



## A TECHNICAL SUPPORT BULLETIN FOR JUDICIAL OFFICERS: CONSOLIDATION IN CHILD ABUSE AND NEGLECT CASES

Juvenile Court Improvement Project  
Oregon Judicial Department

### SCOPE OF BULLETIN:

This bulletin's scope is limited to child abuse and neglect cases brought under ORS 419B. It analyzes the procedure imposed by ORS 419B.806 when there are or have been cases other than the dependency case, pending or previously adjudicated, involving the legal or physical custody of the same child. This bulletin does not deal with delinquency cases under ORS 419C.280 that involve consolidation of delinquency allegations.

### WHAT DOES IT MEAN THAT CASES ARE CONSOLIDATED?

ORS 419B.806(1) defines consolidation to mean that the same circuit court judge hears certain actions (in the nature of domestic relations, filiation or guardianship) involving the child to resolve all pending issues and prevent confusion and conflicting orders.

It does not mean that the actions are "merged" or converted into some kind of hybrid case, either in procedure or substance. The statute explicitly states that any relief granted in the cases consolidated with the dependency case must conform to the procedural and substantive law governing such actions. ORS 419B.806(5). Nor does it mean that parties

***All that consolidation of cases does is put all the cases "on the bench" of the same judge to prevent confusion and problems that might arise when two cases involving custody or care of the same child are pending simultaneously.***

to one of the consolidated actions are parties to the others as a result of consolidation. ORS 419B.806(3).

The consolidation statute operates to ensure that in most situations, only one of the pending cases proceeds at a time and that the others are "stayed." The judge determines, in the best interest of the child, which case should proceed, with a statutory presumption in favor of the juvenile case. ORS 419B.806(4).

### WHY ARE CASES CONSOLIDATED?

Consolidation prevents conflicting orders regarding a child and confusion about the standing of parties, the participation of court appointed counsel, and which procedural and substantive laws apply. The consolidation statute keeps all the related cases in front of the same judge and allows only one to proceed at a time. *In essence, then, the consolidation statute brings these cases together so that the judge can keep them separate.*

A new reason to keep the cases separate emerged with the United States Supreme Court opinion in **Troxel v. Granville** (1999). The court ruled that there is a presumption in favor of parental custody *vis-a-vis* third parties. The rule protects parents whose children are the subject of dependency, if it is in the children's best interest, from an intervenor with superior resources who may attempt to use a domestic relations or guardianship action to "snatch a child from the jaws of reunification" when a parent is particularly vulnerable. The consolidation statute can be used to hold such an intervenor at bay until the court is satisfied that the parents have had a fair chance to

regain the custody of their children through working the case plan.

### **HOW ARE CASES CONSOLIDATED?**

The statute makes consolidation mandatory (ORS 419B.806(2)). The statute requires an order be entered consolidating the cases (ORS 419B.806(4)), but does not specify how the court consolidates the case. Court staff should ensure that a copy of this order is placed in each case file to alert others that a dependency case is pending. They could also send a copy of the order to another state if, for example, they know a divorce case gave one parent custody of the child. Best practice would include physically gathering all the case files and keeping them with the dependency case file.

ORS 419B.806(7) provides guidance on *where* to consolidate cases when actions are pending or were adjudicated in different judicial districts, similar to the procedure for determining which of two courts has jurisdiction of a custody case. Regardless of which court may be the better forum, the court that issues the consolidation order should send copies to the other courts to place in related case files.

### **ONCE THE CASES ARE CONSOLIDATED, HOW DOES THE COURT PROCEED?**

The law presumes that the dependency case proceeds first. ORS 419B.806(4). The other cases are stayed. No proceedings should occur in those actions, although the court may designate relief sought in a consolidated case as the concurrent plan. Under some circumstances, neither the parties to those actions nor their attorneys participate in the dependency action unless they qualify to do so under ORS 419B. Filing a guardianship petition in probate court or a petition for custody under ORS 109.119 does not, in and of itself, confer standing on that petitioner in the ORS 419B action. ORS 419B.806(3).

It is important to stay the other cases so they do not distract from the dependency case or thwart the efforts of the court. For example, depositions in a consolidated domestic relations case would create problems regarding the extent to which caseworkers could be subject to subpoena and could unnecessarily use judicial and agency resources.

The consolidation statute seeks to prevent hearings in consolidated cases from happening simultaneously. A review hearing on the dependency petition that also covers pendent lite issues in a domestic relations case will be rife with procedural and confidentiality issues and issues regarding the proper role of counsel and allowing participation of non-parties in the dependency case.

The judge, however, may determine that it is in the child's best interest to resolve the issues presented by the dependency petition by going forward with relief sought in a consolidated action other than a reunification plan. The court makes this determination in a permanency hearing pursuant to ORS 419B.476. If this happens early in the case, it is much like an aggravated circumstances determination under ORS 419B.340(5). Because this changes the permanent plan, the court must make findings necessary to safeguard the rights of the parent and child. The relief sought in the consolidated case can be designated the new permanency plan.

Although there is no statutory authority to do so (and no prohibition against it), the court may resolve stayed collateral issues in the cases. For example, the court could resolve paternity issues in a filiation case without interfering with the dependency case.

Resolving the dependency case first ensures that once the court has jurisdiction, either through the entry of admissions or adjudication of the petition, the judge knows the child and family's situation well enough to determine whether reunification efforts are in the child's best interest. In most cases, reunification efforts will be in the child's best interest. If, for example, both parents have been involved in criminal activity that will result in their long-term

incarceration, a permanent plan other than reunification could provide expeditious permanency for the child. This may well be an aggravated circumstances case.

Even if the court initially finds that reunification services are in the child's best interest and therefore stays other pending actions, the court may later find in a permanency hearing that reunification efforts are not working in the child's best interest and order that the other action may proceed. ORS 419B.470. Any party except an intervenor, the court, or the Citizen Review Board may request a permanency hearing at any time to request an order to change the permanency plan.

***Confusion and delay are avoided as the court brings all the cases together in order to keep them from interfering with one another.***

#### **HOW DOES THE CASE PROCEED IF THE COURT DECIDES THAT IT IS IN THE CHILD'S BEST INTEREST TO PROCEED WITH ONE OF THE CONSOLIDATED CASES?**

If another action, perhaps a guardianship in favor of a relative, proceeds, the court does not stay the dependency case. While reunification services may cease, review hearings and CRB review, and permanency hearings continue as scheduled in order to comply with federal law. Such hearings, however, should be limited to reviewing the progress on attaining the permanency goal, the concurrent plan. The concurrent plan is the consolidated action that the court found is in the child's best interest to implement. Such a hearing or review would assess the reasonableness of efforts to, say, attain the guardianship.

A court will not hold a review hearing at the same time it holds a hearing on a probate guardianship petition or a domestic relations change of custody action because the ORCP applies to those two actions and not to the dependency action. However, it may hold the two hearings one after the other, on the same day and issue two separate orders, one in each action.

#### **SUMMARY**

The consolidation statute puts all of the issues concerning the child's care and custody in front of the same judicial officer, in juvenile court, where resources are available to serve the child's best interest.

While it puts all the issues in front of the same court, the goal is to resolve the issues separately, in the context of their own legal actions, following the procedures and substantive law particular to those actions.

The Juvenile Court Improvement Project works to raise the profile, priority, and performance of child abuse and neglect cases in Oregon Courts. For more information contact Timothy Travis, Program Manager, at 503.986.6403.