

# DEPENDENCY 101

**Juvenile Court Dependency Proceedings**

# Dependency Jurisdiction

- **ORS 419B.090:** “The juvenile court is a court of record and exercises jurisdiction as a court of general and equitable jurisdiction and ***not*** as a court of limited or inferior jurisdiction.”

# Dependency Jurisdiction

- **ORS 419B.100(1)**: “[T]he juvenile court has exclusive original jurisdiction in any case involving a [child]:
  - “(a) Who is beyond the control of the person’s parents, guardian or other person having custody of the person;
    - “(b) *Whose behavior is such as to endanger the welfare of the person or of others;*
    - “(c) *Whose condition or circumstances are such as to endanger the welfare of the person or of others;*
    - “(d) Who is dependent for care and support on a public or private child-caring agency that needs the services of the court in planning for the best interest of the person;

# Dependency Jurisdiction

- **ORS 419B.100(1) (continued)**
- ***“(e) Whose parents or any other person or persons having custody of the person have:***
  - ***”(A) Abandoned the person;***
  - ***”(B) Failed to provide the person with the care or education required by law;***
  - ***”(C) Subjected the person to cruelty, depravity or unexplained physical injury; or***
  - ***”(D) Failed to provide the person with the care, guidance and protection necessary for the physical, mental or emotional well-being of the person;***

# Dependency Jurisdiction

- **ORS 419B.100(1) (continued)**
- “(f) Who has run away from the home of the person;
- “(g) Who has filed a petition for emancipation pursuant to ORS 419B.550 to 419B.558; or
- “(h) Who is subject to an order entered under ORS 419C.411 (7)(a).”



# Dependency Jurisdiction

## □ DEPENDENCY PETITIONS

- “***Any person*** may file a petition” alleging that a child is within the juvenile court’s dependency jurisdiction. **See ORS 419B.809(1).**
- Dependency petitions are most often based on ORS 419B.100(1)(c) -- *i.e.*, allegations that the child’s “***condition or circumstances are such as to endanger the [child’s] welfare.***”
- In such cases, “***[t]he key inquiry is whether, under the totality of the circumstances, there is a reasonable likelihood of harm to the child’s welfare.***” **Dept. of Human Services v. D.D., 238 Or App 134, 241 P3d 1177 (2010), rev den 349 Or 602 (2011).**

# The Indian Child Welfare Act

25 USC §1901, et seq.

- A child who is a member of, or eligible for membership in, an Indian tribe is an ***“Indian child,”*** and, when the child is the subject of a dependency petition, special jurisdictional limitations apply under the ICWA.
- ***“When [the] court conducts a hearing, the court shall inquire whether [the] child is an Indian child,”*** and, ***“[i]f the court knows or has reason to know that an Indian child is involved,”*** the court must order that the case be treated as an ICWA case and must direct DHS to notify the Tribe of its right to intervene. **ORS 419B.878.**

□

# The Indian Child Welfare Act

**25 USC §1901, et seq.**

## □ STATE COURT & TRIBAL JURISDICTION

- ***The Tribe has exclusive jurisdiction, if the Indian child resides, or is domiciled, within a tribal reservation, except where:***
  - (a) “such jurisdiction is otherwise vested in the State by existing Federal law,” **25 USC § 1911(a); ORS 419B.100(6)(a)**, or
  - (b) ***the state court has temporary emergency removal jurisdiction*** under **25 USC § 1922**.
  
- ***The Tribe has exclusive jurisdiction, regardless of the child’s residence or domicile, if the Indian child “is a ward of a tribal court.”***
- **25 USC § 1911(a)**.

# The Indian Child Welfare Act

25 USC §1901, et seq.

## □ TRANSFER OF JURISDICTION TO THE TRIBE

□

- In a proceeding involving “an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the [state] court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe.” 25 USC § 1911(b).

# Parties to Dependency Proceedings

## ORS 419B.875(1) and (2)

- The Child
- The Parent(s), Guardian(s) or Indian Custodian(s)
- Putative Fathers
- The State (represented by the DA, AG, etc.)
- The Juvenile Department
- Court Appointed Special Advocates (CASA)
- DHS, when the agency has temporary custody
- The Tribe, when the ICWA applies
- Intervenors under ORS 419B.116

# Non-Party Participants in the Proceedings

- **ORS 419B.875(5):** *Persons with “rights of limited participation,”* whose rights are specified in the order granting the request.
- **ORS 419B.875(6):** DHS is required to give timely notice of court proceedings to *the child’s foster parent(s)/preadoptive parent(s)/relative caregiver(s)*, and they have “the right to be heard at the proceeding.”
- **ORS 419B.875(7):** When a *legal grandparent of a child* submits a request for notice in writing and provides an address, DHS is required to give the grandparent timely notice of court proceedings, “and the court shall give the grandparent an opportunity to be heard.”

# Dependency Proceedings & Hearings



- **Shelter** – **ORS 419B.185**
- **Jurisdiction** – **ORS 419B.305 and 419B.310**
- **Disposition** – **ORS 419B.325 to 419B.352**
- **Review** – **ORS 419B.449**
  - By the court
  - By the Citizen Review Board (CRB)
- **Permanency** – **ORS 419B.470 and 419B.476**
- **Termination-of-Parental-Rights** – **ORS 419B.500 to 419B.524**

# Dependency Proceedings & Hearings



**THE COURT'S FINDINGS IN ALL OF THESE PROCEEDINGS MUST BE BASED ON THE EVIDENTIARY RECORD**

Evidence and any other information relied on by the court in these proceedings is not part of the record and cannot be a basis for the court's findings, unless it is presented in sworn testimony, admitted as an exhibit, the parties stipulate to it, or the court takes judicial notice of it. ***See State ex rel Juv. Dept. v. Lewis, 193 Or App 264, 89 P3d 1219 (2004). See also State ex rel Juv. Dept. v. K. L., 223 Or App 35, 38 n2, 194 P3d 845 (2008).***

