

**A-Engrossed**  
**House Bill 3363**

Ordered by the House April 23  
Including House Amendments dated April 23

Sponsored by Representatives OLSON, BARKER; Representatives CONGER, HUFFMAN, KRIEGER, NATHANSON, THOMPSON, TOMEI, WHISNANT, WILLIAMSON, Senators BATES, JOHNSON, KRUSE (at the request of Oregon CASA Network)

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

*[Requires Department of Human Services to disclose case plan and written information to court appointed special advocate in juvenile dependency proceedings.]*

*[Permits amendment to jurisdictional petition at hearing under certain circumstances.]*

*[Provides that unfitness determination in termination proceeding shall be based on parental conduct and conditions at time of hearing or in prior cases, unless department did not make reasonable efforts to provide services.]*

*[Shortens time period to conduct permanency hearing if ward is under three years of age.]*

*[Requires court to take into account at permanency hearings ward's age and conduct and conditions of parent or parents in current proceeding and in prior cases.]*

**Requires Department of Human Services to disclose case plan and written information to all parties in juvenile dependency proceedings.**

**Permits inspection of record of case and audio, video and recordings in juvenile court proceedings by, and disclosure of reports and other material relating to child, ward, youth or youth offender to, CASA Volunteer Program, as reasonably necessary for appointment or supervision of court appointed special advocates.**

**Establishes Work Group on Juvenile Court Dependency Proceedings. Sunsets work group on June 30, 2015.**

**A BILL FOR AN ACT**

1  
2 Relating to juvenile dependency proceedings; creating new provisions; and amending ORS 419A.255,  
3 419A.256 and 419B.881.

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

5 **SECTION 1.** ORS 419B.881 is amended to read:

6 419B.881. (1) In all proceedings brought under ORS 419B.100 or 419B.500, each party, including  
7 the state, shall disclose to each other party and to a guardian ad litem appointed under ORS  
8 419B.231 the following information and material within the possession or under the control of the  
9 party:

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

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

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

18 (d) Any books, papers, documents or photographs that the party intends to offer in evidence at

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 the hearing, or that were obtained from or belong to any other party.

2 (2)(a) Disclosure *[shall]* **under subsection (1) of this section must** be made as soon as practi-  
3 cable following the filing of a petition and no later than:

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

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

7 (C) Ten days before a **permanency hearing or a** termination trial, except for information re-  
8 ceived or discovered less than 10 days prior to the **hearing or** trial.

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

11 **(3)(a) When a ward has been placed in the legal custody of the Department of Human**  
12 **Services for care, placement and supervision under ORS 419B.337, the department shall dis-**  
13 **close to all parties the case plan developed under ORS 419B.343, modifications to the case**  
14 **plan and any written material or information about services provided to the ward, or to the**  
15 **ward's parent or parents, under the case plan.**

16 (b) Disclosure under this subsection must be made within 10 days of:

17 (A) Completion or modification of the case plan; and

18 (B) Receipt by the department of the written material or information about services  
19 provided under the case plan.

20 [(3)] (4) The obligation to disclose is an ongoing obligation and if a party finds, either before  
21 or during the hearing, additional material or information that is subject to disclosure, the informa-  
22 tion or material shall be promptly disclosed.

23 [(4)] (5) The following material and information need not be disclosed:

24 (a) Attorney work product; and

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

27 [(5)] (6) Upon a showing of good cause, the court may at any time order that specified disclosure  
28 be denied, restricted or deferred or make such other order as is appropriate.

29 [(6)] (7) Upon request of a party, the court may permit a showing of good cause for denial or  
30 regulation of disclosure by the parties or the contents of subpoenaed materials, or portion of the  
31 showing, to be made in camera. A record shall be made of the proceeding.

32 [(7)] (8) If the court enters an order following an in camera showing, the entire record of the  
33 showing shall be sealed and preserved in the records of the court, to be made available to the ap-  
34 pellate court in the event of an appeal. The trial court may, after disposition, unseal the record.

35 [(8)] (9) When some parts of certain material are subject to disclosure and other parts are not,  
36 as much of the material as is subject to disclosure shall be disclosed.

37 [(9)] (10) Upon being notified of any breach of a duty to disclose material or information, the  
38 court may:

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

40 (b) Grant a continuance;

41 (c) Refuse to permit the witness to testify;

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

43 (e) Enter such other order as the court considers appropriate.

