

# 2007 Legislative Road Show

A collaboration of the:  
Juvenile Court Improvement Project  
Department of Human Services  
Citizen Review Board  
Local Model Court Teams

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## 2007 LEGISLATIVE ROAD SHOW TALKING POINTS

Michael "Mickey" Serice, MS, LPC, LMFT  
Deputy Assistant Director of  
Policy and Programs  
DHS/Children, Adults & Families  
500 Summer St NE E-62  
Salem, OR 97301-1067  
503-945-5687  
503-581-6198 (fax)  
[michael.serice@state.or.us](mailto:michael.serice@state.or.us)

### Child Protective Services

#### Intake/Screening:

(SB 379 – In effect 6-20-07) DHS must contact reporting party (if we have contact info) and tell them:

- Whether we made contact with child
- Whether services were offered or provided
- Allows exceptions related to disclosure laws

EX: “We did an assessment of the concern you reported. We determined there was abuse and we will be opening a case and providing services to the family.”

(SB 412 – In effect 1-1-08) When a report of child abuse/neglect comes in **for a child who is in foster care**, DHS must notify:

- 1) CASA
  - 2) child’s atty,
  - 3) parents’ atty and
  - 4) the parents
- within 3 days** of a report of child abuse

- Allows some exceptions if hindering an investigation
- Prohibits disclosure of reporting party

(HB 3113 – In effect 1-1-08) - Basically says DHS and LEA will assess all reports of child abuse in licensed and certified day care facilities

When a report of child abuse/neglect comes in **regarding a child at a child care center**, DHS will:

- 1) cross report to LEA,
- 2) will determine with LEA the roles of each during the investigation/assessment, and
- 3) will both investigation/assessment

**DHS must notify the Child Care Division** of the report and the outcome of the report

### **Child Abuse/Neglect Assessments:**

(HB 3328 – Karly’s Law – In effect 6-27-07) – Increases the expectation that DHS and LEA assure that physical injuries in which there is reasonable suspicion of abuse are elevated by a medical professional within 48 hours

If a child is suspected to have been **physically** abused, DHS caseworker must:

- 1) \*photograph injury\* and
- 2) get a medical exam by a “**designated medical professional**” (DMP) within 48 hours
  - DMP will have access to all info and records
  - DMP may refer child to Early Intervention Services or Spec Ed

\*Exception to DHS photographing: If area to be photographed is genital or anal areas, medical staff must photograph\*

\* Will require more consistent protocols related to the filing and labeling of photographs\*

(HB 2179 – In effect 1-1-08) During a CPS assessment, DHS can obtain criminal records (e.g., **LEDS check**) **without prior permission** from an individual if:

- 1) it is for investigation/assessment of child abuse and

2) the individual is the suspected offender or resides or frequents the suspected victim's house

DHS **must give notice** of the criminal records check after obtaining the record

Requires DHS to inform the individual of his/her rights to challenge accuracy or criminal record obtained (as we do now)

### **Child Fatalities:**

(HB 3228 – In effect 6-27-07) Requires a CIRT within 24 hours of a child death as a result of abuse or neglect

After a child death investigation, the DA may submit a letter to DHS and DOJ suggesting ways to improve CW practice

### **Foster Care**

(SB 282 – In effect 1-1-08) DHS will be able to **reimburse relatives** at the same rate as regular foster care

Depending on resources available (Funding begins 7-1-08)  
“Means Test” for now

(SB 409 – In effect 1-1-08) Emphasizes **preference for a child to be placed with parents or relatives**

(SB 414 – In effect 1-1-08) DHS must make **“diligent efforts” to place siblings together** – DHS must consider the ability of the provider to take in the sibs

- DHS must make **written report of these efforts** and give to the court
- If placement together is not in best interests, let court know why
- The court will make written findings on these diligent efforts

**Court can order visitation with the parent(s) or the siblings**

DHS must follow the order

When DHS gives a **report to the court**, the report must include the following:

A list of all schools child attended since in DHS custody  
Length of time in each school  
If 14 or older, number of high school credits earned  
Case Plan template will be reformatted to include school history information

A list of dates for F2F contacts with child  
Place and date of each F2F contact with parents and/or sibs

Proposed visitation plan

(HB 2181 – In effect 1-1-08) **DHS must file a report with the court** about a child in DHS custody who is living with his or her parent(s) or pre-jurisdictional guardian for the past 6 months

Report must include:

- 1) a suggested timetable to discontinue custody and
- 2) a description of the services provided to the child and the child's parent(s) or guardian(s)

Requires **Court to hold a hearing no later than 30 days** after receiving report

Requires Court to:

- 1) state why continuing wardship is in the best interests of the child and
- 2) give a timetable when wardship is expected to end

**Remember: DHS must notify the court and the parties when a child returns home** – It's this step that triggers the other actions in this bill

## Adoptions

(SB 408 – In effect 1-1-08) Prohibits DHS from filing a petition for TPR until the Court has determined the permanency plan for the child is adoption

(SB 597 – In effect 1-1-08) Expands the category of persons who may enter written agreements with adoptive parents (mediation for openness)

Defines birth relatives as birth parent, grandparent, sibling and other member of child's family

Requires that birth family have emotional ties and an ongoing relationship with the child

**If child is 14 or older**, requires child's consent to the agreement

Allows Court to approve agreement

DHS not responsible for costs associated with this expanded mediation

(SB 414 – In effect 1-1-08) Adds **attachment to sib as a compelling reason** not to proceed with TPR

Requires the court to hold a permanency hearing within 30 days after receiving a report that 6 months have passed since a TPR happened or child is surrendered for adoption but the child has not been placed for adoption or the adoption proceeding has not started (court to do this every 6 months until child is placed for adoption)

### **Federal Law Changes**

(HB 2190 – In effect 1-1-08) Below is a list of changes to ORS:

Repeals Oregon's election to not follow federal law on criminal record checks as applies to foster and adoptive parents. **Effective October 1, 2008.**

The Adam Walsh Act, which prompted this change, also initiated a new federal requirement for states to begin running interstate child abuse background checks on adults living in prospective foster/adopt homes. This change is not reflected in HB 2190, but it is a new background check requirement that is in effect now.