# Dependency Proceedings & Hearings

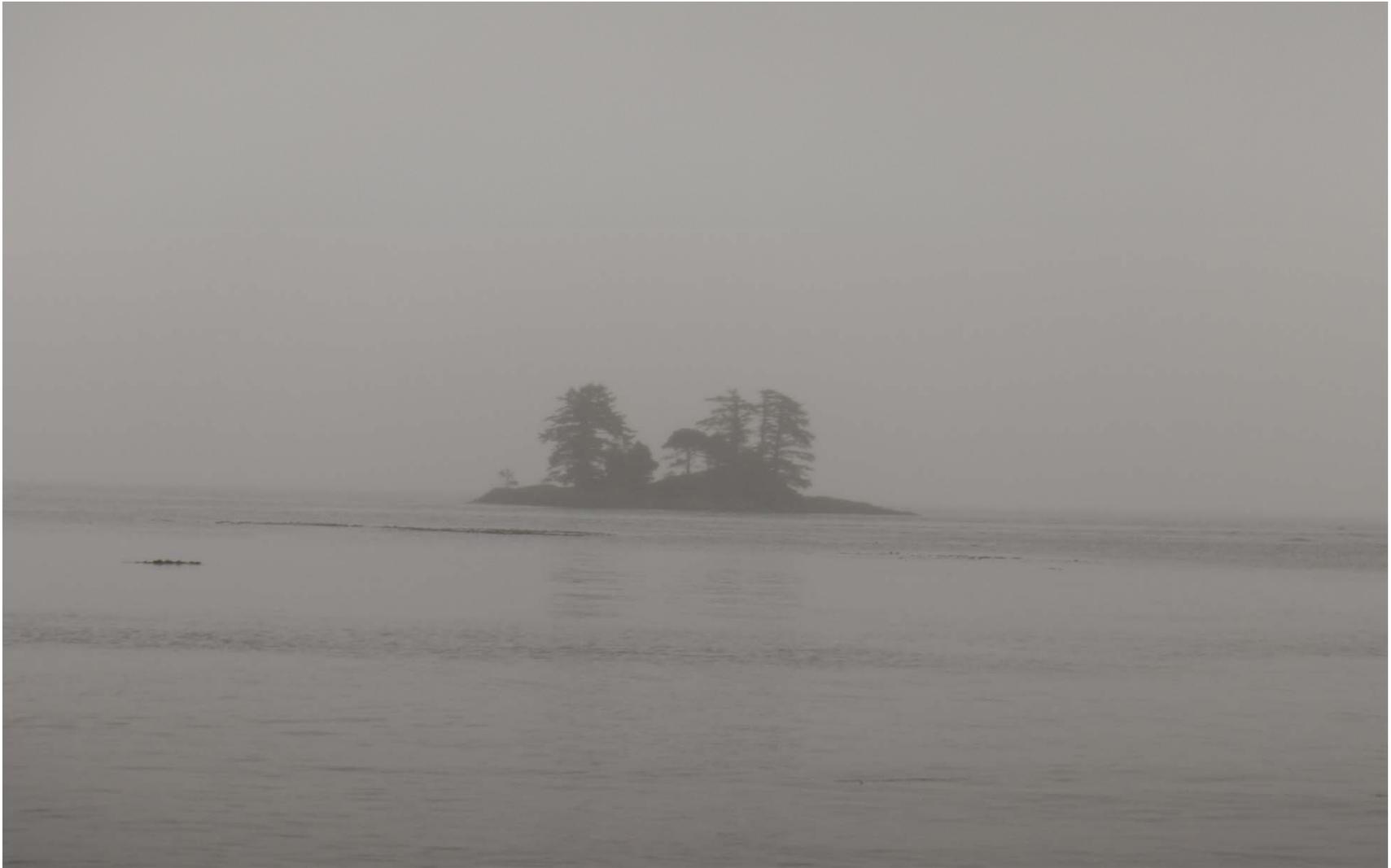
- **THE COURT'S FINDINGS IN ALL OF THESE PROCEEDINGS MUST BE BASED ON THE EVIDENTIARY RECORD**
- **ORS 419A.253** requires that, when a juvenile court judge considers "social file" information in making a ruling, the judge must make the information part of the record, either by causing the document or report in which it appears to be made an exhibit or by taking judicial notice of the information, subject to any objections the parties might make.

# Dependency Proceedings & Hearings

## □ CONSOLIDATION

- **ORS 419B.806:** If there is a juvenile court proceeding “in which the legal or physical custody of a child \* \* \* is at issue,” any on-going domestic relations, guardianship, filiation, or FAPA proceeding involving the child ***must be consolidated with the juvenile court case***, and the juvenile court “shall hear the juvenile matters first unless the court finds that it is in the best interest of the child \* \* \* to proceed otherwise.”

# The Shelter Hearing



# The Shelter Hearing



## **PURPOSE**

To determine whether a child who is (or is about to be) taken into protective custody and is alleged to be within the juvenile court's dependency jurisdiction can be maintained safely in the home, pending adjudication of the petition.

To determine whether a child who already is within the juvenile court's dependency jurisdiction and is (or is about to be) taken into protective custody can be maintained safely in the home. In these circumstances, the state (or some other party) may have filed a new petition, but that will not be true in every case.

# The Shelter Hearing



- **JCIP Model Forms JF2 and JF2i**

# The Shelter Hearing



***At the hearing, the parent(s) and the child must have an opportunity “to present evidence to the court \* \* \* 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.” ORS 419B.185(1).***

The parent(s) and the child also have the ***right to appointed counsel***, who should be present at the hearing, if at all possible. **ORS 419B.195.**

# The Shelter Hearing

## □ ADMISSIBLE EVIDENCE AND DHS DOCUMENTATION

**“Hearsay” is admissible.** “The court may receive testimony, reports and other evidence without regard to whether the evidence is admissible under ORS 40.010 to 40.210 and 40.310 to 40.585 if the evidence is relevant to the determinations and findings required under this section.” **ORS 419B.185(1)(g).**

***DHS is required to present “written documentation” to the court*** outlining its preventive and reunification efforts, its efforts to place the child with a relative, and the reasons why protective custody is in the child’s best interests. **ORS 419B.185(2).** If the court relies on the information, the “documentation” must be made part of the record.

