

## CHAPTER 398

AN ACT

SB 562

Relating to children; creating new provisions; amending ORS 109.092, 109.096, 109.098, 109.252, 109.304, 109.308, 109.309, 109.315, 109.317, 109.319, 109.321, 109.322, 109.323, 109.324, 109.326, 109.330, 109.350, 109.385, 418.270, 418.312, 419A.116, 419B.090, 419B.100, 419B.150, 419B.171, 419B.185, 419B.234, 419B.305, 419B.310, 419B.325, 419B.328, 419B.365, 419B.366, 419B.368, 419B.395, 419B.449, 419B.452, 419B.470, 419B.476, 419B.498, 419B.500, 419B.517, 419B.521, 419B.524, 419B.529, 419B.532, 419B.875, 419B.878, 419B.923 and 419C.626 and sections 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 61 and 64, chapter 14, Oregon Laws 2020 (first special session); and prescribing an effective date.

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

## ADOPTIONS

## (Jurisdiction; Domicile; Hearing)

**SECTION 1.** Section 12, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

**Sec. 12.** (1) Except as otherwise provided in this section, the [juvenile] court's jurisdiction under ORS 109.309 (4) or 419B.100 (1) in a case involving an Indian child is concurrent with the Indian child's tribe.

(2) If a tribe is not subject to Public Law 83-280, the tribe has exclusive jurisdiction in a case described in ORS 109.309 (4) or 419B.100 (1) involving an Indian child if:

(a) The Indian child is a ward of a tribal court of the [Indian child's] tribe; or

(b) The Indian child resides or is domiciled within the reservation of the tribe.

(3)(a) An Indian tribe subject to Public Law 83-280 may limit the [juvenile] court's exercise of jurisdiction under ORS 109.309 (4) or 419B.100 (1) over an Indian child by entering into a tribal-state agreement described in section 10, chapter 14, Oregon Laws 2020 (first special session) [of this 2020 special session Act].

(b) The [juvenile] court shall decline to exercise its jurisdiction under ORS 109.309 (4) or 419B.100 (1) over an Indian child who is a ward of a tribal court [of the Indian child's tribe,] or who resides or is domiciled within the reservation of [the] a tribe[,] if:

(A) The tribe has entered into a tribal-state agreement in which the state has agreed to decline jurisdiction; and

(B) The tribal-state agreement provides that the tribe has default jurisdiction over those cases.

(c)(A) If the [juvenile] court declines to exercise its jurisdiction under paragraph (b) of this subsection, the court shall coordinate with the tribal court

to facilitate the tribal court's assumption of jurisdiction.

(B) The [juvenile] court shall:

(i) Allow the Indian child's parent, Indian custodian or tribe to participate in any communications under this subsection with a tribal court or, if the person is unable to participate in a communication, provide the person with an opportunity to represent facts and legal arguments supporting the person's position before the [juvenile] court makes a decision regarding jurisdiction;

(ii) Create records of any communications under this subsection;

(iii) Notify the Indian child's parent, Indian custodian or tribe in advance of each communication; and

(iv) Provide the Indian child's parent, Indian custodian or tribe with access to the record of the communication.

(C) Communications between the [juvenile] court and a tribal court regarding calendars, court records and similar matters may occur without informing the parties or creating a record of the communications.

(D) As used in this paragraph, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) Notwithstanding subsections (2) and (3) of this section, the juvenile court has temporary exclusive jurisdiction over an Indian child who is taken into protective custody under ORS 419B.150 or 419B.152.

**SECTION 2.** ORS 109.309 is amended to read:

109.309. (1) Any person may petition the circuit court for leave to adopt another person and, if desired, for a change of the other person's name. Except as provided in ORS 419B.529 or section 65a of this 2021 Act, a separate petition must be filed for each person for whom leave to adopt is sought.

(2) One petitioner, the child, one parent or the person, who is not an adoption agency, consenting to the adoption as required under ORS 109.321 (1) must be a resident of this state. As used in this subsection, "resident" means a person who has resided in this state continuously for a period of six months prior to the date of the petition.

(3) Except as provided in subsection (4) of this section, when the petition is for the adoption of a minor child, the adoption is governed by the Uniform Child Custody Jurisdiction and Enforcement Act, ORS 109.701 to 109.834.

(4)(a) Notwithstanding ORS 109.741 and 109.744 and except as provided in section 12, chapter 14, Oregon Laws 2020 (first special session), a court of this state has jurisdiction over the adoption of a minor child if, immediately prior to the filing of a petition for adoption:

(A) The minor child resided in this state for at least six consecutive months including periods of temporary absence;

(B) One parent or another person, who is not an adoption agency, consenting to the adoption as required under ORS 109.321 (1) **or section 19 of this 2021 Act** resided in this state for at least six consecutive months including periods of temporary absence;

(C) The prospective adoptive parent resided in this state for at least six consecutive months including periods of temporary absence and substantial evidence is available in this state concerning the present or future care of the minor child;

(D) It appears that no court of another state would have jurisdiction under circumstances substantially in accordance with subparagraphs (A) to (C) of this paragraph; or

(E) A court of another state has declined to exercise jurisdiction on the grounds that this state is a more appropriate forum to hear a petition for adoption of the minor child and it is in the best interests of the minor child that a court of this state assume jurisdiction.

(b) As used in paragraph (a) of this subsection, “periods of temporary absence” means periods of absence of not more than a total of 30 days in the prior six consecutive months.

(5) In a petition to adopt a minor child, venue lies in the Oregon county with which the child has the most significant connection or in the Oregon county in which the licensed adoption agency is located.

(6) A petition for adoption of a minor child must comply with the requirements, and be served in the manner, described in ORS 109.315.

(7)(a) In a proceeding for the adoption of a minor child, a current home study must be approved by either the Department of Human Services or an Oregon licensed adoption agency for the purpose of demonstrating that the petitioner meets the minimum standards for adoptive homes as set forth in the department’s administrative rules.

(b) **Except when the court finds that there is reason to know that the child is an Indian child**, the department, upon request by the petitioner, may waive the home study requirement in an adoption proceeding in which one of the child’s biological parents or adoptive parents retains parental rights, or when a relative who qualifies under the department’s administrative rules for a waiver of the home study requirement is the prospective adoptive parent.

(c) The department shall, subject to ORS 109.306, adopt rules to implement the provisions of this subsection.

(8)(a)(A) Within 90 days after service upon the Director of Human Services as required under ORS 109.315, the Department of Human Services shall investigate and file for the consideration of the judge before whom the petition for adoption is pending a placement report containing information regarding the status of the child and evidence concerning the suitability of the proposed adoption. The department may designate an Oregon licensed adoption agency to investigate and report to the

court. If the department designates an Oregon licensed adoption agency to investigate and report to the court, the department shall make the designation and provide all necessary information and materials to the Oregon licensed adoption agency no later than 30 days after the service on the director and upon receipt of all required documentation and fees.

(B) **Except when the court finds that there is reason to know that the child is an Indian child**, the department:

(i) May waive the placement report requirement under this subsection; *[but]* **and**

(ii) Shall waive the placement report requirement in an adoption proceeding in which one of the child’s biological parents or adoptive parents retains parental rights.

(b) Upon receipt of a written request by the petitioner or the petitioner’s attorney, the department shall furnish to the petitioner or the petitioner’s attorney copies of any information that the department has filed with the court.

(c) Information gathered by the department or by an Oregon licensed adoption agency during the preparation of the placement report may include information concerning the child’s social, medical and genetic history and the birth parent’s history as may be required by ORS 109.321 or 109.342 **or section 19 of this 2021 Act**.

(d) The court shall file and retain the placement report filed under this subsection in the same location in the records, papers and files in the court’s record of the adoption case as the petition and exhibits filed under ORS 109.315 are located. The placement report must be segregated from the Adoption Summary and Segregated Information Statement and the exhibits submitted under ORS 109.317.

(e) The department shall, subject to ORS 109.306, adopt rules to implement the provisions of this subsection.

(9) The department may charge the petitioner a fee for investigating a proposed nonagency adoption and preparing the home study required under subsection (7) of this section and the placement report required under subsection (8) of this section. The petitioner shall report the fee amount to the court. The court granting the adoption shall make a finding as to whether the fee is necessary and reasonable. Any fee charged may not exceed reasonable costs for investigation, home study and placement report preparation. The department shall prescribe by rule the procedure for computing the investigation, home study and placement report preparation fee. The rules shall provide a waiver of either part or all of the fee based upon the petitioner’s ability to pay.

(10) The court may not rule upon a petition for the adoption of a minor child until at least 90 days after the date that the petition and documents required to be served on the Director of Human Services under ORS 109.315 and 109.317 have been served upon the director. The department may waive the 90-day waiting period.

(11) The amounts of any fees collected under subsection (9) of this section are continuously appropriated to the department for use in preparing home studies and placement reports required under this section.

(12)(a) Except as provided in paragraph (b) of this subsection, a court may not grant a judgment for the adoption of a minor child unless the petitioner has filed with the court:

(A) A petition, including exhibits attached to the petition, meeting the requirements of ORS 109.315;

(B) Written evidence that a home study has been completed and approved, unless waived, under subsection (7) of this section;

(C) A placement report under subsection (8) of this section unless waived; and

(D) The Adoption Summary and Segregated Information Statement under ORS 109.317, including exhibits attached to the statement.

(b) **Except when the court finds that there is reason to know that child is an Indian child**, a person is not required to file a home study or a placement report with the court when the department has granted the person a waiver under department rules.

*[(13) The adoption shall comply with the Indian Child Welfare Act (25 U.S.C. 1901 et seq.), if applicable.]*

**(13) When the court conducts a hearing under ORS 109.304 to 109.410 regarding the adoption of a minor child, the court shall make the inquiries described in section 15 (4)(b), chapter 14, Oregon Laws 2020 (first special session), and make a finding and order subject to the procedures under section 15 (4), chapter 14, Oregon Laws 2020 (first special session), regarding whether there is reason to know that the child is an Indian child.**

**SECTION 3.** Section 9, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

**Sec. 9.** In any **child custody** proceeding *[under]* based on **allegations that an Indian child is within the jurisdiction of the court under ORS 109.304 to 109.410** or ORS chapter 419B *[involving an Indian child]*, the *[juvenile]* court must determine the residence and domicile of the Indian child and whether the Indian child is a ward of tribal court. The *[juvenile]* court shall communicate with any tribal courts to the extent necessary to make a determination under this section.

**SECTION 4.** Section 13, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

**Sec. 13.** (1) Except as provided in subsection (5) of this section, the *[juvenile]* court shall transfer a **child custody** proceeding under **ORS 109.304 to 109.410** or ORS chapter 419B involving an Indian child if, at any time during the proceeding, the Indian child's parent, Indian custodian or tribe petitions the court to transfer the proceeding to the tribal court.

(2) Upon receipt of a transfer motion, the *[juvenile]* court shall contact the Indian child's tribe and request a timely response regarding whether the tribe intends to decline the transfer.

*[(3) A party may object to the transfer motion on the basis of one of the following:]*

**(3) Transfer of the proceeding is inappropriate if:**

(a) *[That]* The Indian child's tribe has declined the transfer;

(b) *[That]* One or both of the Indian child's parents object to the transfer; or

(c) *[That]* Good cause exists to deny the transfer.

(4)(a) If a party objects to the transfer motion for good cause, the court shall fix the time for hearing on objections to the motion.

(b) At the hearing, the objecting party has the burden of proof of establishing by clear and convincing evidence that good cause exists to deny the transfer.

(c) If the Indian child's tribe contests the assertion that good cause exists to deny the transfer, the court shall give the tribe's argument substantial weight.

(d) When making a determination whether good cause exists to deny the transfer motion, the *[juvenile]* court may not consider:

(A) Whether the proceeding is at an advanced stage;

(B) Whether there has been a prior proceeding involving the Indian child in which a transfer motion was not filed;

(C) Whether the transfer could affect the placement of the Indian child;

(D) The Indian child's cultural connections with the tribe or the tribe's reservation;

(E) The socioeconomic conditions of the Indian child's tribe or any negative perception of tribal or United States Bureau of Indian Affairs' social services or judicial systems; or

(F) Whether the transfer serves the best interests of the Indian child.

(5)(a) The court shall deny the transfer motion if:

(A) The tribe declines the transfer orally on the record or in writing;

(B) The Indian child's parent objects to the transfer; or

(C) The court finds by clear and convincing evidence, after hearing, that good cause exists to deny the transfer.

(b) Notwithstanding paragraph (a)(B) of this subsection, the objection of the Indian child's parent does not preclude the transfer if:

(A) The objecting parent dies or the objecting parent's parental rights are terminated and have not been reinstated under ORS 419B.532; and

(B) The Indian child's remaining parent, Indian custodian or tribe files a new transfer motion subsequent to the death of the objecting parent or the termination of the parental rights of the objecting parent.

(6) If the [juvenile] court denies a transfer under this section, the court shall document the basis for the denial in a written order.

**SECTION 5.** Section 14, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

**Sec. 14.** Upon granting a transfer motion under section 13, chapter 14, Oregon Laws 2020 (first special session) [of this 2020 special session Act], the [juvenile] court shall expeditiously:

(1) Notify the tribal court of the pending dismissal of the **child custody** proceeding;

(2) Transfer all information regarding the proceeding, including [but not limited to] pleadings and court records, to the tribal court;

(3) **If the Indian child is alleged to be within the jurisdiction of the juvenile court under ORS 419B.100**, direct the Department of Human Services to:

(a) Coordinate with the tribal court and the Indian child's tribe to ensure that the transfer of the proceeding and the transfer of custody of the Indian child is accomplished with minimal disruption of services to the Indian child and the Indian child's family; and

(b) Provide the Indian child's tribe with documentation related to the Indian child's eligibility for state and federal assistance and information related to the Indian child's social history, treatment diagnosis and services and other relevant case and service related data; and

(4) Dismiss the proceeding upon confirmation from the tribal court that the tribal court received the transferred information.

**(Inquiry; Verification;  
ICWA Compliance Reports)**

**SECTION 6.** Section 7 of this 2021 Act is added to and made a part of ORS 109.304 to 109.410.

**SECTION 7.** (1) In a proceeding for the adoption or readoption of a minor child, within 90 days after service of a petition or amended petition upon the Director of Human Services as required under ORS 109.315 or 109.385, the Department of Human Services shall file with the court an ICWA compliance report. The ICWA compliance report must reflect the department's review of the petition or amended petition and must advise the court on whether the documentation submitted by the petitioner is sufficient and complete for the court to make the findings required under subsection (2) of this section. Nothing in this subsection or subsection (3) of this section requires the department to make a determination of law regarding the documentation provided by the petitioner.

(2)(a) Upon receiving an ICWA compliance report, the court shall order the matter to proceed if the court finds that the petitioner satis-

fied the inquiry requirements under section 15 (2), chapter 14, Oregon Laws 2020 (first special session), and, if applicable, the notice requirements under section 16 (2), chapter 14, Oregon Laws 2020 (first special session).

(b)(A) If the court finds, subject to the procedures under section 15 (4), chapter 14, Oregon Laws 2020 (first special session), that there is reason to know that the child is an Indian child, the court's order under this subsection must include a finding regarding whether the proposed adoptive placement complies with the preferences under section 23 (2), chapter 14, Oregon Laws 2020 (first special session). If the court finds that the proposed adoptive placement does not comply with the preferences or that the documentation provided by the petitioner is insufficient for the court to make a finding, the court shall direct the petitioner to amend the petition to cure the deficiency or file a motion under section 23 (3), chapter 14, Oregon Laws 2020 (first special session), for authority to make the placement contrary to the placement preferences under section 23 (2), chapter 14, Oregon Laws 2020 (first special session).

(B) If the court finds that the petitioner failed to satisfy the inquiry or, if applicable, the notice requirements under sections 15 (2) and 16 (2), chapter 14, Oregon Laws 2020 (first special session), or if the documentation supplied by the petitioner is insufficient for the court to make those findings, the court shall direct the petitioner to cure the inquiry or notice deficiency and file an amended petition.

(c) The court shall order the petitioner to appear and show cause why the court should not dismiss the petition if the court directs the petitioner to file an amended petition or a motion under paragraph (b) of this subsection and the petitioner fails to do so within a reasonable amount of time.

(3)(a) The department shall, by rule, provide a nonexhaustive description of the documentation that petitioners or moving parties in proceedings under ORS 109.304 to 109.410 may submit to the court to document compliance with the inquiry and notice requirements under sections 15 (2) and (4) and 16 (2) and (3), chapter 14, Oregon Laws 2020 (first special session), and the placement preferences under section 23, chapter 14, Oregon Laws 2020 (first special session), including:

(A) Descriptions of the consultations the petitioner or moving party made with the individuals described in section 15 (2), chapter 14, Oregon Laws 2020 (first special session), and the responses the petitioner or moving party obtained;

(B) Descriptions of any oral responses and copies of any written responses the petitioner or moving party obtained from the individuals

described in section 15 (2) or 16 (3), chapter 14, Oregon Laws 2020 (first special session);

(C) Copies of any identification cards or other records indicating the membership of the child or the child's parent in an Indian tribe;

(D) Copies of any tribal court records regarding the Indian child;

(E) Any reports, declarations or testimony on the record documenting the due diligence of the petitioner or moving party to identify and work with all of the tribes of which the petitioner or moving party has reason to know that the child may be a member or in which the child may be eligible for membership; and

(F) The declaration of compliance regarding the section 16 (2), chapter 14, Oregon Laws 2020 (first special session), notices the petitioner sent, as described in ORS 109.315 (5)(d) and 109.385 (7)(b).

(b) The department shall adopt any other rules for the preparation of ICWA compliance reports that are necessary for the department to carry out the department's duties under ORS 109.304 to 109.410.

(c) The State Court Administrator may prepare and make available to the public forms and information to assist petitioners to comply with the requirements under this section, ORS 109.315 and 109.385 and sections 15 (2), 16 (2) and (3) and 23 (2) and (3), chapter 14, Oregon Laws 2020 (first special session), and any related rules, including:

(A) Forms of petitions required under ORS 109.315 and 109.385, motions to request a deviation from the placement preferences under section 23 (3), chapter 14, Oregon Laws 2020 (first special session), and notices required under section 16 (2), chapter 14, Oregon Laws 2020 (first special session); and

(B) Worksheets and checklists to assist petitioners with the inquiry required under section 15 (2), chapter 14, Oregon Laws 2020 (first special session), the notices required under section 16 (2), chapter 14, Oregon Laws 2020 (first special session), and assessing whether proposed adoptive placements satisfy the preferences under section 23 (2), chapter 14, Oregon Laws 2020 (first special session).

(d) The Judicial Department may design and offer trainings to courts having jurisdiction over adoption matters regarding the application of sections 1 to 23, chapter 14, Oregon Laws 2020 (first special session), to adoptions of minor children, including but not limited to identifying when there is reason to know that the child is an Indian child and making findings regarding the sufficiency of inquiry and notice and the appropriateness of adoptive placements.

**SECTION 8.** ORS 109.315 is amended to read:

109.315. (1) A petition for adoption of a minor child must be signed by the petitioner and, unless

stated in the petition why the information or statement is omitted, must contain the following:

(a) The full name of the petitioner;

(b) The state and length of residency in the state of the petitioner and information sufficient to establish that the residency requirement of ORS 109.309 (2) has been met;

(c) The current marital or domestic partnership status of the petitioner;

(d) An explanatory statement as to why the petitioner is of sufficient ability to bring up the minor child and furnish suitable nurture and education sufficient for judgment to be entered under ORS 109.350;

(e) Information sufficient for the court to establish that the petitioner has complied with the jurisdictional and venue requirements of ORS 109.309 (4) and (5);

(f) The full name, gender and date and place of birth of the minor child;

(g) The marital or domestic partnership status of the biological mother at the time of conception, at the date of birth and during the 300 days prior to the date of birth of the minor child;

*[(h) A statement that the minor child is not an Indian child as defined in the Indian Child Welfare Act (25 U.S.C. 1901 et seq.) or, if the Indian Child Welfare Act applies:]*

*[(A) A statement of the efforts to notify the appropriate Indian tribe or tribes of the adoption; and]*

*[(B) A statement of the efforts to comply with the placement preferences of the Indian Child Welfare Act or the placement preferences of the appropriate Indian tribe;]*

(h)(A) A declaration under penalty of perjury and documentation, as described by the Department of Human Services by rule, of the petitioner's efforts described in section 15 (2), chapter 14, Oregon Laws 2020 (first special session), to determine whether there is reason to know that the child is an Indian child;

(B) A statement that the petitioner has reason to know that the child is an Indian child or does not have reason to know that the child is an Indian child; and

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

(i) A declaration under penalty of perjury and documentation, as described by the department by rule, showing that the proposed adoptive placement complies with the requirements under section 23 (2), chapter 14, Oregon Laws 2020 (first special session); or

(ii) A statement that the petitioner is moving the court under section 23 (3), chapter 14, Oregon Laws 2020 (first special session), for a finding, by clear and convincing evidence, that good cause exists for alternative adoptive placement and a statement describing the details supporting the petitioner's assertion that good cause exists for the alternative placement, as described in section 23 (4), chapter 14, Oregon Laws 2020 (first special session);

(i) The name and relationship to the minor child of any person who has executed a written release or surrender of parental rights or of rights of guardianship of the minor child as provided by ORS 418.270 and the date of the release or surrender;

(j) The name and relationship to the minor child of any person who has given written consent as required under ORS 109.321 **or section 19 of this 2021 Act**, and the date the consent was given;

(k) The name and relationship to the minor child of any person or entity for whom the written consent requirement under ORS 109.321 **or section 19 of this 2021 Act** is waived or not required as provided in ORS 109.322, 109.323, 109.324, 109.325, 109.326 and 109.327 or whose written consent may be substituted for the written consent requirement under ORS 109.321 **or section 19 of this 2021 Act** as provided in ORS 109.322, 109.323, 109.324, 109.325, 109.326, 109.327, 109.328 and 109.329;

(L) The name and relationship to the minor child of all persons who have signed and attested to:

(A) A written certificate of irrevocability and waiver as provided in ORS 109.321 (2); or

(B) A written certificate stating that a release or surrender under ORS 418.270 (4) [*shall become*] **becomes** irrevocable as soon as the child is placed for the purpose of adoption **or, if the child is an Indian child, upon entry of the judgment of adoption**;

(m) A statement of the facts and circumstances under which the petitioner obtained physical custody of the minor child, including date of placement with the petitioner for adoption and the name and relationship to the minor child of the individual or entity placing the minor child with the petitioner;

(n) The length of time that a minor child has been in the physical custody of the petitioner and, if the minor child is not in the physical custody of the petitioner, the reason why, and the date and manner in which the petitioner will obtain physical custody of the minor child;

(o) Whether a continuing contact agreement exists under ORS 109.305, including names of the parties to the agreement and date of execution;

(p) A statement establishing that the requirements of ORS 109.353 regarding advisement about the voluntary adoption registry and the registry's services have been met;

(q) A statement establishing that the requirements of ORS 109.346 regarding notice of right to counseling sessions have been met;

(r) A statement that the information required by the Uniform Child Custody Jurisdiction and Enforcement Act under ORS 109.701 to 109.834 has been provided in the Adoption Summary and Segregated Information Statement under ORS 109.317;

(s) A statement that the Interstate Compact on the Placement of Children does or does not apply and, if applicable, a statement of the efforts undertaken to comply with the compact;

(t) Unless waived, a statement that a current home study was completed in compliance with ORS 109.309 (7); and

(u) A declaration made under penalty of perjury that the petition, and the information and statements contained in the petition, are true to the best of the petitioner's knowledge and belief and that the petitioner understands the petition, and information and statements contained in the petition, may be used as evidence in court and are subject to penalty for perjury.

