

November 7, 2011

OREGON JUVENILE COURT PROCEEDINGS

New Legislation
Significant Appellate Court Decisions
JCIP Model Forms for Judgments

Introduction

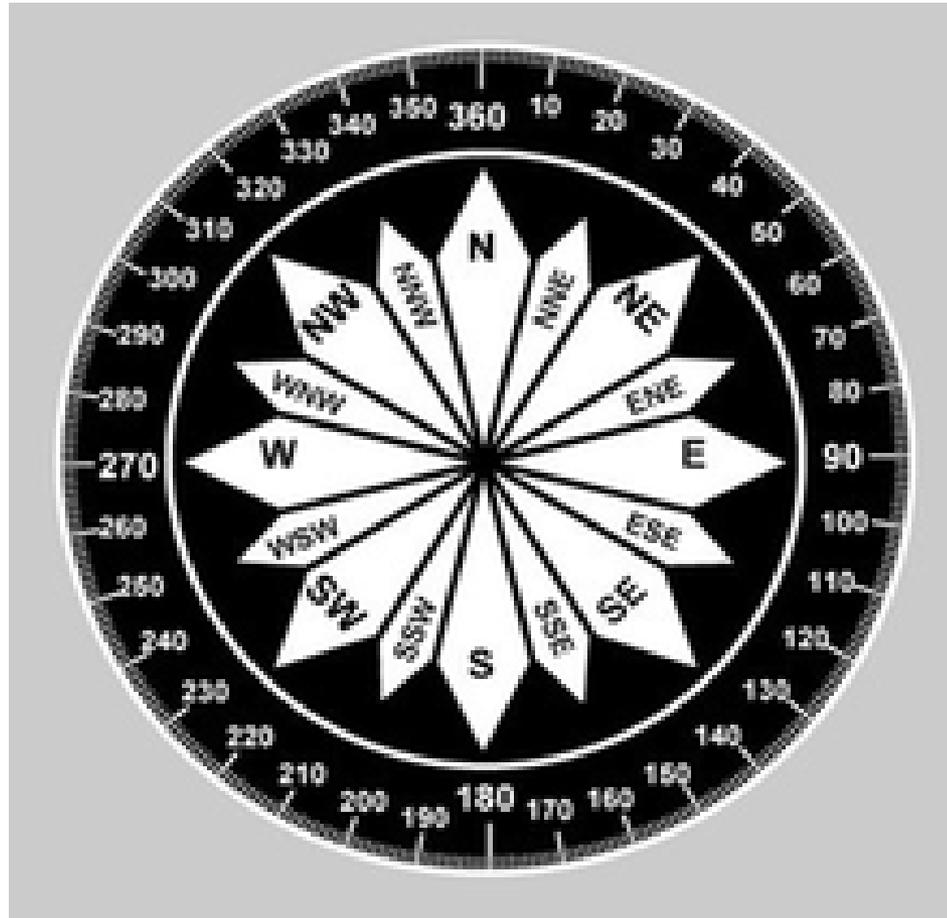
INTRODUCTION



- Describe the universe and give two examples.

-

INTRODUCTION



OREGON JUVENILE COURT PROCEEDINGS

New Legislation
Significant Appellate Court Decisions
JCIP Model Forms for Judgments

New Legislation

SB 964 - “Strengthening, Preserving and Unifying Families” programs

- **SB 964 (Or Laws 2011, ch 568):**
- Requires that DHS and “county partners” establish “Strengthening, Preserving and Unifying Families” programs throughout the state to provide mental health treatment and/or drug and alcohol treatment to parents and to provide housing so that the children of these parents do not have to be placed in foster care. Directs the department to seek federal approval to access federal savings accrued as result of reduction in costs of foster and substitute care to reinvest in these programs.

SB 964 - “Strengthening, Preserving and Unifying Families” programs

- **Effective Date:** Declares emergency, effective on passage: 6/28/11.
-
- **Juvenile Court Issues/Actions:** In determining whether DHS has made “reasonable efforts” (or “active efforts” under the ICWA), courts are required to consider “whether placement of a child and referral of a child and the child’s family to a Strengthening, Preserving and Reunifying Families program is or was in the child’s best interests and the action most likely to prevent or eliminate the need for removal of the child from the child’s home or the action most likely to make it possible for the child to safely return home.”

