Chapter 419C

1993 EDITION

Juvenile Code: Delinquency

GENERALLY

419C.005 Jurisdiction

419C.010 Extradition

419C.013 Venue

TRANSFER

419C.050 Transfer to juvenile court from another court

419C.053 Transfer to court of county of child's residence

419C.056 Transfer of jurisdiction by court in county of child's residence

419C.059 Facilitation of disposition; interests of child; authority of court where proceeding pending to allow other county to conduct hearing or assume jurisdiction

419C.062 Factfinding when other county conducts hearing; record

419C.065 Transportation of child whose case is transferred

PROTECTIVE CUSTODY

419C.080 Protective custody; when authorized

419C.085 Citation in lieu of custody

419C.088 Custody by private person

419C.091 Custody not arrest

419C.094 Jurisdiction attaches at time child taken into custody

419C.097 Notice to parents

419C.100 Release of child taken into custody

419C.103 Procedure when child is not released

419C.106 Report required when child is taken into custody

419C.109 Initial disposition of child taken into custody

DETENTION

419C.130 Child may not be detained where adults are detained; exceptions

419C.133 Detention of child under 12 years of age; judicial review required

419C.136 Temporary hold to develop release plan; duration

419C.139 Speedy hearing on detention cases

419C.142 Notice of detention hearing

419C.145 Preadjudication detention; grounds

419C.150 Time limitations on detention

419C.153 Detention review or release hearing

419C.156 Detention of runaway from another state

419C.159 Escape; punishment

SHELTER HEARINGS

419C.170 Speedy hearing in shelter care cases

419C.173 Evidentiary hearing

419C.176 Conditional release by court

419C.179 Bail provisions not applicable

COURT-APPOINTED COUNSEL

419C.200 Court-appointed counsel for child

419C.203 Court may require payment for compensation of counsel

419C.206 Compensation for counsel when child, parent or guardian cannot pay

419C.209 Applicability of other laws

EDUCATIONAL SURROGATE

419C.220 Evaluation of needs; appointment of surrogate

419C.223 Duties and tenure

INFORMAL DISPOSITION AGREEMENTS

419C.230 Informal disposition agreements; when appropriate

419C.233 Nature of agreement

419C.236 Agreement may require counseling, community service, education, treatment or training; restitution

419C.239 Requirements of agreement

419C.242 Revocation and modification of agreement

419C.245 Right to counsel

PETITION

419C.250 Who may file petition

419C.255 Facts to be pleaded

419C.258 Service

419C.261 Amendment of petition

CRIMINAL PROCEDURE LAWS

419C.270 Application of criminal procedure laws

CONSOLIDATION

419C.280 Consolidation

PARTIES

419C.285 Parties to delinquency proceeding; rights of limited participation

SUMMONS

419C.300 Time limits on issuance of summons

419C.303 Form of summons; content

419C.306 Effect of summons; to whom issued

419C.309 Service of summons or other process

419C.312 Alternate service

419C.315 Travel expenses of party summoned

419C.317 Compliance with summons

419C.320 When arrest warrant for summoned person authorized

419C.323 Proceeding when summoned party not before court

WAIVER

419C.340 Authority to waive child to adult court

419C.343 Depositions

419C.346 Juvenile court's retention of authority over parent

419C.349 Grounds for waiving child to adult court
419C.352 Grounds for waiving child under 16 years of age
419C.355 Written findings required
419C.358 Consolidation of nonwaivable and waivable charges
419C.361 Disposition of nonwaivable consolidated charges and lesser included offenses
419C.364 Waiver of future cases
419C.367 Vacating order waiving future cases
419C.370 Waiver of motor vehicle, boating and game cases
419C.372 Handling of motor vehicle, boating or game cases not requiring waiver
419C.374 Alternative conduct of proceedings involving traffic, boating and game cases

ADJUDICATION

419C.400 Conduct of hearings
419C.405 Witnesses; subpoena
419C.408 Witness fees
419C.411 Authority to make disposition order

DISPOSITION

419C.440 Ward of the court
419C.443 Diversion; marijuana offenses; requirements
419C.446 Probation; requirements
419C.450 Restitution; policy; as condition of probation; factors to be considered
419C.453 Detention; when authorized
419C.456 Detention after escape
419C.459 Fines
419C.462 Community service
419C.465 Service to victim
419C.470 Opportunities to fulfill obligations imposed by court
419C.473 Authority to order blood testing
419C.475 Authority to order HIV testing
419C.478 Commitment to Children's Services Division
419C.481 Wardship, guardianship and legal custody of child committed to Children's Services Division
419C.483 Order to include reasonable efforts determination
419C.486 Consideration of recommendations of committing court
419C.489 Condition requiring medical care or special treatment; preparation of plan; progress reports
419C.492 Court's authority to review placement
419C.495 When commitment to training school authorized
419C.498 Disposition under compact, agreement or arrangement with another state
419C.501 Duration of disposition
419C.504 Duration of probation
419C.507 Additional options; consultation

LEGAL CUSTODIAN OF CHILD

419C.550 Duties and authority

GUARDIAN

419C.555 Authority to appoint guardian
419C.558 Duties and authority of guardian
419C.561 Guardian is not conservator

AUTHORITY OF COURT OVER PARENT OR GUARDIAN

419C.570 Parent or guardian summoned subject to jurisdiction of court
419C.573 Court may order education or counseling
419C.575 Court may order drug or alcohol treatment; hearing required

SUPPORT

419C.590 Authority of court to order support
419C.592 Support order is final judgment
419C.595 Support for child in state financed or supported residence
419C.597 Assignment of support obligation to state
419C.600 Enforcement

MODIFICATION OF ORDERS

419C.610 Authority to modify or set aside orders
419C.613 Notice of modification

REPORTS BY AGENCY HAVING GUARDIANSHIP OR LEGAL CUSTODY

419C.620 Circumstances requiring report
419C.623 Frequency and content of report
419C.626 Review hearing by court; findings
419C.629 Distribution of report by court

CHILD SURRENDERED FOR ADOPTION

419C.640 Agency's responsibility

DISPOSITIONAL REVIEW HEARINGS

419C.650 Scheduling dispositional review hearing
419C.653 Notice; appearance
419C.656 Dispositional review hearing; conduct; order

CURFEW

419C.680 Curfew; parental responsibility; authority of political subdivisions; criminal penalty

CROSS REFERENCES

Admissibility of Department of Human Resources computer printout reflecting payment of public assistance, 25.220

Child support formula for determining account, 25.270 to 25.285

Child support orders, health and dental insurance, 25.255

Denial of driving privileges of juvenile convicted of offense involving intoxicants, 809.260

District attorney and deputy, assisting juvenile court, 8.685

Inapplicability of judgment satisfaction procedure, 18.400

Interstate Compact on Juveniles, 417.030

Jurisdiction of courts with respect to juvenile issues, 3.250 to 3.280, 5.020, 46.092

Matters assigned to family court departments in circuit courts, 3.408

Metropolitan service district planning juvenile justice programs, 268.310

Support enforcement, Support Enforcement Division to represent obligee, 25.080

Support payment to Department of Human Resources, 25.020, 25.320

419C.005

Delinquency, sexual, minor, 163.435

Incapacity due to immaturity, criminal liability of child under 14, 161.290

Jurisdiction and venue, criminal proceedings, Ch. 131

419C.130

Detention practices under Juvenile Corrections Compact, 417.030 (Art. IX)

419C.320

Warrant of arrest, 133.110 to 133.140

419C.349

Detention of juvenile prior to conviction or execution of sentence, 169.800

Limitation on sentence imposed on person waived, 161.620

419C.446

Appointment of probation officers by judge of court of criminal jurisdiction, 137.590

419C.453

Detention practices under Juvenile Corrections Compact, 417.030 (Art. IX)

419C.478

Commitment of children to:
- Children's Services Division, 418.285
- Private child-caring agencies, 418.275

419C.495

Commitment of children under 12 to institution for delinquents prohibited, 420.011

Commitment to training school or youth care center does not affect court's powers of wardship, 420.031, 420.865

419C.498

Commitment to institution in other state under Western Interstate Corrections Compact, 421.294

Interstate Compact on Juveniles, 417.030

419C.507

Reciprocal agreements for interstate exchange of mentally ill or deficient patients, 428.240

419C.550

Obligation to support children:
- Guardian, 126.080, 126.137
- Parent, 109.010

419C.590

Criminal nonsupport, child under 18, 163.555

Support payment to clerk of court, 25.040

419C.600

Assistance in enforcement of liability to support, 418.135

Support Enforcement Division, powers to enforce support, 180.320 to 180.370

GENERALLY

419C.005 Jurisdiction. (1) The juvenile court has exclusive original jurisdiction in any case involving a person who is under 18 years of age and who has committed an act which is a violation, or which if done by an adult would constitute a violation, of a law or ordinance of the United States or a state, county or city.

(2) The provisions of subsection (1) of this section do not prevent a court of competent jurisdiction from entertaining a civil action or suit involving a child.

(3) The court shall have no further jurisdiction as provided in subsection (1) of this section after a minor has been emancipated pursuant to ORS 419B.550 to 419B.558. [1993 c.33 §149]

419C.010 Extradition. (1) The provisions of this chapter shall not apply to a child who, while under the age of 18 years, commits an act which is a violation, or which if done by an adult would constitute a violation, of a law or ordinance of this state or any of its political subdivisions, punishable by imprisonment, and thereafter flees from this state.

(2) The child described in subsection (1) of this section may be proceeded against in the manner provided in ORS 133.743 to 133.857.

(3) Upon the return of the child described in subsection (1) of this section to this state by extradition or otherwise, any proceedings against the child shall be commenced in the same manner as provided in this chapter.

(4) If a child described in subsection (1) of this section has fled to a state which has adopted the Rendition Amendment to the Interstate Compact on Juveniles, the return of the child shall be sought in accordance with the provisions of that compact. [1993 c.33 §150]

419C.013 Venue. (1) A juvenile proceeding shall commence in the county where the child resides.

(2) If the proceeding is based on allegations of jurisdiction under ORS 419C.005, the proceeding may also commence in the county in which the alleged act or behavior took place.

(3) Notwithstanding the provisions of ORS 34.320, an application for a writ of habeas corpus brought by or on behalf of a person who has been committed or placed in a juvenile training school which attacks the validity of the order of commitment shall be brought in the county in which the court that entered the order of commitment is located. [1993 c.33 §151]

TRANSFER

419C.050 Transfer to juvenile court from another court. If during the pendency of a proceeding in any court other than a juvenile court it is ascertained that the age of the person who is the subject of the proceeding is such that the matter is within the exclusive jurisdiction of the juvenile court, it is the duty of the court in which the proceeding is pending forthwith to transfer the proceeding, together with all the papers, documents and testimony connected therewith, to the juvenile court of the county in which the proceeding is pending. [1993 c.33 §152]

419C.053 Transfer to court of county of child's residence. (1) If a proceeding is initiated in a court of a county other than the county in which the child resides, that court, on its own motion or on the motion of a party made at any time prior to disposition, shall transfer the proceeding to the court of the county of the child's residence for such further proceeding as the receiving court finds proper. A like transfer may be made if the residence of the child changes during the proceeding, or if the child has been adjudicated within the jurisdiction of the court where the proceeding is initiated on grounds specified in ORS 419C.005 (1), and other proceedings involving the child are pending in the county of the child's residence. Certified copies of the court records pertaining to the immediate proceeding shall accompany the case on transfer.