(2) A petition filed under ORS 109.309 must, if applicable, request the following:

(a) Entry of a general judgment of adoption;

(b) That the petitioner be permitted to adopt the minor child as the child of the petitioner for all legal intents and purposes;

(c) A finding that the court has jurisdiction over the adoption proceeding, the parties and the minor child;

(d) With respect to the appropriate persons, the termination of parental rights or a determination of nonparentage;

(e) Approval of a change to the minor child's name;

(f) A finding that a continuing contact agreement entered into under ORS 109.305 is in the best interests of the minor child and that, if the minor child is 14 years of age or older, the minor child has consented to the agreement, and that the court incorporate the continuing contact agreement by reference into the adoption judgment;

(g) That the court require preparation of and certify a report of adoption as provided in ORS 432.223;

(h) That all records, papers and files in the record of the adoption case be sealed as provided under ORS 109.319; [*and*]

**(i) A finding that the petitioner complied with the inquiry requirements under section 15 (2), chapter 14, Oregon Laws 2020 (first special session);**

**(j) A finding of whether there is reason to know that the child is an Indian child;**

**(k) If the court finds that there is reason to know that the child is an Indian child:**

**(A) The determinations required under section 9, chapter 14, Oregon Laws 2020 (first special session), regarding the Indian child's residence, domicile and wardship status;**

**(B) A finding that the petitioner complied with the notice requirements under section 16 (2), chapter 14, Oregon Laws 2020 (first special session); and**

**(C) A finding that the adoptive placement complies with the placement preferences under section 23 (2), chapter 14, Oregon Laws 2020 (first special session), or, if not, that, upon the petitioner's motion under section 23 (3), chapter 14, Oregon Laws 2020 (first special session), good cause exists for placement contrary to the placement preferences in section 23 (2), chapter 14, Oregon Laws 2020 (first special session); and**

**[(i)] (L) Any other relief requested by the petitioner.**

(3) A petition filed under ORS 109.309 must, if applicable, have the following attached as exhibits:

(a) Any written release or surrender of the minor child for adoption, or a written disclaimer of parental rights;

(b) Any written consent to the adoption;

(c) Any certificate of irrevocability and waiver;

(d) Any continuing contact agreement under ORS 109.305;

(e) The written disclosure statement required under ORS 109.311; and

(f) Any other supporting documentation necessary to comply with the petition requirements in this section and ORS 109.309.

(4) The petition and documents filed as exhibits under subsection (3) of this section are confidential and may not be inspected or copied except as provided under ORS [109.305] **109.304** to 109.410 and 109.425 to 109.507.

(5)(a) Within 30 days after being filed with the court, the petitioner shall serve copies of the petition, the documents filed as exhibits under subsection (3) of this section, [and] the Adoption Summary and Segregated Information Statement described in ORS 109.317, including any amendments and exhibits attached to the statement, **and, if applicable, a copy of the declaration of compliance described in paragraph (d) of this subsection**, on the Director of Human Services by either registered or certified mail with return receipt or personal service.

(b) In the case of an adoption in which one of the child's parents retains parental rights as established under ORS 109.065 **or section 4, chapter 14, Oregon Laws 2020 (first special session)**, the petitioner shall also serve the petition by either registered or certified mail with return receipt or personal service:

(A) On all persons whose consent to the adoption is required under ORS 109.321 unless the person's written consent is filed with the court; and

(B) On the parents of the party whose parental rights would be terminated, if the names and addresses are known or may be readily ascertained by the petitioner.

(c) When a parent of the child is deceased or incapacitated, the petitioner shall also serve the petition on the parents of the deceased or incapacitated parent, if the names and addresses are known or may be readily ascertained by the petitioner. As used in this paragraph:

(A) "Incapacitated" means a condition in which a person's ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person lacks the capacity to meet the essential requirements for the person's physical health or safety.

(B) "Meet the essential requirements for the person's physical health or safety" means those actions necessary to provide health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is likely to occur.

**(d) If the petitioner has reason to know that the child is an Indian child, within 30 days after filing the petition, the petitioner shall:**

**(A) Serve copies of the petition by registered or certified mail, return receipt requested, together with the notice of proceeding in the form required under section 16 (3), chapter 14, Oregon Laws 2020 (first special session), to:**

**(i) Each tribe of which the child may be a member or in which the Indian child may be eligible for membership;**

**(ii) The child's parents;**

**(iii) The child's Indian custodian, if applicable; and**

**(iv) The appropriate United States Bureau of Indian Affairs Regional Director listed in 25 C.F.R. 23.11(b), if the identity or location of the child's parents, Indian custodian or tribe cannot be ascertained.**

**(B) File a declaration of compliance with the court, including a copy of each notice sent, together with any return receipts or other proof of service.**

**[(d)] (e) Except when the child is an Indian child**, service required by this subsection may be waived by the court for good cause.

**SECTION 9.** ORS 109.385 is amended to read:

109.385. (1) As used in this section, "readoption" means to adopt a person, including but not limited to a minor child, who was previously adopted in a foreign nation, pursuant to the laws of the state.

(2) An adoption in a foreign nation under the laws of that nation of a person who is at the time of the adoption a national of the nation by adoptive parents, at least one of whom is a citizen of the United States, shall be recognized as a valid and legal adoption for all purposes in the State of Oregon if the adoption is valid and legal in the foreign nation where the adoption occurred, unless the adoption violates fundamental principles of human rights or the public policy of the state or of the federal government.

(3) A copy of a decree, order, judgment, certificate or other document of adoption by adoptive parents, at least one of whom is a citizen of the United States, issued by a court or pursuant to an administrative proceeding of competent jurisdiction in the foreign nation is prima facie evidence in any court or administrative proceeding in this state that the adoption was legal and valid.

(4) Notwithstanding subsection (2) of this section, an adoptive parent who has adopted a person in a foreign nation may petition the court for readoption for the purpose of obtaining a judgment of adoption from the circuit court of the county in which the petitioner resides.

(5) Except as otherwise provided in this section, ORS 109.315 does not apply to a petition for readoption under this section.

(6) A petition for readoption must be signed by the petitioner and, unless stated in the petition why

the information or statement is omitted, must contain the following:

- (a) The full name of the petitioner;
- (b) The current marital or domestic partnership status of the petitioner;
- (c) If the readoption is of a minor child, information sufficient for the court to establish that the petitioner has complied with the jurisdictional requirements of ORS 109.309 (4);
- (d) The gender and full birth name, adopted name and any other alias of the person sought to be readopted;
- (e) A statement of the place and date of the person's birth in the foreign nation;
- (f) A statement that the foreign adoption is legal and valid under the laws of the nation in which the adoption occurred and the date of the adoption;
- (g) A statement that the person's entry into the United States has complied with applicable federal immigration laws;
- (h) If the readoption is of a minor child, a statement that a home study was completed and approved prior to the foreign nation adoption of the minor child;
- (i) If the readoption is of a minor child, whether a continuing contact agreement exists under ORS 109.305 or a similar law applicable to the nation where the foreign nation adoption occurred, including the names of the parties to the agreement and the date of execution;
- (j) A statement of the desired new adoptive name for the person to be readopted;
- (k) If applicable, a statement that the birthdate listed on the person's foreign nation birth documents is believed to be inaccurate and a description of the evidence that supports the petitioner's belief;
- (L) A statement requesting the clerk of the court, upon payment of any required fees, to issue to the petitioner a certificate of adoption under ORS 109.410 and a certified copy of the general judgment of adoption; and
- [(m) A statement that indicates whether the minor child is an Indian child as defined in the Indian Child Welfare Act (25 U.S.C. 1901 et seq.) and, if required by the Indian Child Welfare Act:]
  - [(A) A statement of the efforts to notify the appropriate Indian tribe or tribes of the adoption; and]
  - [(B) A statement of the efforts to comply with the placement preferences of the Indian Child Welfare Act or the placement preferences of the appropriate Indian tribe.]
- (m)(A) A declaration under penalty of perjury and documentation, as described by the Department of Human Services by rule, of the efforts described in section 15 (2), chapter 14, Oregon Laws 2020 (first special session), the petitioner made to determine whether there is reason to know that the child is an Indian child;**
- (B) A statement that the petitioner has reason to know that the child is an Indian child or the petitioner does not have reason to know that the child is an Indian child; and**

**(C) If the petitioner has reason to know that the child is an Indian child:**

- (i) A declaration under penalty of perjury and documentation, as described by the department by rule, showing that the proposed adoptive placement complies with the requirements under section 23 (2), chapter 14, Oregon Laws 2020 (first special session); or**
- (ii) A statement that the petitioner is moving the court under section 23 (3), chapter 14, Oregon Laws 2020 (first special session), for a finding that good cause exists for placement contrary to the placement preferences and a statement describing the details supporting the petitioner's assertion that good cause exists for the alternative placement, as described in section 23 (4), chapter 14, Oregon Laws 2020 (first special session).**
- (7)(a) Within 30 days after being filed with the court, the petitioner shall serve copies of the petition and the documents filed as exhibits under subsection (9) of this section and, if applicable, a copy of the declaration of compliance described in paragraph (b) of this subsection, on the Director of Human Services by either registered or certified mail with return receipt or personal service.**
- (b) If the petitioner has reason to know that the child is an Indian child, within 30 days after filing the petition, the petitioner shall:**
  - (A) Serve copies of the petition by registered or certified mail, return receipt requested, together with the notice of proceeding in the form required under section 16 (3), chapter 14, Oregon Laws 2020 (first special session), to:**
    - (i) Each tribe of which the child may be a member or in which the Indian child may be eligible for membership;**
    - (ii) The child's parents;**
    - (iii) The child's Indian custodian, if applicable; and**
    - (iv) The appropriate United States Bureau of Indian Affairs Regional Director listed in 25 C.F.R. 23.11(b), if the identity or location of the child's parents, Indian custodian or tribe cannot be ascertained.**
  - (B) File a declaration of compliance with the court, including a copy of each notice sent, together with any return receipts or other proof of service.**
- (8) A petition filed under this section must, if applicable, request the following:**
  - (a) Entry of a general judgment of adoption;**
  - (b) That the petitioner be permitted to readopt the person as the child of the petitioner for all legal intents and purposes;**
  - (c) A finding that the court has jurisdiction over the adoption proceeding, the parties and the person sought to be readopted;**
  - (d) Approval of a change to the name of the person to be readopted;**
  - (e) If applicable, a finding that a continuing contact agreement entered into under ORS 109.305, or a similar law applicable to the nation where the**



foreign nation adoption occurred, is in the best interests of the minor child and that the court incorporate the continuing contact agreement by reference into the adoption judgment;

(f) If applicable, a finding that the evidence of the person's birthdate listed on the foreign nation adoption documents is inaccurate and that the evidence presented by the petitioner supports a change to the birthdate of the person to be readopted;

(g) That the court require preparation of and certify a report of adoption as provided in ORS 432.223;

(h) If the readoption is of a minor child, that all records, papers and files in the record of the readoption case be sealed as provided under ORS 109.319; *[and]*

**(i) A finding that the child is or is not an Indian child;**

**(j) A finding that the petitioner complied with the inquiry requirements under section 15 (2), chapter 14, Oregon Laws 2020 (first special session);**

**(k) If the child is an Indian child:**

**(A) The determinations required under section 9, chapter 14, Oregon Laws 2020 (first special session), regarding the Indian child's residence, domicile and wardship status;**

**(B) A finding that the petitioner complied with the notice requirements under section 16 (2), chapter 14, Oregon Laws 2020 (first special session); and**

**(C) A finding that the adoptive placement complies with the placement preferences under section 23 (2), chapter 14, Oregon Laws 2020 (first special session), or, upon the petitioner's motion under section 23 (3), chapter 14, Oregon Laws 2020 (first special session), that good cause exists for placement contrary to the placement preferences in section 23 (2), chapter 14, Oregon Laws 2020 (first special session); and**

*[(i)]* **(L) Any other relief requested by the petitioner.**

(9) A petition filed under this section must, if applicable, have the following attached as exhibits:

(a) True copies of the foreign nation birth certificate of the person to be readopted, accompanied by an English translation, if necessary;

(b) True copies of the foreign nation adoption decree, order, judgment, certificate or similar document accompanied by an English translation, if necessary;

(c) True copies of the foreign nation passport and proof of legal residency in the United States for the person sought to be readopted;

(d) If applicable, a true copy of any continuing contact agreement entered into under ORS 109.305 or a similar law applicable to the nation where the foreign nation adoption occurred;

(e) If applicable, the written disclosure statement required under ORS 109.311; and

(f) Any other supporting documentation necessary to comply with the petition requirements in this section.

(10)(a) An Adoption Summary and Segregated Information Statement must be filed concurrently with every petition for readoption of a minor child. The statement must summarize information in the readoption proceeding and include additional information and attached exhibits as required under this subsection. The statement must contain, at a minimum, the following information if known or readily ascertainable by the petitioner:

(A) The full name, permanent address and telephone number of each petitioner;

(B) The current full name, the proposed adoptive name and the date and place of birth of the minor child;

(C) The information required by the Uniform Child Custody Jurisdiction and Enforcement Act under ORS 109.701 to 109.834; and

(D) The name, bar number and contact information for any attorney representing a petitioner.

(b) An Adoption Summary and Segregated Information Statement must attach as an exhibit:

(A) A home study that has been approved under ORS 109.309; and

(B) A report of adoption on a form prescribed and furnished by the State Registrar of the Center for Health Statistics as required under ORS 432.223.

(c) The petitioner has a continuing duty to inform the court of any change to the information required by this subsection or when information that was not previously known or ascertainable becomes known or ascertainable.

(d) The Adoption Summary and Segregated Information Statement and the exhibits submitted under this subsection are confidential and may not be inspected or copied except as otherwise provided under ORS ~~[109.305]~~ **109.304** to 109.410 or 109.425 to 109.507. The Adoption Summary and Segregated Information Statement and the exhibits submitted under this section must be segregated in the record of the adoption case from other records, papers and files in the record of the adoption case.

(11)(a) A petition filed under this section is exempt from any requirement for one or more of the following:

*[(a)]* **(A)** Compliance with the consent requirements of ORS 109.321 to 109.330;

*[(b)]* **(B)** A statement that the requirements of ORS 109.353 regarding advisement about the voluntary adoption registry and the registry's services have been met;

*[(c)]* **(C)** A statement that the requirements of ORS 109.346 regarding notice of the right to counseling sessions have been met; and

*[(d)]* **(D)** Provision of a placement report under ORS 109.309 (8).

**(b) Paragraph (a) of this subsection does not apply if the child is an Indian child.**

(12) The requirements for keeping a separate record of the case, for sealing the records, papers and files in an adoption proceeding and for the conditions under which inspection and copying of sealed records, papers and files in the court's record of an

adoption case set forth in ORS 109.319 apply to proceedings for readoption under this section.

(13)(a) The court may find that a person's birthdate listed on the person's foreign nation birth documents is inaccurate based upon a finding that the preponderance of the evidence demonstrates that the birthdate is inaccurate and that the age or birthdate proposed by the petitioner is accurate.

(b) Evidence that the court may consider in making the finding and order under this subsection includes, but is not limited to, one or more of the following:

- (A) Medical evaluations;
- (B) Birth certificates;
- (C) School records;
- (D) Dental evaluations;
- (E) Psychological evaluations;
- (F) Bone density tests; and
- (G) Social evaluations.

(14) The fee imposed and collected by the court for the filing of a petition under this subsection shall be in accordance with ORS 21.145, except that when separate petitions for readoption of multiple minor children are concurrently filed under this section by the same petitioner, one filing fee shall be charged for the first petition filed and the filing fees for concurrently filed petitions shall not be charged.

**SECTION 10.** ORS 109.304 is amended to read: 109.304. As used in ORS [109.305] **109.304** to 109.410, unless the context requires otherwise:

**(1) "Continued custody" of an Indian child has the meaning described in section 3, chapter 14, Oregon Laws 2020 (first special session).**

[(1)] **(2)** "Home study" means a written report documenting the result of an assessment conducted by the Department of Human Services, a licensed adoption agency or other public agency to evaluate the suitability of a prospective adoptive parent or parents to adopt.

**(3) "ICWA compliance report" means a written report prepared by the department after the petition for adoption or readoption has been filed, as described in section 7 of this 2021 Act.**

**(4) "Indian child" has the meaning given that term in section 2, chapter 14, Oregon Laws 2020 (first special session).**

[(2)] **(5)** "Placement report" means a written report prepared by the department or by an Oregon licensed adoption agency after the petition for adoption has been filed that includes the department's or the agency's recommendation to the court concerning whether the court should grant the petition for adoption based upon the department's or the agency's evaluation of:

- (a) The status and adjustment of the child; and
- (b) The status and adjustment of the child's prospective adoptive parent.

[(3)] **(6)** "Records, papers and files" means all documents, writings, information, exhibits and other filings retained in the court's record of an adoption case pursuant to ORS 109.319, and includes but is not limited to the Adoption Summary and Segre-

gated Information Statement described in ORS 109.317, and exhibits attached to the statement, the petition and exhibits attached to the petition pursuant to ORS 109.315, and any other motion, judgment, document, writing, information, exhibit or filing retained in the court's record of the adoption case.

**SECTION 11.** Section 2, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

**Sec. 2.** As used in sections 1 to 23, **chapter 14, Oregon Laws 2020 (first special session)** [of this 2020 special session Act], unless the context provides otherwise:

**(1)(a) "Child custody proceeding" means a matter arising under ORS chapter 109, 418, 419A or 419B in which the legal custody or physical custody of an Indian child is an issue.**

**(b) "Child custody proceeding" does not include:**

**(A) A proceeding for the custody or support of, or parenting time with, a child under ORS 109.100, 109.103 or 109.119; or**

**(B) An emergency proceeding.**

[(1)] **(2)** "Emergency proceeding" means any court action that involves the emergency removal or emergency placement of an Indian child, including removal under ORS 419B.150, with or without a protective custody order, or a shelter care proceeding under ORS 419B.185.

[(2)(a)] **(3)(a)** "Extended family member" has the meaning given that term by the law or custom of an Indian child's tribe.

(b) If the meaning of "extended family member" cannot be determined under paragraph (a) of this subsection, "extended family member" means a person who has attained 18 years of age and who is the Indian child's grandparent, aunt, uncle, brother, sister, sister-in-law, brother-in-law, niece, nephew, first cousin, second cousin, stepparent or, as determined by the Indian child's tribe, clan or band member.

[(3)] **(4)** "Indian" means a person who is a member of an Indian tribe or who is an Alaska Native and a member of a regional corporation as defined in section 7 of the Alaska Native Claims Settlement Act (43 U.S.C. 1606).

[(4)] **(5)** "Indian child" means any unmarried person who has not attained 18 years of age and:

- (a) Is a member or citizen of an Indian tribe; or
- (b) Is eligible for membership or citizenship in an Indian tribe and is the biological child of a member of an Indian tribe.

[(5)] **(6)** "Indian custodian" means an Indian, other than the Indian child's parent, who has custody, as described in section 3 (1), **chapter 14, Oregon Laws 2020 (first special session)** [of this 2020 special session Act], of the Indian child, or to whom temporary physical care, custody and control has been transferred by the Indian child's parent.

[(6)] **(7)** "Indian tribe" or "tribe" means any Indian tribe, band, nation or other organized group or community of Indians federally recognized as eligible for the services provided to Indians by the United States Secretary of the Interior because of their

status as Indians, including any Alaska Native village as defined in 43 U.S.C. 1602(c).

[(7)] (8) "Juvenile court" has the meaning given that term in ORS 419A.004.

[(8)] (9) "Member" or "membership" means a determination by an Indian tribe that a person is a member or citizen in that Indian tribe.

[(9)] (10) "Parent" means:

(a) A biological parent of an Indian child;

(b) An Indian who has lawfully adopted an Indian child, including adoptions made under tribal law or custom; or

(c) A father whose parentage has been acknowledged or established under **ORS 109.065** or section 4, chapter 14, Oregon Laws 2020 (first special session) [of this 2020 special session Act].

[(10)] (11) "Party" or "parties" means parties to a proceeding, as described in ORS 419B.875.

[(11)] (12) "Reservation" means Indian country as defined in 18 U.S.C. 1151 and any lands not covered under that section, title to which is held by the United States in trust for the benefit of an Indian tribe or individual or held by an Indian tribe or individual subject to a restriction by the United States against alienation.

[(12)] (13) "Tribal court" means a court with jurisdiction over **Indian** child custody proceedings and that is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe or any other administrative body of a tribe that is vested with authority over **Indian** child custody proceedings.

**SECTION 12.** Section 8, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

**Sec. 8.** (1) In a **child custody** proceeding in which an Indian child is alleged to be within the jurisdiction of the court under ORS chapter 109, 418, 419A or 419B [when there is reason to know that the child is an Indian child], or in a hearing under **ORS 419B.626** involving an Indian child, the Indian child's tribe is:

(a) If the Indian child is a member of or is eligible for membership in only one tribe, the tribe of which the Indian child is a member or eligible for membership.

(b) If the Indian child is a member of one tribe but is eligible for membership in one or more other tribes, the tribe of which the Indian child is a member.

(c) If the Indian child is a member of more than one tribe or if the Indian child is not a member of any tribe but is eligible for membership with more than one tribe:

(A) The tribe designated by agreement between the tribes of which the Indian child is a member or in which the Indian child is eligible for membership; or

(B) If the tribes are unable to agree on the designation of the Indian child's tribe, the tribe designated by the court.

(2) When designating an Indian child's tribe under subsection (1)(c)(B) of this section, the court

shall, after hearing, designate the tribe with which the Indian child has the more significant contacts, taking into consideration the following:

(a) The preference of the Indian child's parent;

(b) The duration of the Indian child's current or prior domicile or residence on or near the reservation of each tribe;

(c) The tribal membership of the Indian child's custodial parent or Indian custodian;

(d) The interests asserted by each tribe;

(e) Whether a tribe has previously adjudicated a case involving the Indian child; and

(f) If the court determines that the Indian child is of sufficient age and capacity to meaningfully self-identify, the self-identification of the Indian child.

[(3)] *If an Indian child is a member of or is eligible for membership in more than one tribe, the court may, in its discretion, permit a tribe, in addition to the Indian child's tribe determined under subsection (1) of this section, to participate in a proceeding under ORS chapter 419B involving the Indian child in an advisory capacity or as a party.*

**SECTION 13.** ORS 419B.875, as amended by section 28, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

419B.875. (1)(a) Parties to proceedings in the juvenile court under ORS 419B.100 and 419B.500 are:

(A) The child or ward;

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

(C) A putative father of the child or ward who has demonstrated a direct and significant commitment to the child or ward by assuming, or attempting to assume, responsibilities normally associated with parenthood, including but not limited to:

(i) Residing with the child or ward;

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

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

(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 or ward; and

(H) [In cases where there is reason to know, as described in section 15, chapter 14, Oregon Laws 2020 (first special session), that a child involved] **If the child or ward** is an Indian child:

(i) The Indian child's tribe; and

(ii) The Indian child's Indian custodian.

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

**(c) If an Indian child is a member of or is eligible for membership in more than one tribe, the court may, in its discretion, permit a tribe, in addition to the Indian child's tribe, to participate in a proceeding under this chapter involv-**

**ing the Indian child in an advisory capacity or as a party.**

(2) 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)(b) 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.

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

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

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

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

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

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

(b) If a grandparent of a child or ward is present at a hearing concerning the child or ward, and the court informs the grandparent of the date and time

of a future hearing, the department is not required to give notice of the future hearing to the grandparent.

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

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

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

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

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

**SECTION 14.** Section 15, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

**Sec. 15.** (1) In an emergency proceeding, the person taking the child into protective custody shall make a good faith effort to:

(a) Determine whether *[there is]* **the person has** reason to know that the child is an Indian child; and *[to]*

(b) Contact by telephone, electronic mail, facsimile or other means of immediate communication any tribe of which the child is or may be a member to determine the child's affiliation.

(2) Except as provided in subsection (1) of this section **or if the person already knows that a child is an Indian child**, whenever a person is required under **ORS 419C.626 or ORS chapter 109, 418, 419A or 419B** to determine whether *[there is]* **the person has** reason to know that *[a]* **the child** is an Indian child, *[if the person has not already determined that the child is an Indian child, the person shall make a good faith effort to determine whether there is reason to know the child is an Indian child, including by consulting with:]* **the person shall make a good faith effort to determine whether the child is an Indian child, including, at a minimum, consulting with:**

(a) The child;

(b) The child's parent or parents;

(c) Any person having custody of the child or with whom the child resides;

(d) Extended family members of the child;

(e) Any other person who may reasonably be expected to have information regarding the child's membership or eligibility for membership in an Indian tribe; and

(f) Any Indian tribe of which the child may be a member or of which the child may be eligible for membership.