# The Shelter Hearing

## 6 THINGS THE COURT IS REQUIRED TO DO

- (1) Determine whether the child is an “Indian child.”
- (2) Make written findings whether DHS has made *reasonable efforts*, or, if the ICWA applies, **active efforts to prevent/eliminate the need for the child’s removal from home** and **to make it possible for the child to safely return home**. The findings must include a *brief description* of the preventive and reunification efforts made by the agency.
- (3) ***Consider the child’s health and safety to be the paramount concerns.***

# The Shelter Hearing

## (4) *If the court authorizes the child's out-of-home placement:*

(a) make written findings describing why it is in the child's best interests to be removed from the home or continued in the out-of-home placement;

(b) make written findings whether the agency has made **diligent efforts** pursuant to ORS 419B.192 to place the child with a relative.

(5) Determine whether, based on the allegations of the petition, there is **probable cause for jurisdiction under ORS 419B.100** and there are allegations in the petition concerning every person with legal rights to the child.

(6) Provide the notice to the parent(s) required by ORS 419B.117.

# The Shelter Hearing

## □ “REASONABLE EFFORTS” and “ACTIVE EFFORTS”

- Neither term is defined in the applicable statutes. The terms have been explained in decisions in TPR cases, as follows:

“The type and sufficiency of efforts that the state is required to make and whether the types of actions it requires parents to make are *reasonable* depends on the particular circumstances.” *State ex rel DHS v. R.O.W.*, 215 Or App 83, 168 P3d 322 (2007).

“‘*Active efforts*’ entails more than ‘reasonable efforts’ and ‘impose[s] on the agency an obligation greater than simply creating a reunification plan and requiring the client to execute it independently.’” *Dept. of Human Services v. K.C.J.*, 228 Or App 70, 207 P3d 423 (2009).

# The Shelter Hearing

## □ OUT-OF-HOME PLACEMENT OF AN “INDIAN CHILD”

- **25 USC § 1912(d)**: “Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that **active efforts** have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.”
- **25 USC § 1912(e)**: “No foster care placement may be ordered in such proceeding in the absence of a determination, supported by **clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.**” **See also ORS 419B.340(7) (stating same requirement).**

# The Shelter Hearing



## OUT-OF-HOME PLACEMENT OF AN “INDIAN CHILD”

What happens if the evidence shows that

*“continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child “*

BUT, an “expert” is not available at the hearing?

# The Shelter Hearing

## OUT-OF-HOME PLACEMENT OF AN “INDIAN CHILD”

**The JCIP Model Form JF2i includes the following subsection:**

The Court’s finding that continued custody of the child by the parent, or Indian custodian, is likely to result in serious emotional or physical damage to the child: [ ] **is based** on evidence that included the testimony of an expert witness within the meaning of ORS 419B.340(7) [ ] **is not based** on evidence that included the testimony of an expert witness within the meaning of ORS 419B.340(7), because: \_\_\_\_\_ , and the expert testimony requirements of ORS 419B.340(7) shall be satisfied in the following manner:\_\_\_\_\_ . 25 USC §1912(e) and ORS 419B.340(7).

# The Shelter Hearing

## OUT-OF-HOME PLACEMENT OF AN “INDIAN CHILD”

**25 USC § 1915(b)**: “Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met[, and] \* \* \* within reasonable proximity to his or her home, taking into account any special needs of the child. ***In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with --***

“(i) a member of the Indian child's extended family;

“(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

“(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

“(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.”

# The Shelter Hearing

- **ORS 419B.185(1)(a)**: *“When the court finds that no services were provided but that reasonable services would not have eliminated the need for protective custody, the court shall consider the department to have made reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to prevent or eliminate the need for protective custody.”*
- **BUT, what can/should the court do if the services that were not provided would have eliminated the need for protective custody, and, because the services were not provided, the child cannot be safely placed in the home at the time of the hearing?**

# The Shelter Hearing

## □ OTHER FINDINGS AND CONSIDERATIONS

- (1) Does the court have jurisdiction under the UCCJEA? See ORS 109.741 and 109.751.
- (2) Schedule the next hearing – e.g., settlement conference on the petition, a second Shelter Hearing.
- (3) Notice to Tribe in an ICWA case.
- (4) Visitation plan, if the child is to be placed out-of-home.
- (5) Should a CASA be appointed?
- (6) Should a restraining order be entered, pursuant to ORS 419B.845?
- (7) Service of summons and petition on parent(s), guardian(s), child over 12 years of age, pursuant to ORS 419B.839?

# The Shelter Hearing

## THE ORDER

**At the conclusion of the hearing, the court must enter an order – see, e.g., JCIP Model Forms JF2 and JF2i.**

**If the child is to be placed out-of-home, the order must include a temporary custody order, awarding temporary legal custody of the child to DHS, or a person. For example:**

- **▶ Temporary Custody:**
- **The Court places the child in the temporary custody of [ ] DHS [ ] Other: \_\_\_\_\_ for care, placement, and supervision, pursuant to ORS 419B.809(5). The Court authorizes DHS to disclose court records and reports associated with the petition(s) in this matter, if such disclosure is reasonably necessary to perform its official duties related to the involvement of the child with the juvenile court and complies with ORS 419A.255 through ORS 419A.257 and ORS 419B.035.**

# The Jurisdictional Hearing



# The Jurisdictional Hearing



- **JCIP Model Forms JF3 and JF4B**

# The Jurisdictional Hearing



## **PURPOSE**

To adjudicate, or otherwise resolve, the petition alleging that the child is within the jurisdiction of the juvenile court under ORS 419B.100.

In other words: (a) to determine the “legal sufficiency” of the allegations; and (b) to determine whether the contested allegations have been proved.