(2) Notwithstanding subsection (1) of this section, if a child has no ascertainable residence in any county in this state, the court of the county wherein a proceeding is initiated may adjudicate any petition under ORS 419C.005 (1). [1993 c.33 §153]

419C.056 Transfer of jurisdiction by court in county of child's residence. Where a juvenile court proceeding is pending in a county other than the county in which the child resides and the case is transferable, the juvenile court of the county in which the child resides may authorize the court in which the case is pending to proceed with the case in either of the following ways where it will facilitate disposition of the case without adverse effect on the interests of the child:

(1) To hear, determine and dispose of the case in its entirety; or

(2) Prior to transferring the case, to conduct a hearing into the facts alleged to bring the child within the jurisdiction of the juvenile court, to determine the facts and to certify its findings to the juvenile court of the

county in which the child resides. [1993 c.33 §154]

419C.059 Facilitation of disposition; interests of child; authority of court where proceeding pending to allow other county to conduct hearing or assume jurisdiction. Where a proceeding is pending in the juvenile court of any county, the juvenile court of that county may authorize the juvenile court of any other county to do one or both of the following, where it will facilitate the disposition of the case without adverse effect on the interests of the child:

(1) To conduct a hearing into the facts alleged to bring the child within the jurisdiction of the juvenile court, to determine the facts and to certify its findings to the court in which the case is pending.

(2) To assume jurisdiction over the case and administer probation or protection supervision of the child, where the court in which the proceeding is pending:

(a) Finds that the child has moved to the other county or orders as part of its disposition of the proceeding that legal custody of the child be given to a person residing in the other county; and

(b) Is advised that the court of the other county will accept jurisdiction of the case. The cost of administering probation or protective supervision of the child shall be paid by the county accepting jurisdiction, unless the transferring and receiving counties otherwise agree. The cost of transporting the child shall be paid by the county transferring jurisdiction, unless the transferring and receiving counties otherwise agree. [1993 c.33 §155]

419C.062 Factfinding when other county conducts hearing; record. Where the juvenile court of one county is authorized by the juvenile court of another county to conduct a hearing into facts as provided in ORS 419C.056 (2) or 419C.059 (1), the facts so found and certified may be taken as established by the court of the county authorizing the hearing and, if adopted by written order of the latter court, form a part of its record in the case. [1993 c.33 §156]

419C.065 Transportation of child whose case is transferred. If the child who is the subject of the proceeding is, at the time of the transfer or temporary transfer provided for in ORS 419C.053, 419C.056 or 419C.059, in detention or shelter care or for other reason needs transportation to the other county, the county in which the child resides shall make such order or provision for the transportation and safekeeping of the child as is appropriate in the circumstances, including an order directing any peace officer of the county in which the child resides to transfer the child in the manner directed. [1993 c.33 §157]

PROTECTIVE CUSTODY

419C.080 Protective custody; when authorized. A child may be taken into protective custody by a peace officer, or by any other person authorized by the juvenile court of the county in which the child is found, in the following circumstances:

(1) Where, if the child were an adult, the child could be arrested without a warrant; or

(2) Where the juvenile court, by order indorsed on the summons as provided in ORS 419C.306 or otherwise, has ordered that the child be taken into protective custody. [1993 c. 33 §158; 1993 c.546 §59]

419C.085 Citation in lieu of custody. In lieu of taking a child into custody, a peace officer may issue a citation to a child for the same offenses and under the same circumstances that a citation may be issued to an adult. Unless the citation is issued for violation of law or ordinance for which an order has been entered pursuant to ORS 419C.370, the citation is returnable to the juvenile court of the county in which the citation is issued. Law enforcement agencies in a county, in consultation with the juvenile court of the county, may develop a form for citations issued pursuant to this section. [1993 c.33 §159]

419C.088 Custody by private person. A private person may take a child into protective custody in circumstances where, if the child were an adult, the person could arrest the child. [1993 c.546 §160; 1993 c.33 §60]

419C.091 Custody not arrest. (1) Protective custody shall not be deemed an arrest so far as the child is concerned. All peace officers shall keep a record of children taken into protective custody and shall promptly notify the juvenile court or counselor of all children taken into protective custody.

(2) A peace officer taking a child into protective custody has all the privileges and immunities of a peace officer making an arrest. [1993 c.33 §161; 1993 c.546 §61]

419C.094 Jurisdiction attaches at time child taken into custody. Except as otherwise provided in ORS 419C.103 (2) and (3), the jurisdiction of the juvenile court of the county in which a child is taken into protective custody shall attach from the time the child is taken into custody. [1993 c.33 §162; 1993 c.546 §62]

419C.097 Notice to parents. As soon as practicable after the child is taken into protective custody, the person taking the child into custody shall notify the child's parent,

guardian or other person responsible for the child. The notice shall inform the parent, guardian or other person of the action taken and the time and place of the hearing. [1993 c.33 §163; 1993 c.320 §2; 1993 c.546 §63]

419C.100 Release of child taken into custody. The person taking the child into protective custody shall release the child to the custody of the child's parent, guardian or other responsible person in this state, except in the following cases:

(1) Where the court has issued a warrant of arrest against the child.

(2) Where the person taking the child into protective custody has probable cause to believe that the welfare of the child or others may be immediately endangered by the release of the child. [1993 c.33 §164; 1993 c.546 §64]

419C.103 Procedure when child is not released. (1) If a child taken into protective custody is not released as provided in ORS 419C.100 and the juvenile court for the county has not established the alternative procedure authorized in subsection (4) of this section, the person taking the child into custody shall, without unnecessary delay, do one of the following:

(a) Take the child before the court or a person appointed by the court to effect disposition under ORS 419C.109 and 419C.136.

(b) Take the child to a place of detention or shelter care or a public or private agency designated by the court and as soon as possible thereafter notify the court that the child has been taken into custody.

(2) Where a child residing in some other county is taken into protective custody the child may be:

(a) Released to the child's parent, guardian or other responsible person in this state as provided in ORS 419C.100.

(b) Delivered to a peace officer or juvenile counselor in the county in which the child resides, if such delivery can be made without unnecessary delay. In such event, the person to whom the child is delivered shall assume protective custody of the child and shall proceed as provided in this chapter.

(3) Where a child is released or delivered as provided in subsection (2) of this section, the jurisdiction of the juvenile court of the county in which the child resides shall attach from the time the child is taken into custody.

(4) The juvenile court may establish, as an alternative to the provisions of subsection (1) of this section, that if a child taken into protective custody is not released as provided in ORS 419C.100, procedures shall be followed that comply with the following:

(a) The person taking the child into custody may communicate, by telecommunications or otherwise, with the person appointed by the court to effect disposition under ORS 419C.109.

(b) After interviewing the person taking the child into custody and obtaining such other information as is considered necessary, the person appointed by the court under ORS 419C.109 to effect disposition may exercise the authority granted under that section and shall, in such case, direct that the person taking the child into custody release the child or deliver the child in accordance with such direction.

(c) The person taking the child into custody shall comply with the direction of the person appointed by the court to effect disposition. [1993 c.33 §165; 1993 c.546 §65]

419C.106 Report required when child is taken into custody. Except where the child is taken into protective custody pursuant to an order of the court, the person taking the child into custody shall promptly file with the court or a counselor a brief written report stating all of the following:

(1) The child's name, age and address.

(2) The name and address of the person having legal or physical custody of the child.

(3) Efforts to notify the person having legal or physical custody of the child and the results of those efforts.

(4) Reasons for and circumstances under which the child was taken into protective custody.

(5) If the child is not taken to court, the placement of the child.

(6) If the child was not released, the reason why the child was not released.

(7) If the child is not taken to court, why the type of placement was chosen. [1993 c.33 §166; 1993 c.546 §66]

419C.109 Initial disposition of child taken into custody. This section establishes the authority and procedures that apply to a person designated by a court to effect disposition of a child taken into protective custody or brought before the court under ORS 419C.097, 419C.100, 419C.103 and 419C.106. The person shall comply with the following:

(1) The person may do any of the following when the person has taken custody of a child or has authority to effect disposition of a child taken into custody:

(a) Release the child to the custody of a parent, guardian or other responsible person.

(b) Release the child on the child's own recognizance when appropriate.

(c) Upon a finding that release of the child on the child's own recognizance is unwarranted, or upon order of the court or if probable cause exists to believe the child may be detained under ORS 419C.145, 419C.150, 419C.153, 419C.156, 419C.159 or 419C.453, place the child on conditional release.

(d) Subject to ORS 419A.059, 419A.061, 419C.130 and 419C.133, place the child in shelter care or detention. The child shall be placed in shelter care rather than detention, unless the person has probable cause to believe that the court will be able to detain the child under ORS 419C.145, 419C.150, 419C.153, 419C.156, 419C.159 or 419C.453.

(e) Pursuant to order of the court made subsequent to the filing of a petition, hold, retain or place the child in detention or shelter care subject to further order.

(f) Exercise authority to detain the child as provided in ORS 419C.136.

(2) If the child is released under subsection (1) of this section, the person releasing the child shall inform the juvenile court, which may review the release as provided in ORS 419C.153. [1993 c.33 §169; 1993 c.546 §67]

DETENTION

419C.130 Child may not be detained where adults are detained; exceptions. (1) No child shall be detained at any time in a police station, jail, prison or other place where adults are detained, except as follows:

(a) A child may be detained in a police station for up to five hours when necessary to obtain the child's name, age, residence and other identifying information.

(b) A child waived under ORS 419C.349 or 419C.364 to the court handling criminal actions or to municipal court may be detained in a jail or other place where adults are detained, except that any such person under 16 years of age shall, prior to conviction or after conviction but prior to execution of sentence, be detained, if at all, in a facility used by the county for the detention of children.

(2) No child waived to the court handling criminal actions or to municipal court pursuant to a standing order of the juvenile court under ORS 419C.370, including a child accused of nonpayment of fines, shall be detained in a jail or other place where adults are detained. [1993 c.33 §167; 1993 c.546 §115]

419C.133 Detention of child under 12 years of age; judicial review required. No child under 12 years of age shall be placed in detention except pursuant to judicial review. Such review may be ex parte, and the child does not need to be present. However, a juvenile court judge or referee must determine that the child is eligible for detention under ORS 419C.145 or 419C.156 and that appropriate alternative methods of controlling the child's behavior are unavailable. A child detained under this section shall have the right to a hearing as provided in ORS 419C.153. [1993 c.33 §168]

419C.136 Temporary hold to develop release plan; duration. If a parent, guardian or other person responsible for the child cannot be found or will not take responsibility for the child, no appropriate shelter care space is available and the child cannot be released safely on recognizance or conditionally, a child who is accused of an act which would be a crime if committed by an adult may be detained for a period of time not exceeding 24 hours from the time the child first is taken into custody to allow the juvenile department counselor or other person designated by the juvenile court to develop a release plan to insure the child's safety and appearance in court. Such detention shall conform to the limitations of ORS 419C.130. [1993 c.33 §170]

419C.139 Speedy hearing on detention cases. No child shall be held in detention or shelter care more than 24 hours, excluding Saturdays, Sundays and judicial holidays, except on order of the court made pursuant to a hearing under ORS 419C.145, 419C.150, 419C.153, 419C.156 and 419C.159. [1993 c.33 §171]

419C.142 Notice of detention hearing. Whenever a hearing concerning the detention of a child under this chapter is held, notice of the hearing shall be given to the child and, if any can be found, to a parent or guardian of the child or to any other person responsible for the child. The notice shall state the time, place and purpose of the hearing. If a parent, guardian or other person cannot be found and personally notified prior to the hearing, a written notice of the hearing shall be left at the residence, if known, of a parent, guardian or other person. [1993 c.33 §172]

419C.145 Preadjudication detention; grounds. (1) No child may be held or placed in detention before adjudication on the merits unless one or more of the following circumstances exists:

(a) The child is a fugitive from another jurisdiction;

(b) The child is alleged to be within the jurisdiction of the court by reason of ORS 419C.005, by having committed or attempted to commit an offense which, if committed by an adult, would be chargeable as:

(A) A crime involving infliction of physical injury to another person;

(B) Any felony crime against persons or property; or

(C) Criminal manufacture or delivery of a controlled substance;

(c) The child has willfully failed to appear at one or more juvenile court proceedings by having disobeyed a proper summons, citation or subpoena;

(d) The child is currently on probation imposed as a consequence of the child previously having been found to be within the jurisdiction of the court under ORS 419C.005, and there is probable cause to believe the child has violated one or more of the conditions of that probation; or

(e) The child is subject to conditions of release pending or following adjudication of a petition alleging that the child is within the jurisdiction of the court pursuant to ORS 419C.005 and there is probable cause to believe the child has violated a condition of release.

