

Legislative Update 2015



**LEOLA MCKENZIE, DIRECTOR
MEGAN HASSEN, LAW AND POLICY ANALYST**

**JUDICIAL RESPONSE TO SEX TRAFFICKING:
HONORABLE VALERI LOVE**

Juvenile Issues Generally



**CHILD ABUSE REPORTING
RECORDS
STALKING OF DHS EMPLOYEES**

Abuse Reporting: [SB 622](#)

- Adds “personal support worker”, as defined by rule of the Home Care Commission and “home care worker” as defined in ORS 410.600 to list of mandatory reporters for child, elder/persons with disabilities, developmentally disabled abuse in ORS 419B.005, 124.050, 430.735.
 - Adds “member of legislative assembly” to mandatory reporter list for abuse of developmentally disabled in ORS 430.735, and for residents of long term care facilities in ORS 441.630.
 - Provides immunity from criminal liability for good faith reports about abuse to developmental disabled and elder/persons with disabilities.
- Effective 1/1/16

Juvenile Records: [SB 405](#)

- **Allows court to provide DOJ (child support program):**
 - the date of entry of a judgment terminating parental rights or terminating wardship following entry of a judgment of adoption;
 - Names and dates of birth of the parents and children subject to the judgment
 - **Delays “any other person” access to juvenile records to September 30, 2016.**
- Effective June 8, 2015

Stalking of DHS Employees: [HB 3391](#)

- **Allows DOJ to bring an action for a citation or a stalking protective order under ORS 30.866 or 163.730 to 163.750 on behalf of a DHS employee who:**
 - Conducts child abuse investigations
 - Makes a determination that a child must be taken into protective custody
 - Makes a determination the child should not be released to a parent or other responsible person
 - Is involved in development a case plan or making a placement decision for a child in the legal custody of DHS
- **Effective 7/6/15**

Adoption

**RECORDS
FILING FEES
READOPTIONS**

Filing Requirements: [HB 2365](#)

- **Petition**
 - One petition per child. Amends ORS 109.309 to require separate petition for each child even if siblings (petition-less adoptions still allowed post termination/ relinquishment). §7 (1/1/16)
 - Petition must include name and relationship of all persons who have signed a surrender under ORS 418.270(4). §1 (e-clause)
 - Declaration allowed; notarization not required. §1 (e-clause)
- **ASSIS**
 - UCCJEA information does not include the name and address of foster parents; listing the county/state of residence is sufficient. §2 (1/1/16)

Records: [HB 2365](#)

- **Presiding judges may access records**
- **Clarifications regarding redaction.**
 - Records releases to birth parents who have consented – the following information not subject to redaction:
 - × Name of parent filing the motion.
 - × Name, bar number and contact information for any attorney of record.
 - Written evidence that a home study was approved does not need to be redacted when that information is within another document subject to release.
- **Finding the records.** DHS may disclose the county in which the adoption was finalized to adoptee, birth parent/guardian.
- **Placement report:** place with petition and exhibits – not with ASSIS.
- Effective 6/22/15

Filing Fees: [HB 2366](#)

- **Filing fee includes adoption certificate.**
 - Raises the fee for adoptions under ORS Chapter 109 to \$255, an increase of \$3. Eliminates the \$1 fee for an adoption certificate and makes the adoption certificate part of the new \$255 fee for adoptions.
- **Request for adoption records by birth parent following termination/relinquishment.**
 - Amends ORS 109.319 to clarify that when an adoption is consented to by the Department of Human Services under ORS 109.325 or ORS 419B.529, a fee is not to be imposed or collected when a birth parent makes a motion to inspect the adoption records after the adoptee has turned 18.
- **Siblings: multiple petitions.**
 - When separate petitions for adoption of multiple minor children are concurrently filed under ORS 109.309 by the same petitioner, one filing fee is due for the first petition and the fees for the concurrently filed petitions shall not be charged.
- Effective 1/1/16

Readoptions: [HB 2365](#)

- **New petition and exhibit requirements. ORS 109.385(6) & (9).**
 - Petitions not required: (1) to comply with consent requirements of ORS 109.321 to 109.330; (2) to include statements re: voluntary adoption registry and right to counseling sessions; and (3) provision of placement report.
- **ASSIS and exhibit requirements. ORS 109.385(10).**
- **Records to be maintained and released under ORS 109.319. ORS 109.385(12).**
- **Court may find adoptee's birth date listed on foreign nation birth document is inaccurate; statute lists examples of evidence the court may consider. ORS 109.385(13).**
- Effective 1/1/16

Delinquency

**SEX OFFENDER REGISTRATION
RELATIVES AS FOSTER PARENTS**

Sex Offender Registration: [HB 2320](#), § 31

- Applies to youth found to be within court’s jurisdiction (ORS 419C.005; 419C.411) for an act, if committed by an adult, would be a felony sex crime.
 - Notice: court provides notice of right to hearing at adjudication.
 - Hearing shall be held within six months of:
 - × Termination of jurisdiction
 - × Discharge from jurisdiction of Psychiatric Security Review Board
 - Scheduling:
 - × Supervising authority must provide notice to the youth when it determines that termination of jurisdiction will occur within six months.
 - × Petition: youth may file a request for hearing within six months prior to termination of jurisdiction.