# The Jurisdictional Hearing



## TIMELY RESOLUTION OF THE PETITION

**ORS 419B.305(2)** requires that “all parties comply with [the discovery provisions of] ORS 419B.881” within 30 days of the filing of the petition.

**ORS 419B.305(1)** requires that, absent a finding of “good cause,” the court must hold a hearing on the petition and enter a dispositional order “no later than 60 days” after the filing of the petition.

# The Jurisdictional Hearing

## □ PRE-ADJUDICATION

- (1) Many courts schedule “settlement conferences” or “admit/deny” hearings at about the 30-day mark.
- (2) The petitioner may file an amended petition “within a reasonable time before an adjudication.” **ORS 419B.872(1).**
- (3) The court, on its own motion or that of a party, “may at any time direct that the petition be amended.”  
**ORS 419B.872(2).**

# The Jurisdictional Hearing

## □ ADJUDICATION – Preliminary Considerations

- (1) Have the necessary parties (e.g., parents, legal guardians) been summoned or otherwise ordered to appear? **See ORS 419B.815.**
- (2) Is the child an “Indian child”?
- (3) Does the court have jurisdiction under the UCCJEA (**see ORS 109.741 and 109.751**) to make a “child custody determination”?

# The Jurisdictional Hearing



## □ ADJUDICATION – The Merits

**ORS 419B.310(3):** In a non-ICWA case, “unless admitted,” the facts alleging jurisdiction under ORS 419B.100(1) “must be established by a preponderance of competent evidence.”

# The Jurisdictional Hearing

## □ ADJUDICATION – The Merits

- **25 USC § 1912(e):** In an ICWA case, the facts alleging jurisdiction under ORS 419B.100(1) must be established by clear and convincing evidence, and clear and convincing evidence, which includes qualified expert testimony, also must show that *“the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.”*
- **QUESTION:** Does the expert testimony requirement apply, if the parent admits the allegations of the petition?

# The Jurisdictional Hearing



## □ **ADJUDICATION – The Merits**

- **All of the provisions of the Oregon Evidence Code apply to jurisdictional hearings in both non-ICWA cases and ICWA cases.**

# The Jurisdictional Hearing



## □ ADJUDICATION – The Merits

**ORS 419B.310(1):** The hearing is conducted by the court “without a jury and may be continued from time to time.”

**ORS 419B.310(1):** The court “may take testimony from any child appearing as a witness and may exclude the child’s parents and other persons [but not the parties’ attorneys] if the court finds such action would likely be in the best interests of the child.”

# The Jurisdictional Hearing

## □ ADJUDICATION – The Merits

*The court may adjudicate the allegations concerning a parent, or legal guardian, who does not appear if:* (a) the person has been lawfully summoned, or ordered, to appear; (b) the Service Members' Civil Relief Act does not excuse the non-appearance; and (c) the court has no reason to believe that circumstances beyond the person's control prevented the person's appearance.

*Even if the requirements for proceeding in the person's absence are satisfied, the burden of proof and standard of proof remain the same.*

# The Jurisdictional Hearing

## THE JUDGMENT

### FINDINGS & ORDERS:

- (1) Is the child within the juvenile court's jurisdiction?
- (2) Which allegations in the petition have been proven/admitted, and which allegations are dismissed?
- (3) If the child is found to be within the court's jurisdiction, the court must make the child a "ward" of the court, **ORS 419B.328**, and, then, the court must "enter an appropriate order directing the disposition to be made in the case," **ORS 419B.325(1)**.

# The Jurisdictional Hearing



## THE JUDGMENT

*The disposition* – i.e., what will be done to address the problems that are the grounds for jurisdiction – should be determined as the second part of the proceeding that begins with the jurisdictional hearing.

*If, for some reason, disposition is to be continued*, the court should enter a stand-alone Jurisdiction Judgment -- **see JCIP Model Form JF3** – making the required findings, providing for the child’s temporary legal and physical custody, scheduling the dispositional hearing and ordering the parties to appear, and providing for visitation, if the child is placed out-of-home.

# The Dispositional Hearing



# The Dispositional Hearing



- **JCIP Model Forms JF4 and JF4B**

# The Dispositional Hearing



## PURPOSE

In the jurisdictional hearing, the court's task is to decide whether the child needs the court's *parens patriae* protection under ORS 419B.100(1), not to determine the nature and extent of that protection. That question is addressed at disposition. *See G.A.C. v. State ex rel Juv. Dept., 219 Or App 1, 182 P3d 223 (2008).*

# The Dispositional Hearing

## ADMISSIBLE EVIDENCE AND THE RECORD

The provisions of the Oregon Evidence Code apply, **except that:**

“testimony, reports or other material relating to the ward’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.” **ORS 419B.325(2)**. See *Dept. of Human Services v. B.J.W.*, 235 Or App 307, 230 P3d 965 (2010) (construing and applying ORS 419B.325(2)).

**Evidence/information considered by the court under ORS 419B.325 still must be made part of the evidentiary record, or it can not be a basis for the court’s dispositional findings and orders.**

# The Dispositional Hearing



## □ **MATTERS TO BE ADDRESSED & RESOLVED**

- (1) The child's needs, placement and legal custody.
- (2) What DHS will be required to do.
- (3) What the parent(s)/legal guardian(s) will be required to do.
- (4) What the concurrent plan will be.
- (5) Visitation with the parent(s), sibling(s), and others.

# The Dispositional Hearing

## THE CHILD'S NEEDS, LEGAL CUSTODY, AND PLACEMENT

Children aren't fungible. What are this child's medical, mental health, and other needs? Federal "CAPTA" requires mental health assessments for children within 60 days of out-of-home placement and referral of those under 3 to early intervention services.

Can the child be maintained safely under "protective supervision" in the parent's home, or the home of another person and, if so, under what conditions? **See ORS 419B.331.**

Is it in the child's best interests and for the child's welfare to be committed to the legal custody of DHS? **See ORS 419B.337.**

# The Dispositional Hearing

## THE CHILD'S NEEDS, LEGAL CUSTODY, AND PLACEMENT

If the child is to be committed to the legal custody of DHS, should the court's recommended placement be in the home or out-of-home, in "substitute care"?