Requires the court to cooperate in sharing information with other states' courts to facilitate interstate placement.

Requires the case plan for any ward in substitute care include health and education information including:

- Name and addresses of health care & education providers;
- Grade level of ward's performance;
- Ward's school records;
- Whether ward's placement takes into account proximity to school;
- Immunizations;
- Known medical problems;
- Ward's medications; and
- Any other health and education info the department deems appropriate.

Requires DHS reports include whether a child placed outside the state has been visited not less than every 6 months by the state or private agency.

**DHS policy requires F2F contact every 30 days** (so, if the child is in Oregon, we see the child every 30 days and if the Oregon child is in another state, we ask the state to see the child every 30 days).

Requires the court to make a finding with regard to the efforts made by DHS to identify permanent placement options, both inside and outside of Oregon.

**Requires the court to determine if the department has made reasonable efforts to place the child in a timely manner in accordance with the case plan through interstate placement, if appropriate.**

Requires the court to determine if the department had considered interstate placement, if appropriate.

Requires the court to determine if an existing interstate placement is in the best interest of the child.

Allows the court to:

- permit an out of state party to testify, provide info and otherwise participate in a proceeding;
- permit an out of state attorney representing the party to participate in a manner the court designs; and/or
- Obtain info from an out of state private agency or state.

Requires the local citizen board to make written findings and recommendations whether the department has made reasonable efforts to place the child in a timely manner in accordance with the case plan through interstate placement, if appropriate.

## **Training**

(SB 379 – In effect 6-20-07) Requires education providers provide **school employees** child abuse prevention, identification and reporting training each year

Requires education providers make available **to parents of children in the school** child abuse prevention, identification and reporting training each year (separate from school employees)

Requires education providers make available **to children who attend schools** training designated to prevent child abuse

Exempts charter schools

## Other

(SB 410 – In effect 1-1-08) DHS may convene a **Sensitive Review Committee** to review actions of DHS when requested by Senate or House Leadership

Requires Committee submit a written report of findings and conclusions

(HB 2553 – In effect 1-1-08) Child support cannot be collected for a child placed in foster care if the reason for placement is subsequently an “unfounded” disposition

(HB 2382 – In effect 1-1-08) Paternity changes

Main changes relate to by whom, how, and when paternity can be challenged

**Specific training on this bill coming before 1-1-08**

## **CFSR Update 2007 Legislative Road Show**

- We have now completed the 2<sup>nd</sup> phase of the CFSR
  - State Assessment (Phase I) was completed in July and can be found at <http://www.oregon.gov/DHS/children/cfsr/index.shtml>
  - On-site review (Phase II) was completed Sept. 10-14 in Multnomah, Marion, and Deschutes
  
- Preliminary Exit Conference Summary
  - Outcomes that cases scored highest in:
    - Well-being 2: Education
    - Permanency 2: Proximity of placement, siblings placed together, connection to community, relative placements, etc.
    - Well-being 3: Physical and Mental Health
  - Outcomes that cases scored lowest in:
    - Well-being 1: Caseworker face-to-face and child/family involvement in case planning
    - Permanency 1: Timely selection and achievement of goals (reunification, adoption, Another Planned Permanent Living Arrangement (APPLA))
    - Safety 2: Risk, safety, and in-home services
  - Some Themes
    - Lack of concurrent planning
    - Need for earlier identification of and more work with fathers and paternal relatives
    - Overuse (and possible inappropriate use) of APPLA goals
  
- Final report from Administration for Children and Families (ACF) sometime in the next several months (they've been averaging 3 months to get reports to states)
  
- All Day Program Improvement Plan (PIP) Kick-off meeting will be in Salem on Oct. 22
  - Contact Angela Long if you'd like to volunteer (503) 945-6170  
[angela.long@state.or.us](mailto:angela.long@state.or.us)
  
- PIP due to ACF Region X 90 days from receipt of the final report

## **NEW LEGISLATION**

### **ROAD SHOW 2007**

Timothy Travis  
Staff Counsel for Juvenile and Treatment Courts  
Oregon Judicial Department

In the 2007 session, legislators, the agency, advocates and the court addressed issues fundamental to the dependency process.

Led by the bi-partisan “Group of Four,” three members of which have had a long-term interest in child welfare law, the Legislature changed the way the things happen in the field, in the courtroom, and in Salem. This group led the Legislature to allocate additional resources for representation of both the state and parents, create provisions to increase communication between the Agency and the Legislature, and to increase its own oversight, and that of the court, of child protection cases.

The Department of Human Services (DHS or “the agency”) sought changes to institutionalize its new paradigm, the Safety Model, implementing recommendations from the “Holder Report,” as well as policy changes required by both members of the Legislature and new federal law.

Child Welfare advocates brought several important measures to the table, focusing on family relationships (including placement in substitute care with siblings and relatives, as well as visitation among family members while children are in care) and other aspects of child and family support and well being during the dependency process.

While the court did not have an agenda of dependency bills for the session, it lent its experience and expertise to the process to ensure that the changes considered could be actualized and operational-ized in the legal process.

The changes made this session may not be as sweeping as those of the Adoption and Safe Families Act (or its predecessor in Oregon, the Best Interest of the Child Bill) but it can be argued that many of these changes will provide a needed balance to the system. Members of the Legislature often spoke of the “disadvantage” at which families find themselves in relationship to the state in child abuse and neglect cases and their desire to redress that.

The health and safety of the child, however, remains the paramount concern of dependency law. The timelines and deadlines continue to focus on the parents’ obligation to make timely progress to ameliorate the conditions that brought their children into care, and to provide the accountability in regard to that obligation. In addition to this, though, much of the new legislation is intended to improve agency effort

to support family recovery in ways that parent advocates and members of the Legislature believe will improve results. It is also intended to improve court oversight of these efforts to support this family recovery.

**(Note: unless otherwise indicated, all bills take effect on January 1, 2008)**

### **Senate Bill 277**

#### Clean-up of Dependency Guardianship Statutes

No substantive change was made to the statutory scheme at ORS 419B.365 and following. Some references to “child” were changed to “ward” so as to make the statutes consistent with the definitional structure created in ORS 419A.004.

