

A PRACTICAL GUIDE TO JUVENILE COURT DEPENDENCY HEARINGS

INTRODUCTION

Dependency Jurisdiction

“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.” [ORS 419B.090](#)

“[T]he juvenile court has exclusive original jurisdiction in any case involving a [child]” whose condition and/or circumstances are described in [ORS 419B.100\(1\)](#).

UMPIRE OR INQUIRING MAGISTRATE?

A child found to be within the court's jurisdiction is a "ward" of the court.

UMPIRE OR INQUIRING MAGISTRATE?

A juvenile court judge is responsible for:

- (1) ensuring that the case proceeds in compliance with statutory timelines;**
- (2) continually assessing the adequacy of the "case plan";**
- (3) making the findings required by statute for each hearing; and**
- (4) ensuring that the court's judgments are legally sufficient.**

UMPIRE OR INQUIRING MAGISTRATE?

In the discharge of these responsibilities, a juvenile court judge is not entitled to rely on the diligence of counsel, the CASA or DHS.

The Indian Child Welfare Act

A child who is a member of an Indian tribe, or is eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe, is an “**Indian child.**” 25 USC § 1903(4)

When an “**Indian child**” is the subject of a dependency petition, special jurisdictional and other requirements apply, pursuant to the Indian Child Welfare Act (ICWA). 25 USC § 1901 *et seq*

Dependency Hearings

Shelter – Can the child be safe in the home pending adjudication?

Jurisdiction – Is the child within the court’s jurisdiction?

Disposition – What assistance do the parent(s) and child require?

Review – How are the child and the parent(s) progressing? Should the case plan be modified? Should wardship continue? Reasonable/Active Efforts?

Permanency – When and where will the child be in a safe, permanent home? Is DHS in compliance with plan? Reasonable/Active Efforts?

Termination-of-Parental-Rights – Are the statutory grounds for termination satisfied? Is termination of parental rights in the child’s best interest?

Findings in Orders & Judgments

THE COURT’S ORDERS & JUDGMENTS IN ALLOF THESE DEPENDENCY 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).

A PRACTICAL GUIDE TO JUVENILE COURT DEPENDENCY HEARINGS

THE HEARINGS

The Shelter Hearing



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 Shelter Hearing

- **Reasonable Efforts / Active Efforts in ICWA cases**
- **Best Interests Finding: for out of home placement**
- **Diligent Efforts Finding:**
 - **Identify relative placements; place with relative**
 - **Place with siblings**
 - **Identify, locate, notice to grandparents**

The Shelter Hearing

**IF DHS HAS NOT MADE
THE REQUIRED EFFORTS,
WHAT DO YOU DO?**

The Shelter Hearing

**APPOINTMENT OF
COUNSEL**

The Shelter Hearing

Model Judgment Forms JF2 and JF2i

The Jurisdictional Hearing



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

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

In an ICWA case, the facts alleging jurisdiction must be established by **clear and convincing** evidence, which includes qualified expert testimony, and 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.*” **25 USC § 1912(e)**

The Jurisdictional Hearing

THE JUDGMENT – Findings and 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, and, then, the court must "enter an appropriate order directing the disposition to be made in the case."

ORS 419B.328 and 419B.325(1)

The Jurisdictional Hearing

CURRENT RISK OF HARM

- *Dept. of Human Services v. C.J.T.*, [258 Or App 57 \(2013\)](#).
- Juvenile court jurisdiction is appropriate under ORS 419B.100(1)(c) when a child's condition or circumstances endanger the welfare of the child. To "endanger" the welfare of a child means to expose the child to conditions or circumstances that present a current threat of serious loss or injury. In this case, the record lacked legally sufficient evidence to establish a nexus between mother's marijuana use and a current threat of harm, when there was no evidence presented that mother used marijuana for the three months prior to the date of jurisdiction.