(a) **ORS 419B.337(2)**: "The court may specify the particular type of care, supervision, and services" that DHS is to provide, "but the actual planning and provision of such care, supervision, and services" is the agency's responsibility.

(b) **ORS 419B.339**: But, "[c]ommitment of a child \*\* \* to [DHS] does not terminate the court's continuing jurisdiction to protect the rights of the child \* \* \* or [the rights of the child's] parents or guardians."

# The Dispositional Hearing

## OUT-OF-HOME PLACEMENT OF A NON-INDIAN CHILD

(a) **The court must determine and make written findings** *why the child can not live at home*, and, except in cases to which ORS 419B.340(5) and (6) apply,

- (b) **The court must determine and make written findings** *whether DHS has made reasonable efforts* to prevent/eliminate the need for the child's removal from home and to make it possible for the child to safely return home, and the findings must include a **brief description** of the preventive and reunification efforts made by the agency and why those efforts were/were not sufficient.

□

# The Dispositional Hearing

## OUT-OF-HOME PLACEMENT OF AN “INDIAN CHILD”

- (a) **The court must determine and make written findings** *why the child can not live at home*, and
- (b) **The court must determine and make written findings** *whether DHS has made active efforts* to prevent/eliminate the need for the child’s removal from home and to make it possible for the child to safely return home, and the findings must include a **brief description** of the preventive and reunification efforts made by the agency and why those efforts were/were not sufficient.

# The Dispositional Hearing

## □ OUT-OF-HOME PLACEMENT OF AN “INDIAN CHILD”

- **25 USC § 1912(d)**: “Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that **active efforts** have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.”
- **25 USC § 1912(e)**: “No foster care placement may be ordered in such proceeding in the absence of a determination, supported by **clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.**” **See also ORS 419B.340(7) (stating same requirement).**

# The Dispositional Hearing

## OUT-OF-HOME PLACEMENT OF AN “INDIAN CHILD”

**25 USC § 1915(b)**: “Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met[, and] \* \* \*within reasonable proximity to his or her home, taking into account any special needs of the child. ***In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with –***

“(i) a member of the Indian child's extended family;

“(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

“(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

“(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.”

# The Dispositional Hearing

## WHAT DHS IS REQUIRED TO DO

**If the child is committed to the DHS, and the goal is reunification of the family, DHS is required by ORS 419B.343 to:**

- (1) ***Develop and implement a case plan that:***
  - (a) is rationally related to the bases for dependency jurisdiction in the case;
  - (b) incorporates the perspective of the child and the family, and
  - (c) includes “[a]ppropriate services” that will give the parent a chance to change the parent’s circumstances and/or conduct “to make it possible for the [child] to safely return home within a reasonable time.”
  
- (2) ***Develop a “concurrent permanent plan*** to be implemented if the parent is unable or unwilling” to make necessary the changes to the parent’s circumstances and/or conduct “to make it possible for the [child] to safely return home within a reasonable time.”

# The Dispositional Hearing

## □ WHAT DHS IS REQUIRED TO DO

**ORS 419A.004 (20): “Reasonable time” means a period of time that is reasonable given a child or ward’s emotional and developmental needs and ability to form and maintain lasting attachments.**

The reasonable-time inquiry “is child-specific,” and “calls for testimony in psychological and developmental terms regarding the particular child’s requirements.” *State ex rel SOSCF v. Stillman*, 333 Or 135, 146, 36 P3d 490 (2001).

**The reasonable-time inquiry should begin when the case begins and be an on-going consideration for the court and the parties.**

# The Dispositional Hearing

## □ WHAT DHS IS REQUIRED TO DO

Under the “Oregon Safety Model,” DHS must:

- (a) Develop an “**Action Agreement**” for the parent “that identifies one or more of the services or activities in which the parent or legal guardian will participate to achieve an expected outcome.”
- (b) Identify in writing and communicate to the parent the “**conditions for return,**” which means “the **specific behaviors, conditions, or circumstances** that must exist within a child's home before a child can safely returned and remain in the home with an in-home ongoing safety plan.”

# The Dispositional Hearing

## □ WHAT THE PARENT IS REQUIRED TO DO

**ORS 419B.387:** “If the court finds in an evidentiary hearing that treatment or training is needed by a parent to correct the circumstances that resulted in [dependency jurisdiction] or to prepare the parent to resume the care of the [child], the court may order the parent to participate in the treatment or training if the participation is in the [child’s] best interests.”

**ORS 419B.385:** “A parent or guardian \* \* \* served with summons” before adjudication of the petition is 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 reasonable manner in providing appropriate education or counseling for the [child].”

# The Dispositional Hearing

## □ WHAT THE PARENT IS REQUIRED TO DO

**Work to address and correct the conditions and circumstances that brought the child within the court's jurisdiction.**

**Comply with the court's orders, attend all hearings, and maintain contact with his/her attorney.**

**If the parent believes that “financial, health or other problems will delay or prevent the parent's compliance” with a court order, the parent “must inform the court of the relevant circumstances as soon as reasonably possible\* \* \*.”** **ORS 419B.389.**

# The Dispositional Hearing

## □ WHAT THE PARENT IS REQUIRED TO DO

**If the child is committed to DHS for placement in substitute care: visit with the child, comply with the case plan and “Action Agreement,” maintain contact with the case worker and the CASA (if one is appointed), identify relatives who could provide substitute care and/or provide support and assistance for the child and family, ask the case worker to be specific about the “conditions for return.”**

# The Dispositional Hearing



## VISITATION

If the child is committed to DHS for placement in substitute care:

**ORS 419B.337(3)**: “The court may make an order regarding visitation by the [child’s] parents or siblings,” and “[DHS] is responsible for developing and implementing a visitation plan consistent with the court’s order.”