### **Senate Bill 282**

#### Payment for those Providing Relative Foster Care

This bill represents that long-awaited reversal of the policy of the State of Oregon that Oregonians could not receive state foster care payments to care for children to whom they are related. Federal funds under Title IVE were available, but state funds were not.

This change not only removes the possibility that, because relatives cannot afford to care for children they will be placed with strangers who can be paid, but also simplifies the situation in which a “no reasonable (or active) efforts” finding, though warranted, would result in the cut off of foster care funds to a relative provider.

This change had a substantial fiscal impact and the legislature provided in SB 282 that the agency could, if it needed to due to limits for such state payment from its budget, “means test” such aid to relatives. This bill authorizes the agency to write rules to create such a structure and procedure to determine, if necessary, how much such aid, based on the income and circumstances of the relative, will be paid.

### **Senate Bill 325**

#### Personal Appearance in Court

This bill was passed to clear up some vagueness in previous legislation that required parents to personally appear at hearings to adjudicate petitions, to terminate parental rights and to create permanent guardianships. The Legislature had intended to ensure that the parent would be available as a witness for the trial and to resolve the problem of needlessly setting and preparing for large cases (contested terminations and creations of permanent guardianship) when, in fact, the parent was not engaged in the case and would not appear.

The new legislation also addresses the problem faced by attorneys when the parent does not appear for trial. What does the parent's absence mean? Would the parent want the attorney to oppose the relief sought or is the parent, by not appearing, conceding and "consenting" to that relief? The bill allows the parent's attorney to withdraw from representation upon the client's non appearance.

(Note: a party may still seek the court's permission to appear through counsel at any hearing. Most often this request will be granted for such matters as first appearances or show cause hearings designed to schedule a trial.)

### **Senate Bill 379**

#### **Mandatory Child Abuse Reporting**

(Emergency Clause: took effect upon signature of governor)

This bill is aimed at the education community although one provision is applicable to all reports of child abuse received pursuant to ORS 419B.020. If a report of abuse is received the agency will, upon completion of the investigation, notify the person making the report whether contact with the child was made, whether the agency determined that abuse occurred and whether services will be provided. This duty is conditioned upon the person who made the report providing contact information to the agency, and the scope of what is reported back to the reporter is limited by normal boundaries of confidentiality.

(Note: language which appeared to limit the applicability of ORS 419B.020 to an "oral report of abuse" was changed by HB 3113—see below--such that the statute now covers all reports of abuse, regardless of how they were made or received. Oral reports are still required by ORS 419B.015, and are the best way to make a report so that follow up questions can elicit information that the reporter may not realize is important.)

### **Senate Bill 408**

#### **Court Must Approve Plan of Adoption Prior to Filing TPR**

No petition to terminate parental rights may be filed under Chapter 419B unless the court has held a permanency hearing (ORS 419B.476) and determined that the permanency plan should be adoption. This does not prevent the DHS from changing the permanent plan to adoption, or anything else, without prior approval of the court, although, for the most part, the agency already seeks approval when it wants to change the plan.

**Senate Bill 409**  
Court Review of Substitute Care Placement

Placement, especially placement with relatives and with siblings, was a major theme of the legislative session. Senate Bill 409 spells out the court's ability to review a child or ward's placement. The preexisting law is not changed in one fundamental regard: in reviewing a child or ward's placement, the court may not designate a specific home or institution in which a ward is to live. The court continues to have the power to determine the level of care in which the child is to be placed.

Senate Bill 409 clarifies, however, what the levels of care are, as there has been some confusion about this. "Stranger" foster care is a different "level" of substitute care than "relative" foster care so that the court may, upon finding that to do so is in the best interest of the child or ward, order that one placed in stranger foster care be placed, instead, in relative foster care (although perhaps not with a specific relative) - ORS 419B.349. While this was the previous general understanding, the amendment makes the distinction explicit.

The relative must, of course, be a "foster care provider." That means that the placement is "directly supervised" by the Department of Human Services or other agency - ORS 419A.004(27). Therefore, the court may not order the ward or child placed with a relative who is not certified as a foster parent by the agency, unless the court is removing the ward from the custody of the agency.

The Legislature made the same kind of clarification about the string of types of residential care listed in the statute. These are separate levels of care and so the court may order that a child or ward be moved from one of these to another, based, again, on a finding that to do so is in the best interest of the child or ward.

Finally, although few would have doubted that the court had the authority to order that the child or ward should be placed in his or her parents' home, as opposed to being placed in substitute care; this is made explicit in the bill.

**Senate Bill 410**  
Sensitive Review Committee at Legislative Request

A sensitive review committee is the means by which the agency investigates "problem" cases, on the state level, to determine what occurred in them. Such committees have normally been created and staffed by the state office of DHS. This legislation allows the President of the Oregon Senate, or the Speaker of the Oregon House, to request that such a committee be convened on a case of interest to a member of the legislature. The director of the agency is not required to convene such a committee but, if one is convened, both the President of the Senate and the Speaker of the House will appoint "at least" one member of each body to serve on the committee. The Speaker and the

President shall use “reasonable efforts” to ensure a balance of both the Senate and the House, and the minority and majority party members.

No more than 180 days after receiving the request for the committee to be convened, if it is, the agency shall report its findings to the President and the Speaker.

### **Senate Bill 412**

#### Notice of Abuse Allegation re Child in Substitute Care

The Legislature amended ORS 419B.015 to provide that the attorney for the child or ward, the CASA (if any), and the parents and any attorney representing a parent, shall be informed of the receipt of a report that a child in substitute care was abused or neglected.

The name and address and other identifying information about the person making the report shall not be disclosed under this subsection and those notified of the report shall not release any information not otherwise authorized by this section. The agency shall make the notification within three days of receiving the report although it is not required to notify a parent or a parent’s attorney “if the notification may interfere with an investigation or assessment or jeopardize the child’s or ward’s safety.” See new ORS 419B.015(3)(d).