(2) Upon exercise of the authority of a person authorized by a court to effect disposition of a child taken into temporary custody or brought before the court under ORS 419C.097, 419C.100, 419C.103 and 419C.106 or at the detention hearing held pursuant to ORS 419C.170 and 419C.173, the child must be released to the custody of a parent or other responsible person, released upon the child's own recognizance or placed in shelter care unless the court or its authorized representative finds that there is probable cause to believe that the child may be detained under subsection (1) of this section, and that one or more of the following circumstances are present:

(a) No means less restrictive of the child's liberty gives reasonable assurance that the child will attend the adjudicative hearing; or

(b) The child's behavior endangers the physical welfare of the child or another person, or endangers the community and:

(A) The juvenile has committed or is alleged to have committed an act which if committed by an adult would constitute a felony or a violation of ORS 163.160; and

(B) The juvenile court or its authorized representative has reasonable cause to believe that other available preventive measures, including but not limited to increased security and monitoring of the child's behavior, have been tried, or if tried, would not adequately assure that the child would conform the child's conduct to conditions imposed by the court or its authorized representative to protect the best interests of the child or the community.

(3) Notwithstanding subsection (2) of this section, if a child is subject to detention under subsection (1)(d) of this section, the child may be placed in detention if the juvenile court or its authorized representative has reasonable cause to believe that other available preventive measures including but not limited to additional conditions of probation, increased security and monitoring of the child's behavior, community service and alternative community placement have been tried, or if tried, would not adequately assure that the child would conform the child's conduct, pending the probation violation hearing, to conditions imposed by the court to protect the best interests of the child or the community.

(4) In determining whether detention is appropriate under subsections (2) and (3) of this section, the court or its authorized representative shall consider the following:

(a) The nature and extent of the child's family relationships and the child's relationships with other responsible adults in the community;

(b) The child's previous record of adjudicated juvenile court proceedings and recent demonstrable conduct;

(c) The child's past and present residence;

(d) The child's school education status and school attendance record;

(e) The child's past and present employment;

(f) The child's previous record regarding appearance in court;

(g) The nature of the charges against the child and any mitigating or aggravating factors; and

(h) Any other facts relevant to the likelihood of the child's appearance in court or likelihood that the child will comply with the law and other conditions of release.

(5) When a child is ordered held or placed in detention, the court or its authorized representative shall state in writing the basis for its detention decision and a finding that it is contrary to the welfare of the child and community for the child to be released to the custody of the child's parent or some other responsible adult. The child shall have the opportunity to rebut evidence received by the court and to present evidence at the hearing. [1993 c.33 §173; 1993 c.546 §130]

419C.150 Time limitations on detention. (1) A child may be held in detention under this section and ORS 419C.145, 419C.153 and 419C.156 for a maximum of 28 days except for good cause shown prior to the expiration of the 28-day period. If good cause for continued detention is shown, the

period of detention may be extended for no more than an additional 28 days unless the adjudication is continued with the express consent of the child.

(2) Subsection (1) of this section does not apply to a child alleged to be within the jurisdiction of the juvenile court for having committed an act that would be murder, attempted murder, conspiracy to commit murder or treason if committed by an adult and if proof of the act is evident or the presumption strong that the child committed the act. The juvenile court may conduct such hearing as the court considers necessary to determine whether the proof is evident or the presumption strong. [1993 c.33 §174]

419C.153 Detention review or release hearing. (1) Any child ordered detained under ORS 419C.145, 419C.150 and 419C.156 shall have a review hearing at least every 10 days, excluding Saturdays, Sundays and judicial holidays. At the review hearing the court shall determine whether sufficient cause exists to require continued detention of the child. In addition, the court may review and may confirm, revoke or modify any order for the detention or release of the child under this section or ORS 419C.109, 419C.136, 419C.139, 419C.145, 419C.150 or 419C.156 and, in the event that the child is alleged to have committed an offense which if committed by an adult would be a misdemeanor or Class C felony, may do so ex parte. Release of a child may not be revoked, however, except upon a finding that the child may be detained under this section or ORS 419C.145, 419C.150 and 419C.156, and after a hearing is held in accordance with ORS 419C.109, 419C.136 and 419C.139 and subsection (2) of this section.

(2) A hearing to consider whether to revoke the release of a child or whether a child should be continued in detention may be held by telephone or closed circuit television as long as all parties having an interest in the proceeding have access to the telephone or television circuit used for the hearing and as long as the hearing is made publicly audible within the court room of the court under whose authority it is held. [1993 c.33 §175]

419C.156 Detention of runaway from another state. Notwithstanding ORS 419C.145 (1) and (2), the court may order the detention of a child who resides in another state if the court finds probable cause to believe that the child has run away from home or from a placement. If a child is ordered detained under this section, the court shall make such orders as are necessary to cause the child to be immediately returned to the child's state of residence. [1993 c.33 §176]

419C.159 Escape; punishment. Any child 12 years of age or older, alleged to be within the jurisdiction of the juvenile court by reason of having committed an act which would be a crime if committed by an adult, who escapes from a juvenile detention facility as defined in ORS 419A.004 after having been placed in the facility pursuant to the filing of a petition alleging that the child has committed an act which would be a crime if committed by an adult commits a violation punishable by placement in a detention facility for children for a specific period of time not to exceed eight days, in addition to time already spent in the facility, when such punishment is ordered by the juvenile court pursuant to ORS 419C.453. [1993 c.33 §177]

SHELTER HEARINGS

419C.170 Speedy hearing in shelter care cases. No child shall be held in shelter care more than 24 hours, excluding Saturdays, Sundays and judicial holidays, except on order of the court made pursuant to a hearing under ORS 419C.145, 419C.150, 419C.153 and 419C.156. [1993 c.33 §178]

419C.173 Evidentiary hearing. When the child is taken, or is about to be taken, into temporary custody pursuant to ORS 419C.080 and 419C.088 and placed in shelter care, a parent or child shall be given the opportunity to present evidence to the court at the hearing specified in ORS 419C.170, and at any subsequent review hearing, that the child can be returned home without further danger of suffering physical injury or emotional harm, endangering or harming others, or not remaining within the reach of the court process prior to adjudication. At the hearing:

(1) The court shall make a written finding as to whether the division has made reasonable efforts, considering the circumstances of the child and parent, to prevent or eliminate the need for removal of the child from the home or to reunify the family;

(2) In determining whether a child shall be removed or continued out of the home, the court shall consider whether the provision of reasonable and available services can prevent or eliminate the need to separate the family; and

(3) The court shall make a written finding in every order of removal that it is in the best interest and for the welfare of the child that the child be removed from the home or continued in care. [1993 c.33 §179; 1993 c.295 §6; 1993 c.546 §131]

419C.176 Conditional release by court. If the court finds that release of the child on the child's own recognizance is unwarranted

and if probable cause exists to believe that the child may be detained under ORS 419A.063, 419C.145 or 419C.453, the court may make a conditional release of the child subject to such conditions as will protect the safety of the child, other persons and the community and insure the child's appearance in court. [1993 c.33 §180]

419C.179 Bail provisions not applicable. Provisions regarding bail in criminal cases shall not be applicable to children held or taken into custody as provided in this chapter. [1993 c.33 §181]

COURT-APPOINTED COUNSEL

419C.200 Court-appointed counsel for child. (1) If the child, the parent or guardian requests counsel for the child but is without sufficient financial means to employ suitable counsel possessing skills and experience commensurate with the nature of the petition and the complexity of the case, the court may appoint suitable counsel to represent the child. Whenever requested to do so, the court shall appoint counsel to represent the child in every case filed pursuant to ORS 419C.005 in which the child would be entitled to court-appointed counsel if the child were an adult charged with the same offense.

(2) Upon presentation of the order of appointment under this section by the attorney for the child, any agency, hospital, school organization, division or department of the state, doctor, nurse or other health care provider, psychologist, psychiatrist, police department or mental health clinic shall permit the attorney to inspect and copy any records of the child or children involved in the case, without the consent of the child or children or parents. This subsection does not apply to records of a police agency relating to an ongoing investigation prior to charging. [1993 c.33 §182; 1993 c.234 §2; 1993 c.546 §68]

419C.203 Court may require payment for compensation of counsel. Where the court appoints counsel to represent the child, it may require the parent, if able, or guardian of the estate, if the estate is able, to pay compensation for counsel and reasonable expenses of investigation, preparation and presentation. The test of the parent's or estate's ability to pay such compensation and expenses shall be the same test as applied to appointment of counsel for defendants under ORS 135.050. The court's order of payment shall be enforceable in the same manner as an order of support under ORS 419C.600. [1993 c.33 §183]

419C.206 Compensation for counsel when child, parent or guardian cannot pay. Where the court appoints counsel for the child and the child, parent or guardian is without sufficient financial means to employ counsel, the compensation for counsel and reasonable expenses of investigation, preparation and presentation paid or incurred shall be allowed and paid as provided in ORS 135.055. [1993 c.33 §184]

419C.209 Applicability of other laws. Appointment of counsel for the child or parent is subject to ORS 135.055, 151.430 to 151.480 and applicable contracts entered into by the State Court Administrator under ORS 151.460. [1993 c.33 §186]

EDUCATIONAL SURROGATE

419C.220 Evaluation of needs; appointment of surrogate. (1) As a part of the investigation, before making a child a ward of the court, a preliminary evaluation shall also be conducted to determine if the child may be eligible for special education as provided in ORS chapter 343. This preliminary evaluation of disabling conditions shall not constitute a final determination of the child's eligibility for special education but shall be used as the basis for appointing a surrogate to protect the child's due process rights pursuant to ORS chapter 343.

(2) The court shall appoint a surrogate for a child when that child is made a ward of the court if the court finds that the child may be eligible for special education programs because of a disabling condition as provided in ORS chapter 343. This finding of probable eligibility shall be based on the preliminary evaluation conducted pursuant to subsection (1) of this section. [1993 c.33 §187]

419C.223 Duties and tenure. A person that is appointed surrogate for a dependent child has the duty and authority to protect the due process rights of the child with respect to the provision of free appropriate public education. A surrogate appointed by the court shall immediately apply to the attending school district for an evaluation of the child's eligibility for special education and shall participate in the development of the child's educational plan as provided in ORS chapter 343. The duties and responsibilities of the surrogate shall continue until whichever of the following occurs first:

(1) The child is 21 years of age;

(2) The child is determined to be no longer eligible for special education; or

(3) The juvenile court terminates wardship of the child and determines that the child's parent or guardian is both known and available to protect the special educational rights of the child. [1993 c.33 §188]

INFORMAL DISPOSITION AGREEMENTS

419C.230 Informal disposition agreements; when appropriate. An informal disposition agreement may be entered into when a child has been referred to a county juvenile department, and a juvenile department counselor has probable cause to believe that the child may be found to be within the jurisdiction of the juvenile court for one or more acts specified in ORS 419C.005. [1993 c.33 §189]

419C.233 Nature of agreement. An informal disposition agreement is a voluntary contract between a child described in ORS 419C.230 and a juvenile department whereby the child agrees to fulfill certain conditions in exchange for not having a petition filed against the child. [1993 c.33 §190]

419C.236 Agreement may require counseling, community service, education, treatment or training; restitution. (1) An informal disposition agreement may require participation in or referral to counseling, a period of community service, drug or alcohol education or treatment, vocational training or any other legal activity which in the opinion of the counselor would be beneficial to the child.