*[(3)(a) At the commencement of any hearing in which the court is required to inquire whether a child is an Indian child, the court shall ask, on the record, each individual present on the matter whether the individual knows or has reason to know that the child is an Indian child.]*

*[(b) If no individual in the proceeding knows or has reason to know that the child is an Indian child, the court shall instruct each party to inform the court immediately if the party later receives information that provides reason to know the child is an Indian child.]*

*[(4)] (3) A court or person has reason to know that a child is an Indian child if:*

*(a) The person knows that the child is an Indian child;*

*(b) The court has found that the child is an Indian child or that there is reason to know that the child is an Indian child;*

*[(a)] (c) Any individual present in the proceeding, officer of the court involved in the proceeding, Indian tribe, Indian organization or agency informs the court or the person that the child is an Indian child;*

*[(b)] (d) Any individual present in the proceeding, officer of the court involved in the proceeding, agency, Indian tribe[,] or Indian organization [or agency] informs the court or the person that information has been discovered indicating that the child is an Indian child;*

*[(c)] (e) The child indicates to the court or the person that the child is an Indian child;*

*[(d)] (f) The court or the person is informed that the domicile or residence of the child, the child's parent or the child's Indian custodian is on a reservation or in an Alaska Native village;*

*[(e)] (g) The court or the person is informed that the child is or has been a ward of a tribal court;*

*[(f)] (h) The court or the person is informed that the child or the child's parent possesses an identification card or other record indicating membership in an Indian tribe;*

*[(g)] (i) Testimony or documents presented to the court or the person indicate in any way that the child may be an Indian child; or*

*[(h)] (j) Any other indicia provided to the court or the person, or within the [court's] knowledge of the court or the person, indicates that the child is an Indian child.*

**(4)(a) Except as provided in section 7 of this 2021 Act, whenever a person is required to demonstrate to the court that the person made efforts to determine whether a child is an Indian child, the court shall make written findings regarding whether the person satisfied the inquiry requirements under subsection (1) or (2) of this section, as appropriate, and whether the child is an Indian child, there is reason to know that the child is an Indian child or there is not reason to know that the child is an Indian child.**

**(b) At the commencement of any hearing in which the court is required to inquire whether**

**a child is an Indian child, unless the court previously found that the child is an Indian child, the court shall ask, on the record, each individual present on the matter whether the individual has reason to know that the child is an Indian child and shall make a finding regarding whether there is reason to know that the child is an Indian child.**

**(c) If the court finds under paragraph (a) or (b) of this subsection that there is reason to know that the child is an Indian child but the court does not have sufficient evidence to find that the child is an Indian child, the court shall order that the child be treated as an Indian child until the court finds that the child is not an Indian child.**

**(d) If the court finds under paragraph (a) or (b) of this subsection that there is not reason to know that the child is an Indian child, the court shall order each party to immediately inform the court if the party receives information providing reason to know that the child is an Indian child.**

**(5) If the court [has] finds under subsection (4) of this section that there is reason to know that the child is an Indian child but the court does not have sufficient evidence to [determine whether the child meets the definition of] make a finding that the child is or is not an Indian child, the court [must:] shall require the Department of Human Services or other party to submit a report, declaration or testimony on the record that the department or the other party used due diligence to identify and work with all of the tribes of which the child may be a member or in which the child may be eligible for membership to verify whether the child is a member or is eligible for membership.**

*[(a) Treat the child as an Indian child until the court determines, on the record, that the child does not meet the definition of an Indian child; and]*

*[(b) Require the Department of Human Services or another party to submit a report, declaration or testimony on the record that the department or other party used due diligence to identify and work with all of the tribes of which there is reason to know the child may be a member or be eligible for membership to verify whether:]*

*[(A) The child is a member; or]*

*[(B) The child is eligible for membership and is the biological child of a member.]*

**(6)(a) A person making an inquiry under subsection (1) or (2) of this section shall request that any tribe receiving information under this section keep documents and information regarding the inquiry confidential if a consenting parent in an adoption proceeding under ORS 109.304 to 109.410 requests anonymity.**

**(b) A consenting parent's request for anonymity does not relieve the court or any party in an adoption proceeding from the duty to verify whether the child is an Indian child.**

**SECTION 15.** Section 16, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

**Sec. 16.** (1)(a) In an emergency proceeding, if there is reason to know that a child is an Indian child and the nature of the emergency allows, the Department of Human Services must notify by telephone, electronic mail, facsimile or other means of immediate communication any tribe of which the child is or may be a member.

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

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

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

(b) File [*an original or*] a copy of each notice sent under this section with the court, together with any return receipts or other proof of service.

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

(a) Be sent to:

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

(B) The child's parents;

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

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

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

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

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

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

(C) To the extent known, the names, dates of birth, places of birth and tribal enrollment information of other direct lineal ancestors of the child;

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

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

(F) A copy of the petition **or motion** initiating the proceeding and, if a hearing has been scheduled, information on the date, time and location of the hearing;

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

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

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

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

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

[*K*] (iv) A statement that the child's parent, Indian custodian or tribe has the right, upon request, to up to 20 additional days to prepare for the proceeding;

**(I) In a proceeding under ORS 109.304 to 109.410, a statement that the child's tribe may intervene in the proceeding;**

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

[*M*] (**K**) A statement describing the potential legal consequences of the proceeding on the future parental and custodial rights of the parent or Indian custodian;

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

[*O*] (**M**) A statement that the information contained in the notice is confidential and that the notice should not be shared with any person not needing the information to exercise rights under sections 1 to 23, **chapter 14, Oregon Laws 2020 (first special session)** [*of this 2020 special session Act*].

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

(5)(a) [*No*] **A hearing [requiring] that requires** notice under subsection (2) of this section may **not** be held until at least 10 days after the [*later*] **latest**

of receipt of the notice by the Indian child's parent, Indian custodian or tribe or, if applicable, the United States Bureau of Indian Affairs. Upon request, the court shall grant the Indian child's parent, Indian custodian or tribe up to 20 additional days from the date upon which notice was received by the parent, Indian custodian or tribe to prepare for participation in the hearing.

(b) Nothing in this subsection prevents a court [from reviewing a removal of an Indian child from the Indian child's parent or Indian custodian] at an emergency proceeding before the expiration of the waiting period described in paragraph (a) of this subsection [to determine the appropriateness of the removal and potential return of the child] **from reviewing the removal of an Indian child from the Indian child's parent or Indian custodian to determine whether the removal or placement is no longer necessary to prevent imminent physical damage or harm to the Indian child.**

**SECTION 16.** Section 23, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

**Sec. 23.** (1) If [there is reason to know that a child is an Indian child and the child] **the parental rights of an Indian child's parents have not been terminated and the Indian child** is in need of placement or continuation in substitute care, as defined in ORS 419A.004, except as provided in subsection [(4)] **(3)** of this section the child must be placed in the least restrictive setting that:

(a) Most closely approximates a family, taking into consideration sibling attachment;

(b) Allows the Indian child's special needs, if any, to be met;

(c) Is in reasonable proximity to the Indian child's home, extended family or siblings; and

(d)(A) Is in accordance with the order of preference established by the Indian child's tribe; or

(B) If the Indian child's tribe has not established placement preferences, is in accordance with the following order of preference:

(i) A member of the Indian child's extended family;

(ii) A foster home licensed, approved or specified by the Indian child's tribe;

(iii) A foster home licensed or approved by a licensing authority in this state and in which one or more of the licensed or approved foster parents is an Indian; or

(iv) An institution for children that has a program suitable to meet the Indian child's needs and is approved by an Indian tribe or operated by an Indian organization.

(2) [If the juvenile court finds that an Indian child is in need of a guardianship pursuant to ORS 419B.365 or 419B.366] **If the parental rights of the Indian child's parents have been terminated or if an Indian child is in need of a guardianship pursuant to ORS 419B.365 or 419B.366 or adoptive placement**, except as provided in subsection [(4)] **(3)** of this section, the Indian child shall be placed:

(a) In accordance with the order of preference established by the Indian child's tribe; or

(b) If the Indian child's tribe has not established [guardianship] placement preferences, according to the following order of preference:

(A) With a member of the Indian child's extended family;

(B) With other members of the Indian child's tribe; or

(C) With other Indian families.

[(3) If any party asserts or the court has reason to believe that the Indian child may have been placed contrary to the placement preferences of subsection (1) or (2) of this section, the court shall make a determination regarding the placement under section 22 of this 2020 special session Act.]

[(4)(a)] **(3)(a)** A party may move the court for authority to make a placement contrary to the placement preferences of subsection (1) or (2) of this section. The motion must detail the reasons the party asserts that good cause exists for placement contrary to the placement preferences established by subsection (1) or (2) of this section.

(b) Upon the filing of an objection to a motion under this subsection, the [juvenile] court shall fix the time for hearing on the objections.

(c) If the [juvenile] court determines that the moving party has established, by clear and convincing evidence, that there is good cause to depart from the placement preferences under this section, the court may authorize placement in an alternative placement.

(d) The court's determination under paragraph (c) of this subsection:

(A) Must be in writing and be based on:

(i) The preferences of the Indian child;

(ii) The presence of a sibling attachment that cannot be maintained through placement consistent with the placement preferences established by subsection (1) or (2) of this section;

(iii) Any extraordinary physical, mental or emotional needs of the Indian child that require specialized treatment services if, despite active efforts, those services are unavailable in the community where families who meet the placement preferences under subsection (1) or (2) of this section reside; or

(iv) Whether, despite a diligent search, a placement meeting the placement preferences under this section is unavailable, as determined by the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

**(B) Must, in applying the placement preferences under this subsection, give weight to a parent's request for anonymity if the placement is an adoptive placement to which the parent has consented.**

[(B)] **(C)** May be informed by but not determined by the placement request of a parent of the Indian child, [if] **after** the parent has reviewed the place-

ment options, if any, that comply with the placement preferences under this section.

[(C)] (D) May not be based on:

(i) The socioeconomic conditions of the Indian child's tribe;

(ii) Any perception of the tribal or United States Bureau of Indian Affairs social services or judicial systems;

(iii) The distance between a placement meeting the placement preferences under this section that is located on or near a reservation and the Indian child's parent; or

(iv) The ordinary bonding or attachment between the Indian child and a nonpreferred placement arising from time spent in the nonpreferred placement.

**(4) The court, on the court's own motion or on the motion of any party, shall make a determination under section 22 (2), chapter 14, Oregon Laws 2020 (first special session), regarding the Indian child's placement if the court or the moving party has reason to believe that the child was placed contrary to the placement preferences of subsection (1) or (2) of this section without good cause. A motion under this subsection may be made orally on the record or in writing.**

**SECTION 17.** ORS 109.317 is amended to read:

109.317. (1) An Adoption Summary and Segregated Information Statement must be filed concurrently with every petition for adoption of a minor child filed under ORS 109.309. The statement must summarize information in the adoption proceeding and include additional information and attached exhibits as required under this section. The statement must contain, at a minimum, the following information if known or readily ascertainable by the petitioner:

(a) The full name, permanent address and telephone number of each petitioner;

(b) The current full name, the proposed adoptive name and the date and place of birth of the minor child;

(c) The names, permanent addresses and telephone numbers of any person whose consent to the adoption is required under ORS 109.321 **or section 19 of this 2021 Act**;

(d) The name and relationship to the minor child and address of any person or entity for whom the written consent requirement under ORS 109.321 **or section 19 of this 2021 Act** is waived or not required as provided in ORS 109.322, 109.323, 109.324, 109.325, 109.326 and 109.327 **or section 19 of this 2021 Act** or whose written consent may be substituted for the written consent requirement under ORS 109.321 **or section 19 of this 2021 Act** as provided in [ORS 109.322, 109.323, 109.324, 109.325, 109.326, 109.327, 109.328 and 109.329] **ORS 109.322 to 109.329**;

(e) **Whether there is reason to know that the child is an Indian child;**

[(e)] (f) The information required by the Uniform Child Custody Jurisdiction and Enforcement Act

under ORS 109.701 to 109.834 except that, when the Department of Human Services or an approved child-caring agency of this or any other state has placed a minor child with a foster parent, the information required under this paragraph regarding the minor child's address, whereabouts or places the minor child has lived during the past five years, as required under ORS 107.767, is limited to the fact that the minor child was placed with a foster parent and the county and state of the location of the foster care placement, and disclosure of the foster parent's name and address is specifically exempted from the requirements of this paragraph;

[(f)] (g) The name, address and telephone number of any adoption agency that will be consenting, or has consented, to the adoption;

[(g)] (h) The name, bar number and contact information for any attorney representing a petitioner or a person whose consent to the adoption is required under ORS 109.321 **or section 19 of this 2021 Act**; and

[(h)] (i) An indication of the type of adoption proceeding as follows:

(A) Private agency adoption, whether domestic or international;

(B) Nonrelated independent adoption;

(C) Readoption of a minor child adopted in a foreign nation under ORS 109.385;

(D) Relative independent adoption;

(E) Stepparent independent adoption;

(F) An independent adoption involving one petitioner who retains parental rights;

(G) Out-of-state public agency adoption;

(H) An adoption in which the Department of Human Services gives consent under ORS 109.325; or

(I) Any other specified adoption.

(2) An Adoption Summary and Segregated Information Statement must, if applicable, have the following attached as exhibits:

(a) A home study or written evidence that a home study has been approved as required by ORS 109.309, unless waived;

(b) A report of adoption on a form prescribed and furnished by the State Registrar of the Center for Health Statistics as required under ORS 432.223; and

(c) A medical history of the minor child and of the biological parents as required under ORS 109.342.

(3) A waiver of the home study requirement may be substituted for the requirement under subsection (2)(a) of this section.

(4) The petitioner has a continuing duty to inform the court of any change to the information required under this section or when information that was not previously known or ascertainable becomes known or ascertainable.

(5) The Adoption Summary and Segregated Information Statement and the exhibits submitted under subsection (2) of this section are confidential and may not be inspected or copied except as otherwise provided under ORS [109.305] **109.304** to 109.410 or 109.425 to 109.507. The Adoption Summary and Seg-



regated Information Statement and the exhibits submitted under this section must be segregated in the record of the adoption case from other records, papers and files in the record of the adoption case.

**(Parental Consent)**

**SECTION 18.** Section 19 of this 2021 Act is added to and made a part of ORS 109.322 to 109.329.

**SECTION 19.** (1) As used in this section, “parent” has the meaning given that term in section 2, chapter 14, Oregon Laws 2020 (first special session).

(2)(a) If a petition filed under ORS 109.309 is for the adoption of an Indian child, except as otherwise provided in ORS 109.322 to 109.329, consent in writing to the adoption must be given by the following:

(A) The Indian child’s parents, or the survivor of the parents.

(B) If the Indian child has no living parent, the Indian child’s guardian or Indian custodian.

(C) If the Indian child has no living parent, guardian or Indian custodian, the next of kin in this state.

(b) Consent under this section is valid only as to the person giving consent.

(c) If both of the Indian child’s parents are living but only one of the Indian child’s parents consents to the adoption:

(A) The petitioner must demonstrate to the court that the petitioner has made active efforts, as described in section 18, chapter 14, Oregon Laws 2020 (first special session), to prevent the break up of the family or to reunite the family;

(B) The petitioner, in accordance with ORS 109.330, shall serve on the nonconsenting parent a summons and a motion and order to show cause why the proposed adoption should not be ordered without the nonconsenting parent’s consent; and

(C) The objections of the nonconsenting parent, if any, must be heard if appearance is made.

(3)(a) An Indian child’s parent may consent to the adoption of the Indian child at any time not less than 10 days following the date of the Indian child’s birth by executing the consent in person before the court and filing the consent with the court.

(b) The consent must clearly set out the conditions to the consent, if any.

(4)(a) Prior to the execution of a parent’s consent under subsection (3) of this section, the court must explain to the parent on the record in detail and in the language of the parent:

(A) The right to legal counsel;

(B) The terms and consequences of the consent in detail; and

(C) That at any time prior to the entry of the judgment of adoption or readoption under ORS 109.350 the parent may withdraw consent for any reason and have the child returned.

(b) After the execution of a parent’s consent under subsection (3) of this section, the court shall certify that the court made the explanation under paragraph (a) of this subsection and that the parent fully understood the explanation.

(5)(a) At any time prior to the entry of a judgment of adoption or readoption under ORS 109.350, an Indian child’s parent may withdraw the parent’s consent under this section.

(b) The withdrawal of consent must be made by filing the written withdrawal with the court or by making a statement of withdrawal on the record in the adoption proceeding.

(c) Upon entry of the withdrawal of consent, the court must promptly notify the person or entity that arranged the adoptive placement and order that the Indian child be returned to the parent or Indian custodian as soon as practicable.

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

**SECTION 20.** Section 18, chapter 14, Oregon Laws 2020 (first special session) is amended to read:

**Sec. 18.** (1) As used in this section, “active efforts” means efforts that are affirmative, active, thorough, timely and intended to maintain or reunite an Indian child with the Indian child’s family.

(2) If there is reason to know that a child in a proceeding under ORS 109.304 to 109.410 or ORS chapter 419B is an Indian child and active efforts are required, the court must determine whether active efforts have been made to prevent the breakup of the family or to reunite the family.

(3) Active efforts require a higher standard of conduct than reasonable efforts.

(4) Active efforts must:

(a) Be documented in detail in writing and on the record;

(b) If the child is alleged to be within the jurisdiction of the juvenile court under ORS 419B.100, include assisting the Indian child’s parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan;

(c) Include providing assistance in a manner consistent with the prevailing social and cultural standards and way of life of the Indian child’s tribe;

(d) Be conducted in partnership with the Indian child and the Indian child’s parents, extended family members, Indian custodians and tribe; and

(e) Be tailored to the facts and circumstances of the case.

(5) Active efforts may include, as applicable, the following:

(a) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on reunification as the most desirable goal;

(b) Identifying appropriate services and helping the Indian child's parents overcome barriers to reunification, including actively assisting the parents in obtaining the identified services;

(c) Identifying, notifying and inviting representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, resolution of placement issues, reviews or other case management related meetings;

(d) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, contacting and consulting with the Indian child's extended family members and adult relatives to provide family structure and support for the Indian child and the Indian child's parents;

(e) Offering and employing culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the Indian child's tribe;

(f) Taking steps to keep the Indian child and the Indian child's siblings together whenever possible;

(g) Supporting regular visits with the Indian child's parent or Indian custodian in the most natural setting possible, as well as trial home visits during any period of removal, consistent with the need to ensure the health, safety and welfare of the Indian child;

(h) Identifying community resources, including housing, financial assistance, employment training, transportation, mental health, health care, substance abuse prevention and treatment, parent training, transportation and peer support services and actively assisting the Indian child's parents or, when appropriate, the Indian child's extended family members, in utilizing and accessing those resources;

(i) Monitoring progress and participation of the Indian child's parents, Indian custodian or extended family members in the services as described in paragraphs (b), (c), (e) and (h) of this subsection;

(j) Considering alternative options to address the needs of the Indian child's parents and, where appropriate, the Indian child's extended family members, if the services as described in paragraphs (b), (c), (e) and (h) of this subsection are not available;

(k) Providing post-reunification services and monitoring *[for the duration of]* **while the Indian child is within the juvenile court's jurisdiction**; and

(L) Any other efforts that are appropriate to the Indian child's circumstances.

**SECTION 21.** ORS 109.321 is amended to read:

109.321. (1) Except as provided in ORS ~~109.323~~ **109.322** to 109.329, consent in writing to the adoption of a minor child pursuant to a petition filed under ORS 109.309 is required to be given by the following:

(a) The parents of the child, or the survivor of *[them]* **the parents**.

(b) The guardian of the child, if the child has no living parent.

(c) The next of kin in this state, if the child has no living parent and no guardian.

(d) Some suitable person appointed by the court to act in the proceeding as next friend of the child to give or withhold consent, if the child has no living parent and no guardian or next of kin qualified to consent.

(2)(a) A person who gives consent to adoption under subsection (1) of this section may agree concurrently or subsequently to the giving of such consent that the consent shall be or become irrevocable, and may waive such person's right to a personal appearance in court, by a duly signed and attested certificate. The certificate of irrevocability and waiver shall be in effect when the following are completed:

(A) The child is placed for the purpose of adoption in the physical custody of the person or persons to whom the consent is given;

(B) The person or persons to whom consent for adoption is given have filed a petition to adopt the child in a court of competent jurisdiction;

(C) The court has entered an order appointing the petitioner or some other suitable person as guardian of the child pursuant to ORS 109.335;

(D) The Department of Human Services, an Oregon licensed adoption agency or an attorney who is representing the adoptive parents has filed either a department or an Oregon licensed adoption agency home study with the court approving the petitioner or petitioners as potential adoptive parents or the department has notified the court that the filing of such study has been waived;

(E) Information about the child's social, medical and genetic history required in ORS 109.342 has been provided to an attorney or the department or an Oregon licensed adoption agency by the person giving consent to the adoption; and

(F) The person signing the certificate of irrevocability and waiver has been given an explanation by an attorney who represents the person and who does not also represent the adoptive family, by the department or by an Oregon licensed adoption agency of the consequences of signing the certificate.

(b) Upon the fulfillment of the conditions in paragraph (a) of this subsection, the consent for adoption may not be revoked unless fraud or duress is proved with respect to any material fact.

**(3)(a) A consent under this section must indicate whether the person giving the consent has reason to know that the child is an Indian child.**

**(b) If the person does not have reason to know that the child is an Indian child, the consent must include a statement that the person giving notice will inform the court immediately if, prior to the entry of the judgment of adoption or readoption under ORS 109.350, the person receives information that provides reason to know that the child is an Indian child.**

*[(3)] (c) [Consent to the adoption of an Indian child as defined in the Indian Child Welfare Act (25*

*U.S.C. 1901 et seq.) shall not be valid unless the requirements of the Indian Child Welfare Act are met. In accordance with the Indian Child Welfare Act,] A certificate of irrevocability **described in subsection (2) of this section** is not valid for the adoption of an Indian child.*

(4) As used in this section, “parent” means a person whose parentage has been established pursuant to ORS 109.065.

**SECTION 22.** ORS 109.322 is amended to read:

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

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

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

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

**SECTION 23.** ORS 109.323 is amended to read:

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

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

**SECTION 24.** ORS 109.324 is amended to read:

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

(2) Upon hearing or when the parent has failed to file a written answer as required in ORS 109.330 (3), **except as provided in ORS 109.330 (8) if the child is an Indian child**, if the court finds that the parent has willfully deserted the child or neglected without just and sufficient cause to provide proper care and maintenance for the child for one year next preceding the filing of the petition for adoption, the consent of the parent at the discretion of the court is not required and, if the court determines that the parent’s consent is not required, the court may proceed regardless of the objection of the parent.

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

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

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

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

**SECTION 25.** ORS 109.330 is amended to read:

109.330. (1)(a) In the cases provided for in ORS 109.322, 109.323 and 109.324 **and section 19 of this 2021 Act**, when a parent does not consent to the adoption of the child, the petitioner shall:

(A) **Conduct the inquiry described in section 15 (2), chapter 14, Oregon Laws 2020 (first special session), to determine whether the petitioner has reason to know that the child is an Indian child; and**

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

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

(c) **If the petitioner has reason to know that the child is an Indian child, in addition to the service required under paragraph (b) of this**

subsection, the petitioner shall serve by registered or certified mail, return receipt requested, copies of the motion and order to show cause, together with the notice of proceeding in the form required under section 16 (3)(c), chapter 14, Oregon Laws 2020 (first special session), on:

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

(B) The child's parents;

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

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

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

(A) A statement and documentation, as described by the Department of Human Services by rule, of the efforts described in section 15 (2), chapter 14, Oregon Laws 2020 (first special session), that the petitioner made to determine whether there is reason to know that the child is an Indian child; and

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

(i) A statement describing the efforts the petitioner made, as required under section 19 (2)(c) of this 2021 Act, to prevent the break up of the family or to reunite the family; and

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

(2) A summons under this section must contain:

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

(A) Consent of the parent is not required; [and]

(B) The adoption is in the best interests of the child[.]; and

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

(b) A statement that:

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

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

\_\_\_\_\_  
 IN THE CIRCUIT COURT OF  
 THE STATE OF OREGON  
 FOR THE COUNTY OF \_\_\_\_\_

\_\_\_\_\_, )  
 Petitioner, ) NO. \_\_\_\_\_  
 )  
 and ) ANSWER  
 )  
 \_\_\_\_\_, )  
 Respondent. )

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

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
Signature  
DATE: \_\_\_\_\_  
ADDRESS OR CONTACT ADDRESS: \_\_\_\_\_

\_\_\_\_\_  
TELEPHONE OR CONTACT TELEPHONE: \_\_\_\_\_

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

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

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

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

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

\_\_\_\_\_  
You have a right to be represented by an attorney. If you wish to be represented by an attorney, please retain one as soon as possible to represent you in this proceeding. If you meet the state's financial guidelines, you are entitled to have an at-

torney appointed for you at state expense. To request appointment of an attorney to represent you at state expense, you must contact the circuit court immediately. Phone \_\_\_\_\_ for further information.

(e) A statement that the parent has the responsibility to maintain contact with the parent's attorney and to keep the attorney advised of the parent's whereabouts.