### **Senate Bill 413**

#### Agency Statistical Reports to the Legislature

Both members of the Legislature and advocates were interested in having the agency make statistical reports about children in substitute care. On November 1 of each even numbered year (which is two months prior to the convening of the legislative session) the agency will provide the following to the “appropriate legislative interim committee”:

1. The number of children in foster care;
2. The number of children who have had more than one foster care placement, and how many placements each such child has had;
3. The percentage of children placed apart from siblings;
4. The number of placement changes experienced by children in care;
5. The number and the percentage of children placed with relatives;
6. The department’s annual “Status of Children in Oregon’s Child Protection System” report.

This is information that will help the legislature and advocates track the outcomes toward which Senate Bill 414 (see below) is aimed.

## **Senate Bill 414**

Sibling placement, visitation, and oversight of casework regarding education progress of wards in foster care.

Regarding children who are legally free but not placed for adoption.

Members and advocates characterized this bill as a means of making great strides to improve the condition of foster children in Oregon. The effects of this bill, of which much is expected, will be tracked and monitored. Several of its aspects have been incorporated into the Juvenile Court Improvement Project strategic plan. Although the initial “debrief” exit interview by the federal Child and Family Services Review auditors identified some of the areas addressed in the bill as “strengths” in the Oregon child welfare system, some may well turn out to be the subjects of Program Improvement Plans.

This bill, introduced (initially as SB 282) by the Juvenile Rights Project, Inc., epitomizes the things that the legislature wants emphasized in child welfare practice and creates requirements for both the agency and the court. These include placement of siblings together, and with relatives, as well as visitation among siblings in care who cannot be placed together, and visitation between parents and children who are in care, as well as educational progress and casework.

One way to view the contents of this bill is as a means of addressing the well-being outcomes of child welfare. The Adoption and Safe Families Act (ASFA) can be seen as having addressed the permanency and safety outcomes, perhaps assuming that well-being would automatically follow. The advocates and the Legislature, however, were concerned about the support and encouragement of families (as well as the connections within them), in addition to their being held accountable.

**Sections One and Two** provide a definition of “sibling” at ORS 419A.004(27) a sibling is one of two or more children or wards related to one another by blood or adoption by a common legal parent or through the marriage of the children’s or wards’ legal or biological parents.

**Section Three** amends the “purpose statement” of ORS 419B.090, which stated that the policy of the state is to safeguard each child’s right to safety, stability and well being. The bill singles out the importance of family relationships to children as one aspect of this safety, stability and well being. None of the ASFA references in ORS Chapter 419B to the health and safety of the child as being the “paramount concern” were amended, however. See ORS 419B.185(1)(c), 419B.337(1)(b), 419B.340(1), 419B.476(2)(a), 419B.476(4)(a) regarding reasonable and active efforts findings and case planning. The Legislature intended to call attention here to a desired focus on family relationships intended by some of the other changes made by this bill and other legislation passed during the session. Again, the Legislature and the advocates want an emphasis on relative placement, placing siblings together, and visitation.

**Section Four** adds to the findings that court must make at a shelter hearing (ORS 419B.185). If the child or ward is to be removed, or continued in substitute care, the

court shall make written findings as to whether the agency made diligent efforts to fulfill its obligations pursuant to ORS 419B.192. (See Section Five, below, re: “diligent” efforts.)

This latter statute provides a placement preference with relatives or those who, under ORS 419B.116, have a “caretaker” relationship with the child. It previously required the agency to make reasonable efforts to effectuate such a placement (see Section Five, below, in which ORS 419B.192, itself, is amended to change the standard from “reasonable” to “diligent” efforts). The agency is still required to provide written information to the court upon which the finding can be made. The court is required to make findings and record the basis for those findings in the order placing the children in substitute care.

Making these findings and recording their bases should be done as the reasonable efforts and best interest findings are now—by incorporation of foundational documents into the order.

Efforts to place with relatives of caretakers is *not* part of the reasonable or active efforts calculus that effects Title IVE funding unless failure to do so prevent the return to parents or implementation of another permanent plan.

**Section Five** amends ORS 419B.192 such that “reasonable” efforts to place a child or ward pursuant to its provisions is to be replaced by “diligent” efforts. This standard of “diligence” was not defined. Legislative testimony from the advocates for the bill, including judges who regularly sit on child abuse and neglect cases, quoted dictionary definitions of the word and indicated that “diligent” is a higher level of effort than “reasonable” but lower than “active” efforts.

The requirement is repeated in sections, below, addressing both review and permanency hearings. This means that information about the agency’s continuing diligent efforts must be provided at each hearing, so long as the child or ward is not placed with a relative (or not placed with siblings also in care). The court continues to have the obligation to make this finding at each such hearing. If, however, the court finds that such placement is not in the best interest of the child then this continuing duty is extinguished. (This extinguishing finding would likely be made if, for example, two siblings, one of whom had abused the other and posed a continuing danger, one to the other, were to be placed in substitute care, or if the agency has identified all potential relatives and they have been ruled out). See amended ORS 419B.192(2).

ORS 419B.192(3) previously provided four considerations to guide the agency about carrying out the placement preferences that the statute promotes. A fifth consideration was added; the ability of the relatives or those with a caretaker relationship under consideration to also provide placement for the child’s or ward’s siblings who are in need of placement or continuation in substitute care. This consideration is not given any more weight by the statute than the other four, however. Nor does the addition of

this consideration “close the list” of what the agency may consider or the court may ask the agency to consider.

**Section Six** amends ORS 419B.337 to require the court to make the same “diligent efforts” finding required by ORS 419.192 again at the time of placing of a ward into the legal custody of the agency and making an order removing the ward from the home or continuing the substitute care.

In addition, at this point in the case, the court may make an order regarding visitation among the ward’s parents or siblings and the agency is obliged to create a plan consistent with that order. The court is not required to make such an order, however, and may leave the terms of visitation in the discretion of the agency. Amended ORS 419B.337(3). (See Section Nine, below, however, regarding the new findings the court must make in review and permanency hearings about whether the frequency of visitation is in the “best interest” of the child or ward).

Careful reading of this provision indicates that it does not apply until the child is made a ward and placed in the legal custody of the agency: at disposition. The provision is contained in the disposition statute and refers to a “ward.”

**Section Seven** amends ORS 419B.368 to require that all of the findings of ORS 419B.185(a) through (e) be made at the point that a juvenile court guardianship is vacated under that statute. Previously that statute only required the findings of ORS 419B.185(a) through (d). This change requires the court to determine whether the Indian Child Welfare Act applies to the ward.