(2) An informal disposition may require that the child make restitution to any person who was physically injured or who suffered loss of or damage to property as a result of the conduct alleged. Before setting the amount of restitution, the juvenile department shall consult with the victim concerning the amount of damage. Restitution does not limit or impair the right of a victim to sue in a civil action for damages suffered, nor shall the fact of consultation by the victim be admissible in such civil action to prove consent or agreement by the victim. However, the court shall credit any restitution paid by the child to a victim against any judgment in favor of the victim in such civil action. [1993 c.33 §191]

419C.239 Requirements of agreement. An informal disposition agreement shall:

(1) Be completed within a period of time not to exceed six months;

(2) Be voluntarily entered into by all parties;

(3) Be revocable by the child at any time by a written revocation;

(4) Be revocable by the juvenile department in the event the department has reasonable cause to believe the child has failed to carry out the terms of the informal disposition agreement or has committed a subsequent offense;

(5) Not be used as evidence against the child at any adjudicatory hearing;

(6) Not require admission of guilt or be used as evidence of guilt;

(7) Be executed in writing and expressed in language understandable to the persons involved;

(8) Be signed by the juvenile department, the child, the child's parent or parents or legal guardian, and the child's counsel, if any;

(9) Become part of the child's juvenile department record; and

(10) When the child has been charged with having committed the child's first violation of a provision under ORS 475.992 prohibiting delivery for no consideration of less than five grams of marijuana or prohibiting possession of less than one ounce of marijuana and unless the juvenile department determines that it would be inappropriate in the particular case:

(a) Require the child to participate in a diagnostic assessment and an information or treatment program as recommended by the assessment. The agencies or organizations providing assessment or programs of information or treatment must be the same as those designated by the court under ORS 419C.443 (1) and must meet the standards set by the Assistant Director for Alcohol and Drug Abuse Programs. The parent of the child shall pay the cost of the child's participation in the program based upon the ability of the parent to pay. If the program finds the parent is indigent, as defined by the rules of the Assistant Director for Alcohol and Drug Abuse Programs, reimbursement of program expenses can be made at rates established by rule of the Assistant Director for Alcohol and Drug Abuse Programs, and subject to the availability, from the moneys transferred to the Department of Human Resources under ORS 137.303 for use by alcohol and drug abuse programs.

(b) Monitor the child's progress in the program which shall be the responsibility of the diagnostic assessment agency or organization. It shall make a report to the juvenile department stating the child's successful completion or failure to complete all or any part of the program specified by the diagnostic assessment. The form of the report shall be determined by agreement between the juvenile department and the diagnostic assessment agency or organization. The juvenile department shall make the report a part of the record of the case. [1993 c.33 §192]

419C.242 Revocation and modification of agreement. (1) If an informal disposition agreement is revoked pursuant to ORS 419C.239, the juvenile department shall either extend the agreement pursuant to sub-

section (2) of this section or file a petition with the juvenile court, and an adjudicatory hearing may be held.

(2) If the juvenile department has reasonable cause to believe that the child has failed to carry out the terms of the informal disposition agreement or has committed a subsequent offense, in lieu of revoking the agreement, the department may modify the terms of the agreement and extend the period of the agreement for an additional six months from the date on which the modification was made with the consent of the child and the child's counsel, if any. [1993 c.33 §193]

419C.245 Right to counsel. The juvenile department counselor shall inform the child and the child's parents or guardian of the child's right to counsel and to court-appointed counsel, if the child is indigent. The right to counsel shall attach prior to the child's entering into an informal disposition agreement. [1993 c.33 §194]

PETITION

419C.250 Who may file petition. (1) The state, acting through the district attorney, Attorney General or juvenile department counselor, may file a petition alleging that a child is within the jurisdiction of the court as provided in ORS 419C.005.

(2) At any time after a petition is filed, the court may make an order providing for the temporary custody of the child.

(3) The court may dismiss the petition at any stage of the proceedings.

(4) The petition and all subsequent court documents in the proceeding shall be entitled, "In the Matter of_____, a child." The petition shall be in writing and verified upon the information and belief of the petitioner. [1993 c.546 §70 (enacted in lieu of 1993 c.33 §195)]

419C.255 Facts to be pleaded. (1) The petition shall set forth in ordinary and concise language such of the following facts as are known and indicate any which are not known:

(a) The name, age and residence of the child.

(b) The facts which bring the child within the jurisdiction of the court as provided in ORS 419C.005.

(c) The name and residence of the child's parents or, if the child has no parents or the names and residences of both parents are unknown, then the name and address of the child's guardian, if the child has a guardian.

(d) The name and residence of the person having physical custody of the child.

(2) A petition alleging jurisdiction under ORS 419C.005 shall set forth in addition the name and city of residence if known of any person who was physically injured or who suffered loss of or damage to property as a result of the conduct alleged. [1993 c.33 §198]

419C.258 Service. A certified copy of the petition shall be served, together with the summons, upon all persons upon whom summonses are served under ORS 419C.300, 419C.303 and 419C.306. [1993 c.33 §199]

419C.261 Amendment of petition. The court, on motion of an interested party or on its own motion, may at any time direct that the petition be amended. If the amendment results in a substantial departure from the facts originally alleged, the court shall grant such continuance as the interests of justice may require. [1993 c.33 §200]

CRIMINAL PROCEDURE LAWS

419C.270 Application of criminal procedure laws. In all proceedings brought under ORS 419C.005, the following rules of criminal procedure apply:

(1) ORS 133.673, 133.683, 133.693 and 133.703;

(2) ORS 135.455, 135.465 and 135.470;

(3) ORS 135.610, 135.630 (3) to (6), 135.640 and 135.670;

(4) ORS 135.711, 135.713, 135.715, 135.717, 135.720, 135.725, 135.727, 135.730, 135.733, 135.735, 135.737, 135.740 and 135.743;

(5) ORS 135.805 and 135.815 (1) to (5); and

(6) ORS 135.825, 135.835, 135.845 and 135.855 to 135.873. [1993 c.546 §72]

CONSOLIDATION

419C.280 Consolidation. Juvenile court hearings shall be held at a special session of the court for that purpose and each case shall be heard separately, except that two or more cases may be heard together in the following instances:

(1) Cases involving violations of motor vehicle laws or ordinances where none of the cases involves death or serious injury to persons.

(2) Cases arising in whole or in part out of a single transaction or series of related transactions. [1993 c.33 §201]

PARTIES

419C.285 Parties to delinquency proceeding; rights of limited participation. (1) At the adjudication stage of a delinquency proceeding, the parties to the proceeding are the child and the state, represented by the district attorney or the juvenile department.

At the dispositional stage of a delinquency proceeding, the following are also parties:

(a) The parents or guardian of the child;

(b) A court appointed special advocate, if appointed;

(c) The Children's Services Division or other child care agency, if the child is temporarily committed to the agency; and

(d) An intervenor under ORS 109.119 (1) to (4).

(2) The rights of the parties include, but are not limited to:

(a) The right to notice of the proceeding and copies of the pleadings;

(b) The right to appear with counsel and to have counsel appointed if otherwise provided by law;

(c) The right to call witnesses, cross-examine witnesses and participate in hearings;

(d) The right to appeal; and

(e) The right to request a hearing.

(3)(a) Persons who are not parties under subsection (1) of this section may petition the court for rights of limited participation. The petition must be filed and served on all parties no later than two weeks before a proceeding in the case in which participation is sought. The petition 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.

(b) If the court finds that the petition is well founded, the court may grant rights of limited participation as specified by the court.

(c) Persons petitioning for rights of limited participation are not entitled to court-appointed counsel. [1993 c.546 §73]

SUMMONS

419C.300 Time limits on issuance of summons. Promptly after the petition is filed, there shall be an investigation of the circumstances concerning the child. No later than 60 days after the petition is filed, summons may be issued. [1993 c.33 §202]

419C.303 Form of summons; content. The summons shall be signed by a counselor or some other person acting under the direction of the court and shall contain the name of the court, the title of the proceeding and, except for a published summons, a brief statement of the substance of the facts required by ORS 419C.255 (1)(b). The summons shall also include a notice that the parent or other person legally obligated to support the child may be required to pay, at some future date, for all or a portion of the support of the child, including the cost of out-of-home placement, depending upon the ability of the parent to pay support. [1993 c.33 §203; 1993 c.546 §94]

419C.306 Effect of summons; to whom issued. (1) The summons shall require the person or persons who have physical custody of the child to appear personally and bring the child before the court at the time and place stated in the summons. The time for the hearing on the petition shall be fixed at a reasonable time, not less than 24 hours, after the issuance of the summons. If it appears to the court that the welfare of the child or of the public requires that the child immediately be taken into custody, the court may indorse an order on the summons directing the officer serving it to take the child into custody.

(2) Summons shall be issued to the legal parents of the child, without regard to who has legal or physical custody of the child, and to the legal guardians, if any, of the child.

(3) If the child is 12 years of age or older, a certified copy of the summons shall be served upon the child.

(4) Summons may be issued requiring the appearance of any person whose presence the court deems necessary. When a summons is issued to a child pursuant to a petition alleging jurisdiction under ORS 419C.005, a copy of the summons shall be mailed to all victims whose names appear on the petition pursuant to ORS 419C.255 (2). The copy of the summons shall be accompanied by a notice that the victim may be present for the child's appearance before the court and is entitled to request and receive notification of future hearings before the court in regard to the particular case. The copy of the summons shall also be accompanied by a notice informing the victim of the provisions of ORS 30.765. [1993 c.33 §204; 1993 c.546 §74]

419C.309 Service of summons or other process. Summonses or other process issuing from the juvenile court may be served without further indorsement in any county of the state by an officer of the county in which the proceeding is pending, by an officer of the county in which the person to be served is found or by any person authorized by the court to serve the process. Except as otherwise provided in this chapter, the provisions of law or the Oregon Rules of Civil Procedure applicable to summonses in civil cases

apply to summonses issued from juvenile court. [1993 c.33 §205]

419C.312 Alternate service. (1) If any parent or guardian required to be summoned as provided in ORS 419C.306 cannot be found within the state, a summons may be served on the parent or guardian in any of the following ways:

(a) If the address of the parent or guardian is known, by sending the parent or guardian a copy of the summons by registered or certified mail with a return receipt to be signed by the addressee only.

(b) By personal service outside the state.

(2) Service as provided in this section and ORS 419C.309 shall vest the court with jurisdiction over the parents or guardian in the same manner and to the same extent as if the person served were served personally within this state. [1993 c.33 §206; 1993 c.546 §75]

419C.315 Travel expenses of party summoned. The court may authorize payment of travel expenses of any party summoned. Except as provided in this section, responsibility for the payment of the cost of service of summons or other process on any party, and for payment of travel expenses so authorized, shall be borne by the party issuing the summons or requesting the court to issue the summons. When the Children's Services Division issues the summons or requests the court to issue the summons, responsibility for such payment shall be borne by the county. [1993 c.33 §207]

419C.317 Compliance with summons. No person required to appear as provided in ORS 419C.306 shall without reasonable cause fail to appear or, where directed in the summons, to bring the child before the court. [1993 c.33 §208]

419C.320 When arrest warrant for summoned person authorized. If the summons cannot be served, if the person to whom the summons is directed fails to obey it or if it appears to the court that the summons will be ineffectual, the court may direct issuance of a warrant of arrest against the person summoned or against the child. [1993 c.33 §209]

419C.323 Proceeding when summoned party not before court. If the child is before the court, the court has jurisdiction to proceed with the case notwithstanding the failure to serve summons upon any person required to be served by ORS 419C.300, 419C.303 and 419C.306, except that:

(1) No order for support as provided in ORS 419C.590, 419C.592, 419C.595 and 419C.597 may be entered against a person unless that person is served as provided in ORS 419C.309.