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

(4) If the parent requests the assistance of appointed counsel and the court determines that the parent is financially eligible, the court shall appoint an attorney to represent the parent at state expense. Appointment of counsel under this subsection is subject to ORS 135.055, 151.216 and 151.219. The court may not substitute one appointed counsel for another except pursuant to the policies, procedures, standards and guidelines adopted under ORS 151.216.

**(5)(a) Upon receiving the petitioner's declaration of compliance under subsection (1)(d) of this section, the court shall order that the motion and order to show cause may proceed if the court finds that the petitioner satisfied the inquiry requirements under section 15 (2), chapter 14, Oregon Laws 2020 (first special session), and, if applicable, the notice requirements under section 16 (2), chapter 14, Oregon Laws 2020 (first special session).**

**(b) If the court finds that the petitioner failed to satisfy the inquiry or, if applicable, notice requirements under sections 15 (2) and 16 (2), chapter 14, Oregon Laws 2020 (first special session), or if the documentation is insufficient for the court to make those findings, the court shall direct the petitioner to cure the inquiry or notice deficiency and file an amended declaration of compliance. The court shall order the petitioner to appear and show cause why the court should not deny the motion and order to show cause if the petitioner fails to file the amended declaration of compliance within a reasonable amount of time.**

(c) If the court finds, subject to the procedures under section 15 (4), chapter 14, Oregon Laws 2020 (first special session), that there is reason to know the child is an Indian child, the court shall offer to order mediation through the Department of Human Services, or if there is

**mutual party agreement to private mediation and to the party assumption of costs, through other mediation services, between the Indian child's parents, the Indian child's tribe and the proposed adoptive placement.**

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

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

**[(b)] (B)** Require the parent to appear personally at the next hearing or hearings related to the motion and order to show cause or the adoption petition; and

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

**(b) If the parent's answer indicates the parent's consent to the adoption, the court may not accept the consent unless the consent meets the requirements under ORS 109.321 or, if the child is an Indian child, section 19 of this 2021 Act.**

**[(6)] (7)** If a parent fails to file a written answer as required in subsection (3) of this section or fails to appear for a hearing related to the motion and order to show cause or the petition as directed by court order under this section, the court, without further notice to the parent and in the parent's absence, may take any action that is authorized by law, including but not limited to entering a judgment of adoption of the child without the consent of the parent if the court finds[.];

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

**(b) That the petitioner complied with the inquiry requirements under section 15 (2), chapter 14, Oregon Laws 2020 (first special session), to determine whether there is reason to know that the child is an Indian child.**

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

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

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

(C) The court determines that the petitioner complied with the notice requirements under section 16 (2), chapter 14, Oregon Laws 2020 (first special session);

(D) The court determines that evidence, including the testimony of one or more qualified expert witnesses under section 17, chapter 14, Oregon Laws 2020 (first special session), establishes beyond a reasonable doubt that the continued custody of the Indian child by the nonconsenting parent is likely to result in serious emotional or physical damage to the child and that the petitioner's active efforts under section 18, chapter 14, Oregon Laws 2020 (first special session), to reunite the Indian family did not eliminate the necessity for termination of the nonconsenting parent's parental rights based on serious emotional or physical damage to the Indian child; and

(E) The court finds that the adoptive placement complies with the placement preferences under section 23 (2), chapter 14, Oregon Laws 2020 (first special session), or, if not, the court finds, upon the petitioner's motion under section 23 (3), chapter 14, Oregon Laws 2020 (first special session), that good cause exists for placement contrary to the placement preferences in section 23 (2), chapter 14, Oregon Laws 2020 (first special session).

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

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

(10) If the child is an Indian child, the child's tribe or Indian custodian may intervene at any time as a matter of right.

**SECTION 26.** ORS 109.326 is amended to read:

109.326. (1) If the mother of a child was married at the time of the conception or birth of the child, and it has been determined pursuant to ORS 109.065 or section 4, chapter 14, Oregon Laws 2020 (first special session), or judicially determined that the mother's spouse at such time or times was not the parent of the child, the spouse's authorization or waiver is not required in adoption, juvenile court or other proceedings concerning the custody of the child.

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

(b) Except as provided in subsection (11) of this section, the testimony or affidavit of the mother or the spouse or another person with knowledge of the facts filed in the proceeding constitutes competent evidence before the court making the determination.

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

(3) Before [making] the court may make the determination of nonparentage, the petitioner shall:

(a) Conduct the inquiry described in section 15 (2), chapter 14, Oregon Laws 2020 (first special session), to determine whether the petitioner has reason to know that the child is an Indian child; and

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

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

[(b)] (B) The child resided with the spouse at any time since the child's birth; [or]

[(c)] (C) The spouse repeatedly has contributed or tried to contribute to the support of the child[.]; or

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

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

(a) Service must be made in the manner provided in ORCP 7 D and E, except as provided in subsection [(6)] (7) of this section. Service of the summons and the motion and order to show cause must be proved as required in ORCP 7 F. The summons and the motion and order to show cause need not contain the names of the adoptive parents.

(b) If the petitioner has reason to know that the child is an Indian child, the petitioner shall serve copies of the motion, together with the notice of proceeding required under section 16 (3), chapter 14, Oregon Laws 2020 (first special session), on:

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

(B) The child's parents;

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

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

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

(A) A statement and documentation, as described by the Department of Human Services by rule, of the efforts described in section 15 (2), chapter 14, Oregon Laws 2020 (first special session), that the petitioner made to determine whether there is reason to know that the child is an Indian child; and

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

(i) A statement describing the efforts the petitioner made, as required under section 19 (2)(c) of this 2021 Act, to prevent the break up of the family or to reunite the family; and

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

(5) The inquiry required under subsection (3)(a) of this section and notice required under subsection (4)(a) of this section may be combined with the inquiry and notice required under ORS 109.315 or 109.385 if the motion and order to show cause is filed concurrently with the petition for adoption or readoption under ORS 109.315 or 109.385.

[(5)] (6) A summons under subsection (3) of this section must contain:

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

(b) A statement that:

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

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

IN THE CIRCUIT COURT OF  
THE STATE OF OREGON  
FOR THE COUNTY OF \_\_\_\_\_

\_\_\_\_\_, )  
Petitioner, ) NO. \_\_\_\_\_  
)  
) ANSWER  
and )  
)  
)

\_\_\_\_\_, )  
Respondent. )  
[ ] I consent to the entry of a judgment of nonparentage.

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature  
DATE: \_\_\_\_\_  
ADDRESS OR CONTACT ADDRESS:

\_\_\_\_\_  
TELEPHONE OR CONTACT TELEPHONE:  
\_\_\_\_\_

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

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

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

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

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

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

(e) A statement that the spouse has the responsibility to maintain contact with the spouse's attorney and to keep the attorney advised of the spouse's whereabouts.

[(6)] (7) A spouse who is served with a summons and a motion and order to show cause under this section shall file with the court a written answer to the motion and order to show cause within 30 days after the date on which the spouse is served with

the summons or, if service is made by publication or posting under ORCP 7 D(6), within 30 days from the date of last publication or posting. In the answer, the spouse shall inform the court and the petitioner of the spouse's telephone number or contact telephone number and current address, as defined in ORS 25.011. The answer may be in substantially the form described in subsection [(5)] (6) of this section.

[(7)] (8) If the spouse requests the assistance of appointed counsel and the court determines that the spouse is financially eligible, the court shall appoint an attorney to represent the spouse at state expense. Appointment of counsel under this subsection is subject to ORS 135.055, 151.216 and 151.219. The court may not substitute one appointed counsel for another except pursuant to the policies, procedures, standards and guidelines adopted under ORS 151.216.

[(8)] (9) If the spouse files an answer as required under subsection [(6)] (7) of this section, the court, by oral order made on the record or by written order provided to the spouse in person or mailed to the spouse at the address provided by the spouse, shall:

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

(b) Require the spouse to appear personally at the next hearing or hearings related to the motion and order to show cause or the adoption petition; and

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

(10)(a) Upon receiving the petitioner's declaration of compliance under subsection (4)(c) of this section, the court shall review the petitioner's statements and documentation and order that the adoption may proceed if the court finds that the petitioner satisfied the inquiry requirements under section 15 (2), chapter 14, Oregon Laws 2020 (first special session), and, if applicable, the notice requirements under section 16 (2), chapter 14, Oregon Laws 2020 (first special session).

(b) If the court finds that the petitioner failed to satisfy the inquiry or, if applicable, notice requirements under sections 15 (2) and 16 (2), chapter 14, Oregon Laws 2020 (first special session), or if the documentation is insufficient for the court to make those findings, the court shall direct the petitioner to cure the inquiry or notice deficiency and file an amended declaration of compliance. The court shall order the petitioner to appear and show cause why the court should not deny the motion and order to show cause if the petitioner fails to file the

**amended declaration of compliance within a reasonable amount of time.**

[(9)] (11)(a) If a spouse fails to file a written answer as required in subsection [(6)] (7) of this section or fails to appear for a hearing related to the motion and order to show cause or the petition as directed by court order under this section, the court, without further notice to the spouse and in the spouse's absence, may take any action that is authorized by law, including but not limited to entering a judgment of nonparentage.

**(b) Notwithstanding paragraph (a) of this subsection, the court may not enter a judgment of nonparentage unless the court finds that the petitioner complied with the inquiry requirements under section 15 (2), chapter 14, Oregon Laws 2020 (first special session).**

**(12) If the child is an Indian child:**

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

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

**(B) Prior to the execution of the consent, the court explains to the spouse, on the record in detail and in the language of the spouse, the spouse's right to legal counsel, the terms and consequences of the consent and that the spouse may withdraw the consent at any time prior to the entry of a judgment of adoption or re-adoption under ORS 109.350;**

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

**(D) After the spouse executes the consent, the court certifies that the court provided the explanation in the manner required under subparagraph (B) of this paragraph and that the spouse fully understood the explanation.**

**(b) Notwithstanding subsection (9) or (11) of this section, the court may not enter a judgment of nonparentage without the consent of the spouse unless:**

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

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

**(C) The court finds that:**

**(i) The petitioner complied with the notice requirements as required under section 16 (2), chapter 14, Oregon Laws 2020 (first special session);**

**(ii) Despite petitioner's active efforts, evidence, including the testimony of one or more qualified expert witnesses under section 17,**



chapter 14, Oregon Laws 2020 (first special session), establishes beyond a reasonable doubt that the continued custody of the Indian child by the spouse is likely to result in serious emotional or physical damage to the Indian child and that the petitioner's active efforts under section 18, chapter 14, Oregon Laws 2020 (first special session), to reunite the Indian family did not eliminate the necessity for termination of the spouse's parental rights based on serious emotional or physical damage to the Indian child; and

(iii) That the adoptive placement complies with the placement preferences under section 23 (2), chapter 14, Oregon Laws 2020 (first special session), or, if not, a finding upon the petitioner's motion under section 23 (3), chapter 14, Oregon Laws 2020 (first special session), that good cause exists for placement contrary to the placement preferences in section 23 (2), chapter 14, Oregon Laws 2020 (first special session).

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

[(10)] (13) There shall be sufficient proof to enable the court to grant the relief sought without notice to the spouse *provided that* if:

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

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

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

[(c)] (C) That the child has not resided with the spouse; and

[(d)] (D) That the spouse has not contributed or tried to contribute to the support of the child[.]; and

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

[(11)] (14) Notwithstanding ORS 109.070 (1)(a), service of a summons and a motion and order to show cause on the spouse under subsection (3) of this section is not required and the spouse's consent, authorization or waiver is not required in adoption proceedings concerning the child unless the child is an Indian child or the spouse has met the re-

quirements of subsection [(3)(a), (b) or (c)] (3)(b)(A), (B) or (C) of this section.

[(12)] (15) A spouse who was not cohabiting with the mother at the time of the child's conception has the primary responsibility to protect the spouse's rights.

[(13)] (16) Nothing in this section shall be used to set aside an act of a permanent nature, including but not limited to adoption, unless the parent establishes, within one year or, if the child is an Indian child, four years after the entry of the order or general judgment, as defined in ORS 18.005, fraud on the part of the petitioner with respect to the matters specified in subsection [(10)(a), (b), (c) or (d)] (13)(a) of this section.

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

**SECTION 27.** ORS 109.308 is amended to read:

109.308. (1) In an adoption proceeding that is contested or in which a summons is required to be served, the court may preserve the confidentiality of the names and addresses of the petitioners for the adoption if the court finds that to do so is in the best interests of the child.

(2) The preservation of confidentiality under this section does not relieve the court or any petitioners in an adoption proceeding from the duty to comply with the placement preferences under section 23 (2), chapter 14, Oregon Laws 2020 (first special session), if the child is an Indian child.

**SECTION 28.** Section 21, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

**Sec. 21.** (1) In any child custody proceeding under ORS 109.326 or 109.330 or ORS chapter 419B when there is reason to know that the child is an Indian child, each party has the right to timely examine all reports or other documents held by the Department of Human Services that are not otherwise subject to a discovery exception under ORS 419B.881 or precluded under state or federal law.

(2) The preservation of confidentiality under this section does not relieve the court or any petitioners in an adoption proceeding from the duty to comply with the placement preferences under section 23 (2), chapter 14, Oregon Laws 2020 (first special session), if the child is an Indian child.

(Agency Consent)

**SECTION 29.** ORS 418.270 is amended to read:

418.270. (1) If licensed for such purposes by the Department of Human Services, a child-caring agency may receive children from the children's parents or legal guardians for special, temporary or continued care. Upon receiving a child under this section, the agency shall make inquiries, as described in section 15 (2), chapter 14, Oregon

**Laws 2020 (first special session), to determine whether there is reason to know that the child is an Indian child.** The parents or guardians may sign releases or surrenders giving to the agency guardianship and control of the children during the period of care, which may be extended until the children arrive at legal age. Releases do not surrender the rights of parents or guardians in respect to the adoption of children and do not entitle the agency to give consent to the adoption of the children unless the release or surrender expressly recites that the release or surrender is given for the purpose of adoption. Child-caring agencies are authorized to place children for adoption or family foster care only if authorized by the department in the license issued by the department to the agency.

(2) Severance of family ties with children by adoption or otherwise may be accomplished only by the order of a court of competent jurisdiction.

(3) In the absence of the certificate provided for in subsection (4) of this section, it is unlawful to present a child released or surrendered to a child-caring agency by a parent, parents or guardian for a court to pass upon the adoption of the child until at least six months have elapsed after signing the release or surrender.

(4) Parents or guardians who have given a child into the guardianship of a child-caring agency by release or surrender under this section for the purpose of adoption may, concurrently or subsequently and without any adoption proceeding having been initiated, agree that the release or surrender shall become irrevocable as soon as the child is placed by the agency in the physical custody of a person or persons for the purpose of adoption, and waive their right to personal appearance in court in matters of adoption of the child, by a duly signed and attested certificate. From and after physical placement for adoption, **or, if the child is an Indian child, upon entry of the judgment of adoption**, the certificate of irrevocability and waiver and the release or surrender may not be revoked by the parent or guardian unless fraud or duress is affirmatively proved.

(5) No agreement to release or surrender a child for adoption, or other agreement or waiver of rights having the same effect, executed before March 24, 1971, in connection with the surrender of a child into the guardianship of a child-caring agency for purposes of adoption, may be revoked or held invalid for any reason except upon affirmative proof of fraud or duress.

**(6)(a) Notwithstanding subsections (1) and (4) of this section, if the agency has reason to know that a child being released or surrendered is an Indian child:**

**(A) The release, surrender or certificate of irrevocability and waiver must be executed before a court, consistent with this subsection; and**

**(B) The agency shall petition the court to hold a hearing in which the child's parent may execute the release, surrender or certificate of irrevocability and waiver.**

**(b) The petition for a hearing under this subsection may be filed in any pending child custody proceeding, as defined in section 2, chapter 14, Oregon Laws 2020 (first special session), involving the child or, if none, a state or local court of competent jurisdiction.**

**(c) Upon receiving a petition under this subsection, the court shall schedule a hearing no fewer than 10 days following the child's date of birth and no more than 30 days following the date the petition is filed.**

**(d)(A) At the hearing, the court shall explain to the parent, on the record in detail and in the language of the parent, the parent's right to legal counsel, the terms and consequences of the release, surrender or certificate of irrevocability and waiver and inform the parent that the release, surrender or certificate of irrevocability and waiver may be revoked at any time prior to the entry of the judgment of adoption.**

**(B) The parent must execute the release, surrender or certificate of irrevocability and waiver in person before the court.**

**(C) The petitioner shall file the release, surrender or certificate of irrevocability and waiver with the court.**

**(D) The court shall certify that it provided the explanation in the manner required under subparagraph (A) of this paragraph and that the parent fully understood the terms and consequences of the release, surrender or certificate of irrevocability and waiver.**

**SECTION 30.** ORS 419B.529, as amended by section 50, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

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

(a) One of the following has occurred:

(A) A juvenile court that is a circuit court has entered an order of permanent commitment of a ward to the Department of Human Services under ORS 419B.527; or

(B) The parent has signed and the department has accepted a release and surrender to the department, and the parent has signed[:]

*[(i)] a certificate of irrevocability and waiver as provided in ORS 418.270 regarding a child; [or]*

*[(ii) A certificate of waiver under the Indian Child Welfare Act regarding a 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 or ward and the department consents to the adoption of the child or ward by the prospective parent;

(c) If the child is an Indian child:

(A) The department has offered to coordinate mediation between the Indian child's tribe and the proposed adoptive placement;

(B) If requested by the tribe, an agreement is in place that requires the proposed adoptive parent to

maintain connection between the Indian child and the Indian child's tribe; and

(C) If an agreement described in [paragraph (c)(B) of this subsection] **subparagraph (B) of this paragraph** is in place, the department incorporates the terms of the agreement into the placement report;

(d) Written evidence of the home study and a placement report requesting the juvenile court to enter a judgment of adoption have been filed in the juvenile court proceeding; and

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

**(2) If the child is an Indian child, a parent's release, surrender or certificate of irrevocability and waiver under subsection (1)(a) of this section must meet the following requirements:**

(a) The court explained to the parent, on the record in detail and in the language of the parent, the parent's right to legal counsel, the terms and consequences of the release, surrender or certificate of irrevocability and waiver and informed the parent that the parent may revoke the release, surrender or certificate of irrevocability and waiver at any time prior to the entry of the judgment of adoption;

(b) The parent executed the release, surrender or certificate of irrevocability and waiver before the court;

(c) The parent or child-caring agency filed a record of the release, surrender or certificate of irrevocability and waiver with the court; and

(d) The court certified that the court provided the explanation as required under paragraph (a) of this subsection and that the parent fully understood the terms and consequences of the release and surrender.

[(2)] **(3)** Notwithstanding subsection (1) of this section, a prospective adoptive parent is required to file an Adoption Summary and Segregated Information Statement with accompanying exhibits as provided under ORS 109.317.

[(3)] **(4)** Notwithstanding ORS 21.135, the clerk of the juvenile court may not charge or collect first appearance fees for a proceeding under this section.

[(4)(a)] **(5)(a)** After the filing of written evidence of a home study and the placement report requesting the court to enter a judgment of adoption, the juvenile court that entered the order of permanent commitment, or the juvenile court having jurisdiction over a ward for whom the department has accepted a release and surrender and a certificate **and waiver** signed by the parent as provided in subsection (1)(a)(B) of this section, may proceed as provided in ORS 109.307 and 109.350 and may enter a judgment of adoption.

(b) If the child is an Indian child and the Indian child's tribe has entered into an agreement described in subsection (1)(c)(B) of this section, the judgment of adoption must include the terms of the agreement.

[(5)] **(6)** Records of adoptions filed and established under this section shall be kept in accordance with, and are subject to, ORS 109.319.

### **(Judgment of Adoption or Readoption)**

**SECTION 31.** Sections 32 and 33 of this 2021 Act are added to and made a part of ORS 109.304 to 109.410.

#### **SECTION 32. (1) As used in this section:**

(a) **"Former parent"** means a person who was previously the legal parent of an Indian child subject to a judgment of adoption under ORS 109.350 or 419B.529 and whose parental rights have not been restored under section 33 or 39 of this 2021 Act.

(b) **"Prior Indian custodian"** means a person who was an Indian child's Indian custodian before entry of a judgment of adoption of the child under ORS 109.350 or 419B.529.

(2) If a judgment of adoption of an Indian child under ORS 109.350 or 419B.529 is vacated, or the adoptive parent has voluntarily consented to the termination of parental rights, the court vacating the judgment or terminating the parental rights must notify, by registered or certified mail with return receipt requested, the Indian child's former parents, prior Indian custodian, if any, and Indian tribe.

(3) The notice required under subsection (2) of this section must:

(a) Include the Indian child's current name and any former names as reflected in the court record;

(b) Inform the recipient of the right to move the court for the return of custody of and restoration of parental rights to the Indian child under this section;

(c) Provide sufficient information to allow the recipient to participate in any scheduled hearings; and

(d) Be sent to the last known address in the court record.

(4)(a) An Indian child's former parent or prior Indian custodian may waive notice under this section by executing waiver of notice in person before the court and filing the waiver with the court. The waiver must clearly set out the conditions to the waiver, if any.

(b) Prior to the execution of a waiver under this subsection, the court must explain to the former parent or prior Indian custodian, on the record in detail and in the language of the former parent or prior Indian custodian:

(A) The former parent's right to legal counsel, if applicable;

(B) The terms and consequences of the waiver; and

(C) How the waiver may be revoked.

(c) After execution of the waiver, the court shall certify that it provided the explanation as

required under paragraph (b) of this subsection and that the former parent or prior Indian custodian fully understood the explanation.

(5) At any time prior to the entry of a judgment of adoption or readoption of the Indian child, the former parent or prior Indian custodian may revoke a waiver executed by the former parent or prior Indian custodian by filing a written revocation with the court or by making a statement of revocation on the record in a proceeding for the adoption of the Indian child.

(6)(a) If a judgment of adoption or readoption of an Indian child under ORS 109.350 or 419B.529 is vacated other than as provided in section 33 of this 2021 Act or section 22, chapter 14, Oregon Laws 2020 (first special session), or the adoptive parent of the Indian child has voluntarily consented to the termination of parental rights, an Indian child's former parent or prior Indian custodian may intervene in the proceeding and move the court for the Indian child to be returned to the custody of the former parent or prior Indian custodian and for the parental rights to the Indian child to be restored.

(b)(A) The moving party shall provide by registered or certified mail, return receipt requested, notice of the motion for the Indian child to be returned to the custody of the former parent or prior Indian custodian and the time set for filing objections to the motion, together with notice of proceeding in the form required under section 16 (3), chapter 14, Oregon Laws 2020 (first special session), to:

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

(ii) The child's parents;

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

(iv) The appropriate United States Bureau of Indian Affairs Regional Director listed in 25 C.F.R. 23.11(b), if the identify or location of the child's parents cannot be ascertained.

(B) The petitioner shall file a declaration of compliance, including a copy of each notice sent under this subsection, together with any return receipts or other proof of service.

(c) Upon the filing of an objection to the motion, the court shall fix the time for hearing on objections.

(d) The court shall order the Indian child returned to the custody of the former parent or prior Indian custodian or restore the parental rights to the Indian child unless the court finds, by clear and convincing evidence, that the return of custody or restoration of parental rights is not in the child's best interests, as described in section 5, chapter 14, Oregon Laws 2020 (first special session). The court's order must include a transition plan for the physical custody of the child, which may include protective supervision under ORS 419B.331.

**SECTION 33.** (1) A petition to vacate a judgment of adoption of an Indian child under ORS 109.350 or 419B.529 may be filed in a state or local court of competent jurisdiction by a parent who consented to the adoption.

(2) Upon the filing of a petition under this section, the court shall set a time for a hearing on the petition and provide notice of the petition and hearing to each party to the adoption proceeding and to the Indian child's tribe.

(3) After a hearing on the petition, the court shall vacate the judgment of adoption if:

(a) The petition is filed no later than four years following the date of the judgment; and

(b) The court finds that the parent's consent was obtained through fraud or duress.

(4) When the court vacates a judgment of adoption under this section, the court shall also order that the parental rights of the parent whose consent the court found was obtained through fraud or duress be restored. The order restoring parental rights under this section must include a transition plan for the physical custody of the child.

**SECTION 34.** ORS 419B.470 is amended to read: 419B.470. (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 a child or ward is in substitute care, the court shall conduct a permanency hearing no later than 12 months after the ward was found within the jurisdiction of the court under ORS 419B.100 or 14 months after the child or ward was placed in substitute care, whichever is the earlier.