**One-hour of DHS-supervised visitation once a week at DHS – is that enough?**

# The Dispositional Hearing

## □ DILIGENT EFFORTS

- If the child is committed to DHS for placement in substitute care:

**ORS 419B.192:** The court must make written findings whether the agency has made diligent efforts to place the child with a “relative.” If the court determines the proposed “relative” placement “is not in the best interest of the child,” the court must make written findings “setting forth the reasons \* \* \*.”

# The Dispositional Hearing

## PSYCHOLOGICAL EVALUATIONS & OTHER “SERVICES”

**“ORS 419B.343 does not limit the provision of psychological services to cases in which a parent’s mental health condition is a basis for juvenile [court] jurisdiction. Rather, it requires only a rational connection between the service to be provided and the basis for jurisdiction.” *State ex rel Juv. Dept. v. G. L.*, 220 Or App 216, 222, 185 P3d 483 (2008).**

# The Dispositional Hearing



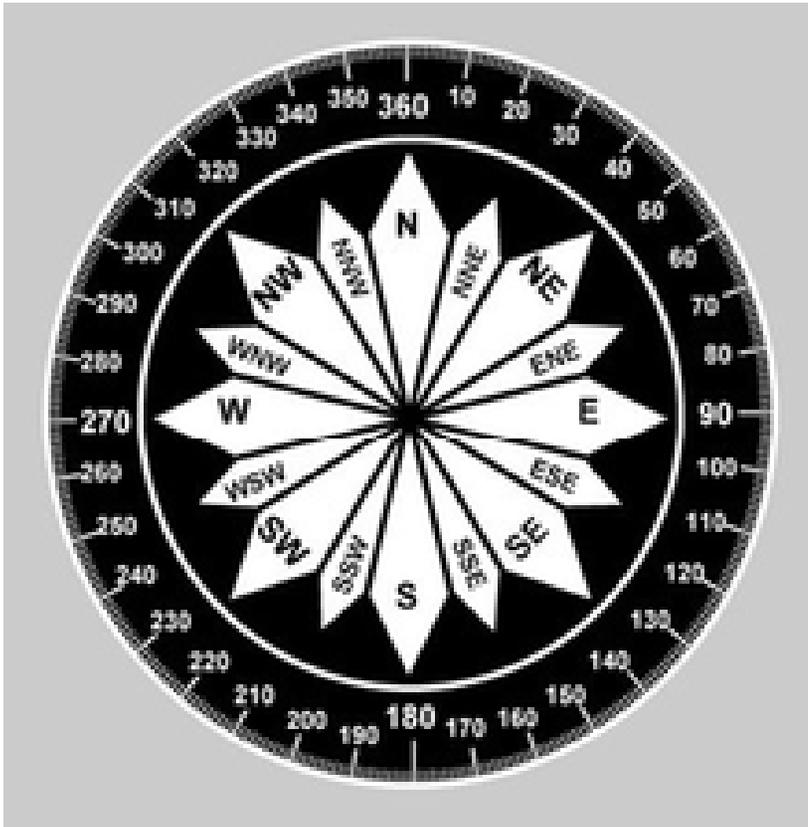
## THE JUDGMENT

**At the conclusion of the dispositional hearing, the court must enter a judgment that includes all of the required findings and orders.**

**JCIP Model Form JF4B** should be used when the jurisdictional and dispositional hearings occur in the same proceeding.

**JCIP Model Form JF4** should be used when the jurisdictional and dispositional hearings are not part of the same proceeding, because, at the conclusion of the jurisdictional hearing, disposition is continued to a later date.

# The Review Hearing



# The Review Hearing



## **PURPOSE**

To determine whether the court should continue jurisdiction and wardship or order modifications in the care, placement and supervision of the child.

To assess the parent's progress and that of DHS in implementing the case plan in effect and determine whether additional efforts or services are required.

To assess the child's circumstances and well-being, including the need, if any, for continued substitute care.

To review the development of the concurrent plan.

# The Review Hearing

## MANDATORY & PERMISSIBLE REVIEW HEARINGS

**ORS 419B.449(1) specifies when review hearings shall be held and when they may be held. See ORS 419B.449(1)(a)-(d). For example: (a) the court “may hold a [review] hearing” following receipt of “any report required by ORS 419B.440,” which are reports that DHS must file when it has legal custody of a child; and (b) the court shall hold a [review] hearing” within “30 days of a report made under ORS 419B.440(2)(c),” which is required when DHS has legal custody of a child who has been placed with the parent for “six consecutive months.”**

**Federal law – 42 USC § 675(5)(B) – requires that juvenile court Review Hearings or reviews by the CRB (Citizen’s Review Board) be conducted at least once every 6 months in the cases of children placed in substitute care.**

# The Review Hearing

## ADMISSIBLE EVIDENCE AND THE RECORD

The provisions of the Oregon Evidence Code apply, **except that:**

“testimony, reports or other material relating to the ward’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.” **ORS 419B.325(2). See ORS 419B.449(2).**

**Evidence/information considered by the court under ORS 419B.325 still must be made part of the evidentiary record, or it can not be a basis for the court’s dispositional findings and orders.**

# The Review Hearing

## REQUIRED FINDINGS – CHILD IN SUBSTITUTE CARE

**For non-Indian children, except in cases to which ORS 419B.340(5) and (6) apply, the court must determine and make written findings *whether DHS has made reasonable efforts* to prevent/eliminate the need for the child's removal from home and to make it possible for the child to safely return home, and the findings must include a *brief description* of the preventive and reunification efforts made by the agency and why those efforts were/were not sufficient.**

# The Review Hearing



## REQUIRED FINDINGS – CHILD IN SUBSTITUTE CARE

**For Indian children, the court must determine and make written findings whether DHS has made active efforts** to prevent/eliminate the need for the child's removal from home and to make it possible for the child to safely return home, and the findings must include a **brief description** of the preventive and reunification efforts made by the agency and why those efforts were/were not sufficient.