Effective?

Sex Offender Registration (cont)

- **Hearing:**
 - Youth has right to court appointed counsel.
 - Court may continue appointment at disposition, set a date prior to the hearing to reappoint, or appoint/reappoint at any other time in response to a request from youth.
 - Youth has burden of proving by clear and convincing evidence that s/he is rehabilitated and does not pose a threat to the safety of the public.
 - See § 31(4) for factors to consider.
 - Court shall review evaluations and treatment records (conducted by a program operating under the standards of practice for the evaluation and treatment of juvenile sex offenders adopted by the Sex Offender Treatment Board), recommendations, and polygraph records. § 31(6).
 - Court may consider any evidence that is relevant without regard to admissibility under the ROE (unless privileged). § 31(5).
 - If court finds burden not met, the court shall enter an order requiring the youth to report as a sex offender under ORS 181.809.
 - When court enters the order, the court shall ensure youth completes a form documenting need to report.
 - Within three days, the court shall ensure the form is sent to state police.

Relatives as Foster Parents: [HB 2314](#)

- **Removes restriction against placing youth with a person related by blood or marriage. Allows OYA to develop rules setting forth circumstances in which a youth may be placed with a person related to the youth offender by blood or marriage.**
- **Effective 1/1/16**

Dependency

ATTORNEY REPRESENTATION
 SAVINGS ACCOUNTS
 EXTRACURRICULAR ACTIVITIES
 GRANDPARENTS
 CURRENT CARETAKER/RELATIVE
 AGE 14 AND OLDER
 SUCCESSOR GUARDIAN
 PERMANENCY PLANNING
 SEX TRAFFICKING

Attorney Representation: [SB 222](#)

- **Creates “Task Force on Legal Representation in Childhood Dependency”**
 - 18 members (3 judges)
 - To propose legislation and make recommendations:
 - ✦ Attorney workloads (parents/children)
 - ✦ Attorneys for the state and DHS are available
 - ✦ Judicial and attorney resources are sufficient to avoid delays
 - ✦ Oregon statutory law is consistent with models proposed
 - Report due July 15, 2016.
 - DHS may continue to appear without counsel through June 30, 2018: (1) at any hearing after jurisdiction, and (2) if the DA is representing DHS, when its position is not in conflict with the DA.



Savings Accounts: [HB 2889](#)

- **DHS shall ensure a child age 12 and older is entitled to assistance from DHS to establish a savings account.**
 - Applies when DHS has had custody for a minimum of six consecutive months.
 - Consent of foster parent, parent not necessary to establish account.
 - Child must give written authorization to allow person having legal custody to be an account holder, or have access to information about money in the account.
 - DHS may monitor the use of the money when required to ensure continuation of state and federal benefits.

Effective 1/1/16

Extracurricular Activities: [HB 2890](#), [HB 2908](#)

- **Creates “reasonable and prudent parent standard”**
- **Requires the substitute care provider to provide opportunity for child to participate in at least one extracurricular activity (2890, Effective 1/1/16).**
 - DHS and substitute care provider shall confer to determine who is responsible for payment.
 - Summer camp or religious services alone aren’t sufficient.
- **Requires DHS to report on steps to ensure the substitute care provider is following the reasonable and prudent parent standard, and that the child has regular, ongoing opportunities to engage in age-appropriate, or developmentally appropriate activities (2908, Effective 10/1/15).**
 - Requires juvenile court and CRB to make a finding whether DHS efforts are sufficient when child is age 16 and up and in an APPLA plan.

Grandparents: [HB 3014](#)

- Expands the definition of “grandparent” in juvenile dependency cases to include parents of the child’s or ward’s legal parent, regardless of whether the rights of the child’s or ward’s legal parent have been terminated under ORS 419B.500 to 524.
 - Grandparent notice findings will be required even after parental rights terminated.
 - Grandparents will be allowed to request visitation after TPR, although the prohibition on requesting visitation at the TPR hearing remains. ORS 419B.876(1).
- Effective 1/1/16

Current Caretaker: [SB 741](#)

- Adds “current caretaker” definition to ORS 419A.004
 - A foster parent who:
 - × Is currently caring for a ward in the legal custody of DHS and who has a permanency plan or concurrent plan of adoption; and
 - × Who has cared for the ward or a sibling of the ward, for the last 12 months or one-half of the ward’s or sibling’s life if the ward or sibling is younger than two years.
- Requires DHS to give equal consideration to current caretakers and relatives for purposes of adoption.
 - DHS must consider each prospective adoptive parent on the basis of his or her ability to meet the child’s needs for safety, attachment and well-being.