SB 408 - Juvenile sex offender registration and relief from reporting requirements

- **SB 408 (Or Laws 2011, ch 271):**
- Substantially modifies current law governing juvenile sex offender registration and reporting. For example, under the bill:

SB 408 - Juvenile sex offender registration and relief from reporting requirements

- (a) only youths adjudicated for conduct that would constitute *felony* sex offenses if committed by an adult are required to report, those adjudicated for *misdemeanor* sex offenses are not, and, by January 1, 2013, the Department of State Police is required to remove from LEDS the sex offender registration information “for any person who has reported as a sex offender solely as the result of” having been adjudicated for a *misdemeanor* sex offense;

SB 408 - Juvenile sex offender registration and relief from reporting requirements

- (b) “the court shall ensure” that a youth adjudicated for a felony sex offense completes a “sex offender registration form” and “shall ensure that the form is sent to the Department of State Police” within 3 working days;

SB 408 - Juvenile sex offender registration and relief from reporting requirements

- (c) a youth required to report based on an adjudication for a **Class A or Class B felony sex offense** may file a petition for relief from the duty to report no sooner than **two years** after termination of juvenile court jurisdiction, a youth required to report based on an adjudication for a **Class C felony sex offense** may file a petition for relief from the duty to report no sooner than **30 days** before the termination of juvenile court jurisdiction, and

SB 408 - Juvenile sex offender registration and relief from reporting requirements

- (d) in every case, “the person filing the petition has the burden of proving by clear and convincing evidence that the person is rehabilitated and does not pose a threat to the safety of the public.”
- The bill also specifies when and under what circumstances youths are required to report, in which court a petition seeking relief from the duty to report must be filed and under what circumstances the court must appoint counsel for a youth seeking such relief.
- **Effective Date:** 6/7/11, but most of the provisions become operative 1/1/12.