# The Review Hearing

## REQUIRED FINDINGS – PARENT PROGRESS

**When the case plan is reunification of the family, the court must determine:**

**(1) Whether the parent has made sufficient progress toward meeting the expectations of the case plan and is in compliance with the case plan and whether the child can be safely returned home.**

**(2) What are the specific “services” in which the parent is to participate during the next period of review and what progress must the parent make?**

# The Review Hearing

## REQUIRED FINDINGS – CHILD TO REMAIN IN SUBSTITUTE CARE

### ORS 419B.449(3):

- (a) Why continued care is necessary, and what the timetable is for the child's return home or other permanent placement;**
  
- (b) Whether DHS has made the diligent efforts required by ORS 419B.192;**
  
- (c) The number of placements, visits, and case worker contacts the child has had “and whether the frequency of each of these is in the best interests of the child,” and, if the child is 14 or older, whether the child is progressing toward high school graduation.**

# The Review Hearing



## REQUIRED FINDINGS – CHILD AT HOME AND IS STILL IN DHS CUSTODY

**ORS 419B.449(4): “Why it is necessary and in the best interests of the [child]” to remain “in the legal custody of [DHS],” and “[t]he expected timetable for dismissal of the department’s legal custody and termination of wardship.”**

# The Review Hearing



## REQUIRED FINDINGS – CONCURRENT PLAN

**ORS 419B.449(5): “[T]he court shall consider the efforts made to develop the concurrent case plan \* \* \*.”**

# The Review Hearing



## **THE JUDGMENT**

**At the conclusion of the review hearing, the court must enter a judgment that includes all of the required findings and orders.**

**JCIP Model Form JF6**

# The Permanency Hearing



# The Permanency Hearing



## □ PURPOSE

- **To reach a decision concerning a permanent plan for a child and to approve a permanent plan, which may be reunification, adoption, guardianship, placement in the legal custody of a relative, or another planned permanent living arrangement (“APPLA”).**
- **To review the progress of both the family and DHS and review the case plan for needed modifications.**
- **To ensure compliance with deadlines within which final permanency decisions should be made.**

# The Permanency Hearing



## □ WHEN THE HEARING IS TO BE HELD

- **ORS 419B.470 and ORS 419B.498(3)** specify when a permanency hearing must be held and when a permanency hearing may be held.
-

# The Permanency Hearing

## WHEN THE HEARING IS TO BE HELD

- **Most permanency hearings are held pursuant to ORS 419B.470(2): “[W]hen a child or ward is in substitute care, the court shall conduct a permanency hearing no later than 12 months after the ward was found within the jurisdiction of the court under ORS 419B.100 or 14 months after the child or ward was placed in substitute care, whichever is the earlier.**
- 
- **NOTE: Reasonable-time considerations may require a permanency hearing sooner than the 12-month, or 14-month, mark in a particular case.**

# The Permanency Hearing

## ADMISSIBLE EVIDENCE AND THE RECORD

The provisions of the Oregon Evidence Code apply, **except that:**

“testimony, reports or other material relating to the ward’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.” **ORS 419B.325(2). See ORS 419B.476(1).**

**Evidence/information considered by the court under ORS 419B.325 still must be made part of the evidentiary record, or it can not be a basis for the court’s dispositional findings and orders.**

# The Permanency Hearing

## □ PRIMARY DETERMINATIONS AND FINDINGS

- **If the case plan at the time of the hearing is to reunify the family, the court must determine:**
- “[W]hether [DHS] has made reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to make it possible for the [child] to safely return home and whether the parent has made sufficient progress to make it possible for the ward to safely return home,” and, if not, whether:
- (a) **to continue the plan of reunification**, because further efforts by the parent and DHS will permit the safe return of the child “within a reasonable time” **OR** (b) **to change the case plan** to the concurrent plan or another permanent plan – *i.e.*, adoption, guardianship, placement with a fit and willing relative, or APPLA.
- **See ORS 419B.476(2)(a), (4)(c) and (5); JCIP Model Form JF5, Sections 3 and 5.**

# The Permanency Hearing

## □ PRIMARY DETERMINATIONS AND FINDINGS

- **If the case plan at the time of the hearing is a plan other than to reunify the family, the court must determine:**
  - (1) “[W]hether [DHS] has made reasonable efforts to place the [child] in a timely manner in accordance with the plan,” and “whether [DHS] has considered permanent placement options for the [child].”
  - (2) Whether the current case plan is in the child’s best interests and should continue, or should be changed to another permanent reunification with a parent.
- **See ORS 419B.476(2)(b), (2)(c), (4)(d-f) and (5); JCIP Model Form JF5, Sections 4 and 5.**