Current Caretaker (continued)

- Allows court to review child's placement or proposed placement under ORS 419B.349, and if not in child's best interest, may direct DHS to place or maintain the child in the care of:
 - Parents
 - In foster care with:
 - × A relative
 - × *A person who is or has been a current caretaker*
 - × *A person who is not a relative or current caretaker*
 - × Residential care
- Court may not direct placement if it will cause removal or prevent placement with adoptive parent selected by DHS when the selection has become final after the expiration of administrative and judicial review procedures under ORS Chapter 183.

Current Caretaker (continued)

- **Requires a report to the court when:**
 - DHS has removed or plans to remove the child to a different substitute care placement, if:
 - × The child has resided for 12 consecutive months or more in the foster home; or
 - × The child resided in the home pursuant to a permanent foster care agreement.
 - A report is not required if:
 - × Removal followed a report of abuse or neglect by provider;
 - × The child has been placed with a person who has been selected by the department to be the adoptive parent and the selection has become final after the expiration of administrative and judicial review procedures under ORS chapter 183.
 - × The removal was made at the request of the provider.
- **Requires hearing within 10 days of receipt of report.**
- **Court review provisions effective 1/1/16**

Age 14 and older: [HB 2908](#), [HR 4980](#)

- Annual credit reports must be run yearly (HR 4980)
- Transition planning starts at 14, regardless of permanency plan
- Case planning (HR 4980)
 - Child may choose up to 2 members of case planning team (who are not foster parent or caseworker)
 - State may reject an individual if there is good cause to believe the person would not act in child's best interests
 - One individual may act as child's advisor and advocate with respect to the application of the reasonable and prudent parent standard
- Rights
 - Case plan must include a document that describes the child's rights and a signed acknowledgment by the child that s/he has received it and it has been explained in an age-appropriate way.
- Effective 10/1/15

Permanency Planning: [HB 2908](#), [HR 4980](#)

- APPLA: limited to children age 16 and up.
 - At each permanency hearing, DHS must document intensive, ongoing efforts to return child home, secure placement with a fit and willing relative (including adult siblings), a legal guardian or an adoptive parent.
 - DHS shall implement procedures to ensure the court asks the child about the desired permanency outcome for the child.
 - Court must make judicial determination explaining why APPLA is the best permanency plan, and why it's not in the child's best interest to be in a higher level plan.
- Placement with a Fit and Willing Relative
 - Separate and distinct permanency plan in ORS 419B.476(5).
 - Will be implemented with a permanent foster care agreement.
 - Definition of relative being expanded through administrative rule for purposes of placement with a fit and willing relative.

Successor Guardians: [HR 4980](#)

- May be designated in the guardianship assistance agreement at any time prior to the incapacity or death of the guardian.
 - DHS will conduct a background check (criminal and DHS records) and will notify the court if the child will not be eligible for guardianship assistance. DHS is not going to conduct a home study.
- Effective 10/1/14

Siblings: [HR 4980](#)

- Within 30 days of the child's entry into care, requires DHS to provide notice to a parent of a sibling, when the parent has legal custody of the sibling.
- Redefines sibling to include individuals who would have been considered siblings except for a termination or other disruption of parental rights.
 - DHS definition has been amended to be consistent:
 - ✦ [OAR 413-010-0310\(9\)](#)
- Effective 10/1/14

Sex Trafficking: [HR 4980](#)

- **Identify and provide services.** DHS must develop a plan to identify, document and determine appropriate services for children who are, or are at risk of, being sex trafficked by 10/1/15.
 - DHS must implement plan by 10/1/16.
- **Runaway children:** DHS must develop and implement protocols by 10/1/15 for:
 - Expediently locating any child missing from foster care;
 - Determining the child's experiences while absent, including screening for sex trafficking;
 - Reporting this information to the federal government.

Sex Trafficking: Reporting

- **New DHS reporting requirements (by 10/1/16):**
 - Sex trafficking victim. Report to law enforcement immediately after receiving information that a child has been sex trafficked.
 - Missing or abducted children. DHS must report immediately to:
 - × Law enforcement authorities for entry into the National Criminal Information Center database (FBI); and
 - × National Center for Missing and Exploited Children
 - Sex trafficking data in the Adoption and Foster Care Analysis and Reporting System.
 - × DHS to report annually the number of children in foster care who are identified as victims.

Sex Trafficking: Judicial Response



Questions?