This issue should have been settled long before this point in the case. A child in a guardianship that can be vacated under ORS 419.368 was previously adjudged to be under the jurisdiction, to be a ward, of the court pursuant to ORS Chapter 419B. Indeed, such a child continued to be a ward of the court during the duration of the guardianship. If it is discovered that the ward is an Indian child at the point that a guardianship is being vacated the effect of that discovery might well be to vacate all orders entered in the case to date and to require the state to begin the case anew, complying this time with the ICWA.

**Section Eight** The statute amended, OR 419B.443, requires a report to be filed with the court at six month intervals and describes the content of this report.

The new ORS 419B.443(1)(d) requires that the report contain a list of the schools that the child has attended since being placed in the legal custody or guardianship of the agency and the length of time that the child spent in each school. In addition, the report must list the number of high school credits earned if the child or ward is 14 years of age or older.

Another new subsection, amended ORS 419B.443(1)(e), requires a listing of the dates of the face-to-face contacts that the assigned caseworker has had with the child since

that child came into the guardianship or legal custody of the agency and, for a child in substitute care, the location of that face to face contact.

If the child is in substitute care, a new subsection, numbered ORS 419B.443(1)(f), requires the report to also list the place and date of visits that have taken place between the child and the child's siblings or parents during the duration of the custody or guardianship.

It is intended that this information be cumulative, that each report contain the information from prior reports as well as new information about the period under review.

Finally, the renumbered ORS 419B.443(1)(h) requires a proposed visitation plan, or a continued or modified visitation plan, be included in the report if the child or ward is in substituted care.

**Section Nine** adds to findings made at review hearings, amending ORS 419B.449. At such hearings the court, using the reports described in Section Eight, above, and the evidence that these reports summarize, must make a series of new findings.

The first of these is the diligent effort finding regarding placement with relatives (or those with a caretaker relationships) and with siblings, pursuant to ORS 419B.192.

The second, found in ORS 419B.449(2)(c), requires a finding of fact about the number of placements made, the schools attended, face to face contacts with the assigned case worker and the sibling and parent visitation since the custody or guardianship was established. In addition to the strictly factual findings about number and frequency, the court must also find whether the frequency of each of these is in the best interest of the child.

The third new finding applies to children or wards older than 14 years. The court must find whether adequate progress is being made toward graduation from high school and, if not, the efforts the agency has made to assist the child or ward to graduate. Amended ORS 449B.(2)(d).

The findings of fact about the numbers involved in the first two findings will likely be easy to make—unless there are disagreements about the accuracy of what the agency has put into the report. An incorporation of this report into the order (and a reference to any other evidence presented by the agency or a witness at the hearing) will suffice to support findings made.

Whether the frequency of each is in “the best interest of the child” may require more evidence.

The agency may well be asked to show, given the situation of the child in question, how this frequency meets that child's individual needs. This will begin with some kind of evidence of what the needs are, given the particular child and family situation. Once

these needs are established, and the agency has made a showing of how what has been done meets the “best interest” standard, parties who believe that this frequency falls short should be required to provide evidence to show why this standard has not been met. Considering that such findings can be appealed the need for evidence is crucial. If there is no evidence in the record the findings, one way or another, cannot stand.

Making the third finding, regarding progress toward high school graduation, may well require more information than the court is accustomed to getting about both the child and the particular education program in which the child or ward is enrolled and will require the court to resolve issues of what “adequate” means.

A child or ward who has the requisite number of credits established by a particular school district for those in the grade of enrollment will likely be making adequate progress. Whether a child or ward not at that level of attainment is progressing adequately will require the court to consider the child or ward’s overall situation. Also, since many children or wards of this age may not be enrolled in a mainstream public school program (e.g., may, instead, be completing a GED or not enrolled in school, at all) the findings should probably recite the basis upon which this finding has been made in a particular case.

***Whether or not any of these findings implicate whether reasonable or active efforts have been made in the case for the period under review will depend upon whether what the agency has done or not done has helped or hindered the return of the child to the parents or the implementation of the permanent plan.***

Unless, for example, the child or ward’s progress in school is directly related to the child’s return home, or implementation of the (formerly concurrent now) permanent plan, a failure on the part of the agency to support the child or ward’s adequate progress toward high school graduation would not be a part of the reasonable or active efforts calculus. That would not mean, however, that the court should not be concerned and make such inquiries and orders as are calculated to improve the child’s situation, as well as making the appropriate finding as required by the statute. It does not also mean that in the future these findings may not be useful to the advocacy of the agency for the parent at some crucial stage of the litigation.

It is anticipated that an argument may be made that “inadequate” visitation or efforts to place with a relative **do** have an effect on reunification. It will likely be argued, if this arises, that if there was more visitation or the child were placed with relatives that reunification would be more likely. This becomes, as stated above, an evidentiary issue. The link between visitation and reunification is “conventional wisdom” in the child welfare community and the co-incidence of high visitation rate and successful reunification has been shown. What needs to be shown, however, in order for visitation “not in the best interest of the child” or lack of diligence in placement with relatives to figure into the reasonable or active efforts calculus, is that there is a *causal link, and not just a coincidence*, between frequency of visits and successful reunification. The

coincidence could mean there is a connection. It could also mean that parental motivation to visit is part of the profile for a parent likely to achieve reunification. Therefore, a study or learned treatise, for example, that establishes the link between visitation or relative placement should go beyond showing an association with improved reunification rates and establish a causal connection.

**Section Ten** creates a requirement to hold a permanency hearing in a new situation: within thirty days of the court receiving the report required by ORS 419B.440 (see above) and six months have passed since the ward was surrendered for adoption or the parents' rights have been terminated and the department has not:

1. Physically placed the ward for adoption, or
2. Initiated adoption proceeding (note: "initiated an adoption proceeding" probably means the filing of an adoption petition).

The court is also required to conduct a permanency hearing every six months thereafter for as long as the ward is not physically placed or adoption proceedings have not been initiated. Amended ORS 419B.470(7).

Unless it is the policy of the local court to have the Citizen Review Board review the case on schedule, despite the holding this "extra" permanency hearing, this hearing will interrupt to the normal CRB review schedule.