(3) If a ward 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) If a ward has been surrendered for adoption or the parents' rights have been terminated and the department has not physically placed the ward for adoption or initiated adoption proceedings within six months after the surrender or entry of an order terminating parental rights, the court shall conduct a permanency hearing within 30 days after receipt of the report required by ORS 419B.440 (1)(b)(B).

(5) If an order is entered reinstating parental rights [is entered] under ORS 419B.532 or section 32 of this 2021 Act, the court shall conduct a permanency hearing within 60 days after entry of the order.

(6) 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 or ward, parents whose parental rights

have not been terminated, an attorney for the child or ward, 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.

(7) After the initial permanency hearing conducted under subsection (1) or (2) of this section or any permanency hearing conducted under subsections (3) to (6) of this section, the court shall conduct subsequent permanency hearings not less frequently than once every 12 months for as long as the child or ward remains in substitute care.

(8) After the permanency hearing conducted under subsection (4) of this section, the court shall conduct subsequent permanency hearings at least every six months for as long as the ward is not physically placed for adoption or adoption proceedings have not been initiated.

(9) 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.

**SECTION 35.** ORS 419B.524 is amended to read: 419B.524. (1) Except as provided in ORS 419B.532 or section 32 or 33 of this 2021 Act or section 22, chapter 14, Oregon Laws 2020 (first special session), 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 ward.

(2) A parent who is the subject of an order restoring parental rights under section 33 of this 2021 Act or section 22, chapter 14, Oregon Laws 2020 (first special session), may assert that the parental rights were never terminated without incurring a penalty for perjury or false swearing under the laws of the state.

**SECTION 36.** ORS 109.350 is amended to read: 109.350. (1) If, upon a petition for adoption or readoption duly presented and consented to, the court is satisfied as to the identity and relations of the persons, that the petitioner is of sufficient ability to bring up the child and furnish suitable nurture and education, having reference to the degree and condition of the parents, [*that, if applicable, the requirements of the Indian Child Welfare Act (25 U.S.C. 1901 et seq.) have been met,*] and that it is fit and proper that such adoption or readoption be effected, a judgment shall be made setting forth the facts, and ordering that from the date of the judgment the child, to all legal intents and purposes, is the child of the petitioner.

(2)(a) A judgment entered under this section must include:

(A) A finding that the petitioner complied with the inquiry requirements under section 15 (2), chapter 14, Oregon Laws 2020 (first special session), to determine whether there is reason to know that the child is an Indian child; and

(B) A finding that the child is or is not an Indian child.

(b) In an adoption or readoption [*subject to the Indian Child Welfare Act (25 U.S.C. 1901 et seq.)*], of an Indian child, the judgment must include:

(A) The birth name and birthdate of the Indian child, the Indian child's tribal affiliation and the name of the Indian child after adoption;

(B) The names and addresses of the biological parents;

(C) The names and addresses of the adoptive parents;

(D) The name and contact information for any agency having files or information relating to the adoption;

(E) Any information relating to tribal membership or eligibility for tribal membership of the Indian child;

(F) The determination regarding the Indian child's residence, domicile and tribal wardship status as required under section 9, chapter 14, Oregon Laws 2020 (first special session);

(G) A finding that the petitioner complied with the notice requirements under section 16, chapter 14, Oregon Laws 2020 (first special session);

(H) If an agency consented to the adoption in loco parentis and the Indian child's tribe has entered into an agreement described in ORS 419B.529 (1)(c)(B), the terms of the agreement; and

(I)(i) A finding that the adoptive placement complies with the placement preferences under section 23, chapter 14, Oregon Laws 2020 (first special session); or

(ii) If the placement does not comply with the placement preferences under section 23 (2), chapter 14, Oregon Laws 2020 (first special session), a finding upon the petitioner's motion under section 23 (3), chapter 14, Oregon Laws 2020 (first special session), that good cause exists for placement contrary to the placement preferences.

(c) For each of the findings or determinations under this subsection, the court must provide a description of the facts upon which the finding or determination is based.

(d) Upon entry of the judgment of adoption of an Indian child, the state court shall provide to the United States Secretary of the Interior [*a copy of the judgment together with the other information required by the Indian Child Welfare Act (25 U.S.C. 1901 et seq.)*] copies of the judgment entered under this section and any document signed by a consenting parent requesting anonymity.

**SECTION 37.** Section 22, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

**Sec. 22.** *[(1) A petition to invalidate the placement of an Indian child, the guardianship of an Indian child or the termination of parental rights involving an Indian child may be filed in any court of competent jurisdiction by:]*

**(1) A petition to vacate an order or a judgment involving an Indian child regarding jurisdiction, placement, guardianship or the termination of parental rights may be filed in a pending child custody proceeding involving the Indian child or, if none, in any state or local court of competent jurisdiction by:**

(a) *[An]* **The Indian child who *[is or was under]* was alleged to be within the jurisdiction of the *[juvenile]* court under ORS *[chapter 419B]* **109.309 or 419B.100;****

(b) **The Indian child's parent or Indian custodian from whose custody such child was removed or whose parental rights were terminated;** or

(c) **The Indian child's tribe.**

**(2)(a) The court shall *[invalidate the placement of an Indian child, the guardianship of an Indian child or the termination of parental rights]* vacate an order or judgment involving an Indian child regarding jurisdiction, placement, guardianship or the termination of parental rights if the court determines that any provision of *[sections]* **ORS 418.312 or section 12, 13, 16 (2), (3)(a) or (b), (5)(a), 20 (1) or 21, chapter 14, Oregon Laws 2020 (first special session), *[of this 2020 special session Act, ORS 418.312]* or, where required, section 17 (2), 18 or 23, chapter 14, Oregon Laws 2020 (first special session), *[of this 2020 special session Act]* has been violated and the court determines it is appropriate to vacate the order or judgment.****

*[(b) The proceeding that led to the violation must be vacated and, if the proceeding led to the removal or placement of the Indian child, the court shall order the child immediately returned to the Indian child's parent or Indian custodian, and any issues determined must be relitigated.]*

**(b) If the vacated order or judgment resulted in the removal or placement of the Indian child, the court shall order the child immediately returned to the Indian child's parent or Indian custodian and the court's order must include a transition plan for the physical custody of the child, which may include protective supervision under ORS 419B.331.**

**(c) If the vacated order or judgment terminated parental rights, the court shall order the previously terminated parental rights to be restored.**

**(d) If the state or any other party affirmatively asks the court to reconsider the issues under the vacated order or judgment, the court's findings or determinations must be re-adjudicated.**

**(3) As used in this section, "termination of parental rights" includes the involuntary termination of parental rights under ORS chapter 419B or the termination of parental rights re-**

**sulting from an adoption proceeding under ORS 109.304 to 109.410.**

*[(3)(a) If any party to a proceeding under ORS chapter 419B involving an Indian child asserts or the court has reason to believe that the Indian child may have been improperly retained following a visit or temporary relinquishment of custody or improperly removed, the court shall expeditiously determine whether the Indian child was improperly retained or improperly removed.]*

*[(b) If the court finds that the Indian child was improperly retained or improperly removed, the court shall terminate the proceeding and order the Department of Human Services to immediately return the Indian child to the Indian child's parent or Indian custodian, unless the court determines by clear and convincing evidence that doing so would subject the Indian child to substantial and immediate danger or a threat of substantial and immediate danger.]*

**SECTION 38. Section 39 of this 2021 Act is added to and made a part of sections 1 to 23, chapter 14, Oregon Laws 2020 (first special session).**

**SECTION 39. (1) The juvenile court, on the court's own motion or on the motion of any party, shall expeditiously determine whether an Indian child asserted to be within the jurisdiction of the juvenile court under ORS 419B.100 has been improperly removed or improperly retained following a visit or temporary relinquishment of custody. A motion under this section may be made orally on the record or in writing.**

**(2) If the court finds that the Indian child has been improperly removed or improperly retained, the court shall order the Department of Human Services to immediately return the Indian child to the child's parent or Indian custodian and dismiss the proceeding, unless the court determines by clear and convincing evidence that doing so would subject the child to substantial and immediate danger or a threat of substantial and immediate danger.**

#### (Adoption Records)

**SECTION 40. ORS 109.319 is amended to read:**

**109.319. (1) The clerk or court administrator of any court having jurisdiction over adoption proceedings shall keep a separate record of the case for each adoption proceeding filed with the court. Adoption proceedings shall not be entered upon the general records of the court.**

**(2) The clerk, court administrator and any other person having custody of the records, papers and files in the court's record of an adoption case shall cause the records, papers and files, both prior to entry of judgment and after entry of judgment of adoption, to be sealed. The clerk, court administrator and any other person having custody of the re-**

cords, papers and files shall not unseal or allow inspection or copying of or disclose any information in the records, papers and files to any person or entity, except as provided in this section or pursuant to ORS [109.305] **109.304** to 109.410 or 109.425 to 109.507.

(3) Prior to entry of judgment in an adoption proceeding, and after entry of judgment in an adoption proceeding but prior to the minor child who is the subject of the adoption proceeding attaining 18 years of age, the following may inspect and copy sealed records, papers and files that are maintained in the court's record of an adoption case without a court order:

(a) Presiding judges and judges of the court operating under the Judicial Department, and court staff or other persons operating under the direction of the presiding judges or judges;

(b) Petitioners and their attorneys of record; [and]

(c) The Department of Human Services[.]; and

**(d) If the minor child is an Indian child, the Indian child's tribe and the United States Secretary of the Interior.**

(4) After entry of judgment in an adoption proceeding and after the minor child who is the subject of the adoption proceeding has attained 18 years of age, the following may inspect and copy sealed records, papers and files that are maintained in the court's record of the adoption case without a court order:

(a) Judges of the court operating under the Judicial Department and court staff or other persons operating under the direction of the judges;

(b) The person who was the minor child in the adoption proceeding, except that the person who was the minor child in the adoption proceeding may not inspect or copy the home study approved under ORS 109.309 (7) except pursuant to a court order and with good cause;

(c) Petitioners and their attorneys of record; [and]

(d) The Department of Human Services[.]; and

**(e) If the minor child was an Indian child, the Indian child's tribe and the United States Secretary of the Interior.**

(5)(a) After entry of judgment in an adoption proceeding and after the minor child who is the subject of the adoption proceeding has attained 18 years of age, an individual whose consent for the adoption is required under ORS 109.321 **or section 19 of this 2021 Act** may file a motion with the court to inspect and copy sealed records, papers and files that are maintained in the court's record of the adoption case.

(b) Except as provided in paragraph (c) of this subsection, the court shall grant the motion except for good cause but must exclude from inspection and copying:

(A) For adoption cases filed on or after January 1, 2014:

(i) The Adoption Summary and Segregated Information Statement filed in accordance with ORS 109.317; and

(ii) Exhibits described in ORS 109.317 (2) that are contained in the court's record of the adoption case.

(B) For adoption cases filed before January 1, 2014:

(i) Statements, exhibits and other documents provided for purposes of the Uniform Child Custody Jurisdiction and Enforcement Act pursuant to ORS 109.767;

(ii) A home study;

(iii) A report of adoption on a form prescribed and furnished by the State Registrar of the Center for Health Statistics under ORS 432.223 or a similar document in which the court has certified to the state registrar the facts of the live birth of the person adopted;

(iv) A medical history described in ORS 109.342 or a similar document provided to the court for the purpose of describing the medical history of the minor child or of the biological parents; and

(v) Addresses, phone numbers and Social Security numbers of persons or entities described in ORS 109.317 (1)(a) to (d) that are contained in the court's record of the adoption case.

(c) If the Department of Human Services consented or has the authority to consent to the adoption of a minor child under ORS 109.325 or 419B.529:

(A) A parent who has signed a release and surrender to the department under ORS 418.270, that was accepted by the department, or whose parental rights were terminated under ORS 419B.500 and 419B.502 to 419B.524, may file a motion with the court to inspect or copy sealed records, papers and files that are maintained in the court's record of the adoption case but may not be granted the right to inspect or copy:

(i) For adoption cases filed on or after January 1, 2014:

(I) The Adoption Summary and Segregated Information Statement filed in accordance with ORS 109.317; and

(II) Exhibits described in ORS 109.317 (2) that are contained in the court's record of the adoption case.

(ii) For adoption cases filed before January 1, 2014:

(I) Statements, exhibits and other documents provided for purposes of the Uniform Child Custody Jurisdiction and Enforcement Act pursuant to ORS 109.767;

(II) A home study;

(III) A report of adoption on a form prescribed and furnished by the State Registrar of the Center for Health Statistics under ORS 432.223 or a similar document in which the court has certified to the state registrar the facts of the live birth of the person adopted; and

(IV) A medical history described in ORS 109.342 or a similar document provided to the court for the



purpose of describing the medical history of the minor child or of the biological parents.

(B)(i) The court may grant the motion for good cause. The name, address, phone number, Social Security number or other identifying information of any individual or entity contained in the records, papers and files must be redacted and may not be disclosed as part of the inspection or copying allowed under this paragraph.

(ii) Notwithstanding sub-subparagraph (i) of this subparagraph, the name of the parent filing the motion and the name, bar number and contact information for any attorney of record in the case may be disclosed as part of the inspection or copying allowed under this paragraph.

(d) The fee imposed and collected by the court for the filing of a motion under this subsection by the birth parent of an adult adoptee shall be in accordance with ORS 21.145, except that a fee may not be imposed or collected for a motion filed under this subsection for adoptions where the Department of Human Services consented to the adoption under ORS 109.325 or 419B.529.

(6) Except as provided in subsection (5)(c) of this section, an individual or entity that signed a record, paper or document in a file contained in the court's record of the adoption case is entitled to inspect and obtain a copy of that record, paper or document without a court order. The signature and name of any other individual or entity on the same record, paper or document must be redacted or otherwise not disclosed as part of the inspection and copying permitted under this subsection.

(7)(a) Any documents, writings, information and other records retained by the Department of Human Services or a child-caring agency as defined in ORS 418.205 in the department's or agency's record of an adoption case that are not records, papers and files in the court's record of the adoption case are confidential and must be sealed. Any records, documents or information, including records, papers and files in the court's record of the adoption case, retained by the department or agency in its record of an adoption case may be accessed, used or disclosed only as provided in this section or ORS [109.305] **109.304** to 109.410 or 109.425 to 109.507, or pursuant to a court order for good cause.

(b) The department or agency may, without a court order, access, use or disclose any records, documents or information retained by the department or agency in its record of an adoption case, including records, papers and files in the court's record of an adoption case that are in the possession of the department or the agency for the purpose of providing adoption services or the administration of child welfare services that the department or agency is authorized to provide under applicable federal or state law.

(8) Except as otherwise provided in this section, a court may grant a motion and enter an order allowing inspection, copying or other disclosure of records, papers and files that are maintained in the court's record of an adoption case for good cause.

(9) Nothing contained in this section shall prevent the clerk or court administrator from certifying or providing copies of a judgment of adoption to the petitioner in an adoption proceeding, to the petitioner's attorney of record or to the Department of Human Services.

(10) The provisions of this section do not apply to the disclosure of information under ORS 109.425 to 109.507.

(11) Except as provided in subsection (5)(d) of this section, the court may impose and collect fees for copies and services provided under this section, including but not limited to filing, inspection and research fees.

(12) Unless good cause is shown, when the court grants a motion to inspect, copy or otherwise disclose records, papers and files in the court's record of an adoption case, the court shall order a prohibition or limitation on redisclosure of the records, papers and files, or of information contained in the records, papers and files.

(13) When inspection, copying or disclosure is allowed under this section, the court may require appropriate and reasonable verification of the identity of the requesting person to the satisfaction of the court.

**(14)(a) When an Indian child's tribe or the United States Secretary of the Interior requests access to the adoption records of an Indian child, the court must make the records available no later than 14 days following the date of the request.**

**(b) The records made available under this subsection must, at a minimum, include the petition, all substantive orders entered in the adoption proceeding, the complete record of the placement finding and, if the placement departs from the placement preferences under section 23, chapter 14, Oregon Laws 2020 (first special session), detailed documentation of the efforts to comply with the placement preferences.**

## PUTATIVE FATHER

**SECTION 41.** Section 4, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

**Sec. 4. (1)** *[In addition to the methods for establishing parentage under ORS 109.065.]* A man's parentage of an Indian child is acknowledged or established for purposes of **ORS 109.304 to 109.410, ORS chapter 419B and sections 1 to 23, chapter 14, Oregon Laws 2020 (first special session),** *[of this 2020 special session Act and ORS chapter 419B]* if the man's parentage has been:

**(a) Established under ORS 109.065;**

*[(1)]* **(b)** Established under tribal law;

*[(2)]* **(c)** Recognized in accordance with tribal custom; or

*[(3)]* **(d)** *[Openly proclaimed]* **Subject to subsection (2) of this section, acknowledged orally or in writing** by the man to the court, *[to the Indian*



*child's family,]* to the Department of Human Services or to an Oregon licensed adoption agency.

**(2)(a) If a man acknowledges paternity of an Indian child as provided in subsection (1)(d) of this section, the department or the adoption agency must notify the court of the man's acknowledgement immediately or, if a matter is not yet pending in this state, immediately upon filing a petition or being served with a copy of a petition alleging that the child is within the jurisdiction of the court under ORS 109.309 or 419B.100.**

**(b) No later than 30 days after receiving the man's oral or written acknowledgment under subsection (1)(d) of this section or receiving notice under paragraph (a) of this subsection of the man's acknowledgment, the court shall order blood tests, subject to the provisions of ORS 109.252.**

**(c) If any person fails to comply with the court's order for blood tests within a reasonable amount of time, the court shall consider the person to have refused to submit to the test for the purposes of ORS 109.252.**

**(d) If the blood tests ordered under paragraph (b) of this subsection do not confirm the man's paternity as provided in ORS 109.258, or if the man has refused to consent to the blood tests, the man's parentage has not been acknowledged or established for purposes of subsection (1) of this section.**

**SECTION 42.** ORS 109.252 is amended to read:

109.252. (1) Unless the court or administrator finds good cause not to proceed in a proceeding under ORS 25.501 to 25.556 [and 109.125] or 109.124 to 109.230 or section 4, chapter 14, Oregon Laws 2020 (first special session), in which parentage is a relevant fact, the court or administrator, as defined in ORS 25.010, upon the court's or administrator's own initiative or upon suggestion made by or on behalf of any person whose blood is involved may, or upon motion of any party to the action made at a time so as not to delay the proceedings unduly shall, order the mother, child, alleged father and any other named respondent who may be the father to submit to blood tests. If any person refuses to submit to such tests, the court or administrator may resolve the question of parentage against such person or enforce the court's or administrator's order if the rights of others and the interests of justice so require.

(2) When child support enforcement services are being provided under ORS 25.080, the Child Support Program shall pay any costs for blood tests subject to recovery from the party who requested the tests. If the original test result is contested prior to the entry of an order establishing parentage, the court or administrator shall order additional testing upon request and advance payment by the party making the request.

**SECTION 43.** ORS 109.092 is amended to read:

109.092. (1) When it is determined that a woman is pregnant with a child, the woman and any man to whom she is not married and with whom she engaged in sexual intercourse at approximately the time of conception have an obligation to recognize that the man may be the other person responsible for the conception.

**(2)(a) During the months of pregnancy, the man may join the woman in acknowledging paternity and assuming the rights and duties of expectant parenthood.**

**(b) If the man acknowledges paternity of the expected child and the woman denies that he is the father or refuses to join him in acknowledging paternity, the man may seek relief under ORS 109.125.**

**(c) If the woman wants the man to join her in acknowledging his paternity of the expected child and the man denies that he is the father or refuses to join her in acknowledging paternity, the woman may seek relief under ORS 109.125.**

**(3) If after the birth of the child the mother decides to surrender the child for adoption and paternity has not been acknowledged as provided in ORS 109.065 (1)(e) or the putative father has not asserted his rights in filiation proceedings, the mother has the right without the consent of the putative father to surrender the child as provided in ORS 418.270 or to consent to the child's adoption.**

**(4) Subsection (3) of this section does not apply if the child is an Indian child.**

**SECTION 44.** ORS 109.096 is amended to read:

109.096. (1) When the parentage of a child has not been established under ORS 109.065 or has not been established or acknowledged under section 4, chapter 14, Oregon Laws 2020 (first special session), the putative father is entitled to reasonable notice in adoption or other court proceedings concerning the custody of the child, except for juvenile court proceedings, if the petitioner knows, or by the exercise of ordinary diligence should have known:

(a) That the child resided with the putative father at any time during the 60 days immediately preceding the initiation of the proceeding, or at any time since the child's birth if the child is less than 60 days old when the proceeding is initiated; or

(b) That the putative father repeatedly has contributed or tried to contribute to the support of the child during the year immediately preceding the initiation of the proceeding, or during the period since the child's birth if the child is less than one year old when the proceeding is initiated.

(2) Except as provided in subsection (3) or (4) of this section, a verified statement of the mother of the child or of the petitioner, or an affidavit of another person with knowledge of the facts, filed in the proceeding and asserting that the child has not resided with the putative father, as provided in subsection (1)(a) of this section, and that the putative father has not contributed or tried to contribute to the support of the child, as provided in subsection

(1)(b) of this section, is sufficient proof to enable the court to grant the relief sought without notice to the putative father.

(3) The putative father is entitled to reasonable notice in a proceeding for the adoption of the child if notice of the initiation of filiation proceedings as required by ORS 109.225 was on file with the Center for Health Statistics of the Oregon Health Authority prior to the child's being placed in the physical custody of a person or persons for the purpose of adoption by them. If the notice of the initiation of filiation proceedings was not on file at the time of the placement, the putative father is barred from contesting the adoption proceeding.

(4) Except as otherwise provided in subsection (3) of this section, the putative father is entitled to reasonable notice in court proceedings concerning the custody of the child, other than juvenile court proceedings, if notice of the initiation of filiation proceedings as required by ORS 109.225 was on file with the Center for Health Statistics prior to the initiation of the proceedings.

(5) Notice under this section is not required to be given to a putative father who was a party to a filiation [*proceedings*] **proceeding** under ORS 109.125 **or to a proceeding to acknowledge or establish parentage of an Indian child under section 4, chapter 14, Oregon Laws 2020 (first special session)**, that [*were*] was dismissed or resulted in a finding that he was not the father of the child.

(6) The notice required under this section shall be given in the manner provided in ORS 109.330.

(7) No notice given under this section need disclose the name of the mother of the child.

(8) A putative father has the primary responsibility to protect his rights, and nothing in this section shall be used to set aside an act of a permanent nature including, but not limited to, adoption or termination of parental rights, unless the father establishes within one year after the entry of the final judgment or order fraud on the part of a petitioner in the proceeding with respect to matters specified in subsections (1) to (5) of this section.

**SECTION 45.** ORS 109.098 is amended to read:

109.098. (1) If a putative father of a child by due appearance in a proceeding of which he is entitled to notice under ORS 109.096 objects to the relief sought, the court:

(a)(A) May stay the adoption or other court proceeding to await the outcome of the filiation proceedings only if notice of the initiation of filiation proceedings was on file as required by ORS 109.096 (3) or (4); **or**

(B) **If the child is an Indian child, shall stay the adoption proceeding to await the outcome of a determination of the putative father's parentage under section 4, chapter 14, Oregon Laws 2020 (first special session).**

(b) Shall, if **neither a filiation [*proceedings are not*] proceeding nor a proceeding to determine the putative father's parentage under section 4, chapter 14, Oregon Laws 2020 (first special ses-**

**sion), is pending**, inquire as to the paternity of the child, the putative father's past endeavors to fulfill his obligation to support the child and to contribute to the pregnancy-related medical expenses, the period that the child has lived with the putative father, the putative father's fitness to care for and rear the child and whether the putative father is willing to be declared the father of the child and to assume the responsibilities of a father.

(2) If after inquiry under subsection (1)(b) of this section the court finds:

(a) That the putative father is the father of the child and is fit and willing to assume the responsibilities of a father, it shall have the power:

(A) Upon the request of the putative father, to declare his paternity and to certify the fact of paternity in the manner provided in ORS 109.094; and

(B) To award custody of the child to either parent as may be in the best interests of the child, or to take any other action which the court may take if the parents are or were married to each other.

(b) That the putative father is not the father of the child, it may grant the relief sought in the proceeding without the putative father's consent.

(c) That the putative father is the natural father of the child but is not fit or willing to assume the responsibilities of a father, it may grant the relief sought in the proceeding or any other relief that the court deems to be in the best interests of the child, notwithstanding the father's objection.

(3) If a putative father of a child is given the notice of a proceeding required by ORS 109.096 and he fails to enter due appearance and to object to the relief sought therein within the time specified in the notice, the court may grant the relief sought without the putative father's consent.