OREGON JUVENILE COURT PROCEEDINGS

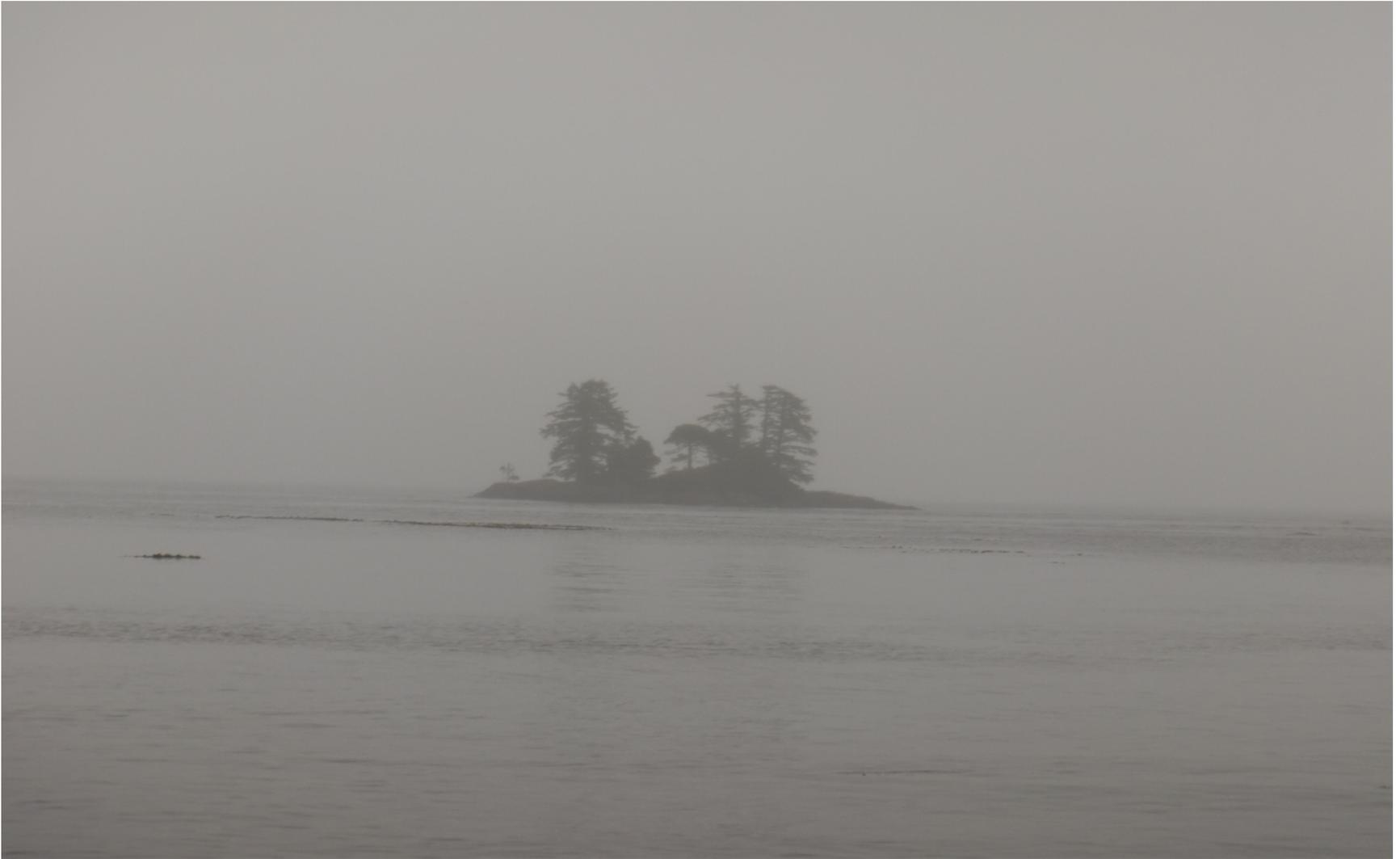
New Legislation

Significant Appellate Court Decisions

JCIP Model Forms for Judgments

Significant Appellate Court Decisions

APPELLATE COURT DECISIONS



APPELLATE COURT DECISIONS



APPELLATE COURT DECISIONS



APPELLATE COURT DECISIONS

Jurisdiction



APPELLATE COURT DECISIONS

Jurisdiction

- ***State v. N.L., 237 Or App 133, 239 P3d 255 (2010)*** (father was denied adequate counsel because his attorney misstated the law concerning applicability of the ICWA, and the juvenile court lacked authority under ORS 419B.923 to enter an amended jurisdictional judgment applying the ICWA after the parents had filed notices of appeal)
- ***State v. R.T.S., 236 Or App 646, 238 P3d 53 (2010)*** (state proved that father's domestic violence created a reasonable likelihood of harm to the children and, therefore, endangered their welfare)
- ***Dept. of Human Services v. G.E., 243 Or App 471, 260 P3d 516 (2011)*** (mother challenges continuing juvenile court wardship on the ground that the specific facts alleged in the dependency petition, which she admitted, have ceased to exist)

APPELLATE COURT DECISIONS

Permanency Hearings & Judgments



APPELLATE COURT DECISIONS

Permanency Hearings & Judgments

- *Department of Human Services v. N. M. S., --- Or App ---, --- P3d --- (October 26, 2011)* (reversing permanency judgments changing plan from reunification to adoption because the juvenile court relied on facts extrinsic to the jurisdictional judgment in determining whether DHS had made "reasonable efforts" toward reunification of children with mother, and whether mother had made "'sufficient progress" toward reunification)
- *"[W]here the jurisdictional judgment is based on an unexplained, nonaccidental injury—the basis for jurisdiction includes those "conditions or characteristics" potentially demonstrated by the specific facts alleged. In other words, it properly encompasses those conditions or characteristics that could have caused the nonaccidental injury. * * * That universe is admittedly broad--it may, for example, point to physical abuse, substance abuse, mental health issues, domestic violence, failure to protect, or other conditions * * * [but not] concerns about hygiene and general parenting skills."*

APPELLATE COURT DECISIONS

Permanency Hearings & Judgments

- *Department of Human Services v. L. B., --- Or App ---, --- P3d --- (October 19, 2011)* (reversing permanency judgments changing plan from reunification to adoption because the permanency judgment did not include the findings required by ORS 419B.476(5)(d))

“ORS 419B.476(5) expresses the legislature's intent that ‘the trial court carefully evaluate DHS's decision to change a permanency plan for a child in order to ensure that the decision is one that is most likely to lead to a positive outcome for the child.’
** * * Indeed, the matter is of such import that the legislature has required not only that the findings be made, but that they be expressly included in the court's written order. In other words, the legislature has manifested its intent that a juvenile court expressly connect all of the dots along the way to a change in the permanency plan. The court did not do so in this case and, given the clear legislative mandate and interests at stake, as well as the confusing form of judgment, we consider this an appropriate case in which to exercise our discretion to correct the errors in the permanency judgments.”*