Although not stated explicitly, the occasioning of this "extra" permanency hearing was intended by advocates to add a new dimension to permanency hearings for such children. The court can and should, at such hearings, inquire into what barriers exist to adoptive placement or initiation of adoption proceedings consistent with the permanent plan. The advocates for this bill intended that, in appropriate cases, the court also consider *whether the plan of adoption is still the most appropriate permanency plan*. This consideration, according to advocates for the bill, should include the circumstances giving rise to the delay in finalizing the plan, or even other developments--including efforts of parents to ameliorate the conditions underlying the termination.

Prior to Senate Bill 414, ORS 419B.476 as written required reconsideration of "return to parent" as a plan even though the termination judgment had been entered, the appeal period had run, and the ward was permanently committed to the legal custody of the agency.

The statutory scheme of ORS 419B.476 has always required that at each permanency hearing the court make findings about *all* permanency plans that are "above" the designated permanent plan (in the hierarchy of such plans established by the Adoption and Safe Families Act. See ORS 419B.476(5)(c)-(f)).

***There never has been a provision that removed the duty of the court to consider return home at a permanency hearing because the parent has surrendered the child or when the parents' rights have been terminated. There is also no***

***provision that, at the second permanency hearing, the court may review only the plan that has been in place, and which the agency intends should stay in place, without considering the plans “above” that one in the hierarchy. Although some have argued that this is an oversight the fact remains that, as written, the law requires the court to start “at the top” at each permanency hearing.***

Therefore, the “cascading” nature of the inquiry, and the findings required, have *always* required a showing that “return to parent” was inappropriate before considering whether, during the pendency of an adoption (or the second year of a permanent foster care placement) that was still the best permanent plan for the child.

This consideration, however, begs the question: does the court have the power to vacate a termination judgment after it has been entered, the appeal period has run, and the ward is permanently committed to the legal custody of the agency if, at a permanency hearing, it is determined that the course of events has rendered return to parent (or some other plan short of adoption) the best plan for the child?

Advocates for this bill believe that ORS 419B.923 allows for setting aside *any* judgment made by the court pursuant to ORS 419B, including a termination of parental rights judgment. A provision explicitly stating that the court has such power was removed from (Senate Bill 282 before all of the contents of that bill were amended into) Senate Bill 414 and passed in its final form. No reference to termination judgments, and no policy or procedural provisions, were added to ORS 419B.923 to govern vacating such judgments when, for whatever reason, adoption is deemed to no longer a viable plan for the ward.

(Note: There was discussion about adding policy goals and procedures to govern such motions, and the discretion of the court in deciding them, the advocates and the legislature decided not provide these during this session. Legislators indicated that, depending upon how events unfold in the statutory silence about such issues, they may re-visit the need to do that, in the future.)

The grounds upon which a judgment can be vacated that are explicitly stated in ORS 419B.923 all convey a policy goal intended to guide the discretion to vacate, as well as implying the procedures to be followed. (For example, it is fairly clear why a judgment might be set aside because of the “newly discovered evidence” doctrine and, if that ground is established, it is also fairly clear how to go about proceeding). The fact that the list is not “closed,” however, may give rise to less certainty if the legislative policy to be implemented by such discretion is not implicit in the grounds for the motion. In this situation, the goal, and therefore the policy, to be fulfilled, is not so clear.

Prior to removing the explicit authority to vacate a termination judgment, advocates of this bill argued that it could be done to re-instate parental rights if the parents have made satisfactory progress in ameliorating the conditions underlying the termination. They also argued that even if re-unification was not the goal of vacating the judgment,

and that some other permanent plan, such as permanent foster care or guardianship was to be implemented; there was value in retrieving the child from being a legal orphan.

Aside from the question of whether the legislature intended, years ago (when the predecessor statute to the current ORS 419B.923 was written), that a termination be vacated in these situations, there are also questions of standing as well as burdens and standards of proof. A termination judgment is based on a finding by clear and convincing evidence following an evidentiary hearing, with appeal rights attending.

Can such a judgment be vacated by a preponderance of the evidence in the manner of a review or a permanency hearing?

If such a judgment is vacated, can that vacating judgment (or is it an order?), itself, be appealed?

Do parents, whose rights have been terminated, have the right to counsel in such a proceeding that may result in a re-instatement of their parental rights and obligations? Can their rights and obligations be re-instated against their will, or even without their knowledge, should the state (or whoever is determined to have standing to file such a motion) be unable to provide them with notice of the hearing?

Advocates of this bill believe that the court can change the plan from adoption and, even, although the parents have no further legal standing to challenge the termination of their rights (or to participate in a permanency hearing or any other proceeding pursuant to ORS Chapter 419B), set aside the termination judgment and designate the plan as "return to parents" or, having reinstated the parental rights (and saving the child from "legal orphan-hood"), designate another permanent plan, such as guardianship or permanent foster care.

Anecdotal information from advocates for the bill indicated that motions to set aside termination judgments were already being filed in situations in which the plan of adoption had fallen through and the ward was thus "stuck" as a legal orphan. No detailed information was available, however, about the outcome of these cases or how the court has proceeded under ORS 419B.973 to resolve them.

**Section Eleven** requires that the new findings of amended ORS 419B.449(2) (see Section Nine, above) be made by the court at a permanency hearing.

As noted above in regard to review hearings, these findings do not necessarily enter into the reasonable or active efforts determination required by Section (2)(a) or the reasonable efforts determination required by Section (2)(b) of ORS 419B.476. If the court intends to consider these in making those findings it should recite how the effort or lack thereof underlying these findings contributed to or detracted from the implementation of the permanent plan.

The education finding now required by ORS 419B.449(2)(d) may be supported by evidence relating to the current education findings required by amended ORS 419B.476((3)(a) in regard to the transition planning for the ward. The court should clearly set these two out as separate findings.

**Section Twelve** amends ORS 419B.498(2)(b)(B) to elaborate on the “compelling reasons” to not file a termination of parental rights petition when the child has been in care for 15 of the most recent 22 months.