**SECTION 46.** ORS 419B.395 is amended to read:

419B.395. (1) If in any proceeding under ORS 419B.100 or 419B.500 the juvenile court determines that the child or ward has fewer than two legal parents or that parentage is disputed as allowed in ORS 109.070, the court may enter a judgment of parentage or a judgment of nonparentage in compliance with the provisions of ORS 109.065, 109.070, 109.124 to 109.230, 109.250 to 109.262 and 109.326 **and section 4, chapter 14, Oregon Laws 2020 (first special session).**

(2) Before entering a judgment under subsection (1) of this section, the court [*must find that*] **shall:**

(a) **Determine that the inquiry requirements under section 15 (2), chapter 14, Oregon Laws 2020 (first special session), to determine whether the child is an Indian child, have been satisfied;**

(b) **Make a finding regarding whether the child is an Indian child, subject to the procedures under section 15 (4), chapter 14, Oregon Laws 2020 (first special session); and**

(c) **Find that adequate notice and an opportunity to be heard was provided to:**

[*a*] (A) The parties to the proceeding;

[(b)] **(B)** The person alleged or claiming to be the child or ward's parent; [and]

[(c)] **(C)** The Administrator of the Division of Child Support of the Department of Justice or the branch office providing support services to the county in which the court is located[.]; and

**(D) If the child is an Indian child, the child's Indian custodian and tribe, together with the notice of proceeding in the form required under section 16 (2), chapter 14, Oregon Laws 2020 (first special session).**

(3) When appropriate, the court shall inform a person before the court claiming to be the parent of a child or ward that parentage establishment services may be available through the administrator if the child or ward:

- (a) Is a child born out of wedlock;
- (b) Has not been placed for adoption; and
- (c) Has fewer than two legal parents.

(4) As used in this section:

- (a) "Administrator" has the meaning given that term in ORS 25.010.
- (b) "Child born out of wedlock" has the meaning given that term in ORS 109.124.
- (c) "Legal parent" has the meaning given that term in ORS 419A.004 (19).

## OREGON INDIAN CHILD WELFARE

**SECTION 47.** Section 7, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

**Sec. 7.** (1) Unless an Indian child's parent objects, the Department of Human Services shall provide assistance with enrolling an Indian child within the juvenile court's jurisdiction under ORS 419B.100 in a tribe with which the child is eligible for enrollment.

(2) In any **child custody** proceeding under ORS chapter 419B, [where there is] **when the department determines the department has** reason to know **that** the child is an Indian child, and **if** the department reasonably believes that the Indian child is eligible for enrollment in a tribe, the department shall notify the Indian child's parent of the parent's right to object to the department's assistance under subsection (1) of this section.

**SECTION 48.** Section 3, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

**Sec. 3.** (1) An individual has custody of an Indian child under sections 1 to 23, **chapter 14, Oregon Laws 2020 (first special session)**, [of this 2020 special session Act] if the individual has physical custody or legal custody of the Indian child under any applicable tribal law, tribal custom or state law.

(2) An Indian child's parent has continued custody of the Indian child **under sections 1 to 23, chapter 14, Oregon Laws 2020 (first special session)**, if the parent currently has, or previously had, custody of the Indian child.

(3) For purposes of sections 1 to 23, **chapter 14, Oregon Laws 2020 (first special session)** [of this

2020 special session Act], the following individuals are presumed to have continued custody of an Indian child:

- (a) The Indian child's biological mother.
- (b) A man who is married to the Indian child's biological mother.
- (c) A man whose parentage has been acknowledged or established as described in section 4, **chapter 14, Oregon Laws 2020 (first special session)** [of this 2020 special session Act].

**SECTION 49.** Section 5, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

**Sec. 5. In a child custody proceeding involving an Indian child**, when making a determination regarding the best interests of [an Indian] **the child** under **ORS 109.304 to 109.410, ORS chapter 419B, sections 1 to 23, chapter 14, Oregon Laws 2020 (first special session)** [of this 2020 special session Act, ORS chapter 419B], the Indian Child Welfare Act (25 U.S.C. 1901 et seq.) or any regulations or rules regarding **ORS 109.304 to 109.410, ORS chapter 419B, sections 1 to 23, chapter 14, Oregon Laws 2020 (first special session)**, [of this 2020 special session Act] or the Indian Child Welfare Act, the [juvenile] court shall, in consultation with the Indian child's tribe, consider the following [relevant factors]:

- (1) The protection of the safety, well-being, development and stability of the Indian child;
- (2) The prevention of unnecessary out-of-home placement of the Indian child;
- (3) The prioritization of placement of the Indian child in accordance with the placement preferences under section 23, **chapter 14, Oregon Laws 2020 (first special session)** [of this 2020 special session Act];
- (4) The value to the Indian child of establishing, developing or maintaining a political, cultural, social and spiritual relationship with the Indian child's tribe and tribal community; and
- (5) The importance to the Indian child of the Indian tribe's ability to maintain the tribe's existence and integrity in promotion of the stability and security of Indian children and families.

**SECTION 50.** Section 10, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

**Sec. 10.** (1)(a) The Department of Human Services shall make a good faith effort to enter into a tribal-state agreement with any Indian tribe within the borders of this state.

(b) The department may also enter into a tribal-state agreement with any Indian tribe outside of this state having significant numbers of member children or membership-eligible children residing in this state.

(2) The purposes of a tribal-state agreement are to promote the continued existence and integrity of the Indian tribe as a political entity and to protect the vital interests of Indian children in securing and maintaining political, cultural and social relationships with their tribe.

(3) A tribal-state agreement may include, *but is not limited to,* agreements regarding default jurisdiction over cases in which the state courts and tribal courts have concurrent jurisdiction, the transfer of cases between state courts and tribal courts, the assessment, removal, placement, *[and]* custody **and adoption** of Indian children and any other child welfare services provided to Indian children.

(4) A tribal-state agreement must:

(a) Provide for the cooperative delivery of child welfare services to Indian children in this state, including the utilization, to the extent available, of services provided by the tribe or an organization whose mission is to serve the American Indian or Alaska Native population to implement the terms of the tribal-state agreement; and

(b) If services provided by the tribe or an organization whose mission is to serve the American Indian or Alaska Native population are unavailable, provide for the department's use of community services and resources developed specifically for Indian families and that have the demonstrated experience and capacity to provide culturally relevant and effective services to Indian children.

**SECTION 51.** Section 11, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

**Sec. 11.** Section 10 (3), chapter 14, Oregon Laws 2020 (first special session), *[of this 2020 special session Act]* applies to tribal-state agreements entered into or renewed on or after *[the effective date of this 2020 special session Act]* **January 1, 2021.**

**SECTION 52.** Section 17, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

**Sec. 17.** (1) In any **child custody** proceeding under ORS chapter **109 or 419B** that requires the testimony of a qualified expert witness, the petitioner shall contact the Indian child's tribe and request that the tribe identify one or more individuals meeting the criteria described in subsection (3) or (4) of this section. The petitioner may also request the assistance of the United States Bureau of Indian Affairs in locating individuals meeting the criteria described in subsection (3) or (4) of this section. The petitioner shall file a declaration with the court describing the efforts the petitioner made under this subsection to identify a qualified expert witness.

(2) At a hearing under ORS **109.326, 109.330, 419B.340, 419B.365, 419B.366 or 419B.521,** *[when there]* **if the court has found that there** is reason to know **that** a child is an Indian child *[and a qualified expert witness is required]*, at least one qualified expert witness must testify regarding:

(a) Whether the *[Indian child's]* continued custody **of the Indian child** by the *[Indian]* child's parent **or custody by the child's** Indian custodian is likely to result in serious emotional or physical damage to the Indian child; and

(b) The prevailing social and cultural standards and child rearing practices of the Indian child's tribe.

(3) A person is a qualified expert witness under this section if the Indian child's tribe has designated the person as being qualified to testify to the prevailing social and cultural standards of the tribe.

(4) If the Indian child's tribe has not identified a qualified expert witness, the following individuals, in order of priority, may testify as a qualified expert witness:

(a) A member of the Indian child's tribe or another person *[of the tribe's choice]* who is recognized by the tribe as knowledgeable **about** tribal customs regarding family organization or child rearing practices;

(b) A person having substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe; or

(c) Any person having substantial experience in the delivery of child and family services to Indians and knowledge of prevailing social and cultural standards and child rearing practices in Indian tribes with cultural similarities to the child's tribe.

(5) In addition to testimony from a qualified expert witness, the court may hear supplemental testimony regarding information described in subsection (2) of this section from a professional having substantial education and experience in the area of the professional's specialty.

(6) No petitioning party, employees of the petitioning party or an employee of the Department of Human Services may serve as a qualified expert witness or a professional under this section.

## JUVENILE DEPENDENCY

**SECTION 53.** ORS 418.312, as amended by section 53, chapter 14, Oregon Laws 2020 (first special session), and sections 16a and 16b, chapter 19, Oregon Laws 2020 (first special session), is amended to read:

418.312. (1) The Department of Human Services may not require any parent or legal guardian to transfer legal custody of a child in order to have the child placed in a child-caring agency under ORS 418.205 to 418.327, 418.470, 418.475, 418.480 to 418.500, 418.950 to 418.970 and 418.992 to 418.998 in a foster home, group home or institutional child care setting, when the sole reason for the placement is the need to obtain services for the child's emotional, behavioral or mental disorder or developmental or physical disability. In all such cases, the child shall be placed pursuant to a voluntary placement agreement. When a child is placed pursuant to a voluntary placement agreement, the department shall have responsibility for the child's placement and care.

(2) If a child is placed pursuant to a voluntary placement agreement in a qualified residential treatment program as described in section 12b, chapter 19, Oregon Laws 2020 (first special session), the placement is subject to judicial approval under

section 14b, chapter 19, Oregon Laws 2020 (first special session).

*[(3)(a) If a child is placed pursuant to a voluntary placement agreement and there is reason to know under section 15, chapter 14, Oregon Laws 2020 (first special session), that the child is an Indian child, the placement and voluntary placement agreement must be approved by the juvenile court.]*

**(3)(a) When a child is placed pursuant to a voluntary placement agreement, the department shall make inquiries, as described in section 15 (2), chapter 14, Oregon Laws 2020 (first special session), to determine whether the department has reason to know that the child is an Indian child.**

**(b) If the department has reason to know that the child is an Indian child, the placement agreement must be executed in person before the juvenile court, consistent with this subsection, and the placement must be approved by the court.**

**(c) At a hearing, the juvenile court shall explain to the Indian child's parent or Indian custodian, on the record in detail and in the language of the parent or Indian custodian, the parent's right to legal counsel, the terms and consequences of the voluntary placement agreement, including that if the Indian child remains in custody for more than 12 months, the court will hold a permanency hearing that could eventually result in the termination of parental rights, and the court must inform the parent or Indian custodian that the voluntary placement agreement may be revoked at any time prior to an entry of a final decree of termination of parental rights and have the child returned to the parent's custody. The parent or Indian custodian must execute the voluntary placement agreement before the court. The parent or Indian custodian shall file the voluntary placement agreement with the court. The court shall certify that the court provided the explanation consistent with the requirements under this paragraph and that the parent or Indian custodian fully understood the explanation.**

*[(b)] (d) The juvenile court may approve the voluntary placement agreement if:*

**(A) The court finds that the Indian child's parent or Indian custodian entered into the voluntary placement agreement without a threat of removal by the Department of Human Services or an Oregon licensed adoption agency; and**

**(B) The proposed placement conforms with the placement preferences described in section 23, chapter 14, Oregon Laws 2020 (first special session);].**

*[(C) The agreement is executed in writing and filed with the court;]*

*[(D) The court has explained to the Indian child's parent or Indian custodian the terms and consequences of the agreement, including that if the Indian child remains in custody for more than 12 months, the juvenile court will hold a permanency hearing which could eventually result in the termination of parental*

*rights, and that the Indian child's parent or Indian custodian may withdraw consent to the agreement at any time prior to an entry of a final decree of termination of parental rights and have the child returned to the parent's custody; and]*

*[(E) The juvenile court certifies that the explanation required under paragraph (b)(D) of this subsection was provided in English or, if English is not the primary language of the Indian child's parent or Indian custodian, in the primary language of the Indian child's parent or Indian custodian, and that the explanation was fully understood by the parent or Indian custodian.]*

*[(c)] (e) An Indian child's parent or Indian custodian may terminate the voluntary placement agreement at any time prior to an entry of an order terminating parental rights. To terminate the voluntary placement agreement, the parent or Indian custodian must file a written notice of termination with the juvenile court or otherwise testify before the court. The court shall promptly notify the department of the termination and order the immediate return of the Indian child to the physical custody of the Indian child's parent or Indian custodian.*

**(4)(a) If a child remains in voluntary placement for more than 180 days, the juvenile court shall make a judicial determination, within the first 180 days of the placement, that the placement is in the best interests of the child.**

**(b) If a child remains in voluntary placement for more than 12 months, the juvenile court shall hold a permanency hearing as provided in ORS 419B.476 no later than 14 months after the child's original voluntary placement, and not less frequently than once every 12 months thereafter during the continuation of the child's original voluntary placement, to determine the future status of the child.**

**(5) As used in this section, "voluntary placement agreement" means a binding, written agreement between the department and the parent or legal guardian of a minor child that does not transfer legal custody to the department but that specifies, at a minimum, the legal status of the child and the rights and obligations of the parent or legal guardian, the child and the department while the child is in placement.**

**SECTION 53a.** ORS 419A.116, as amended by section 52, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

419A.116. (1) After reviewing each case, the local citizen review board shall make written findings and recommendations with respect to:

(a) Whether reasonable efforts were made prior to the placement, to prevent or eliminate the need for removal of the child or ward from the home;

(b) If the case plan at the time of the review is to reunify the family, whether the Department of Human Services has made reasonable efforts to make it possible for the child or ward to safely return home and whether the parent has made sufficient progress to make it possible for the child or ward to safely return home;

(c) If the case plan at the time of the review is something other than to reunify the family, whether the department has made reasonable efforts to place the child or ward in a timely manner in accordance with the case plan, including, if appropriate, placement of the child or ward through an interstate placement, and to complete the steps necessary to finalize the permanent placement of the child or ward;

(d) The continuing need for and appropriateness of the placement;

(e) Compliance with the case plan;

(f) The progress which has been made toward alleviating the need for placement;

(g) A likely date by which the child or ward may be returned home or placed for adoption;

(h) Other problems, solutions or alternatives the board determines should be explored;

(i) Whether the court should appoint an attorney or other person as special advocate to represent or appear on behalf of the child or ward under ORS 419B.195;

(j) For a ward 16 years of age or older with a permanency plan of another planned permanent living arrangement, the steps the department is taking to ensure that:

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

(B) The ward has regular, ongoing opportunities to engage in age-appropriate or developmentally appropriate activities, including consultation with the ward in an age-appropriate manner about the opportunities the ward has to participate in the activities;

(k) Whether there is reason to know, as described in section 15, chapter 14, Oregon Laws 2020 (first special session), that the child or ward is an Indian child; and

(L) If there is reason to know the child or ward is an Indian child:

(A) Whether the department made active efforts, as described in section 18, chapter 14, Oregon Laws 2020 (first special session), to prevent the breakup of the Indian family prior to the child's removal [*and whether those efforts did not eliminate the necessity for removal based on serious emotional or physical damage to the child*];

(B) If the case plan at the time of the review is to reunify the family, whether the department has provided active efforts to make it possible for the child to safely return home [*whether active efforts have eliminated the necessity for continued removal based on serious emotional or physical damage to the child*] and whether the parent has made sufficient progress to make it possible for the child to return home;

(C) If the case plan at the time of review is to reunify the family and the child or ward is placed in a home outside the placement preferences described in section 23, chapter 14, Oregon Laws 2020 (first special session), whether the department has continued to maintain the relationship of the child or ward

with potential adoption preferences or whether the department has continued to search for a permanent placement that satisfies the placement preferences described in section 23, chapter 14, Oregon Laws 2020 (first special session); and

(D) If the case plan at the time of the review is something other than to reunify the family, whether the department has made active efforts to place the child in a timely manner in accordance with the placement preferences under section 23, chapter 14, Oregon Laws 2020 (first special session).

(2) The local citizen review board may, if the case plan has changed during the period since the last review by a local citizen review board or court hearing, make written findings and recommendations with respect to:

(a) Whether the Department of Human Services has made reasonable efforts or, if [*there is reason to know, as described in section 15, chapter 14, Oregon Laws 2020 (first special session), that*] the child is an Indian child, active efforts to make it possible for the child or ward to safely return home and whether the parent has made sufficient progress to make it possible for the child or ward to safely return home, if a plan to reunify the family was in effect for any part of the period since the last review or hearing; or

(b) Whether the department has made reasonable efforts to place the child or ward in a timely manner in accordance with the case plan, including, if appropriate, placement of the child or ward through an interstate placement, and to complete the steps necessary to finalize the permanent placement of the child or ward, if a case plan other than to reunify the family was in effect for any part of the period since the last review or hearing.

(3) In determining whether the Department of Human Services has made reasonable efforts or, if [*there is reason to know, as described in section 15, chapter 14, Oregon Laws 2020 (first special session), that*] the child is an Indian child, active efforts to make it possible for the child or ward to safely return home, the local citizen review board shall consider the child or ward's health and safety the paramount concerns.

(4) No later than 10 days after receiving the findings and recommendations of the local citizen review board, a party adversely affected by the findings and recommendations may request judicial review.

**SECTION 54.** ORS 419B.150, as amended by section 29, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

419B.150. (1) As used in this section:

(a) "Abuse" has the meaning given that term in ORS 419B.005.

(b) "Reasonable cause" means a subjectively and objectively reasonable belief, given all of the circumstances and based on specific and articulable facts.

(c) "Severe harm" means:

(A) Life-threatening damage; or

(B) Significant or acute injury to a person's physical, sexual or psychological functioning.

(2) The following persons are authorized to take a child into protective custody under this section:

(a) A peace officer, as defined in ORS 420.905;

(b) A counselor; or

(c) An employee of the Department of Human Services.

(3)(a) Prior to taking a child into protective custody under this section, the person taking the child into protective custody shall **conduct the inquiry described in section 15, chapter 14, Oregon Laws 2020 (first special session), to determine whether [there is] the person has reason to know that the child is an Indian child[, as provided in section 15, chapter 14, Oregon Laws 2020 (first special session)].**

(b) If [there is] **the person has** reason to know **that the child is an Indian child, the person taking the child into protective custody shall provide the emergency notification [requirements of] under section 16 (1), chapter 14, Oregon Laws 2020 (first special session), [must be met prior to] before** taking the child into protective custody.

(4)(a) Except as provided in paragraph (b) of this subsection, a child may be taken into protective custody without a court order only when there is reasonable cause to believe that:

(A) There is an imminent threat of severe harm to the child;

(B) The child poses an imminent threat of severe harm to self or others; or

(C) There is an imminent threat that the child's parent or guardian will cause the child to be beyond the reach of the juvenile court before the court can order that the child be taken into protective custody under subsection (7) of this section.

(b) If [there is] **the person has** reason to know that the child is an Indian child, the child may be taken into protective custody without a court order only when it is necessary to prevent imminent physical damage or harm to the child.

(5) A person authorized to take a child into protective custody shall apply for a protective custody order, as described in subsection (7) of this section, by submitting a declaration based on information and belief that sets forth with particularity:

(a) Why protective custody is necessary and the least restrictive means available to:

(A) Protect the child from abuse;

(B) Prevent the child from inflicting harm on self or others;

(C) Ensure that the child remains within the reach of the juvenile court to protect the child from abuse or to prevent the child from inflicting harm on self or others; or

(D) If the department [knows or] has reason to know that the child is an Indian child, prevent imminent physical damage or harm to the child.

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

(6)(a) The applicant under subsection (5) of this section shall deliver the declaration described in subsection (5) of this section to the juvenile court.

(b) At the applicant's request, instead of the declaration described in subsection (5) of this section, the judge may take an oral statement under oath. If the applicant makes the oral statement to the judge out of court, the applicant shall record the oral statement and retain a copy of the recording. The recording constitutes a declaration for the purposes of subsection (5) of this section.

(7) The juvenile court may order that a child be taken into protective custody if, after reviewing the declaration described in subsection (5) of this section, the court [determines that]:

(a) **Determines that the person complied with the inquiry requirements under section 15, chapter 14, Oregon Laws 2020 (first special session);**

(b) **Makes a finding, subject to the procedures under section 15 (4), chapter 14, Oregon Laws 2020 (first special session), regarding whether there is reason to know that the child is an Indian child;**

(c) **If the court finds that there is reason to know that the child is an Indian child, determines that the person complied with the notice requirements under section 16 (1), chapter 14, Oregon Laws 2020 (first special session);**

[(a)] (d) **Determines that** protective custody is necessary and the least restrictive means available to:

(A) Protect the child from abuse;

(B) Prevent the child from inflicting harm on self or others;

(C) Ensure that the child remains within the reach of the juvenile court to protect the child from abuse or prevent the child from inflicting harm on self or others;

(D) Ensure the safety of a child who has run away from home; or

(E) If the [department knows or has] **court finds that there is** reason to know that the child is an Indian child, prevent imminent physical damage or harm to the child; and

[(b)] (e) **Determines that** protective custody is in the best interests of the child.

(8) When the court issues a protective custody order under subsection (7) of this section, the court may transmit the signed order to the applicant by a form of electronic communication approved by the court that delivers a complete printable image of the signed order. The court shall file the original order in the court record.

**SECTION 55.** ORS 419B.171, as amended by section 30, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

419B.171. (1) Except where the child is taken into protective custody pursuant to an order of the court, the person taking the child into protective custody shall promptly file with the court or a counselor a brief written report stating all of the following:

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



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

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

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

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

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

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

(h) **A declaration under penalty of perjury and documentation of the person's** efforts to determine whether *[there is]* **the person has** reason to know that the child is an Indian child, *as required under section 15, chapter 14, Oregon Laws 2020 (first special session),* and the results of those efforts.

(2) If *[there is]* **the person has** reason to know that the child is an Indian child, the report under subsection (1) of this section must also include:

(a) The name and address of the Indian child's parents and, if any, Indian custodian;

(b) Confirmation that notification about the emergency proceeding *[under section 16 (1), chapter 14, Oregon Laws 2020 (first special session),]* has been provided **as required under section 16 (1), chapter 14, Oregon Laws 2020 (first special session);**

(c) If the Indian child's parent or Indian custodian is unknown, a detailed *[explanation]* **description and documentation** of *[what efforts have been]* **the efforts the person has** made to locate and contact the parent or Indian custodian, including contact with the appropriate United States Bureau of Indian Affairs Regional Director;

(d) The tribal affiliation of the Indian child and the Indian child's parent or Indian custodian;

(e) The residence and the domicile of the Indian child;

(f) If either the residence or the domicile of the Indian child is believed to be on a reservation or in an Alaska Native village, the name of the tribe affiliated with that reservation or village;

(g) A specific and detailed account of the circumstances that led the person responsible for the emergency removal of the Indian child to determine that removal of the Indian child was necessary to prevent imminent physical damage or harm and to remove the Indian child;

(h) If the Indian child is believed to reside or to be domiciled on a reservation, a statement describing the efforts that were made and are being made to contact the tribe and transfer the Indian child to the tribe's jurisdiction; and

(i) A statement of the efforts that have been *[taken]* **made** to assist the Indian child's parent or Indian custodian so that the Indian child may remain in or safely be returned to the custody of the Indian child's parent or Indian custodian.

**SECTION 56.** ORS 419B.185, as amended by section 31, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

419B.185. (1) When a child or ward is taken, or is about to be taken, into protective custody pursuant to ORS 419B.150, 419B.152, 419B.160, 419B.165, 419B.168 or 419B.171 and placed in shelter care, a parent, child or ward 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 or ward 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:]*

(2) **When the court conducts a hearing described in subsection (1) of this section, unless the court has previously found that the child is an Indian child, before the court may enter an order taking a child or ward into protective custody the court shall inquire and make a finding, subject to the procedures under section 15 (4), chapter 14, Oregon Laws 2020 (first special session), regarding whether there is reason to know that the child is an Indian child.**

*[(a) The court shall make written findings as to:]*

*[(A) Whether there is reason to know, as described in section 15, chapter 14, Oregon Laws 2020 (first special session), that the child or ward is an Indian child; and]*

*[(B) Whether the Department of Human Services has made reasonable efforts or, if there is reason to know as described in section 15, chapter 14, Oregon Laws 2020 (first special session), the child or ward is an Indian child, active efforts pursuant to section 18, chapter 14, Oregon Laws 2020 (first special session),]*

(3)(a) **At a hearing described in subsection (1) of this section, the court shall make written findings as to whether the Department of Human Services has made reasonable efforts or, if the child is an Indian child, active efforts to prevent or eliminate the need for removal of the child or ward from the home and to make it possible for the child or ward 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 *[there is reason to know that]* the child or ward is an Indian child, active efforts to prevent or eliminate the need for protective custody. The court shall include in the written findings a brief description of the preventive and reunification efforts made by the department.**

(b) In determining whether a child or ward 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 *[there is reason to know]* the child or ward is an Indian child, active



efforts to prevent or eliminate the need for removal of the child or ward from the home and to make it possible for the child or ward to safely return home, the court shall consider the child or ward's health and safety the paramount concerns.