(2) If it appears to the court that a parent or guardian required to be served by ORS 419C.300, 419C.303 and 419C.306 was not served as provided in ORS 419C.309, 419C.312 and 419C.315, or was served on such short notice that the parent or guardian did not have a reasonable opportunity to appear at the time fixed, the court shall, upon petition by the parent or guardian, reopen the case for full consideration. [1993 c.33 §210]

WAIVER

419C.340 Authority to waive child to adult court. In the circumstances set forth in ORS 419C.349, 419C.352, 419C.364, 419C.367 and 419C.370, the court may waive the child to the appropriate court handling criminal actions, or to municipal court. [1993 c.33 §211; 1993 c.546 §76]

419C.343 Depositions. (1) After the commencement of any proceeding in which a motion to waive has been filed, a party may move the court for an order allowing the taking of a deposition to perpetuate the testimony of a witness who is:

(a) Outside of the jurisdiction of, or otherwise not subject to the process of, the court; or

(b) Unable to attend because of age, sickness, infirmity, imprisonment or undue hardship.

(2) The affidavit in support of the motion to take a deposition to perpetuate testimony, in addition to setting forth the reasons described in subsection (1)(a) and (b) of this section, shall also set forth:

(a) The reasons why the testimony of the witness sought to be deposed cannot be taken by telephone at the time of the hearing;

(b) Where the deposition is to be taken;

(c) The manner of recording the deposition; and

(d) A brief statement of the substance of the testimony that the witness is expected to give.

(3) If the court finds that taking a deposition will best promote the just, speedy and inexpensive resolution of one or more issues in the proceeding or that taking a deposition is necessary to meet the requirements of due process, the court shall grant the motion.

(4) If the motion is granted, the court may, in its discretion, set conditions regarding the time, place and method of taking the deposition.

(5) All objections to any testimony or evidence taken at the deposition shall be made at the time and noted upon the record. The court before which the testimony is offered

shall rule on any objections before the testimony is offered. Any objection not made at the deposition is waived. [1993 c.546 §81]

419C.346 Juvenile court's retention of authority over parent. If the juvenile court waives a child to another court under ORS 419C.349, 419C.355 and 419C.370 for disposition as an adult, the juvenile court nevertheless may retain jurisdiction over the child's parents or guardians under ORS 419C.570. However, if the court enters an order of waiver under ORS 419C.364, jurisdiction over the parents or guardians under ORS 419C.570 shall terminate. [1993 c.33 §212; 1993 c.546 §77]

419C.349 Grounds for waiving child to adult court. The juvenile court, after a hearing except as otherwise provided in ORS 419C.364 or 419C.370, may waive a child to a circuit, district, justice or municipal court of competent jurisdiction for prosecution as an adult if:

(1) The child is 15 years of age or older at the time of the commission of the alleged offense;

(2) The child, except as otherwise provided in ORS 419C.364 and 419C.370, is alleged to have committed a criminal offense constituting murder under ORS 163.115 or any aggravated form thereof, a Class A or Class B felony or any of the following Class C felonies:

(a) Escape in the second degree under ORS 162.155.

(b) Assault in the third degree under ORS 163.165.

(c) Coercion under ORS 163.275 (1)(a).

(d) Arson in the second degree under ORS 164.315.

(e) Robbery in the third degree under ORS 164.395;

(3) The child at the time of the alleged offense was of sufficient sophistication and maturity to appreciate the nature and quality of the conduct involved; and

(4) The juvenile court, after considering the following criteria, determines by a preponderance of the evidence that retaining jurisdiction will not serve the best interests of the child and of society and therefore is not justified:

(a) The amenability of the child to treatment and rehabilitation given the techniques, facilities and personnel for rehabilitation available to the juvenile court and to the criminal court which would have jurisdiction after transfer;

(b) The protection required by the community, given the seriousness of the offense alleged;

(c) The aggressive, violent, premeditated or willful manner in which the offense was alleged to have been committed;

(d) The previous history of the child, including:

(A) Prior treatment efforts and out-of-home placements; and

(B) The physical, emotional and mental health of the child;

(e) The child's prior record of acts which would be crimes if committed by an adult;

(f) The gravity of the loss, damage or injury caused or attempted during the offense;

(g) The prosecutive merit of the case against the child; and

(h) The desirability of disposing of all cases in one trial if there were adult cooffenders. [1993 c.33 §213; 1993 c.546 §78]

419C.352 Grounds for waiving child under 16 years of age. A person under 16 years of age shall not be waived for disposition as an adult under ORS 419C.349 unless the child is represented by counsel during the waiver proceedings and is alleged to have committed an act or acts that if committed by an adult would constitute one or more of the following crimes:

(1) Murder or any aggravated form thereof under ORS 163.095 or 163.115, or an attempt to commit murder or aggravated murder;

(2) Manslaughter in the first degree under ORS 163.118;

(3) Assault in the first degree under ORS 163.185;

(4) Rape in the first degree under ORS 163.375 (1)(a);

(5) Sodomy in the first degree under ORS 163.405 (1)(a); or

(6) Robbery in the first degree under ORS 164.415. [1993 c.33 §214; 1993 c.546 §79]

419C.355 Written findings required. The juvenile court shall make a specific, detailed, written finding of fact to support any determination under ORS 419C.349 (3) and (4). [1993 c.33 §215]

419C.358 Consolidation of nonwaivable and waivable charges. When a person is waived for prosecution as an adult, the person shall be waived only on the actual charges justifying the waiver under ORS 419C.349 (2) or 419C.352, as the case may be. Any nonwaivable charges arising out of the same act or transaction as the waivable charge shall be consolidated with the waivable charge for purposes of conducting the adjudicatory hearing on the nonwaivable charges. [1993 c.33 §216; 1993 c.546 §82]

419C.361 Disposition of nonwaivable consolidated charges and lesser included offenses. (1) Notwithstanding that the juvenile court has waived the case under ORS 419C.349, 419C.352, 419C.355, 419C.358, 419C.364, 419C.367 and 419C.370, the court of waiver shall return the case to the juvenile court unless an accusatory instrument is filed in the court of waiver alleging, in the case of a person under 16 years of age, a crime listed in ORS 419C.352 or, in the case of any other person, a crime listed in ORS 419C.349 (2). Also in the case of a waived person, when a trial has been held in the court of waiver upon an accusatory instrument alleging a crime listed in ORS 419C.349 (2) or 419C.352, as the case may be, and the person is found guilty of any lesser included offense that is not itself a waivable offense, the trial court shall not sentence the defendant therein, but the trial court shall order a presentence report to be made in the case, shall set forth in a memorandum such observations as the court may make regarding the case and shall then return the case to the juvenile court in order that the juvenile court make disposition in the case based upon the guilty finding in the court of waiver. Disposition shall be as if the juvenile court itself had found the child to be in its jurisdiction pursuant to ORS 419C.005. The records and consequences of the case shall, in all respects, be as if the juvenile court itself had found the child to be in its jurisdiction pursuant to ORS 419C.005. When the person is found guilty of a nonwaivable charge that was consolidated with a waivable charge under ORS 419C.358, the case shall be returned to the juvenile court for disposition as provided in this subsection for lesser included offenses.

(2) Nothing in this section or ORS 419C.358 applies to a waiver under ORS 419C.364 or 419C.370. [1993 c.33 §217; 1993 c.546 §83]

419C.364 Waiver of future cases. After the juvenile court has entered an order waiving a child to an adult court under ORS 419C.349, the court may, if the child is 16 years of age or older, enter a subsequent order providing that in all future cases involving the same child, the child shall be waived to the appropriate court without further proceedings under ORS 419C.349 and ORS 419C.370. [1993 c.33 §218; 1993 c.546 §84]

419C.367 Vacating order waiving future cases. The juvenile court may at any time direct that the subsequent order entered under ORS 419C.364 shall be vacated or that a pending case be waived to the juvenile court for further proceedings. The court may make such a direction on any case but shall do so and require a pending case to be waived to the juvenile court if it cannot support the finding required under ORS 419C.355. The juvenile court shall direct that the subsequent order entered under ORS 419C.364 shall be vacated when the child is not convicted in the waived case that preceded the order under ORS 419C.364. [1993 c.33 §219; 1993 c.546 §85]

419C.370 Waiver of motor vehicle, boating and game cases. The juvenile court may enter an order directing that all cases involving violation of a law or ordinance relating to the use or operation of a motor vehicle, boating laws or game laws be waived to criminal or municipal court, subject to the following conditions:

(1) That the criminal or municipal court prior to hearing a case, other than a case involving a parking violation, in which the defendant is or appears to be under 18 years of age notify the juvenile court of that fact; and

(2) That the juvenile court may direct that any such case be waived to the juvenile court for further proceedings. [1993 c.33 §220; 1993 c.546 §86]

419C.372 Handling of motor vehicle, boating or game cases not requiring waiver. If the child's conduct consists, or is alleged to consist, of a violation of a law or ordinance relating to the use or operation of a motor vehicle, boating laws or game laws and it appears to the court that the nature of the offense and the child's background are such that a proceeding as provided in this chapter is not warranted, the court may handle:

(1) Cases involving boating laws or game laws as provided in ORS 419C.374.

(2) Cases involving the use or operation of a motor vehicle as provided under ORS 809.370. [1993 c.33 §221; 1993 c.546 §95]

419C.374 Alternative conduct of proceedings involving traffic, boating and game cases. (1) A petition relating to boating or game offenses shall be filed as provided in ORS 419C.250, 419C.255 and 419C.258. Motor vehicle offenses are subject to ORS 809.370.

(2) Summons as provided in ORS 419C.300 shall be issued to the parent or other person having physical custody of the child, requiring the parent or other person to appear with the child before the court at the time and place stated in the summons.

(3) The summons may be served as provided in ORS 419C.309, 419C.312 and 419C.315 or by mailing a copy thereof to the parent or other person having physical custody of the child. If the summons is served

personally, a warrant may be issued as provided in ORS 419C.320.

(4) A hearing shall be held as provided in ORS 419C.142, 419C.280 and 419C.400. At the termination of the hearing, if the court finds the matters alleged in the petition to be true, it may enter an order finding the child to be a juvenile:

(a) Motor vehicle offender and dispose of the case as provided in ORS 809.370; or

(b) Boating law offender or a game law offender and may dispose of the case as provided in subsection (5) of this section.

(5) In a proceeding under this chapter, the juvenile court may suspend a hunting or fishing license or permit where a game violation is involved and may make such other recommendations where a boating violation is involved. [1993 c.33 §222]

ADJUDICATION

419C.400 Conduct of hearings. (1) The hearing shall be held by the court without a jury and may be continued from time to time.

(2) The facts alleged in the petition showing the child to be within the jurisdiction of the court as provided in ORS 419C.005, unless admitted, must be established beyond a reasonable doubt.

(3) For the purpose of determining proper disposition of the child, testimony, reports or other material relating to the child's mental, physical and social history and prognosis may be received by the court without regard to their competency or relevancy under the rules of evidence.