44 **SECTION 2.** ORS 419A.255 is amended to read:

45 419A.255. (1) The clerk of the court shall keep a record of each case, including therein the

1 summons and other process, the petition and all other papers in the nature of pleadings, motions,  
2 orders of the court and other papers filed with the court, but excluding reports and other material  
3 relating to the child, ward, youth or youth offender's history and prognosis. The record of the case  
4 shall be withheld from public inspection but is open to inspection by the child, ward, youth, youth  
5 offender, parent, guardian, court appointed special advocate, **a CASA Volunteer Program as de-**  
6 **defined in section 3, chapter 97, Oregon Laws 2012, when reasonably necessary for the ap-**  
7 **pointment or supervision of court appointed special advocates**, surrogate or a person allowed  
8 to intervene in a proceeding involving the child, ward, youth or youth offender, and their attorneys.  
9 The attorneys are entitled to copies of the record of the case.

10 (2) Reports and other material relating to the child, ward, youth or youth offender's history and  
11 prognosis are privileged and, except at the request of the child, ward, youth or youth offender, may  
12 not be disclosed directly or indirectly to anyone other than the judge of the juvenile court, those  
13 acting under the judge's direction, service providers in the case and the attorneys of record for the  
14 child, ward, youth or youth offender or the child, ward, youth or youth offender's parent, guardian,  
15 court appointed special advocate, **a CASA Volunteer Program as defined in section 3, chapter**  
16 **97, Oregon Laws 2012, when reasonably necessary for the appointment or supervision of**  
17 **court appointed special advocates**, surrogate or person allowed to intervene in a proceeding in-  
18 volving the child, ward, youth or youth offender. Reports and other material relating to a youth  
19 offender's history and prognosis in cases under ORS 419C.005 may be disclosed to the superintendent  
20 of the school district in which the youth offender resides or the superintendent's designee. The ser-  
21 vice providers in the case, school superintendents, superintendents' designees and attorneys are en-  
22 titled to examine and obtain copies of any reports or other material relating to the child, ward,  
23 youth or youth offender's history and prognosis. Any service provider in the case, school super-  
24 intendent, superintendent's designee or attorney who examines or obtains copies of such reports or  
25 materials is responsible for preserving their confidentiality. A service provider, school superinten-  
26 dent or superintendent's designee who obtains copies of such reports or materials shall return the  
27 copies to the court upon the conclusion of the service provider's, superintendent's or  
28 superintendent's designee's involvement in the case.

29 (3) Except as otherwise provided in subsection (7) of this section, no information appearing in  
30 the record of the case or in reports or other material relating to the child, ward, youth or youth  
31 offender's history or prognosis may be disclosed to any person not described in subsection (2) of this  
32 section without the consent of the court, except for purposes of evaluating the child, ward, youth  
33 or youth offender's eligibility for special education as provided in ORS chapter 343, and no such  
34 information may be used in evidence in any proceeding to establish criminal or civil liability against  
35 the child, ward, youth or youth offender, whether such proceeding occurs after the child, ward,  
36 youth or youth offender has reached 18 years of age or otherwise, except for the following purposes:

37 (a) In connection with a presentence investigation after guilt has been admitted or established  
38 in a criminal court.

39 (b) In connection with a proceeding in another juvenile court concerning the child, ward, youth  
40 or youth offender or an appeal from the juvenile court.

41 (4) If the court finds that the child, ward, youth, youth offender or parent is without financial  
42 means to purchase all or a necessary part of the transcript of the evidence or proceedings, the court  
43 shall order upon motion the transcript or part thereof to be furnished. The transcript or part thereof  
44 furnished under this subsection shall be paid for in the same manner as furnished transcripts are  
45 paid for in criminal cases.

1 (5) Notwithstanding any other provision of law, the following are not confidential and not ex-  
2 empt from disclosure:

3 (a) The name and date of birth of the youth or youth offender;

4 (b) The basis for the juvenile court's jurisdiction over the youth or youth offender;

5 (c) The date, time and place of any juvenile court proceeding in which the youth or youth  
6 offender is involved;

7 (d) The act alleged in the petition that if committed by an adult would constitute a crime if ju-  
8 risdiction is based on ORS 419C.005;

9 (e) That portion of the juvenile court order providing for the legal disposition of the youth or  
10 youth offender when jurisdiction is based on ORS 419C.005;

11 (f) The names and addresses of the youth or youth offender's parents or guardians; and

12 (g) The register described in ORS 7.020 when jurisdiction is based on ORS 419C.005.