*[(d) The court shall determine whether the child or ward is an Indian child.]*

*[(e) (d) The court shall make a written finding in every order of removal that describes:*

*(A) Why it is in the best interests of the child or ward that the child or ward be removed from the home or continued in care; and*

*(B) If [the court determines under paragraph (d) of this subsection that] the child or ward is an Indian child, why the Indian child's removal or continuation in care is necessary to prevent imminent physical damage or harm to the Indian child.*

*[(f) (e) When the court determines that a child or ward shall be removed from the home or continued in care, the court shall make written findings whether the department made diligent efforts pursuant to ORS 419B.192. The court shall include in its written findings a brief description of the efforts made by the department.*

*[(g) (f) The court may receive testimony, reports and other evidence without regard to whether the evidence is admissible under ORS 40.010 to 40.210 and 40.310 to 40.585 if the evidence is relevant to the determinations and findings required under this section. As used in this paragraph, "relevant evidence" has the meaning given that term in ORS 40.150.*

*[(2) (4) To aid the court in making the written findings required by subsection [(1)(a), (e) or (f)] (3) of this section, the department shall present written documentation to the court outlining:*

*(a) The efforts made to prevent taking the child or ward into protective custody and to provide services to make it possible for the child or ward to safely return home;*

*(b) The efforts the department made pursuant to ORS 419B.192;*

*(c) Why protective custody is in the best interests of the child or ward; and*

*(d) If [there is reason to know] the child or ward is an Indian child, why protective custody is necessary to prevent imminent physical damage or harm to the Indian child.*

*[(3)(a) The court may not enter an order taking a child or ward into protective custody under this section unless the department provides documentation that the department has made inquiries as required under section 15, chapter 14, Oregon Laws 2020 (first special session), to determine whether there is reason to know the child or ward is an Indian child.]*

*[(b) If there is reason to know that the child or ward is an Indian child, the court may not enter an order taking the child or ward into protective custody unless after holding a hearing the court finds in writing:]*

*[(A) That the department has complied with the notice requirements under section 16, chapter 14, Oregon Laws 2020 (first special session);]*

**(5)(a)(A) The court may not enter an order taking a child or ward into protective custody under this section unless, after review of documentation provided by the department, the court makes written findings that the department satisfied the inquiry requirements under section 15 (1), chapter 14, Oregon Laws 2020 (first special session), and, if applicable, the notice requirements under section 16 (1), chapter 14, Oregon Laws 2020 (first special session).**

**(B) If the court finds, subject to the procedures under section 15 (4), chapter 14, Oregon Laws 2020 (first special session), that there is reason to know that the child is an Indian child, the court shall order that the child or ward is to be treated as an Indian child.**

**(b) The court may not enter an order taking an Indian child into protective custody unless after holding a hearing the court finds in writing:**

**[(B)] (A) That removal of the child or ward is in the best interest, as described in section 5, chapter 14, Oregon Laws 2020 (first special session), of the child or ward; and**

**[(C)] (B) That a preponderance of the evidence indicates that protective custody is necessary to prevent imminent physical damage or harm to the child.**

**(c)(A) If [there is reason to know] the child or ward is an Indian child and the court enters a protective custody order under this section, the order must direct the department to immediately notify the court if new information indicates that the emergency necessitating the protective custody of the Indian child has changed.**

**(B) Whenever the court receives notice from the department that the emergency necessitating the protective custody of the Indian child has changed, the court shall promptly hold a hearing under this section to determine whether protective custody continues to be necessary.**

**(C) The court shall immediately terminate the protective custody of an Indian child if the court determines that protective custody is no longer necessary to prevent imminent physical damage or harm to the Indian child.**

**(d) If [there is reason to know] the child or ward is an Indian child, a protective order under this section may not be continued for more than 30 days unless the court:**

**(A) Has set the case for a hearing on the petition [asserting dependency jurisdiction] alleging jurisdiction under ORS 419B.100 (1);**

**(B) Determines that restoring the Indian child to the Indian child's parent or Indian custodian would subject the Indian child to imminent physical damage or harm;**

**(C) Despite diligent efforts, has been unable to transfer the proceeding to the jurisdiction of the Indian child's tribe; or**

**(D) Has been unable to set the case for a hearing on the petition showing the child or ward to be within the court's jurisdiction under ORS 419B.100**

for a reason other than scheduling or availability of counsel and the reason has been documented in writing on the record.

**(6) As used in this section, “active efforts” has the meaning described in section 18, chapter 14, Oregon Laws 2020 (first special session).**

**SECTION 57.** ORS 419B.305, as amended by section 34, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

419B.305. (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) At the commencement of the hearing, unless the court has entered an order finding that the child is an Indian child, the court shall inquire and make a finding, subject to the procedures under section 15 (4), chapter 14, Oregon Laws 2020 (first special session), regarding whether there is reason to know that the child is an Indian child.**

[(2)(a)] **(3)(a)** If *[there is reason to know, as described in section 15, chapter 14, Oregon Laws 2020 (first special session), that]* the child is an Indian child and if the court found under ORS 419B.185 [(3)(b)(C)] **(5)(b)(B)** that protective custody is necessary to prevent imminent physical damage or harm to the child, no later than 30 days after the petition is filed, the court shall hold the hearing and enter the order described in subsection (1) of this section, unless:

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

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

(C) The court continues the protective order regarding the child for more than 30 days as provided in ORS 419B.185 [(3)(d)] **(5)(d)**; or

(D) The court grants the child’s parent, Indian custodian or tribe an extension of time to prepare for participation in the hearing *[under]* **as provided in** section 16 (5), chapter 14, Oregon Laws 2020 (first special session).

(b) The court may not schedule a hearing on the petition, or enter an order on the petition, unless the inquiry and notice requirements *[of]* **under** sections 15 (2) and 16 (2), chapter 14, Oregon Laws 2020 (first special session), and all relevant timelines have been followed.

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

[(4)] (5) 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.

[(5)] (6) 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.

**NOTE:** Section 58 was deleted. Subsequent sections were not renumbered.

**SECTION 59.** ORS 419B.328 is amended to read: 419B.328. (1) The court shall make a child found to be within the jurisdiction of the court as provided in ORS 419B.100 a ward of the court.

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

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

(b) The court transfers jurisdiction over the ward as provided in ORS 419B.127, 419B.130 *[and]* or 419B.132 or **section 14, chapter 14, Oregon Laws 2020 (first special session)**;

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

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

(e) The ward becomes 21 years of age.

**SECTION 60.** ORS 419B.365, as amended by section 43, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

419B.365. (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, a party, or person granted rights of limited participation for the purpose of filing a guardianship petition, may file, and the court may hear, a petition for permanent guardianship. If the Department of Human Services chooses not to participate in a proceeding initiated by an intervenor under ORS 419B.875, the state is not foreclosed from filing a subsequent action should the intervenor’s petition be denied.

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

**(3) Upon the filing of a motion to establish guardianship under this section, the court shall make a finding, subject to the procedures under section 15 (4), chapter 14, Oregon Laws 2020 (first special session), regarding whether there is reason to know that the child is an Indian child.**

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

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

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

[(4)(a)] **(5)(a)** Notwithstanding subsection [(3)] (4) of this section, *if an Indian child is involved,* the court may grant the permanent guardianship of *[the]* **an Indian child** only:

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

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

(C) If after inquiry as required under section 15 (2), chapter 14, Oregon Laws 2020 (first special session), and notice as required under section 16 (2), chapter 14, Oregon Laws 2020 (first special session), and in addition to any other findings required for the termination of parental rights under ORS 419B.500 to 419B.524, the court finds:

(i) That evidence, including the testimony of one or more qualified expert witnesses under section 17, chapter 14, Oregon Laws 2020 (first special session), establishes beyond a reasonable doubt that the *[Indian child's]* continued custody **of the Indian child** by the child's parent or custody by the child's Indian custodian is likely to result in serious emotional or physical damage to the Indian child;

(ii) That active efforts under section 18, chapter 14, Oregon Laws 2020 (first special session), to reunite the Indian family did not eliminate the necessity for permanent guardianship based on serious emotional or physical damage to the Indian child; and

(iii) That the placement of the Indian child complies with the placement preferences described in section 23 (1), chapter 14, Oregon Laws 2020 (first special session).

(b) The evidence under paragraph (a) of this subsection must show a causal relationship between the particular conditions in the Indian child's home and the likelihood that custody or continued custody of the Indian child will result in serious emotional or physical damage to the particular Indian child who is the subject of the child custody proceeding, **as defined in section 2, chapter 14, Oregon Laws 2020 (first special session)**. Evidence that shows the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse or nonconforming social behavior does not, by itself, establish a causal relationship as required by this paragraph.

(c) As used in this subsection, "custody" and "continued custody" have the meanings described in section 3, chapter 14, Oregon Laws 2020 (first special session).

[(5)] **(6)** Unless vacated under ORS 419B.368, a guardianship established under this section continues as long as the ward is subject to the court's jurisdiction as provided in ORS 419B.328.

**SECTION 61.** ORS 419B.366, as amended by section 44, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

419B.366. (1) A party, or a person granted rights of limited participation for the purpose of filing a guardianship motion, may file a motion to establish a guardianship. The motion must be in writing and state with particularity the factual and legal grounds for the motion.

(2) Except as otherwise provided in subsection (3) of this section, the facts supporting any finding made or relief granted under this section must be established by a preponderance of evidence.

**(3) Upon the filing of a motion to establish guardianship under this section, the court shall make a finding, subject to the procedures under section 15 (4), chapter 14, Oregon Laws 2020 (first special session), regarding whether there is reason to know that the child is an Indian child.**

[(3)(a)] **(4)(a)** *If there is reason to know, as described in section 15, chapter 14, Oregon Laws 2020 (first special session), an Indian child is involved,* The court may grant the guardianship of *[the]* **an Indian child** only:

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

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

(C) If after inquiry as required under section 15 (2), chapter 14, Oregon Laws 2020 (first special session), and notice as required under section 16 (2), chapter 14, Oregon Laws 2020 (first special session), the court *[finds]*:

(i) **Finds**, by clear and convincing evidence, including the testimony of one or more qualified expert witnesses under section 17, chapter 14, Oregon Laws 2020 (first special session), that the *[Indian child's]* continued custody **of the Indian child** by the child's parent or custody by the child's Indian custodian is likely to result in serious emotional or physical damage to the Indian child;

(ii) **Finds** that active efforts under section 18, chapter 14, Oregon Laws 2020 (first special session), to reunite the Indian family did not eliminate the necessity for guardianship based on serious emotional or physical damage to the Indian child; and

(iii) **Finds** that the placement of the Indian child complies with the placement preferences as described in section 23 (1), chapter 14, Oregon Laws 2020 (first special session), **or, if not, upon the moving party's motion under section 23 (3), chapter 14, Oregon Laws 2020 (first special session), the court finds by clear and convincing evidence, that there is good cause to depart from the placement preferences.**

(b) The evidence under paragraph (a) of this subsection must show a causal relationship between the particular conditions in the Indian child's home and the likelihood that custody or continued custody of the Indian child will result in serious emotional or physical damage to the particular Indian child who is the subject of the child custody proceeding,

as defined in section 2, chapter 14, Oregon Laws 2020 (first special session). Evidence that shows the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse or nonconforming social behavior does not, by itself, establish a causal relationship as required by this paragraph.

(c) As used in this subsection, “custody” and “continued custody” have the meanings described in section 3, chapter 14, Oregon Laws 2020 (first special session).

(4) In a proceeding under this section, the court may receive testimony and reports as provided in ORS 419B.325.

(5) If the court has approved a plan of guardianship under ORS 419B.476, the court may grant the motion for guardianship if the court determines, after a hearing, that:

(a) The ward cannot safely return to a parent within a reasonable time;

(b) Adoption is not an appropriate plan for the ward;

(c) The proposed guardian is suitable to meet the needs of the ward and is willing to accept the duties and authority of a guardian; and

(d) Guardianship is in the ward’s best interests. In determining whether guardianship is in the ward’s best interests, the court shall consider the ward’s wishes.

(6) Unless vacated pursuant to ORS 419B.368, a guardianship established under this section continues as long as the ward is subject to the court’s jurisdiction as provided in ORS 419B.328.

**SECTION 62.** ORS 419B.500, as amended by section 48, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

419B.500. (1) The parental rights of the parents of a ward 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 ward for the purpose of freeing the ward for adoption if the court finds it is in the best *[interest]* **interests** of the ward *[or]* **and**, if *[there is reason to know as described in section 15, chapter 14, Oregon Laws 2020 (first special session), that]* the ward is an Indian child, that **the parents’** continued custody of the *[ward]* **Indian child, as described in section 3, chapter 14, Oregon Laws 2020 (first special session)**, is likely to result in serious emotional or physical harm to the ward. The rights of one parent may be terminated without affecting the rights of the other parent.

(2) **Upon the filing of a petition to terminate parental rights, the court shall make a finding, subject to the procedures under section 15 (4), chapter 14, Oregon Laws 2020 (first special session), regarding whether there is reason to know that the ward is an Indian child.**

**SECTION 63.** ORS 419B.517, as amended by section 39, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

419B.517. (1) The use of mediation shall be encouraged in cases involving:

(a) A parent or guardian in a juvenile dependency proceeding in which the child is taken into protective custody or placed in substitute care; or

(b) The termination of parental rights.

(2) If *[there is reason to know that]* the child or ward is an Indian child, prior to hearing a petition for guardianship under ORS 419B.365 or 419B.366, or termination of parental rights under ORS 419B.500, the court shall offer to order mediation **through the Department of Human Services, or, if there is mutual party agreement to private mediation and party assumption of costs, through other mediation services** between the Indian child’s **parents, the Indian child’s** tribe and the proposed guardian or, if the hearing is for the termination of parental rights, the proposed adoptive placement.

**SECTION 64.** ORS 419B.521, as amended by section 49, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

419B.521. (1) The court shall hold a hearing on the question of terminating the rights of the parent or parents. The court may not hold the hearing 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 or ward and the potential adverse effect delay may have on the child or ward. 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)(a) Notwithstanding subsection (1) of this section, *[if an Indian child is involved,]* **the** termination of parental rights **to an Indian child** must be supported by *[competent]* evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that continued custody of the **Indian child by the child’s parents** is likely to result in serious emotional or physical *[harm]* **damage** to the child.

(b) The court may not enter an order terminating parental rights **to an Indian child** unless:

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

(B) If requested by the tribe, and if the Department of Human Services has identified a proposed adoptive placement, an agreement is in place that requires the [Department of Human Services] proposed adoptive placement to maintain connection between the Indian child and the Indian child's tribe; and

(C) After inquiry as required under section 15, chapter 14, Oregon Laws 2020 (first special session), and notice as required under section 16, chapter 14, Oregon Laws 2020 (first special session), and in addition to any other findings required under ORS 419B.500 to 419B.524, the court determines:

(i) That evidence, including the testimony of one or more qualified expert witnesses under section 17, chapter 14, Oregon Laws 2020 (first special session), establishes beyond a reasonable doubt that the [Indian child's] continued custody of the Indian child by the child's parent or custody by the child's Indian custodian is likely to result in serious emotional or physical damage to the Indian child; and

(ii) That active efforts under section 18, chapter 14, Oregon Laws 2020 (first special session), to reunite the Indian family did not eliminate the necessity for termination based on serious emotional or physical damage to the Indian child.

(c) The evidence under this [section] subsection must show a causal relationship between the particular conditions in the Indian child's home and the likelihood that [custody or] continued custody of the Indian child by the child's parents will result in serious emotional or physical damage to the particular Indian child who is the subject of the child custody proceeding, as defined in section 2, chapter 14, Oregon Laws 2020 (first special session). Evidence that shows the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse or nonconforming social behavior does not, by itself, establish a causal relationship as required by this paragraph.

(d) As used in this subsection, "custody" and "continued custody" have the meanings described in section 3, chapter 14, Oregon Laws 2020 (first special session).

## TRIBAL CUSTOMARY ADOPTION

**SECTION 65.** Section 65a of this 2021 Act is added to and made a part of ORS chapter 419B.

**SECTION 65a.** (1) As used in this section, "tribal customary adoption" means the adoption of an Indian child, by and through the tribal custom, traditions or law of the child's tribe, and which may be effected without the termination of parental rights.

(2) If the juvenile court determines that tribal customary adoption is in the best inter-

ests, as described in section 5, chapter 14, Oregon Laws 2020 (first special session), of a ward who is an Indian child and the child's tribe consents to the tribal customary adoption:

(a) The Department of Human Services shall provide the Indian child's tribe and proposed tribal customary adoptive parents with a written report on the Indian child, including, to the extent not otherwise prohibited by state or federal law, the medical background, if known, of the child's parents, and the child's educational information, developmental history and medical background, including all known diagnostic information, current medical reports and any psychological evaluations.

(b) The court shall accept a tribal customary adoptive home study conducted by the Indian child's tribe if the home study:

(A) Includes federal criminal background checks, including reports of child abuse, that meet the standards applicable under the laws of this state for all other proposed adoptive placements;

(B) Uses the prevailing social and cultural standards of the Indian child's tribe as the standards for evaluation of the proposed adoptive placement;

(C) Includes an evaluation of the background, safety and health information of the proposed adoptive placement, including the biological, psychological and social factors of the proposed adoptive placement and assessment of the commitment, capability and suitability of the proposed adoptive placement to meet the Indian child's needs; and

(D) Except where the proposed adoptive placement is the Indian child's current foster care placement, is completed prior to the placement of the Indian child in the proposed adoptive placement.

(c)(A) Notwithstanding subsection (3) of this section, the court may not accept the tribe's order or judgment of tribal customary adoption if any adult living in the proposed adoptive placement has a felony conviction for child abuse or neglect, spousal abuse, crimes against a child, including child pornography, or a crime involving violence.

(B) As used in this paragraph, "crime involving violence" has the meaning described by the Department of Human Services by rule, which must include rape, sexual assault or homicide, but may not include other physical assault or battery.

(3)(a) The juvenile court shall accept an order or judgment for tribal customary adoption that is filed by the Indian child's tribe if:

(A) The court determines that tribal customary adoption is an appropriate permanent placement option for the Indian child;

(B) The court finds that the tribal customary adoption is in the Indian child's best interests,

as described in section 5, chapter 14, Oregon Laws 2020 (first special session); and

(C) The order or judgment:

(i) Includes a description of the modification of the legal relationship of the Indian child's parents or Indian custodian and the child, including contact, if any, between the child and the parents or Indian custodian, responsibilities of the parents or Indian custodian and the rights of inheritance of the parents and child;

(ii) Includes a description of the Indian child's legal relationship with the tribe; and

(iii) Does not include any child support obligation from the Indian child's parents or Indian custodian.

(b) The court shall afford full faith and credit to a tribal customary adoption order or judgment that is accepted under this subsection.

(4)(a) Notwithstanding ORS 109.309, a tribal customary adoptive parent is not required to file a petition for adoption when the court accepts a tribal customary adoption order or judgment under subsection (3) of this section.

(b) The tribal customary adoptive parent shall file an Adoption Summary and Segregated Information Statement with accompanying exhibits as provided under ORS 109.317.

(c) Notwithstanding ORS 21.135, the clerk of the juvenile court may not charge or collect first appearance fees for a proceeding under this subsection.

(d) After accepting a tribal customary adoption order or judgment under subsection (3) of this section, the juvenile court that accepted the order or judgment shall proceed as provided in ORS 109.350 and enter a judgment of adoption. In addition to the requirements under ORS 109.350, the judgment of adoption must include a statement that any parental rights or obligations not specified in the judgment are transferred to the tribal customary adoptive parents and a description of any parental rights or duties retained by the Indian child's parents, the rights of inheritance of the child and the child's parents and the child's legal relationship with the child's tribe.

(e) A tribal customary adoption under this section does not require the consent of the Indian child or the child's parents.

(f) Upon the court's entry of a judgment of adoption under this section, the court's jurisdiction over the Indian child terminates as provided in ORS 419B.328 (2)(d).

(g) Records of adoptions filed and established under this subsection shall be kept in accordance with, and are subject to, ORS 109.319.

(5) Any parental rights or obligations not specifically retained by the Indian child's parents in the juvenile court's adoption judgment are conclusively presumed to transfer to the tribal customary adoptive parents.

(6) This section shall remain operative only to the extent that compliance with the pro-

visions of this section do not conflict with federal law as a condition of receiving funding under Title IV-E of the Social Security Act.

(7)(a) The Department of Human Services shall adopt rules requiring that any report regarding a ward who is an Indian child that the department submits to the court, including home studies, placement reports or other reports required under ORS chapters 109, 418, 419A and 419B, must address tribal customary adoption as a permanency option.

(b) The Chief Justice of the Supreme Court may make rules necessary for the court processes to implement the provisions of this section.

(c) The State Court Administrator may prepare necessary forms for the implementation of this section.

**SECTION 65b.** ORS 419B.476, as amended by section 38, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

419B.476. (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 [*there is reason to know as described in section 15, chapter 14, Oregon Laws 2020 (first special session), that*] the ward is an Indian child, active efforts as described in section 18, chapter 14, Oregon Laws 2020 (first special session), to make it possible for the ward to safely return home and whether the parent has made sufficient progress to make it possible for the ward to safely return home. In making its determination, the court shall consider the ward'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 ward in a timely manner in accordance with the plan, including, if appropriate, reasonable efforts to place the ward through an interstate placement, and to complete the steps necessary to finalize the permanent placement.

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

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

(e) If the child is an Indian child and the case plan at the time of the hearing is something other than to reunify the family, make a finding whether, after the department's consultation with the child's tribe, and, if the tribe

**appears at the hearing, the court's direct consultation with the tribe, tribal customary adoption, as described in section 65a of this 2021 Act, is an appropriate permanent placement for the child if reunification is unsuccessful.**

(3) When the ward is 14 years of age or older, in addition to making the determination required by subsection (2) of this section, at a permanency hearing the court shall review the comprehensive plan for the ward's transition to successful adulthood and determine and make findings as to:

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

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

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

(4) 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 *[there is reason to know as described in section 15, chapter 14, Oregon Laws 2020 (first special session), that]* the ward is an Indian child, active efforts as described in section 18, chapter 14, Oregon Laws 2020 (first special session), to make it possible for the ward to safely return home. In making its determination, the court shall consider the ward'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 ward in a timely manner in accordance with the plan, including, if appropriate, placement of the ward through an interstate placement, and to complete the steps necessary to finalize the permanent placement;

(c) If the court determines that further efforts will make it possible for the ward 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 of appropriate permanent in-state placement options and appropriate permanent interstate placement options and, if adoption is the concurrent case plan, identification and selection of a suitable adoptive placement for the ward;

(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 agency to modify the care, placement and supervision of the ward;

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

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

(5) 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 (4) of this section, the order shall include the following:

(a) The court's determinations required under subsections (2) and (3) 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 ward that includes whether and, if applicable, when:

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

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

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

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

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

(c) If the court determines that the permanency plan for the ward should be to return home because further efforts will make it possible for the ward 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 ward 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 ward should be establishment of a legal guardianship, the court's determination of why neither placement with parents nor adoption is appropriate.

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

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

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

(A) Why another planned permanent living arrangement is in the ward's best interests and a compelling reason, that must be documented by the



department, why it would not be in the best interests of the ward to be returned home, placed for adoption, placed with a legal guardian or placed with a fit and willing relative; and

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

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

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

[(h)] (i) 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.

[(i)] (j) If *[there is reason to know that an Indian child is involved]* **the ward is an Indian child**, the tribal affiliation of the ward.

[(j)] (k) If *[there is reason to know that]* the ward is an Indian child and **if** the court determines that the permanency plan for the ward should be something other than to reunify the family, the court's determination, by clear and convincing evidence, that:

(A) Active efforts as described in section 18, chapter 14, Oregon Laws 2020 (first special session), were provided to make it possible for the Indian child to safely return home;

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

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

(D) The new permanency plan complies with the placement preferences described in section 23, chapter 14, Oregon Laws 2020 (first special session).