(4) An adjudication by a juvenile court that a child is within its jurisdiction is not a conviction of a crime or offense. [1993 c.33 §223; 1993 c.546 §87]

419C.405 Witnesses; subpoena. (1) Witnesses or other persons necessary for the conduct of the hearing may be subpoenaed. The child, parents, guardian or any person appearing in the child's behalf may have compulsory attendance of witnesses in the child's or their behalf in the same manner as provided in ORS 136.567 to 136.603. The form of the subpoena shall be substantially as provided in ORS 136.575 (4) or (6), but shall describe the action as a "juvenile court proceeding" and the appearance as on behalf of "the court," "the child," and so on, as the case may be.

(2) In addition to the subpoena available under subsection (1) of this section, when the petition alleges that the child is within the jurisdiction of the court by reason of a ground set forth in ORS 419C.005, the child or any person appearing in behalf of the child or the state may secure the attendance of out-of-state witnesses in the same manner as provided in ORS 136.623 to 136.637. [1993 c.33 §224]

419C.408 Witness fees. Witnesses subpoenaed to give testimony shall receive the same fees as are paid in criminal cases. Except as provided by this section, responsibility for the per diem and mileage fees of any witness, and travel expenses if so ordered by the court, shall be borne by the party who subpoenas the witness or requests the court to subpoena the witness. If the witness was subpoenaed to appear on behalf of the Children's Services Division, responsibility for per diem, mileage fees and travel expenses shall be borne by the county. If the witness was subpoenaed by more than one party, the witness shall be paid by the party who first subpoenas the witness. The court may then, thereafter, order that the costs be distributed equally among all parties who subpoenaed the witness and that the original payor of the costs be reimbursed accordingly. When the witness has been subpoenaed on behalf of an indigent party who is represented by court-appointed counsel, the fees and costs allowed for that witness shall be paid pursuant to ORS 135.055. [1993 c.33 §225]

419C.411 Authority to make disposition order. At the termination of the hearing or hearings in the proceeding, the court shall enter an appropriate order directing the disposition to be made of the case. [1993 c.33 §226]

DISPOSITION

419C.440 Ward of the court. (1) A child found to be within the jurisdiction of the court as provided in ORS 419C.005, may be made a ward of the court.

(2) Unless guardianship is granted as provided in ORS 419C.555, the court as an incident of its wardship over the child shall have the duties and authority of the guardian as provided in ORS 419C.558. [1993 c.33 §227]

419C.443 Diversion; marijuana offenses; requirements. (1) Except when otherwise provided in subsection (3) of this section, when a child is found to be within the jurisdiction of the court under ORS 419C.005 for a first violation of the provisions under ORS 475.992 prohibiting delivery for no consideration of less than five grams of marijuana or prohibiting possession of less than one ounce of marijuana, the court shall order an evaluation and designate agencies or organizations to perform diagnostic assessment and provide programs of information and treatment. The designated agencies or organizations must meet the standards set by the Assistant Director for Alcohol and Drug Abuse Programs. When-

ever possible, the court shall designate agencies or organizations to perform the diagnostic assessment that are separate from those that may be designated to carry out a program of information or treatment. The parent of the child shall pay the cost of the child's participation in the program based upon the ability of the parent to pay. If the program finds the parent is indigent, as defined by the rules of the Assistant Director for Alcohol and Drug Abuse Programs, reimbursement of program expenses can be made at rates established by rule of the Assistant Director for Alcohol and Drug Abuse Programs, and subject to availability, from the moneys transferred to the Department of Human Resources under ORS 137.303 for use by alcohol and drug abuse programs. The petition shall be dismissed by the court upon written certification of the child's successful completion of the program from the designated agency or organization providing the information and treatment.

(2) Monitoring the child's progress in the program shall be the responsibility of the diagnostic assessment agency or organization. It shall make a report to the court stating the child's successful completion or failure to complete all or any part of the program specified by the diagnostic assessment. The form of the report shall be determined by agreement between the court and the diagnostic assessment agency or organization. The court shall make the report a part of the record of the case.

(3) The court is not required to make the disposition required by subsection (1) of this section if the court determines that the disposition is inappropriate in the case or if the court finds that the child has previously entered into an informal disposition agreement under ORS 419C.239 (10). [1993 c.33 §228]

419C.446 Probation; requirements. (1) Where a child has been found to be within its jurisdiction, and when the court determines it would be in the best interest and welfare of the child, the court may place the child on probation. The court may direct that the child remain in the legal custody of the child's parents or other person with whom the child is living, or the court may direct that the child be placed in the legal custody of some relative or some person maintaining a foster home approved by the court, or in a child care center or a youth care center authorized to accept the child.

(2) The court may specify particular requirements to be observed during the probation consistent with recognized juvenile court practice, including but not limited to restrictions on visitation by the child's parents, restrictions on the child's associates, occupation and activities, restrictions on and requirements to be observed by the person having the child's legal custody, requirements that the child pay any assessment under ORS 137.290, and requirements for visitation by and consultation with a juvenile counselor or other suitable counselor, requirements to make restitution under ORS 419C.450, requirements of a period of detention under ORS 419C.453, requirements to pay a fine under ORS 419C.459, requirements to perform community service under ORS 419C.462, or service for the victim under ORS 419C.465, or requirements to submit to blood testing under ORS 419C.473. [1993 c.33 §229; 1993 c.546 §88]

419C.450 Restitution; policy; as condition of probation; factors to be considered. (1) It is the policy of the State of Oregon to encourage and promote the payment of restitution and other obligations by juvenile offenders as well as by adult offenders. In any case within the jurisdiction of the juvenile court pursuant to ORS 419C.005 in which the child caused another person any physical injury or any loss of or damage to property, the court shall consider restitution to the victim to be of high priority. There shall be a rebuttable presumption that the obligation to make such restitution is in the best interest of the child as well as of the victim and society.

(2) Restitution for physical injury inflicted upon a person by the child and for property taken, damaged or destroyed by the child may be required as a condition of probation. Restitution does not limit or impair the right of a victim to sue in a civil action for damages suffered, nor shall the fact of consultation by the victim be admissible in such civil action to prove consent or agreement by the victim. However, the court shall credit any restitution paid by the child to a victim against any judgment in favor of the victim in such civil action. Before setting the amount of such restitution, the court shall notify the person upon whom the physical injury was inflicted or the owner of the property taken, damaged or destroyed and give such person an opportunity to be heard on the issue of restitution.

(3) If the child has been placed in custody of the Children's Services Division on probation or for placement at a juvenile training school, the court may order that the child pay restitution, as provided in this section, and any assessment under ORS 137.290. In determining whether or not to order restitution or payment of an assessment under ORS 137.290 and, if so, the conditions of payment, the court shall take into consideration the availability to the child of paid employment during such time as the child

may be committed to a juvenile training school.

(4) In determining whether or not to order restitution or an assessment under ORS 137.290, the court shall take into account:

(a) The financial resources of the child and the burden that payment of restitution will impose, with due regard to the other obligations of the child;

(b) The present and future ability of the child to pay restitution on an installment basis or on other conditions to be fixed by the court; and

(c) The rehabilitative effect on the child of the payment of restitution and the method of payment.

(5) Notwithstanding ORS 419C.501 and 419C.504, when the court has ordered a child to pay restitution, as provided in this section, the judgment may be docketed and, if so, shall have the same effect as a judgment in a civil action, as provided in ORS 18.320, 18.350, 18.360 and 18.400. The judgment is in favor of the state and may be enforced only by the state. Notwithstanding ORS 419A.255, a judgment for restitution docketed under this subsection is a public record. The requirements of ORS 137.071 (9) apply to a judgment under this subsection. [1993 c.33 §230; 1993 c.405 §1]

419C.453 Detention; when authorized. Pursuant to hearing, the juvenile court may order a child 12 years of age or older placed in a detention facility for children for a specific period of time not to exceed eight days, in addition to time already spent in the facility, unless a program plan that is in conformance with standards established by the State Commission on Children and Families has been filed with and approved by the commission, in which case the child may be held in detention for a maximum of 30 days in addition to time already spent in the facility, when:

(1) The child has been found to be within the jurisdiction of the juvenile court by reason of having committed an act which would be a crime if committed by an adult; or

(2) The child has been placed on formal probation for an act which would be a crime if committed by an adult, and has been found to have violated a condition of that probation. [1993 c.33 §231]

419C.456 Detention after escape. Pursuant to a hearing, the juvenile court may order a child 12 years of age or older placed in a detention facility for children for a specific period of time not to exceed eight days, in addition to time already spent in the facility, when the child has been found to be within the jurisdiction of the juvenile court by reason of having escaped from a juvenile detention facility as defined in ORS 419A.004, after having been placed in the facility pursuant to the filing of a petition alleging that the child has committed an act which would be a crime if committed by an adult or the offense described in ORS 419C.159. [1993 c.33 §232]

419C.459 Fines. In circumstances under which, if the child were an adult, a fine not exceeding a certain amount could be imposed under the Oregon Criminal Code, the court may impose such a fine upon the child. In determining whether to impose a fine and, if so, then in what amount, the court shall consider whether the child will be able to pay a fine and whether payment of a fine is likely to have a rehabilitative effect on the child. Fines ordered paid under this section shall be collected by the clerk of the court. [1993 c.33 §233]

419C.462 Community service. The court may order a child to perform appropriate community service for a number of hours not to exceed that which could be required under ORS 137.129 if the child were an adult. [1993 c.33 §234]

419C.465 Service to victim. Upon agreement of the child, the child's parent or guardian and the victim of the child's conduct, the court may order a child within the court's jurisdiction under ORS 419C.005 to perform personal service for the victim as a condition of probation. Contact with a victim to determine whether the victim is willing to agree to such personal service shall be by a person to be designated by the court and shall not be by the child. The victim shall be advised by such person of any prior findings of juvenile court jurisdiction of the child under ORS 419C.005. The court shall specify the nature and length of the service as the court finds appropriate. Personal service performed pursuant to the order shall constitute full or partial satisfaction of any restitution ordered by the court, as provided by agreement prior to the making of the order. However, in no case shall the child, pursuant to this section, perform more hours of personal service than would be indicated by dividing the victim's monetary loss by the legal minimum wage. [1993 c.33 §235].

419C.470 Opportunities to fulfill obligations imposed by court. The Children's Services Division and county juvenile departments, respectively, and to the extent practicable, shall create opportunities for juvenile offenders placed in the legal custody of the division or under the supervision of a county juvenile department to pay restitution as ordered by the court and the assessment under ORS 137.290, and to perform any community service ordered by the court, as well

as to fulfill any other obligation imposed by the court. [1993 c.33 §236]

419C.473 Authority to order blood testing. (1) Whenever a child is found to be within the jurisdiction of the court under ORS 419C.005 for having committed an act which, if done by an adult would constitute a felony offense listed in ORS 137.076 (1), the court shall order the child to submit to the drawing of a blood sample in the manner provided by ORS 137.076. The court shall further order that as soon as practicable after the entry of the dispositional order, the law enforcement agency attending upon the court shall cause a blood sample to be drawn and transmitted in accordance with ORS 137.076. The court may also order the child to reimburse the appropriate agency for the cost of drawing and transmitting the blood sample.

(2) No order for the drawing and transmitting of a blood sample is required to be entered if:

(a) The Department of State Police notifies the court or the law enforcement agency attending upon the court that it has previously received an adequate blood sample taken from the child in accordance with this section, ORS 137.076 or 161.325 (4); or

(b) The court determines that drawing a sample would create a substantial and unreasonable risk to the health of the child.