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

Model Judgment Forms JF3 and JF4B

The Dispositional Hearing



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, not to determine the nature and extent of that protection.

That question is addressed at disposition.

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

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\(2\)](#).

All evidence/information considered by the court must be made part of the evidentiary record, or it can not be a basis for the court's dispositional findings and orders.

NOTE: The same standards apply to REVIEW and PERMANENCY hearings.

The Dispositional Hearing

The DHS case plan must be rationally related to the bases for jurisdiction and include:

- (1) a reunification plan with “[a]ppropriate services to allow the parent the opportunity to adjust the parent’s circumstances, or conditions to make it possible for the ward to safely return home **within a reasonable time;**” AND
- (2) “[a] concurrent permanent plan to be implemented if the parent is unable or unwilling to adjust the parent’s circumstances, conduct or conditions in such a way as to make it possible for the ward to safely return home **within a reasonable time.**” ORS 419B.343

The Dispositional Hearing

“**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.”

ORS 419A.004(20)

“[The **within-a-reasonable-time**] inquiry is child-specific. It calls for testimony in psychological and developmental terms regarding the particular child's requirements.” *State ex rel SOSCF v. Stillman*, 333 Or 135, 146, 35 P3d 490 (2001).

The Dispositional Hearing

DHS also must

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

VISITATION

The Dispositional Hearing

VISITATION

ORS 419B.337 (3): “The court may make an order regarding visitation by the ward’s parents or siblings. The Department of Human Services is responsible for developing and implementing a visitation plan consistent with the court’s order.”

Is a DHS visitation plan subject to “reasonable efforts” review by the court? **YES**

The Dispositional Hearing

OAR 413-070-0830(1): “The child * * *, a parent or legal guardian, and each sibling have the right to visit each other while the child * * * is in substitute care * * * [and] a right to visit as often as reasonably necessary to develop and enhance their attachment to each other.”

OAR 413-070-0830(3): “When Department resources alone cannot meet the family contact and visitation needs of the child * * *, the caseworker must solicit help from family and community resources.”

The Dispositional Hearing

“VISITATION PLAN: Once a week, supervised at the DHS office.”

INQUIRIES: (1) Why once a week?

(2) Why supervised?

(3) Why at the DHS office?

The Dispositional Hearing

If the court commits the child to DHS for placement in substitute care, the court must:

- (1) Determine whether the agency has made **diligent efforts** to place the child with a “relative.” **ORS 419B.192**
- (2) Determine 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 and include in those findings a brief description of the agency’s preventive and reunification efforts, and, if ICWA applies, determine whether the placement complies with ICWA preferences. **ORS 419B.340 and 25 USC § 1915**

The Dispositional Hearing

Other options: ORS 419B.331

The Dispositional Hearing

THE JUDGMENT – Findings and Orders

- At the conclusion of the dispositional hearing, the court must enter a judgment that includes all of the required findings and orders.
- The judgment should also set future court dates.

The Dispositional Hearing

Model Judgment Forms JF4 and JF4B

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

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 IN SUBSTITUTE CARE

- (1) Has DHS made **diligent efforts** to place the child with a “relative”?
(Identify, locate, qualify for placement)
- (2) Has DHS 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 agency’s preventive and reunification efforts, and, if ICWA applies, a determination whether the placement complies with ICWA preferences.

ORS 419B.449, 419B.340 and 25 USC § 1915

The Review Hearing

REQUIRED FINDINGS – CHILD TO REMAIN IN SUBSTITUTE CARE

- (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 school changes, 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

DHS REPORTS TO THE COURT

“ORS 419B.443 Time and content of reports. (1) An agency described in ORS 419B.440 shall file the reports required by ORS 419B.440 (2) 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: * * *.”