[(k)] (L) If the ward has been placed in an interstate placement, the court's determination of whether the interstate placement continues to be appropriate and in the best interests of the ward.

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

(7) If *[there is reason to know that an Indian child is involved]* **the child is an Indian child**:

(a) The court shall follow the placement preferences described in section 23, chapter 14, Oregon Laws 2020 (first special session).

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

(c) If the court finds that the department did not provide active efforts to make it possible for the In-

dian child to return home, except as otherwise required under ORS 419B.470, the court may not set a date for a subsequent permanency hearing until the department has provided active efforts for the number of days that active efforts were not previously provided.

**(d)(A) If the court determines that tribal customary adoption, as described in section 65a of this 2021 Act, is an appropriate permanent placement for the child, and the Indian child's tribe consents, the court shall request that the tribe file with the court a tribal customary adoption order or judgment evidencing that the tribal customary adoption has been completed. The tribe must file the tribal customary adoption order or judgment no less than 20 days prior to the date set by the court for hearing.**

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

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

(8) 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 ward to safely return home is an interlocutory order to which a party may assign error.

**SECTION 65c.** ORS 419B.498, as amended by section 47, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

419B.498. (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 or ward's parents and identify, recruit, process and approve a qualified family for adoption if the child or ward is in the custody of the department and:

(a) The child or ward 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 ward or of another child of the parent or felony assault that has resulted in serious physical injury to the child or ward or to another child of the parent; or

(c) A court of competent jurisdiction has determined that the child or ward 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 or ward 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 or ward. 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 or ward to safely return home within a reasonable time as provided in ORS 419B.476 (5)(c);

(B) Another permanent plan is better suited to meet the health and safety needs of the child or ward, including the need to preserve the child's or ward's sibling attachments and relationships; *or*

**(C) If the child is an Indian child, the court finds that tribal customary adoption, as described in section 65a of this 2021 Act, is an appropriate permanent plan for the child and the Indian child's tribe consents to the tribal customary adoption; or**

*[(C)]* (D) 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 child or ward is an Indian child, active efforts, as described in section 18, chapter 14, Oregon Laws 2020 (first special session), to make it possible for the child or ward to safely return home; or

(c) The department has not provided to the family of the child or ward, consistent with the time period in the case plan, such services as the department deems necessary for the child or ward to safely return home, if reasonable efforts to make it possible for the child or ward to safely return home are required to be made with respect to the child or ward.

(3) No petition to terminate the parental rights of a child or ward's parents pursuant to subsection (1) of this section or pursuant to ORS 419B.500, 419B.502, 419B.504, 419B.506 or 419B.508 may be filed until the court has determined that the permanency plan for the child or ward should be adoption after a permanency hearing pursuant to ORS 419B.476.

## STATUS OFFENSES

**SECTION 66.** ORS 419C.626 is amended to read: 419C.626. (1) Upon receiving a report required by ORS 419C.620:

(a) The court may hold a hearing to review the youth offender's condition and circumstances and to determine if the court should continue jurisdiction over the youth offender or order modifications in the custody, placement and supervision of the youth offender.

(b) And if requested by the youth offender, the attorney for the youth offender, if any, the parents of the youth offender if parental rights have not been terminated, a court appointed special advocate, a local citizen review board, the Oregon Youth Au-

thority, a county juvenile department, a district attorney or a private agency having guardianship or legal custody of the youth offender, the court shall hold a hearing within 30 days of receipt of the request.

(2) The court, on its own motion, may hold a review hearing at any time. Unless good cause otherwise is shown, the court shall hold a review hearing at any time upon the request of the youth offender, the attorney for the youth offender, if any, the parents of the youth offender if parental rights have not been terminated, a court appointed special advocate, a local citizen review board, the youth authority, a county juvenile department, a district attorney or a private agency having guardianship or legal custody of the youth offender.

(3)(a) A hearing under subsection (1) or (2) of this section shall be conducted in the manner provided in ORS 419C.400 (1), 419C.405 and 419C.408, except that the court may receive testimony and reports as provided in ORS 419C.400 (4).

(b) At the conclusion of the hearing, the court shall enter findings of fact if the decision is to continue the youth offender in an out-of-home placement in the legal custody of the youth authority, a county juvenile department or a private agency. The findings shall specifically state:

*[(a)]* (A) Why continued out-of-home placement is necessary as opposed to returning the youth offender to the youth offender's home or promptly securing another placement;

*[(b)]* (B) The expected timetable for return home; and

*[(c)]* (C) Whether the youth offender's reformation plan or case plan should be modified.

(4) After receiving a report required by ORS 419C.620 (2), if requested by the county juvenile department, the court's findings under subsection (3) of this section must specifically state:

**(a) Whether, subject to the procedures under section 15 (4), chapter 14, Oregon Laws 2020 (first special session), there is reason to know the youth offender is an Indian child.**

*[(a)]* (b) Whether the county juvenile department has made reasonable efforts or, if *[the Indian Child Welfare Act applies]* **the youth offender is an Indian child**, active efforts to make it possible for the youth offender to safely return home. In making this finding, the court shall consider the youth offender's health and safety the paramount concerns.

*[(b)]* (c) The appropriateness of the youth offender's placement.

*[(c)]* (d) The extent of compliance with the youth offender's case plan.

*[(d)]* (e) The extent of progress that has been made toward alleviating or mitigating the causes necessitating the youth offender's placement in substitute care.

(5) The court may direct the local citizen review board to review the status of the youth offender prior to the court's next review under ORS 419A.106, 419A.108, 419A.110, 419A.112, 419A.116 and 419A.118.

(6) Any final decision of the court made pursuant to a hearing under subsection (1) or (2) of this section is appealable under ORS 419A.200.

### CONFORMING AMENDMENTS

**SECTION 67.** ORS 419B.090, as amended by section 25, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

419B.090. (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 safeguard and promote each child's right to safety, stability and well-being and to safeguard and promote each child's relationships with parents, siblings, grandparents, other relatives and adults with whom a child develops healthy emotional attachments.

(4) 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, the right to:

- (a) Guide the secular and religious education of their children;
- (b) Make health care decisions for their children; and

(c) Discipline their children.

(5) 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. The state shall provide to parents and guardians with disabilities opportunities to benefit from or participate in reunification services that are equal to those extended to individuals without disabilities. The state shall provide aids, benefits and services different from those provided to parents and guardians without disabilities, when necessary to ensure that parents and guardians with disabilities are provided with an equal opportunity under this subsection. 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.

(6) It is the policy of the State of Oregon, in a case involving an Indian child, to safeguard and promote the Indian child's connections with the Indian child's family, culture and tribe in accordance with the policies regarding Indian children in [*dependency*] **child custody** proceedings under section 1, chapter 14, Oregon Laws 2020 (first special session).

**SECTION 68.** ORS 419B.100, as amended by section 27, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

419B.100. (1) Except as otherwise provided in subsection (5) 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 is a runaway;

(g) Who has filed a petition for emancipation pursuant to ORS 419B.550 to 419B.558; or

(h) Who is subject to an order entered under ORS 419C.411 (7)(a).

(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 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.

(4) The court does not have further jurisdiction as provided in subsection (1) of this section after a minor has been emancipated pursuant to ORS 419B.550 to 419B.558.

(5) Except as provided in section 12, chapter 14, Oregon Laws 2020 (first special session), jurisdiction over any child custody proceeding, **as defined in section 2, chapter 14, Oregon Laws 2020 (first special session)**, involving an Indian child is determined as provided in section 12, chapter 14, Oregon Laws 2020 (first special session).

**SECTION 69.** ORS 419B.234 is amended to read: 419B.234. (1) A person appointed as a guardian ad litem under ORS 419B.231:

(a) Must be a licensed mental health professional or attorney;

(b) Must be familiar with legal standards relating to competence;

(c) Must have skills and experience in representing persons with mental and physical disabilities or impairments; and

(d) May not be a member of the parent's family.

(2) The guardian ad litem is not a party in the proceeding but is a representative of the parent.

(3) The guardian ad litem shall:

(a) Consult with the parent, if the parent is able, and with the parent's attorney and make any other inquiries as are appropriate to assist the guardian ad litem in making decisions in the juvenile court proceeding.

(b) Make legal decisions that the parent would ordinarily make concerning the juvenile court proceeding including, but not limited to, whether to:

(A) Admit or deny the allegations of any petition;

(B) Agree to or contest jurisdiction, wardship, temporary commitment, guardianship or permanent commitment;

(C) Accept or decline a conditional postponement; or

(D) Agree to or contest specific services or placement.

(c) Make decisions concerning the adoption of a child of the parent including release or surrender, certificates of irrevocability and consent to adoption

under ORS 109.321 or 418.270 **or section 19 of this 2021 Act** and agreements under ORS 109.305.

(d) Control the litigation and provide direction to the parent's attorney on the decisions that would ordinarily be made by the parent in the proceeding.

(e) Inform the court if the parent no longer needs a guardian ad litem.

(4) In making decisions under subsection (3) of this section, the guardian ad litem shall make the decisions consistent with what the guardian ad litem believes the parent would decide if the parent did not lack substantial capacity to either understand the nature and consequences of the proceeding or give direction or assistance to the parent's attorney on decisions the parent must make in the proceeding.

(5) The parent's attorney shall follow directions provided by the guardian ad litem on decisions that are ordinarily made by the parent in the proceeding. The parent's attorney shall inquire at every critical stage in the proceeding as to whether the parent's competence has changed and, if appropriate, shall request removal of the guardian ad litem.

(6)(a) A parent for whom a guardian ad litem has been appointed under ORS 419B.231 has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional services to the parent:

(A) Between the guardian ad litem and the parent's attorney or a representative of the attorney; or

(B) Between the guardian ad litem and the parent.

(b) The privilege created by this subsection:

(A) May be claimed by the parent or the guardian ad litem. The guardian ad litem may claim the privilege only on behalf of the parent.

(B) Is subject to ORS 40.280, 40.285 and 40.290.

**SECTION 70.** ORS 419B.310, as amended by section 35, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

419B.310. (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 may 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)(a) Except as otherwise provided in this section, 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:

(A) By a preponderance of competent evidence; or

(B) If [there is reason to know under section 15, chapter 14, Oregon Laws 2020 (first special session), that] the child is an Indian child, by clear and convincing competent evidence.

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

(A) Include testimony of one or more qualified expert witnesses under section 17, chapter 14, Oregon Laws 2020 (first special session), demonstrating that the Indian child's continued custody by the child's parent or custody by the child's Indian custodian is likely to result in serious emotional or physical damage to the Indian child; and

(B) Show a causal relationship between the particular conditions in the Indian child's home and the likelihood that the [Indian child's] continued custody **of the Indian child** by the child's parent or custody by the child's Indian custodian will result in serious emotional or physical damage to the particular Indian child who is the subject of the child custody proceeding, **as defined in section 2, chapter 14, Oregon Laws 2020 (first special session)**. Evidence that shows the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse or nonconforming social behavior does not, by itself, establish a causal relationship as required by this paragraph.

(c) As used in this subsection, "custody" and "continued custody" have the meanings described in section 3, chapter 14, Oregon Laws 2020 (first special session).

[(4)(a) *At any hearing of a case filed pursuant to ORS 419B.100, the court shall determine whether there is reason to know under section 15, chapter 14, Oregon Laws 2020 (first special session), that the child is an Indian child.*]

[(b)] **(4) If the court finds under ORS 419B.305 (2), or at any time prior to the commencement of the hearing, that** there is reason to know that the child is an Indian child, the jurisdictional requirements of section 12, chapter 14, Oregon Laws 2020 (first special session), and ORS 419B.305 must be met before the court may assume jurisdiction of the case.

**SECTION 71.** ORS 419B.325, as amended by section 36, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

419B.325. (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 ward, testimony, reports or other material relating to the ward'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.

(3) If [there is reason to know under section 15, chapter 14, Oregon Laws 2020 (first special session),

that the ward is an Indian child,] **the child is an Indian child**, the court's order under this section must be in compliance with the placement preferences described in section 23, chapter 14, Oregon Laws 2020 (first special session).

**SECTION 72.** ORS 419B.368, as amended by section 58, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

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

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

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

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

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

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

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

(a) Within 14 days, make written findings required in ORS 419B.185 [(1)(a), (d), (e) and (f)] **(2) and (3)(d) and (e)** and make any order directing disposition of the ward that the court is authorized to make under this chapter; and

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

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

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

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

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

(d) The ward's wishes.

(6) In addition to service required under ORS 419B.851, a party filing a motion to vacate a guardianship shall serve the motion upon the Department of Human Services.

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

(8) If a guardianship is established under ORS 419B.366 and 419B.371, the court shall conduct a court review not later than 60 days before the ward reaches 18 years of age. At the hearing, the court shall inform the ward that after reaching 18 years

of age the ward may not be placed in substitute care in the legal custody of the Department of Human Services.

**SECTION 73.** ORS 419B.449, as amended by section 46, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

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

(a) In all cases under ORS 419B.440 (1)(b)(B) when the parents' rights have been terminated;

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

(c) Not later than six months after receipt of a report made under ORS 419B.440 (1)(a) on a ward who is in the legal custody of the Department of Human Services pursuant to ORS 419B.337 but who is placed in the physical custody of a parent or a person who was appointed the ward's legal guardian prior to placement of the ward in the legal custody of the department;

(d) Within 30 days after receipt of a report made under ORS 419B.440 (1)(b)(C); or

(e) Within 10 days after receipt of a report made under ORS 419B.440 (1)(c).

(2) The court shall conduct a hearing provided in subsection (1) of this section 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.

(3) If the child or ward is in substitute care and the decision of the court is to continue the child or ward in substitute care, the findings of the court shall specifically state:

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

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

(b) Whether the agency having guardianship or legal custody of the child or ward has made diligent efforts to place the child or ward pursuant to ORS 419B.192.

(c) The number of placements made, schools attended, face-to-face contacts with the assigned case worker and visits had with parents or siblings since the child or ward has been in the guardianship or legal custody of the agency and whether the frequency of each of these is in the best interests of the child or ward.

(d) For a child or ward 14 years of age or older, whether the child or ward is progressing adequately toward graduation from high school and, if not, the

efforts that have been made by the agency having custody or guardianship to assist the child or ward to graduate.

(e) For a ward 16 years of age or older with a permanency plan of another planned permanent living arrangement, the steps the department is taking to ensure that:

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

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

(4) If the ward is in the legal custody of the department but has been placed in the physical custody of the parent or a person who was appointed the ward's legal guardian prior to placement of the ward in the legal custody of the department, and the decision is to continue the ward in the legal custody of the department and the physical custody of the parent or guardian, the findings of the court shall specifically state:

(a) Why it is necessary and in the best interests of the ward to continue the ward in the legal custody of the department; and

(b) The expected timetable for dismissal of the department's legal custody of the ward and termination of the wardship.

(5) If *[there is reason to know, as described in section 15, chapter 14, Oregon Laws 2020 (first special session), that]* the child or ward is an Indian child and the child or ward is in the legal custody of the department but has been placed in the physical custody of the parent or a person who was appointed the child's or ward's legal guardian prior to placement of the child or ward in the legal custody of the department, the court may order that the child or ward be placed in the physical custody of a substitute care provider only after making all of the inquiry, notice and findings required under ORS 419B.305 and 419B.310.

(6) 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 of appropriate permanent placement options for the child or ward both inside and outside this state and, if adoption is the concurrent case plan, identification and selection of a suitable adoptive placement for the child or ward.

(7)(a) If *[there is reason to know, as described in section 15, chapter 14, Oregon Laws 2020 (first special session), that]* the child or ward is an Indian child, the findings of the court shall specifically state whether the department has provided active efforts to reunify the Indian child with the Indian child's parent or Indian custodian.

(b) If the court finds that active efforts have not been provided, the court shall order that the Indian child be immediately returned to the Indian child's parent.

(c) Notwithstanding paragraph (b) of this subsection, if the court finds that returning the Indian child to the Indian child's parent will result in substantial and immediate danger or threat of danger to the Indian child, the court shall:

(A) Determine the period of time during which active efforts were not provided;

(B) Order the department to provide those services necessary for the provision of active efforts;

(C) Order the department to continue placement of the Indian child pursuant to the placement preferences under section 23, chapter 14, Oregon Laws 2020 (first special session); and

(D) Order the department to continue to foster relationships with any individuals identified by the department as long-term placement resources meeting the placement preferences under section 23, chapter 14, Oregon Laws 2020 (first special session).

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

(9) Any final decision of the court made pursuant to the hearing provided in subsection (1) of this section is appealable under ORS 419A.200.

**SECTION 74.** ORS 419B.452, as amended by section 59, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

419B.452. Except when a child or ward 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 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 or ward. If the court finds that informing the parents of the identity and location of the foster parents of the child or ward is not in the best interest of the child or ward, the court may order such information deleted from the report before sending the report to the parents. *[If there is reason to know, as described in section 15, chapter 14, Oregon Laws 2020 (first special session), that an Indian child is involved]* **If the child is an Indian child**, the court shall send a copy of the report to the Indian child's tribe as required by the notice requirements under section 16, chapter 14, Oregon Laws 2020 (first special session).

**SECTION 75.** ORS 419B.532, as amended by section 51, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

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

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

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

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

(B) No legal action to achieve the adoption of the ward has been initiated under ORS 109.309 or 419B.529;

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

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

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

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

(4) The moving party shall provide a copy of the motion to reinstate parental rights to the former parent and shall notify the court, the parties and, if there is reason to know, *as described in section 15, chapter 14, Oregon Laws 2020 (first special session),* that the ward is an Indian child, the tribe that a copy of the motion has been provided.

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

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

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

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

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

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

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

(A) The ward's health, safety, permanency, age, maturity and ability to express the ward's preferences;

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

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

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

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

(d) The department shall establish by rule procedures for investigating the present fitness of the former parent and for providing appropriate reunification services.

(7) If the court grants the motion to reinstate parental rights under subsection (6) of this section:

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

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

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

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

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

**SECTION 76.** ORS 419B.878, as amended by section 40, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

419B.878. (1) When a court conducts a hearing, the court shall inquire **and make a finding**, [as described in] **subject to the procedures under** section 15 (4), chapter 14, Oregon Laws 2020 (first special session), **regarding** whether a child is an Indian child.

(2) If the court [knows or has reason to know that an Indian child is involved] **enters an order described in section 15 (4)(b), chapter 14, Oregon Laws 2020 (first special session), directing that the child be treated as an Indian child**, the court shall enter an order requiring the Department of Human Services to comply with the inquiry and notice provisions of sections 15 and 16, chapter 14, Oregon Laws 2020 (first special session)[, and shall enter an order that the child be treated as an Indian child until such time as the court determines that the child is not an Indian child].

**SECTION 77.** ORS 419B.923, as amended by section 60, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

419B.923. (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 ward, 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 or ward, to place the child or ward in an institution or agency or to transfer the child or ward 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 [there is] **the person giving notice** has reason to know, as described in section 15, chapter 14, Oregon Laws 2020 (first special session), that an Indian child is involved, notice must be provided as required under section 16, chapter 14, Oregon Laws 2020 (first special session).

(6) Except when the child or ward 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 or ward 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.

### CONFLICT OF LAWS

**SECTION 78.** Section 64, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

**Sec. 64. (1)** If any provision of **section 7, 19, 32, 33, 39 or 65a of this 2021 Act**, sections 1 to 23, **chapter 14, Oregon Laws 2020 (first special session)**, [of this 2020 special session Act] or the amendments to statutes [by sections 24 to 60 of this 2020 special session Act] and session law by sections 1 to 5, 8 to 17, 20 to 30, 34 to 37, 40 to 64 and 65b to 77 of this 2021 Act is found to [contravene] provide a lower standard of protection to the rights of an Indian child or the Indian child's parent, Indian custodian or tribe than the Indian Child Welfare Act [(25 U.S.C. 1901 et seq.)]:

(a) **The higher standard of protection in the Indian Child Welfare Act shall control; and**

(b) It shall not serve to render inoperative any remaining provisions of **section 7, 19, 32, 33, 39 or 65a of this 2021 Act**, sections 1 to 23, **chapter 14, Oregon Laws 2020 (first special session)**, [of this 2020 special session Act] or the amendments to statutes [by sections 24 to 60 of this 2020 special session Act] and session law by sections 1 to 5, 8 to 17, 20 to 30, 34 to 37, 40 to 64 and 65b to 77 of this 2021 Act that may be held [not to conflict with] to provide a higher standard of protection than the Indian Child Welfare Act.

(2) **As used in this section, "Indian Child Welfare Act" means the federal Indian Child Welfare Act (25 U.S.C. 1901 et seq.) and related regulations.**

### REPORT TO INTERIM COMMITTEES ON JUDICIARY

**SECTION 79.** Section 61, chapter 14, Oregon Laws 2020 (first special session), is amended to read:

**Sec. 61.** No later than September 15 of every even-numbered year, the Department of Human Services and the Judicial Department shall report to the interim committees of the Legislative Assembly relating to children regarding:

(1) The number of Indian children involved in dependency proceedings during the prior two-year period.

(2) The average duration Indian children were in protective custody.

(3) The ratio of Indian children to non-Indian children in protective custody.

(4) Which tribes the Indian children in protective custody were members of or of which they were eligible for membership.

(5) The number of Indian children in foster care who are in each of the placement preference categories described in section 23, **chapter 14, Oregon Laws 2020 (first special session)**, [of this 2020 special session Act] and the number of those placements that have Indian parents in the home.

(6) The number of Indian children placed in adoptive homes in each of the placement preference categories described in section 23, **chapter 14, Oregon Laws 2020 (first special session)**, [of this 2020 special session Act] and the number of those placements that have Indian parents in the home.

(7) The number of available placements and common barriers to recruitment and retention of appropriate placements.

(8) The number of times the court [determined] found that good cause existed to deviate from the statutory placement preferences under section 23, **chapter 14, Oregon Laws 2020 (first special session)**, when making a finding regarding the placement of a child in a dependency proceeding [of this 2020 special session Act].

(9) The number of cases that were transferred to tribal court under section 14, **chapter 14, Oregon Laws 2020 (first special session)** [of this 2020 special session Act].

(10) The number of times the court found good cause to decline to transfer jurisdiction of a [case] dependency proceeding to tribal court upon request and the most common reasons the court found good cause to decline a transfer petition.

(11) The efforts the Department of Human Services and the Judicial Department have taken to ensure compliance with the provisions of sections 1 to 23, **chapter 14, Oregon Laws 2020 (first special session)**, [of this 2020 special session Act] and the amendments to statutes by sections 24 to 60, **chapter 14, Oregon Laws 2020 (first special session)**, in dependency proceedings [of this 2020 special session Act].

(12) The number of ICWA compliance reports, as defined in ORS 109.304, in which the department reported the petitioner's documentation was insufficient for the court to make a finding regarding whether the petitioner complied with the inquiry or notice requirements under section 15 (2) or 16 (2), **chapter 14, Oregon Laws 2020 (first special session)**.

(13) The total number and the ratio of all ICWA compliance reports that indicated there was a reason to know that the child was an Indian child.

**SECTION 80.** No later than March 15, 2024, the Department of Human Services shall submit a report to the interim committees of the Legislative Assembly related to the judiciary describing the department's implementation of tribal customary adoption as described in section 65a of this 2021 Act, as an alternative permanency option for wards who are Indian children and the department's recommendations

for proposed legislation to improve the tribal customary adoption process.

#### MISCELLANEOUS

**SECTION 81.** The amendments to section 61, chapter 14, Oregon Laws 2020 (first special session), by section 79 of this 2021 Act become operative on January 2, 2023.

**SECTION 82.** (1) Sections 7, 19, 32, 33, 39 and 65a of this 2021 Act and the amendments to statutes and session law by sections 1 to 5, 8 to 17, 20 to 30, 34 to 37, 40 to 64 and 65b to 78 of this 2021 Act become operative on January 2, 2022.

(2) The Department of Justice, Department of Human Services and State Court Administrator may take any action before the operative date specified in subsection (1) of this section that is necessary for the department or administrator to exercise, on and after the operative

date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the department or the administrator by sections 7, 19, 32, 33, 39 and 65a of this 2021 Act and the amendments to statutes and session law by sections 1 to 5, 8 to 17, 20 to 30, 34 to 37, 40 to 64 and 65b to 78 of this 2021 Act.

**SECTION 83.** The unit captions used in this 2021 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2021 Act.

**SECTION 84.** This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Approved by the Governor June 23, 2021  
 Filed in the office of Secretary of State June 23, 2021  
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