(3) Notwithstanding any other provision of law, blood samples, autoradiographs and other physical evidence and criminal identification information obtained under authority of this section or as a result of analysis conducted pursuant to ORS 181.085 may be maintained, stored, destroyed and released to authorized persons or agencies under the conditions established in ORS 181.085 and rules adopted by the Department of State Police under the authority of that section. [1993 c.33 §237]

419C.475 Authority to order HIV testing. (1) Whenever a child is found to be within the jurisdiction of the court under ORS 419C.005 (1) for having committed an act from which it appears that the transmission of body fluids from one person to another as described in ORS 135.139 may have been involved or a sexual act may have occurred, the court shall order the child to submit to HIV testing as provided in ORS 135.139 if the victim, or parent or guardian of the victim, requests the court to make such an order.

(2) The court may also order the child or the parent or guardian of the child to reimburse the appropriate agency for the cost of the test. [1993 c.331 §3]

419C.478 Commitment to Children's Services Division. (1) Where a child has been found to be within its jurisdiction, and when the court determines it would be in the best interest and welfare of the child, the court may, in addition to probation or any other dispositional order, place the child in the legal custody of the Children's Services Division for care, placement and supervision. The court may specify the particular type of care, supervision or services to be provided by the Children's Services Division to children placed in the division's custody and to the parents or guardians of such children, but the actual planning and provision of such care, supervision or services shall be the responsibility of the Children's Services Division. The division may place the child in a child care center authorized to accept the child.

(2) Uniform commitment blanks, in a form approved by the Assistant Director for Children's Services, shall be used by all courts for placing children in the legal custody of the Children's Services Division.

(3) If the child has been placed in the custody of the Children's Services Division, the court shall make no commitment directly to any residential facility, but shall cause the child to be delivered into the custody of the Children's Services Division at the time and place fixed by rules of the division. No child so committed shall be placed in a Department of Corrections institution. [1993 c.33 §238; 1993 c.546 §89]

419C.481 Wardship, guardianship and legal custody of child committed to Children's Services Division. (1) The juvenile court shall retain wardship and the Children's Services Division shall retain legal custody of the child committed to it regardless of the physical placement of the child by the Children's Services Division.

(2) When the court grants legal custody to the Children's Services Division, it may also grant guardianship of the child to the division, to remain in effect solely while the child remains in the legal custody of the division.

(3) The assistant director of the division may authorize the superintendent of the juvenile training school, as defined in ORS 420.005, in which the child is placed, if any, to exercise the duties and authority of a guardian of the child under ORS 419C.558 and to determine parole and final release under ORS 420.045. [1993 c.33 §239; 1993 c.367 §4]

419C.483 Order to include reasonable efforts determination. (1) If the court awards custody to the division, the disposition order shall include a determination whether the division has made reasonable

efforts to prevent or eliminate the need for removal of the child from the home. If the child has been removed prior to the entry of the order, the order shall also include a determination whether the division has made reasonable efforts to reunify the family after the removal.

(2) In support of its determination whether reasonable efforts have been made by the division, the court shall enter a brief description of what preventive and reunification efforts were made and why further efforts could or could not have prevented or shortened the separation of the family.

(3) Where the first contact with the family has occurred during an emergency in which the child could not remain without jeopardy at home even with reasonable services being provided, the division shall be considered to have made reasonable efforts to prevent or eliminate the need for removal.

(4) Where the court finds that preventive or reunification efforts have not been reasonable, but further preventive or reunification efforts could not permit the child to remain without jeopardy at home, the court may authorize or continue the removal of the child. [1993 c.33 §241]

419C.486 Consideration of recommendations of committing court. To insure effective planning for children, the Children's Services Division shall take into consideration recommendations and information provided by the committing court before placement in any facility. [1993 c.33 §240]

419C.489 Condition requiring medical care or special treatment; preparation of plan; progress reports. Whenever a child who is in need of medical care or other special treatment by reason of physical or mental condition is placed in the custody of the Children's Services Division by the juvenile court, the division shall prepare a plan for care or treatment within 14 days after assuming custody of the child. The court may indicate in general terms the type of care which it regards as initially appropriate. A copy of the plan, including a time schedule for its implementation, shall be sent to the juvenile court which committed the child to the division. The court may at any time request regular progress reports on implementation of the plan. The division shall notify the court when the plan is implemented, and shall report to the court concerning the progress of the child annually thereafter. If the plan is subsequently revised, the division shall notify the court of the revisions and the reasons therefor. [1993 c.33 §242]

419C.492 Court's authority to review placement. Commitment of a child to the Children's Services Division does not terminate the court's continuing jurisdiction to protect the rights of the child or the child's parents or guardians. Notwithstanding ORS 419C.478 (3), if upon review of a placement of a child made by the Children's Services Division, the court determines that the placement is so inappropriate as to violate the rights of the child or the child's parents or guardians, the court may direct the Children's Services Division to place the child in a specific type of residential placement, but the actual planning and placement of the child shall be the responsibility of the Children's Services Division. Nothing in this section affects any contractual right of a private agency to refuse or terminate a placement. [1993 c.33 §243]

419C.495 When commitment to training school authorized. (1) A child placed in the legal custody of the Children's Services Division shall be placed in a juvenile training school or in a private institution operated as a training school for children requiring secure custody in the following cases and no other:

(a) The child is found to be within the jurisdiction of the juvenile court by reason of a ground set forth in ORS 419C.005; and

(b) The juvenile court having jurisdiction so orders.

(2) No child under 12 years of age shall be placed in a juvenile training school.

(3) No child shall be transferred or returned after discharge to a facility described in subsection (1) of this section, except upon court order under this chapter.

(4) Nothing in subsection (3) of this section shall be deemed to prohibit return of a child to a facility described in subsection (1) of this section, in the discretion of the Children's Services Division, if the child has been released from the facility on temporary or indefinite parole, or to prohibit transfer of a child from one such facility to another. [1993 c.33 §244]

419C.498 Disposition under compact, agreement or arrangement with another state. If there is an interstate compact or agreement or an informal arrangement with another state permitting the child to reside in another state while on probation or under protective supervision, or to be placed in an institution or with an agency in another state, the court may place the child on probation or under protective supervision in such other state, or, subject to ORS 419C.495, place the child in an institution in such other state in accordance with the compact, agreement or arrangement. [1993 c.33 §245]

419C.501 Duration of disposition. The duration of any disposition made pursuant to

this chapter shall be fixed by the court and may be for an indefinite period. Any placement in the legal custody of the Children's Services Division shall be for an indefinite period. However, in cases under ORS 419C.005, the period of any disposition made pursuant to this chapter shall not exceed the maximum period of institutionalization or commitment authorized if the act had been committed by an adult. The period of any disposition shall not extend beyond the date on which the child becomes 21 years of age. [1993 c.33 §246]

419C.504 Duration of probation. In any case under ORS 419C.005 the court, notwithstanding ORS 419C.501, may place the child on probation to the court for a period not to exceed five years. However, the period of probation shall not extend beyond the date on which the child becomes 21 years of age. [1993 c.33 §247]

419C.507 Additional options; consultation. The court may, in lieu of or in addition to any disposition under this chapter, direct that the child be examined or treated by a physician, psychiatrist or psychologist, or receive other special care or treatment in a hospital or other suitable facility. If the court determines that mental health examination and treatment should be provided by services delivered through the Mental Health and Developmental Disability Services Division, the Mental Health and Developmental Disability Services Division shall determine the appropriate placement or services in consultation with the court, the Children's Services Division and other affected agencies. If the Children's Services Division or another affected agency objects to the type of placement or services, the court shall determine the appropriate type of placement or service. During the examination or treatment of the child, the Mental Health and Developmental Disability Services Division shall not be appointed guardian of the child. [1993 c.33 §248]

LEGAL CUSTODIAN OF CHILD

419C.550 Duties and authority. A person, agency or institution having legal custody of a child has the following duties and authority:

(1) To have physical custody and control of the child.

(2) To supply the child with food, clothing, shelter and incidental necessaries.

(3) To provide the child with care, education and discipline.

(4) To authorize ordinary medical, dental, psychiatric, psychological, hygienic or other remedial care and treatment for the child, and, in an emergency where the child's safety appears urgently to require it, to authorize surgery or other extraordinary care.

(5) To make such reports and to supply such information to the court as the court may from time to time require.

(6) To apply for any social security benefits or public assistance to which the child is otherwise entitled and to use the benefits or assistance to pay for the care of the child. [1993 c.33 §250; 1993 c.367 §2]

GUARDIAN

419C.555 Authority to appoint guardian. Except when the court grants legal custody to the Children's Services Division, the court may grant guardianship of the child to a private institution or agency to which the child is committed or to some suitable person or entity if it appears necessary to do so in the interests of the child. [1993 c.33 §249]

419C.558 Duties and authority of guardian. A person, agency or institution having guardianship of a child by reason of appointment by the court has the duties and authority of a guardian of the child, including but not limited to the following:

(1) To authorize surgery for the child, but this authority does not prevent the person having legal custody of the child from acting under ORS 419C.550 (4).

(2) To authorize the child to enlist in the Armed Forces of the United States.

(3) To consent to the child's marriage.

(4) To make other decisions concerning the child of substantial legal significance.

(5) To make such reports and to supply such information to the court as the court may from time to time require. [1993 c.33 §251]

419C.561 Guardian is not conservator. A person appointed guardian of the child by the court is guardian only and not a conservator of the estate of the child, unless that person is appointed conservator of the child's estate in a protective proceeding as provided in ORS 126.003 to 126.403, 127.005 and 127.015. [1993 c.33 §252]

AUTHORITY OF COURT OVER PARENT OR GUARDIAN

419C.570 Parent or guardian summoned subject to jurisdiction of court. A parent or legal guardian of any child found to be within the jurisdiction of the court as provided in ORS 419C.005, if such parent or guardian was served with summons under ORS 419C.300, 419C.303 and 419C.306 prior to the adjudication, shall be subject to the jurisdiction of the court for purposes of this section. The court may order the parent or guardian to assist the court in any reason-

able manner in providing appropriate education or counseling for the child. [1993 c.33 §253]

419C.573 Court may order education or counseling. If the court finds that a deficiency in parenting skills has significantly contributed to the circumstances bringing the child within the jurisdiction of the court, the court may order the parent or guardian to participate in educational or counseling programs, if it finds such participation would be consistent with the best interests of the child, as are reasonably directed toward improvement of parenting skills. The court may order such participation with the child or separately. [1993 c.33 §254]

419C.575 Court may order drug or alcohol treatment; hearing required. If the court finds that the parent's or guardian's addiction to or habitual use of alcohol or controlled substances has significantly contributed to the circumstances bringing the child within the jurisdiction of the court in a proceeding under ORS 419C.005, the court may conduct a special hearing to determine if the court should order the parent or guardian to participate in treatment and pay the costs thereof. Notice of this hearing shall be by special petition and summons to be filed by the court and served upon the parent or guardian. The court shall appoint counsel to represent the parent or guardian if the parent or guardian is eligible under ORS 135.050. If, at this hearing, the court finds it is in the best interest of the juvenile for the parent or guardian to be directly involved in treatment, the judge may order the parent or guardian to participate in treatment. The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The judge shall state with particularity, both orally and in the written order of the disposition, the precise terms of the disposition. [1993 c.33 §255; 1993 c.546 §90]

SUPPORT

419C.590 Authority of court to order support. The court may, after a hearing on the matter, require the parents or other person legally obligated to support a child found to be within the jurisdiction of the court to pay toward the child's support such amounts at such intervals as the court may direct, while the child is within the jurisdiction of the court even though the child is over 18 years of age as long as the child is attending school. The court, in determining the amount to be paid, shall use the scale and formula provided for in ORS 25.275 and 25.280. Unless otherwise ordered, the amounts so required to be paid shall be paid to the Department of Human Resources or the county clerk, whichever is appropriate, for transmission to the person, institution or agency having legal custody of the child. [1993 c.33 §256]

419C.592 Support order is final judgment. Any order for support entered pursuant to ORS 419C.590 is a final judgment as to any installment or payment of money which has accrued up to the time either party makes a motion to set aside, alter or modify the order, and the court does not have the power to set aside, alter or modify such order, or any portion thereof, which provides for any payment of money, either for minor children or the support of a party, which has accrued prior to the filing of such motion. [1993 c.33 §257]

419C.595 Support for child in state financed or supported residence. Any order for support entered pursuant to ORS 419C.590 for a child in the care and custody of the Children's Services Division may be made contingent upon the child residing in a state financed or supported residence, shelter or other facility or institution. A certificate signed by the Assistant Director for Children's Services, the Administrator of the Support Enforcement Division or the administrator's authorized representative shall be sufficient to establish such periods of residence and to satisfy the order for periods of nonresidence. [1993 c.33 §259]

419C.597 Assignment of support obligation to state. When a child is in the legal custody of the Children's Services Division and such child is the beneficiary of an existing order of support in a decree of dissolution or other order and the division is required to provide financial assistance for the care and support of such child, the Children's Services Division shall be assignee of and subrogated to such child's proportionate share of any such support obligation including sums which have accrued whether or not the support order or decree provides for separate monthly amounts for the support of each of two or more children or a single monthly gross payment for the benefit of two or more children, up to the amount of assistance provided by the division. [1993 c.33 §258]

419C.600 Enforcement. (1) An order of support entered pursuant to ORS 419C.590, 419C.592, 419C.595 and 419C.597 may be enforced by execution or in the manner provided by law for the enforcement of a judgment granting an equitable remedy or by an order to withhold pursuant to ORS 25.311 to 25.318, 25.351 to 25.367 and 25.722.