13 (6) Notwithstanding any other provision of law, when a youth has been taken into custody under  
14 ORS 419C.080, the following information shall be disclosed unless, and only for so long as, there is  
15 a clear need to delay disclosure in the course of a specific investigation, including the need to pro-  
16 tect the complaining party or the victim:

17 (a) The youth's name and age and whether the youth is employed or in school;

18 (b) The youth offense for which the youth was taken into custody;

19 (c) The name and age of the adult complaining party and the adult victim, unless the disclosure  
20 of such information is otherwise prohibited or restricted;

21 (d) The identity of the investigating and arresting agency; and

22 (e) The time and place that the youth was taken into custody and whether there was resistance,  
23 pursuit or a weapon used in taking the youth into custody.

24 (7)(a) Information contained in reports and other materials relating to a child, ward, youth or  
25 youth offender's history and prognosis that, in the professional judgment of the juvenile counselor,  
26 caseworker, school superintendent or superintendent's designee, teacher or detention worker to  
27 whom the information for the reports or other materials has been provided, indicates a clear and  
28 immediate danger to another person or to society shall be disclosed to the appropriate authority and  
29 the person or entity who is in danger from the child, ward, youth or youth offender.

30 (b) An agency or a person who discloses information under paragraph (a) of this subsection has  
31 immunity from any liability, civil or criminal, that might otherwise be incurred or imposed for  
32 making the disclosure.

33 (c) Nothing in this subsection affects the provisions of ORS 146.750, 146.760, 419B.035, 419B.040  
34 and 419B.045. The disclosure of information under this section does not make the information ad-  
35 missible in any court or administrative proceeding if it is not otherwise admissible.

36 (8) A county juvenile department is the agency responsible for disclosing youth and youth  
37 offender records if the records are subject to disclosure.

38 (9) A petition filed under ORS 419B.851 alleging that a child who is a foreign national is within  
39 the jurisdiction of the court, or a motion requesting an implementation plan other than return of a  
40 ward to the ward's parent, is subject to disclosure to the consulate for the child or ward's country  
41 as provided under ORS 419B.851 (3).

42 (10) Nothing in this section prohibits a guardian appointed under ORS 419B.365 or 419B.366 from  
43 disclosing or providing copies of letters of guardianship when so required to fulfill the duties of a  
44 guardian.

45 (11) The court shall cooperate in the sharing of information with a court in another state to

1 facilitate an interstate placement of a child or ward.

2 **SECTION 3.** ORS 419A.256 is amended to read:

3 419A.256. (1)(a) Once prepared and filed with the court, a transcript of a juvenile court pro-  
4 ceeding is part of the record of the case maintained by the clerk of the court under ORS 419A.255  
5 (1) and is subject to the provisions of ORS 419A.255 (1) and (3) governing access and disclosure.

6 (b) Notwithstanding ORS 419A.255, if a transcript, audiotape or videotape has been prepared in  
7 any proceeding under ORS chapter 419C, the victim may obtain a copy by paying the actual cost  
8 of preparation.

9 (2) The official audio, video or other recording of a juvenile court proceeding shall be withheld  
10 from public inspection but is open to inspection by the child, ward, youth, youth offender, parent,  
11 guardian, court appointed special advocate, **a CASA Volunteer Program as defined in section 3,  
12 chapter 97, Oregon Laws 2012, when reasonably necessary for the appointment or supervision  
13 of court appointed special advocates**, surrogate or a person allowed to intervene in a proceeding  
14 involving the child, ward, youth or youth offender, and their attorneys.