# The Permanency Hearing

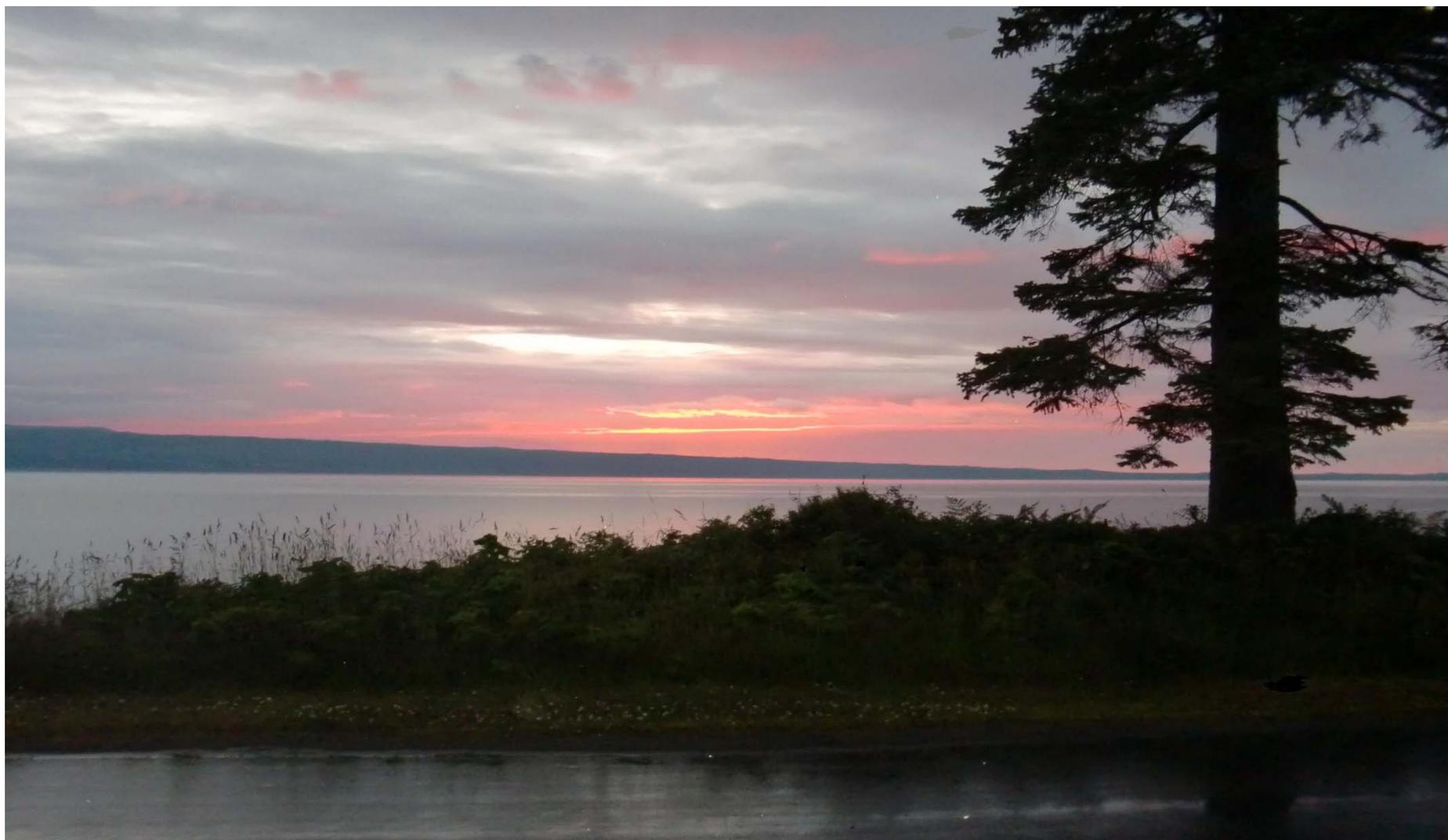


## THE JUDGMENT

**A judgment that includes all of the findings and determinations required by ORS 419B.476 (2) and (5) must be entered within 20 days of the permanency hearing.**

**JCIP Model Form JF5**

# Termination of Parental Rights (TPR)



# Termination of Parental Rights (TPR)



## □ REQUIREMENTS FOR FILING A TPR PETITION

- (1) The court must hold a permanency hearing and enter a permanency judgment changing the case plan to “adoption.”**
- (2) Only the state or the child may file a TPR petition.**
- (3) A TPR petition may be filed only for the purpose of freeing the child for adoption.**

**See ORS 419B.498(3) and 419B.500**

# Termination of Parental Rights (TPR)

## □ INDEPENDENT STATUTORY GROUNDS FOR TERMINATION

- **ORS 419B.502 (extreme conduct)**
- **ORS 419B.504 (unfitness)**
- **ORS 419B.506 (neglect)**
- **ORS 419B.508 (abandonment)**

TPR petitions are most often based on ORS 419B.504 -- *i.e.*, allegations a parent is “***unfit by reason of conduct or condition seriously detrimental to the child \* \* \* and integration of the child \* \* \* into the home of the parent \* \* \* is improbable within a reasonable time due to conduct or conditions not likely to change.***”

# Termination of Parental Rights (TPR)

- **TERMINATION MUST BE IN THE CHILD'S BEST INTEREST**
  
- **ORS 419B.500: The court is authorized to order termination of a parent's rights to a child only if the petitioner proves:**
  - **(a) one, or more, of the independent statutory grounds for termination, and**
  - **(b) that termination of the parent's rights and the parent-child relationship is in the child's best interests.**

# Termination of Parental Rights (TPR)

- **TIMELY RESOLUTION OF THE PETITION**



- **ORS 419B.521(1) and (2): The hearing to adjudicate the TPR petition “may not” be held “any earlier than 10 days after service or final publication of the summons,” and, “except for good cause shown,” must be held “not later than six months from the date on which summons for the petition \* \* \* is served.”**

# Termination of Parental Rights (TPR)



## □ ADJUDICATION – The Merits

- **ORS 419B.310(3):** In a non-ICWA case, “[t]he facts on the basis of which the rights of the parents are to be terminated, unless admitted, must be established by a clear and convincing evidence.”

# Termination of Parental Rights (TPR)

## □ ADJUDICATION – The Merits

- **ORS 419B.521(4)**: “[I]f an Indian child is involved, termination of parental rights must be supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that continued custody of the child is likely to result in serious emotional or physical harm to the child.” **See also 25 USC § 1912(f).**
- The beyond-a-reasonable-doubt standard applies to “*all the facts that form the basis for termination of parental rights.*” **State ex rel Dept. of Human Services v. K.C.J., 228 Or App 70, 207 P3d 423 (2009)**

# Termination of Parental Rights (TPR)



## □ THE TERMINATION ORDER

- **ORS 419B.524(4)**: “Unless there is an appeal from the order terminating the rights of the parent or parents, the order permanently terminates all rights of the parent or parents whose rights are terminated and the parent or parents have no standing to appear as such in any legal proceeding concerning the [child.]”

# Termination of Parental Rights (TPR)



- **THE COURT'S CONTINUING RESPONSIBILITY TO MONITOR PROGRESS TOWARD ADOPTION**
- **See, e.g., ORS 419B.449(1)(a) and 419B.470(4) and (7).**