The existing statement of the fact that the duty to file a termination is abrogated if some different plan is better suited to serve the health and safety needs of the child or ward is elaborated upon by stating that one of the ways in which it may be better suited is that it preserves sibling attachments and relationships. The amendment does not elevate that as a factor above others, or give it priority over other health and safety needs that may be better provided for by a plan of adoption.

**Section 13** changes a reference to ORS 419B.337 that is contained in ORS 419B.349 and reflects the renumbering of the former statute.

**Section 14** was added to Senate Bill 414 because its relating clause made it a convenient vehicle to accomplish a change unrelated to the remainder the bill.

### **Senate Bill 597**

#### **Relatives May Be Included in Open Adoption Agreement**

Amendments to ORS 109.305 now allow birth relatives of the child to enter into written agreements with adoptive parents to continue contact with the child. These provide that if child is 14 years of age or older, agreements to continue contact may not be entered into without consent of child. The Department of Human Services is not responsible for costs associated with negotiating or making the agreement, and incorporation of the agreement into the adoption decree evidences the “ratification” of the agreement by the court. This ratification has always been required by the statute and was thought by the Legislature in passing the initial legislation, to be necessary due to the lack of “arms length” relationship among the parties.

### **House Bill 2179**

#### **Criminal Records Checks**

The normal requirement, when requesting a criminal records check on an individual, that an agency certify that the individual in question has given consent to the check, or has been informed in advance that such a check is being made, can be waived if the check is part of an investigation of child abuse and the individual is either the alleged abuser or an individual who resides in or frequents the alleged victim’s residence.

After such a request the agency is required to notify the subject of the check that the check was made and that the subject may challenge the accuracy of the information and manner of notice. There shall also be notice of the possibility that Title VII of the 1964 Civil Rights Act may apply to the situation. (Act outlaws discrimination based on race, religion, sex or national origin.)

### **House Bill 2181**

Time Table to Dismiss Legal Custody after Ward Returned to Parent  
(Applies to children placed in the legal custody of the agency on or  
after effective date of the legislation: January 1, 2008)

This is one of the bills that the agency put forward to implement the Safety Model. HB 2181 requires that, if a ward has been returned to parents, or will be, a recommended timetable for dismissal of department's legal custody of the ward, and describing any services the agency *will provide* in the meantime, will included in its six month report to the court.

If the ward has been returned for six months or longer (and a report is required six months after return) this report must include the timetable for dismissal of the custody and wardship and a list of the services that *have been provided*.

If the ward has not yet been returned for six months at the time of the report the court must hold a review within six months of receiving it. If the report is written at six months after return, or sometime thereafter, the court must hold the hearing within 30 days. Regardless, the court must make the following findings:

1. That remaining within the custody of the agency and the wardship of the court is necessary and in the best interest of the child, and
2. An expected timetable for dismissal of the custody and the wardship.

### **House Bill 2190**

Criminal Records Checks, Efforts to Make Interstate Placements

This bill is a collection of changes to Oregon statutes required by federal legislation.

**Section One** deletes provision that Oregon has "opted out" of federal requirements concerning criminal records checks for persons seeking to be foster parents, adoptive parents or relative caregivers and other individuals over 18 years of age who will be in household. The alternative to "opt out" of the federal requirements, in favor of state rules, was repealed from federal law.

**Section Three** requires local citizen review board to make written findings and recommendations, if appropriate, relating to Department of Human Services efforts regarding placement of child or ward out of state.

**Section Four** amends ORS 419A.255 (relating to confidentiality of records in juvenile cases) to require sharing information with a court in another state to facilitate an interstate placement of a child or ward.

**Section Five** amends ORS 419B.343 (relating to case planning for dependent children) to require the case plan to include the most recent information available about the child or ward's education and health situation and condition.

**Section Six** amends ORS 419B.443 (describing the contents of reports submitted by DHS to the court) adding the requirement that reports state whether children placed outside of Oregon for six months is being visited every six months.

**Section Seven** requires the court, in review hearings held pursuant to ORS 419B.449, to consider, as part of the review of the concurrent planning efforts, whether the agency searched, in cases in which the concurrent plan is adoption, for placements both inside and outside of Oregon.

**Section Eight** requires that a part of the court's reasonable efforts determination, at a permanency hearing, if the plan is something other than to reunify the ward with the family, be whether efforts were made to place the child both in and out of Oregon. Also, in aspects of planning and placement, the court is to review whether the agency considered out of state placement as an option.

**Section Nine** amends ORS 419B.875 (regarding parties to a dependency action) to provide that foster and pre adoptive parents, while they are still not parties to the action, have right to notice of the hearing and to be heard. (This changes from requiring that they be notified and be given an opportunity to be heard). This federal mandate reflects dissatisfaction on the part of Congress with the performance of the states in including relative placements, foster and pre adoptive parents in review and permanency hearings.

**Section Ten** amends ORS 419B.918 to provide that in an action involving interstate placement of a ward the court may permit a party from outside the state to participate in proceedings, permit an attorney from outside the state representing a party to participate, and that the court may obtain information or testimony in any way it designates from a state or private agency located in another state.

**Section Eleven** takes advantage of the relating clause of this dependency bill ("custody of children") to amend ORS 107.135 such that the deployment overseas of a custodial parent shall not, in and of itself, be a change of circumstances supporting a motion to change custody of the child in a domestic relations case.

## **House Bill 2364**

### Tribal Documents as Evidence in Oregon Proceedings

The term “including federally recognized American Indian tribal governments” was included in various provisions of the evidence code to the effect that the decisional, constitutional and public statutory law of such tribes is given the same status as such law of Oregon, the United States and any state, territory, or other jurisdiction of the United States. The bill also gives notarial acts recognized by such tribes the same recognition as such acts of jurisdictions listed, above.

## **House Bill 2382**

### Paternity

(Took effect on the 91<sup>st</sup> day after the adjournment,  
but see note, below, to Section 9 of the bill)

The paternity statutes have been reworked in recent years to expand the scope of proceedings that declare “non paternity.” This reworking was tentative and experimental, and this bill is intended to refine it in light of experience.

An analysis of the entire bill is beyond the scope of this treatment, which addresses changes to child abuse and neglect law. Here the aspects of this bill that are most directly relevant to child welfare proceedings are discussed.