APPELLATE COURT DECISIONS

Permanency Hearings & Judgments

- **ORS 419B.476(5)(d)**: If the court decides that the plan for the child should be adoption, the permanency judgment MUST include “the court’s determination of whether one of the circumstances in ORS 419B.498 (2) is applicable.”
- **ORS 419B.498(2)**:
 - (a) “The child * * * is being cared for by a relative and that placement is intended to be permanent;”
 - (b) “There is a compelling reason, which is documented in the case plan, for determining that filing [a termination] petition would not be in the best interests of the child;”
 - (c) “[DHS] has not provided to the family of the child * * *, consistent with the time period in the case plan, such services as [DHS] deems necessary for the child * * * to safely return home, if reasonable efforts to make it possible for the child * * * to safely return home.”

APPELLATE COURT DECISIONS

Permanency Hearings & Judgments

- [] **ADOPTION**
- [] None of the circumstances described in ORS 419B.498(2) applies, because: [] the child is not currently being cared for by relative in a placement that is intended to be permanent, as provided in ORS 419B.498(2)(a), [] there is not a “compelling reason” within the meaning of that term in ORS 419B.498(2)(b) for determining that filing a petition to terminate the parent’s/parents’ parental rights would not be in the child’s best interests, and [] the circumstances described in ORS 419B.498(2)(c) are not present. [] Additional related findings: _____
- _____.

APPELLATE COURT DECISIONS

Termination of Parental Rights



APPELLATE COURT DECISIONS

Termination of Parental Rights

- **Dept. of Human Services v. L.E.G., 244 Or App 92, 260 P3d 586 (2011)** (reversing judgment terminating father's parental rights, because state failed to prove, by clear and convincing evidence, that it was improbable that the child could be integrated into father's home within a reasonable time)
- **Dept. of Human Services v. A.L.M. and J.T.C. , 242 Or App 625, 259 P3d 17, rev den 350 Or 716 (2011)** (reversing judgment terminating father's parental rights, because state failed to prove, by clear and convincing evidence, that it was improbable that the two-year-old child could be reintegrated into father's home within a reasonable time)

APPELLATE COURT DECISIONS

Termination of Parental Rights

- *Dept. of Human Services v. T.C.A.*, 240 Or App 769, 248 P3d 24 (2011) (reversing judgments terminating mother's parental rights to two children where state failed to prove by clear and convincing evidence that it was improbable that the children could be integrated into mother's home within a reasonable time)

*“Under [ORS 419B.504], we must determine not only whether the parent is unfit, but also whether integration of the child into the parent's home is improbable within a reasonable time due to conduct or conditions not likely to change. * * * A reasonable time is ‘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.’ ORS 419A.004(20). The inquiry into a reasonable time ‘is child-specific. It calls for testimony in psychological and developmental terms regarding the particular child's requirements.’ * * * Facts supporting termination of parental rights, unless admitted, must be proved by clear and convincing evidence. * * **

APPELLATE COURT DECISIONS

Termination of Parental Rights

- ***“* * * Although the expert witnesses acknowledged the difficulties of predicting when mother will be far enough into her recovery to be able to parent, they testified that she may well be able to resume caring for the children in a period ranging from six to 18 months. DHS did not show that mother would be unlikely to achieve sobriety or otherwise meet its burden to prove that it was improbable that mother would be able to provide a safe home for the children in that timeframe. Ultimately, the problem here is that the record is devoid of evidence regarding how such a delay in achieving permanency would affect the children's emotional and developmental needs or their ability to form and maintain lasting attachments.***
- ***“* * * In short, the record does not contain clear and convincing evidence that a six-to-18-month wait to return to mother's home is unreasonable in light of the children's needs.”***

OREGON JUVENILE COURT PROCEEDINGS

New Legislation

Significant Appellate Court Decisions

JCIP Model Forms for Judgments

JCIP Model Forms for Judgments

JCIP Model Forms for Judgments



JCIP Model Forms for Judgments

- **GOOGLE “JCIP Oregon” for Model Forms in “WORD” and “WORD Fillable” formats:**
- **JF2 Shelter Order**
- **JF 2i Shelter Order – ICWA**
- **JF3 Jurisdiction Judgment**
- **JF4 Disposition Judgment**
- **JF4B Jurisdiction and Disposition Judgment**
- **JF5 Permanency Judgment**

JCIP Model Forms for Judgments

