

**JUVENILE CODE REVISION:
Intervenor/Rights of Limited Participation**

REPORT

(SB 72)

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Juvenile Code Revision Work Group Intervenor/Rights of Limited Participation Report

I. Introductory Summary

This proposed bill resolves an inconsistency in two statutes: ORS 419B.116, governing intervention in juvenile dependency proceedings; and ORS 109.119, governing intervention in other matters related to the custody, placement, guardianship or wardship of a child. This proposal also establishes standards and procedures for granting intervention and for recognizing persons with rights of limited participation in juvenile dependency proceedings. Finally, provisions related to rights of limited participation are moved to a more appropriate section of the juvenile dependency code.

II. History of the Project

This proposal was first considered by members of the Continuing HB 2611 Sub-Work Group on June 21, 2002. Members of the Sub-Work Group include: Timothy Travis, Juvenile Court Improvement Project; Lisa Kay, Juvenile Rights Project; Mickey Serice, Department of Human Services; Ted Meece, DOJ Assistant Attorney General, Family Law Section; Michael Livingston, DOJ Assistant Attorney General, Appellate Division; and Linda Guss, DOJ Assistant Attorney General, General Counsel Division. Members of the Sub-Work Group have expressed support for the proposal. The proposal was brought before the full Juvenile Code Revision Work Group¹ on September 20, 2002, and October 18, 2002; members of that Work Group expressed similar support for the proposed bill.

III. Statement of the Problem Areas

Persons asserting that they have a “caregiver relationship” with a child who is the subject of a juvenile dependency proceeding may file a motion for intervention in that proceeding and be granted party status. ORS 419B.116(2).² Filing a motion under ORS 419B.116 is the “sole means by which a person may intervene in a juvenile dependency proceeding.” ORS 419B.116(3).

Notwithstanding ORS 419B.116, ORS 109.119(1)³ provides that a person may file a motion for intervention with a court having jurisdiction over the wardship of

¹ Senator Kate Brown, an Oregon Law Commissioner, chairs the Juvenile Code Revision Work Group.

² ORS 419B.116(2) provides: “A person asserting that the person has a caregiver relationship with a child may file a motion for intervention in a juvenile dependency proceeding.”

³ ORS 109.119(1) provides: “Any person, including but not limited to a related or nonrelated foster parent, stepparent, grandparent or relative by blood or marriage, who has established emotional ties creating a child-parent relationship or an ongoing personal relationship with a child may petition or file a motion for intervention with the court having jurisdiction over the custody, placement, guardianship or wardship of

a child. Generally, the only court that establishes wardship of a child is a juvenile court. See ORS 419B.328 and ORS 419C.440. Thus ORS 109.119 conflicts with ORS 419B.116.

ORS 109.119(6)(b)⁴ provides a standard for when a motion for intervention filed under ORS 419B.875 may be denied or granted in certain circumstances and also establishes a standard of proof for granting a motion to intervene filed by grandparents. ORS 419B.875 is not the statute governing motions to intervene in juvenile dependency proceedings. The procedures related to motions to intervene under ORS 109.119 are inconsistent with the procedures established by ORS 419B.116. Not only are the procedures inconsistent, but as stated above, ORS 419B.116 states that it establishes the “sole means” for intervening in a juvenile dependency proceeding.

The current juvenile code provisions governing the process by which a person may be granted rights of limited participation require the filing of a motion and affidavit. ORS 419B.875(4)(a)⁵. The affidavit must state certain facts including the reason participation is sought, how the person’s involvement is in the best interests of the child or the administration of justice, and why the parties can not adequately present the case. ORS 419B.875(4)(a)(A)-(D). There is no requirement in the present statute; however, that the movant prove any of the facts alleged in the affidavit. There is also no established procedure for parties to oppose a motion for rights of limited participation or for the court to conduct a hearing on the motion.

that child, or if no such proceedings are pending, may petition the court for the county in which the child resides, for an order providing for relief under subsection (3) of this section.”

⁴ ORS 109.119(6)(b)(A)-(B) provides:

“(b)(A) A motion for intervention filed under ORS 419B.875 by a person other than a grandparent may be denied or a petition may be dismissed on the motion of any party or on the court's own motion if the petition does not state a prima facie case of emotional ties creating a child-parent relationship or ongoing personal relationship or does not allege facts that the intervention is in the best interest of the child.

(B) A motion for intervention filed under ORS 419B.875 by a grandparent may be granted upon a finding by clear and convincing evidence that the intervention is in the best interests of the child.”

⁵ ORS 419B.875(4)(a) provides:

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

- (A) The reason the participation is sought;
- (B) How the person's involvement is in the best interest of the child or the administration of justice;
- (C) Why the parties cannot adequately present the case; and
- (D) What specific relief is being sought.”

IV. Objectives of the Proposal

An objective of the proposed bill is to clarify that ORS 419B.116 is the only statute governing the process for intervening in a juvenile dependency proceeding. To that end, the bill would eliminate the reference to “wardship” in ORS 109.119(1). Also deleted are the provisions that allow a court to grant or deny a motion for intervention in a juvenile dependency proceeding under ORS 109.119 and on grounds different than those established in ORS 419B.116.

The second main objective of the proposal is to clarify and further develop the existing juvenile code provisions that govern intervention and rights of limited participation.

To accomplish these objectives, the proposal:

- a. Requires the filing of a written objection stating the grounds for objecting to a motion for intervention or rights of limited participation;
- b. Authorizes the court to grant a motion for intervention or rights of limited participation without a hearing if no objection is filed;
- c. Authorizes the court to dismiss without a hearing either a motion for intervention or rights of limited participation if the motion fails to state a *prima facie* case;
- d. Requires the juvenile court to conduct a hearing on a motion to intervene if an objection is filed;
- e. Permits but does not require, a hearing on a motion for rights of limited participation;
- f. Requires a movant to establish the facts alleged in a motion by a preponderance of evidence if a hearing is conducted;
- g. Requires the court to specify in its order the rights of limited participation that are granted; and
- h. Moves the provision governing the process for seeking rights of limited participation into the related code section governing intervention.

V. The Proposal: See SB 72 (2003).

VI. Conclusion

This proposed bill should be adopted because it will fulfill the intention of the drafters of ORS 419B.116, to establish one procedure for intervening in juvenile dependency cases. By eliminating confusing references in ORS 109.116, the proposal will also clarify the process for intervening in juvenile dependency proceedings. In addition, the proposal will serve to establish clearer guidelines for persons seeking intervention or rights of limited participation, and will establish clear procedures for those parties who want to object to motions for intervention or rights of limited. Finally, the proposal clarifies court authority to act on motions for intervention and rights of limited participation.