Although it may not be true in every situation, public policy assumes that children (and those acting on their behalf) are best served when their actual father (by operation of law or biology) has the benefit of that relationship and is called upon to fulfill its duties. It also assumes that men should not have those benefits, or at least those duties, unless they are the actual father of the children.

Paternity law is important in child welfare cases for two reasons. The first is to include the father or father’s family in planning reunification services, or services directed at permanency for the child. The second is to exclude those who, for one reason or another, insert themselves, or are inserted by others without his knowledge (sometimes leading the “insertee” to believe he is the father), into the case in the role of the father.

Although all three ways in which a man is determined by the law to be the father of a child are open to exploitation, by far the most common means, at least in child welfare, of complicating a child’s situation (and child welfare case) is through the voluntary acknowledgment of paternity. Sections 1, 2 and 7 of HB 2382 address this circumstance. These provisions apply to the case of any child who comes into care on or after the effective date of this act.

The recent revisions in paternity law created the ability of the Department of Human Services to challenge a voluntary acknowledgment of paternity. This ability is continued in the new legal framework. If the agency believes that a voluntary acknowledgment of

paternity for a child in its care and custody was signed because of “fraud, duress, or material mistake of fact,” it may file a petition with the circuit court and has the burden of proof to show that one of these grounds is true. Should the court so rule, based on a preponderance of the evidence, then it shall set aside the voluntary acknowledgment unless “giving consideration to the interests of the parties and the child, the court finds that setting aside the acknowledgment would be substantially inequitable.”

If the petition to declare non-paternity is brought within one year of the signing of the acknowledgment, the agency can apply for an order for blood testing in accordance with ORS 416.443.

Another aspect of the new law that is applicable to child welfare cases is found in the amended ORS 109.070(7). An acknowledgment is not valid if it is signed by someone who, before it was signed, had also signed a consent to adoption of the child by another individual, or who signed a relinquishment of the child (to a public or private agency), one whose rights were terminated by a court or one who was determined not to be a biological parent of the child. Such an acknowledgment is void *ab initio*—from the beginning—not merely legitimate until some future time at which it is voided.

A less common situation in which paternity becomes an issue in a child welfare case is that in which paternity has been established by a judgment from a proceeding that creates a legal obligation to pay child support, or some other legal proceeding in which one is expressly or by inference determined to be the father of the child. This circumstance is addressed in Section 9 of HB 2382. (Note: this section applies to all paternity judgments that were entered before, on or after the effective date of this act.)

If, in such a case, blood tests were not done, and paternity was not challenged, a party to such judgment—or the agency if the child is in its care and custody—may file a petition in circuit court for a judgment of non paternity.

There are two sets of grounds that will support the remedy in such a case. The first is when the grounds are “mistake, inadvertence, surprise or excusable neglect.” Such a petition must be filed within one year of the entry of the judgment. If, however, the grounds are “fraud, misrepresentation or other misconduct of an adverse party,” the petitioner may not file the petition more than one year after the petitioner discovers the fraud, misrepresentation or other misconduct occurred.

### **House Bill 2553**

#### **Support Obligation for Children in Substitute Care**

A member of the legislature introduced this bill after hearing complaints from constituents who were required to pay support for children placed in substitute care and who were subsequently “exonerated” regarding the allegations.

Due to difficulties in determining what “exonerated” meant (is every dismissal of a petition prior to adjudication an “exoneration” that indicates the children should not have been taken into care?) the bill was scaled back to its current form.

“Public assistance” for which reimbursement can be sought excludes money payments made as the result of a child’s removal from home against the will of the parents if, after completing the child abuse assessment, it is determined that the report of abuse is unfounded “according to the rules adopted by the Department of Human Services.”

**House Bill 3113**  
Respective Roles of Agency and Law Enforcement:  
Abuse in Child Care Facility

If the agency or law enforcement receives a report abuse in a child care facility the agency and law enforcement shall jointly determine the scope of their respective investigations and both shall submit reports, upon the completion of their investigations, to the Child Care Division.

ORS 657.250 (5) “Child care facility” means any facility that provides child care to children, including a day nursery, nursery school, child care center, certified or registered family child care home or similar unit operating under any name, but not including any:

- (a) Facility providing care that is primarily educational, unless provided to a preschool child for more than four hours a day.
- (b) Facility providing care that is primarily supervised training in a specific subject, including but not limited to dancing, drama, music or religion.
- (c) Facility providing care that is primarily an incident of group athletic or social activities sponsored by or under the supervision of an organized club or hobby group.
- (d) Facility operated by:
  - (A) A school district as defined in ORS 332.002;
  - (B) A political subdivision of this state; or
  - (C) A governmental agency.
- (e) Residential facility licensed under ORS 443.400 to 443.455.
- (f) Babysitters.
- (g) Facility operated as a parent cooperative for no more than four hours a day.
- (h) Facility providing care while the child’s parent remains on the premises and is engaged in an activity offered by the facility or in other non-work activity.

(Note: The language of ORS 419B.020 which limited its reach to “oral reports” was changed by this bill so that all of its provisions—except those limited to reports of abuse in a child care facility—apply to all reports of abuse that are received, whether orally or otherwise.)

**House Bill 3328**  
Child Abuse Investigation  
(Emergency Clause: took effect upon signature of governor)

Details procedures that are to be observed when a person investigating a child abuse report has “reason to believe” that a “suspicious” physical injury has been caused by abuse. Photographs of the injury shall be taken and a “designated medical professional” shall conduct a medical assessment. Other procedures are detailed.

If the agency determines that a child fatality is likely the result of child abuse or neglect it shall assign a Critical Incident Response Team within 24 hours if the child was in the custody of the agency or the child was subject of an agency protective assessment within 12 months of the fatality.

If a criminal case goes forward regarding a child fatality the District Attorney shall send a letter to the Governor and the agency outlining recommendations for the systemic improvement of child abuse investigations.

(Final note: this document was prepared by Timothy Travis, by his own hand. All errors of law, grammar, spelling or of any other nature herein are his own and are to be laid exclusively at his feet. No person in a support staff role laid a hand on this document and the thoroughness or competence of none shall be called into question by any error, whatsoever.)