15 **SECTION 4. (1) The Work Group on Juvenile Court Dependency Proceedings is estab-**  
16 **lished, consisting of 11 members appointed as follows:**

17 (a) **The Chief Justice of the Supreme Court shall appoint six members as follows:**

18 (A) **Two members representing the Judicial Department with expertise in juvenile court**  
19 **dependency proceedings, at least one of whom shall be a circuit court judge;**

20 (B) **One member representing the citizen review board state administrative office or local**  
21 **citizen review boards;**

22 (C) **Two members representing CASA Volunteer Programs as defined in section 3, chap-**  
23 **ter 97, Oregon Laws 2012; and**

24 (D) **One member representing the Public Defense Services Commission.**

25 (b) **The Attorney General shall appoint two members as follows:**

26 (A) **One member representing the Department of Justice with expertise in juvenile court**  
27 **dependency proceedings; and**

28 (B) **One member representing the Oregon District Attorneys Association with expertise**  
29 **in juvenile court dependency proceedings.**

30 (c) **The Board of Governors of the Oregon State Bar shall appoint two members who are**  
31 **members of the Oregon State Bar with expertise representing parents and children in juve-**  
32 **nile court dependency proceedings.**

33 (d) **The Director of Human Services shall appoint one member representing the Depart-**  
34 **ment of Human Services with expertise in the area of child welfare.**

35 (2) **The work group shall:**

36 (a) **Examine Oregon's juvenile court dependency system for the purpose of identifying**  
37 **impediments to:**

38 (A) **The timely resolution of jurisdictional petitions in juvenile court dependency pro-**  
39 **ceedings.**

40 (B) **The assessment of the bases for dependency jurisdiction.**

41 (C) **The development and implementation of case plans for the reunification of families**  
42 **that include services and other assistance that are appropriate and accessible to parents.**

43 (D) **The assessment of the adequacy of case plans.**

44 (E) **The identification and implementation of specific, understandable and realistic con-**  
45 **ditions for the return of a child placed in substitute care to the physical custody of the**

1 **child's parent.**

2 **(F) The timely development and implementation of permanent plans, including reunifica-**  
3 **tion of the family, that take into account the policies of the State of Oregon expressed in**  
4 **ORS 419B.090 and the concept of "reasonable time" as defined in ORS 419A.004.**

5 **(b) Identify the specific actions each entity represented by the work group members can**  
6 **take under existing law and within current budgetary restraints to remove or mitigate the**  
7 **impediments identified under paragraph (a) of this subsection, and develop a plan to put**  
8 **those actions into practice and to measure the effectiveness of those actions.**

9 **(c) Identify changes to existing law that could be made to assist in removing or mitigat-**  
10 **ing one or more of the impediments identified under paragraph (a) of this subsection that**  
11 **would not require the investment and support of additional state funds.**

12 **(d) Identify changes to existing law that would be essential to remove or mitigate one**  
13 **or more of the impediments identified in paragraph (a) of this subsection that would require**  
14 **the investment and support of additional state funds.**

15 **(3) A majority of the members of the work group constitutes a quorum for the trans-**  
16 **action of business.**

17 **(4) Official action by the work group requires the approval of a majority of the voting**  
18 **members of the work group.**

19 **(5) The work group shall elect one of its members to serve as chairperson.**

20 **(6) If there is a vacancy for any cause, the appointing authority shall make an appoint-**  
21 **ment to become immediately effective.**

22 **(7) The work group shall meet at times and places specified by the call of the chairperson**  
23 **or of a majority of the members of the work group.**

24 **(8) The work group may adopt rules necessary for the operation of the work group.**

25 **(9) The work group shall make a report, and may include recommendations for legis-**  
26 **lation, to interim committees of the Legislative Assembly related to juvenile dependency**  
27 **proceedings no later than January 15, 2015.**

28 **(10) The Legislative Administrator selected under ORS 173.710 shall provide staff support**  
29 **to the work group.**

30 **(11) Members of the work group who are not members of the Legislative Assembly are**  
31 **not entitled to compensation, but may be reimbursed for actual and necessary travel and**  
32 **other expenses incurred by them in the performance of their official duties in the manner**  
33 **and amounts provided for in ORS 292.495.**

34 **(12) All agencies of state government, as defined in ORS 174.111, are directed to assist**  
35 **the work group in the performance of its duties and, to the extent permitted by laws relating**  
36 **to confidentiality, to furnish such information and advice as the members of the work group**  
37 **consider necessary to perform their duties.**

38 **SECTION 5. Section 4 of this 2013 Act is repealed on June 30, 2015.**

39 **SECTION 6. The amendments to ORS 419A.255, 419A.256 and 419B.881 by sections 1 to 3**  
40 **of this 2013 Act apply to dependency proceedings commenced on or after the effective date**  
41 **of this 2013 Act.**

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