The Review Hearing

THE JUDGMENT – Findings and Orders

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

The Review Hearing

Model Judgment 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

THE INITIAL PERMANENCY HEARING

“[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. [ORS 419B.470\(2\)](#)

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

THE CURRENT CASE PLAN IS REUNIFICATION

- Reasonable/Active Efforts Determination
- Either: Continue current plan or implement Concurrent Plan

NOTE: difference between “change plan” and “implement plan”

The Permanency Hearing

THE CURRENT CASE PLAN IS NOT REUNIFICATION

Determine whether 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].”

Determine whether the current case plan is in the child’s best interests and should continue, or should be changed to another permanent plan, including reunification with a parent. **ORS 419B.476(2)(a), (4)(c) and (5)**

The Permanency Hearing

THE JUDGMENT – Findings and Orders

At the conclusion of the permanency hearing, the court must enter a judgment that includes all of the findings and determinations required by ORS 419B.476(2) and (5).

The Permanency Hearing



In the last few years, the Court of Appeals has reversed about 20 permanency judgments because they did not include the findings and determinations required by ORS 419B.476(5).

The Permanency Hearing

Model Judgment Form JF5 & The Permanency Hearing “Roadmap”

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.

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 that 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)

Dept. of Human Services v. T.C.A. , 240 Or App 769, 248 P3d 24 (2011)
(reversing judgments terminating mother's parental rights)

*“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.’ * * **

Termination of Parental Rights (TPR)

“ * * 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.”*

Termination of Parental Rights (TPR)

TERMINATION MUST BE IN THE CHILD'S BEST INTEREST

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.

ORS 419B.500

Termination of Parental Rights (TPR)

TIMELY RESOLUTION OF THE PETITION

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."

ORS 419B.521(1) and (2)

Termination of Parental Rights (TPR)

ADJUDICATION – The Merits

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.”

ORS 419B.521(1)

Termination of Parental Rights (TPR)

ADJUDICATION – The Merits

- “[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.”

ORS 419B.521(4)

- 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)

A story about time and “reasonable time”

Dept. of Human Services v. R.D., 257 Or App 427, --- P3d --- (2013) (affirming permanency judgment continuing plan of reunification and rejecting the child's argument that, regardless whether DHS's reunification efforts were "reasonable," the mother would never be able to adequately parent the child and the child will not be able to safely return home within a reasonable time)

A story about time and “reasonable time”

- (1) The jurisdiction judgment was not entered until **11 months** after the child (then one day old) was taken into protective custody and placed in substitute care, and the permanency hearing was not held until **18 months** after jurisdiction was established. ORS 419B.305(1) requires that, absent a judicial finding of "good cause," the juvenile court must hold a hearing on the petition and enter a dispositional order "no later than 60 days" after the filing of the petition, and ORS 419B.470(2) requires that, "when 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."

A story about time and “reasonable time”

- (2) The record in this case also showed that, as a result of DHS's "delay in obtaining the services of a provider for mother's sex offender treatment[,] * * * the mother's treatment did not begin until April 2012" -- i.e., *16 months* after the dispositional order was entered and one month before the permanency hearing. ORS 419B.343 requires that a DHS case plan for reunification be rationally related to the bases for jurisdiction and provide "[a]ppropriate services to allow the parent the opportunity to adjust the parent's circumstances or condition to make it possible for the ward to safely return home *within a reasonable time*."

A story about time and “reasonable time”

- (3) The juvenile court found that "further efforts can and will make it possible for the child to safely return home *within a reasonable period of time*," "ordered the parents to participate in services and make progress," continued the reunification plan in effect and "scheduled another permanency hearing for *one year later*." But, the Court of Appeals (and, apparently, the juvenile court) effectively ignored the "reasonable time" requirements of ORS 419B.476(4)(c) and (5)(c), and there is no reference in the opinion to what evidence, if any, supported the juvenile court's finding that one year is a "reasonable time" for this child. A juvenile court simply can not make a finding that further efforts will permit the safe return home of a child "within a reasonable time" without knowing/considering what the "reasonable time" is for the specific child.

FINAL THOUGHTS