(2) No property of the child's parents, or either of them, or other person legally obligated to support the child is exempt from levy and sale or other process to enforce collection of the amounts ordered by the

court to be paid toward the support of the child. [1993 c.33 §260; 1993 c.798 §31a]

MODIFICATION OF ORDERS

419C.610 Authority to modify or set aside orders. Except as provided in ORS 419C.613, the court may modify or set aside any order made by it upon such notice and with such hearing as the court may direct. [1993 c.33 §261]

419C.613 Notice of modification. (1) Except as provided in subsection (2) of this section, notice and a hearing as provided in this chapter shall be granted in any case where the effect of modifying or setting aside the order will or may be to deprive a parent of the legal custody of the child, to place the child in an institution or agency or to transfer the child from one institution or agency to another. However, the provisions of this subsection shall not apply to a parent whose rights have been terminated by the court or whose child has been permanently committed by order of the court unless an appeal from such order is pending.

(2) Notice and a hearing as provided in subsection (1) of this section are not required where the effect of modifying or setting aside the order will be to transfer the child from one foster home to another. [1993 c.33 §262]

REPORTS BY AGENCY HAVING GUARDIANSHIP OR LEGAL CUSTODY

419C.620 Circumstances requiring report. Any public or private agency having guardianship or legal custody of a child pursuant to court order shall file reports on the child with the juvenile court which entered the original order concerning the child or, where no such order exists, with the juvenile court of the county of the child's residence in the following circumstances:

(1) Where the child has been placed with the agency as a result of a court order and prior to, or as soon as practicable after the agency places the child in any placement including, but not limited to, the child's home, shelter care, substitute care or a child care center, unless the court has previously received a report or treatment plan indicating the actual physical placement of the child;

(2) Where the child has been placed with the agency as the result of a court order and remains under agency care for six consecutive months from date of initial placement except for a child who has been committed to a state juvenile training school; or

(3) Where the child has been surrendered for adoption or the parents' rights have been terminated and the agency has not physically placed the child for adoption or initiated adoption proceedings within six months of receiving the child. [1993 c.33 §263]

419C.623 Frequency and content of report. (1) The reports required by ORS 419C.620 (2) and (3) shall be filed by the agency at the end of the initial six-month period and no less frequently than each six months thereafter. The agency shall file reports more frequently if the court so orders. The reports shall include, but not be limited to:

(a) A description of the problems or offenses which necessitated the placement of the child with the agency;

(b) A description of the type and an analysis of the effectiveness of the care, treatment and supervision that the agency has provided for the child, together with a list of all placements made since the child has been in the guardianship or legal custody of an agency and the length of time the child has spent in each placement;

(c) A description of agency efforts to return the child to the parental home or find permanent placement for the child, including, where applicable, efforts to assist the parents in remedying factors which contributed to the removal of the child from the home;

(d) A proposed treatment plan or proposed continuation or modification of an existing treatment plan, including, where applicable, terms of visitation to be allowed and expected of parents and a description of efforts expected of the child and the parents to remedy factors which have prevented the return of the child to the parental home; and

(e) If continued substitute care is recommended, a proposed timetable for the child's return home or other permanent placement or a justification of why extended substitute care is necessary.

(2) The following apply to reports required under ORS 419C.620:

(a) Notwithstanding the requirements of subsection (1) of this section, reports following the initial report need not contain information contained in prior reports.

(b) Notwithstanding the requirements under ORS 419C.620 that reports be filed with the court, any report after the initial report that is required by subsection (1) of this section on a child whose case is being regularly reviewed by a local citizen review board shall be filed with that local citizen review board rather than the court. [1993 c.33 §264]

419C.626 Review hearing by court; findings. (1) Upon receiving any report required by ORS 419C.620, the court may hold a hearing to review the child's condition and circumstances and to determine if the court

should continue jurisdiction over the child or order modifications in the care, placement and supervision of the child. The court shall hold a hearing:

(a) In all cases under ORS 419C.620 (3) where the parents' rights have been terminated; or

(b) If requested by the child, the attorney for the child, if any, the parents or the public or private agency having guardianship or legal custody of the child within 30 days of receipt of the notice provided in ORS 419C.629.

(2) The hearing provided in subsection (1) of this section shall be conducted in the manner provided in ORS 419C.400 (1), 419C.405 and 419C.408, except that the court may receive testimony and reports as provided in ORS 419C.400 (3). At the conclusion of the hearing, the court shall enter findings of fact if the decision is to continue the child in substitute care. Such findings shall specifically state:

(a) Why continued care is necessary as opposed to returning the child to the child's home or prompt action to secure another permanent placement; or

(b) The expected timetable for return or other permanent placement.

(3) Any decision of the court made pursuant to the hearing provided in subsections (1) and (2) of this section shall be a final order for the purposes of ORS 419A.200. [1993 c.33 §265]

419C.629 Distribution of report by court. Except where a child has been surrendered for adoption or the parents' rights have been terminated, the court shall send a copy of the report required by ORS 419C.620 to the parents of the child and shall notify the parents either that a hearing will be held or that the parents may request a hearing at which time they may ask for modifications in the care, treatment and supervision of the child. If the court finds that informing the parents of the identity and location of the foster parents of the child is not in the child's best interest, the court may order such information deleted from the report before sending the report to the parents. [1993 c.33 §266]

CHILD SURRENDERED FOR ADOPTION

419C.640 Agency's responsibility. Where a child has been surrendered for adoption and the agency has not physically placed the child for adoption or initiated adoption proceedings within six months of receiving the child, the agency shall file a petition alleging that the child comes within the jurisdiction of the court. [1993 c.33 §267]

DISPOSITIONAL REVIEW HEARINGS

419C.650 Scheduling dispositional review hearing. The court shall conduct a dispositional review hearing no later than 18 months after the original placement and periodically thereafter during the continuation of substitute care. Unless good cause otherwise is shown, the court shall also conduct a dispositional review hearing at any time upon the request of the Children's Services Division, an agency directly responsible for care or placement of the child, parents whose parental rights have not been terminated, an attorney for the child, a court-appointed special advocate, a citizen review board or upon its own motion. The court shall schedule the hearing as soon as possible after receiving a request. [1993 c.33 §268]

419C.653 Notice; appearance. (1) The court may order that the child or any other person be present during the hearing under ORS 419C.650.

(2) The court shall notify the parties listed in ORS 419C.650 and any other interested parties of the hearing. The notice shall state the time and place of the hearing. Upon request of the court, the division or other legal custodian of the child shall provide the court with information concerning the whereabouts and identity of such parties. [1993 c.33 §269]

419C.656 Dispositional review hearing; conduct; order. (1) The court shall enter an order within 20 days after the review hearing. Where the child is in substitute care, the order shall include a determination of:

(a) Whether or not the child should be returned to the parent;

(b) Whether or not the child should be placed for adoption;

(c) Whether the child should continue in substitute care for a specified period; or

(d) Whether, because of special needs or circumstances, the child should be placed in the permanent custody or guardianship of a responsible relative or other individual or should continue in substitute care on a permanent or long-term basis.

(2) If the court determines that the child shall be placed or continued in substitute care or placed in the custody or guardianship of a relative or other responsible individual, the court shall enter written findings specifying why neither placement with parents nor adoption is appropriate. If the current placement is not expected to be permanent, the court shall specify a projected timetable for return home or another permanent placement. If the timetable set forth by the

court is not met, the division shall promptly notify the court and parties.

(3) In the course of the dispositional review hearing, the court may determine the adequacy of and compliance with the case plan and case progress report. In addition to other orders, the court may:

(a) Order the division to develop or expand a case plan or case progress report which must be submitted within 10 days after the hearing;

(b) Set a court hearing at a specific later time;

(c) Direct the local citizen review board to review the status of the child prior to its next review under ORS 419A.106, 419A.108, 419A.110, 419A.112, 419A.116 and 419A.118;

(d) Order the division or other agency directly responsible for the child to modify the care, placement and supervision of the child; and

(e) Determine whether the division or other agency directly responsible for the child has made reasonable efforts to reunify the family.

(4) The dispositional review hearing shall be conducted in the manner provided in ORS 419C.400 (1), 419C.405 and 419C.408, except that the court may receive testimony and reports as provided in ORS 419C.400 (3).

(5) Any decision of the court made pursuant to the dispositional review hearing shall be a final order for the purposes of ORS 419A.200. [1993 c.33 §270]

CURFEW

419C.680 Curfew; parental responsibility; authority of political subdivisions; criminal penalty. (1) No minor shall be in or upon any street, highway, park, alley or other public place between the hours of 12 midnight and 4 a.m. of the following morning, unless:

(a) Such minor is accompanied by a parent, guardian or other person 18 years of age or over and authorized by the parent or by law to have care and custody of the minor;

(b) Such minor is then engaged in a lawful pursuit or activity which requires the presence of the minor in such public places during the hours specified in this section; or

(c) The minor is emancipated pursuant to ORS 419B.550 to 419B.558.

(2) No parent, guardian or person having the care and custody of a minor under the age of 18 years shall allow such minor to be in or upon any street, highway, park, alley or other public place between the hours specified in subsection (1) of this section, except as otherwise provided in that subsection.

(3) Subsections (1) and (2) of this section do not affect the authority of any political subdivision to make regulations concerning the conduct of minors in public places by ordinance or other local law, provided, that the local ordinance or law restricts curfew hours at least to the extent required by subsections (1) and (2) of this section.

(4) The county court or board of county commissioners of any county may provide by ordinance for a curfew restriction on minors applicable to areas not within a city, which has the same terms provided in subsection (1) of this section except that the period of curfew may include hours in addition to those specified in subsection (1) of this section. The ordinance may provide different periods of curfew for different age groups.

(5) Any minor who violates subsection (1) of this section or an ordinance established under subsection (4) of this section may be taken into custody as provided in ORS 419C.080, 419C.085 and 419C.088 and may be subjected to further proceedings as provided in this chapter.

(6) Violation of subsection (2) of this section is a misdemeanor. [1993 c.33 §271; 1993 c.546 §140]