

DEPENDENCY SKIT
Final Draft 2010

PLAYERS

Judge
Paternal Grandmother
Foster Parents
CRB
Father's Attorney
Caseworker
CASA
Mother
Mother's Attorney
Children's Attorney
Deputy D.A.
Police Officer

EVENTS

ONE: May 20th, 2009 - Police and worker go to home and remove children
TWO: May 21st, 2009 - Shelter Hearing
THREE: May 21st, 2009 - TDM
FOUR: Services
FIVE: July 15th, 2009 - Jurisdiction/Disposition
SIX: November, 2009 - CRB Review
SEVEN: July, 2010 - Permanency Hearing

DEPENDENCY SKIT

Narrator - - introduce self

Narrator: Chris Jones and Sally Lewis are the parents of two children, Justin (age 2) and Jason (age 5). Chris was convicted of delivery of a controlled substance a year ago and sentenced to 24 months incarceration. His former partner, Sally Lewis, is raising their two children. She is also raising Jennifer (age 15), her teenage daughter from a previous relationship. Jennifer is struggling with drug abuse and emotional problems, staying away from home for days at a time, and out of mother's control. A phone call is made to the Child Welfare hotline alleging Ms. Lewis is using methamphetamine and that her son, Jason, is wandering around the neighborhood unattended and asking neighbors for food. Given the meth allegations, Child Welfare contacts law enforcement, and a caseworker and police officer respond to the home.

Narrator: As you can see from the Assessment Referral in your packets, this is a complex family system that has not previously been involved with the child welfare system. All children in the household must receive an assessment. The information gathered during the 30-60 day assessment process will lead to an assessment conclusion by Child Welfare and will point to a direction for an action plan and services for the family. Caseworkers must complete their child safety assessment while working parallel with a possible criminal investigation conducted by law enforcement. It is not uncommon for there to be a substantiated child abuse assessment and for law enforcement to drop criminal charges. One action does not necessarily stop the other from moving forward since there are different legal standards for child protective services and criminal prosecutions, but since the factual and legal issues overlap, one of the cases may be postponed until the other is resolved. In some counties parents with both dependency cases and criminal cases are represented by the same lawyer in both matters. In other counties, there are separate attorneys for each case who must coordinate with each other.

Narrator: When the officer and caseworker arrive at the home, the officer makes several observations, including that the home is in extremely poor condition. There is garbage everywhere, no food in the kitchen and there is a foul odor in the house with dirty clothing and clutter everywhere. They also see beer cans and drug paraphernalia in the house. The officer sees a plastic baggy of white crystalline powder on the coffee table. The caseworker and the police officer find that the conditions reasonably appeared to jeopardize the children's welfare. (ORS 419B.150)

EVENT ONE: THE REMOVAL - WORKER AND POLICE OFFICER

Officer: Ms. Lewis, we are arresting you for possession of a controlled substance.

Worker: Where is your daughter?

Mother: I don't know. She comes and goes.

Worker: Where does she go to school?

Mother: School? I can't make her go.

Worker: Is there a relative who can care for your children? Could they stay with the boys' father?

Mother: (Seeming confused and disoriented): NO

Worker: There will be a juvenile court hearing for the children tomorrow morning. We will arrange to have you transported there from the jail if you are still in custody so you can participate in planning for the children.

Narrator: Officer takes mother to jail. Worker takes two younger children to a foster home. Officer writes a report describing his observations which is sent to Child Welfare for the juvenile court shelter hearing. A search is initiated for Jennifer.

Worker to Foster Parent: Hello Mr. Smith. Thank you so much for your willingness to care for Justin, Jason, and Jennifer (if we are able to locate her). Let's sit down and talk about the background information I have been able to find on the children and their current needs. They have not been in care before, and I have only been able to talk to one relative so I'll be providing you additional information as I receive it and would appreciate your letting me know how the children are doing and any special needs you observe. I will also leave you a packet of information. Please call me if there are any issues of concern. The shelter hearing is scheduled for tomorrow at 11 a.m.

[Insert a brief discussion of the impact these events are likely to have on the children. They will be fed and cared for but this is an extremely traumatic event for most young children. Where removal can be avoided and services be provided in the home, they need to be.]

PHIL'S FIRST COMMENTS GO HERE. THE FOCUS WILL BE ON RESEARCH ABOUT PLACEMENT STABILITY. OUR RESEARCH SHOWS THAT PLACEMENT CHANGES GREATLY INCREASE RISK FOR MORE PLACEMENT CHANGES; THUS IF A CHILD IS EXPERIENCING A FIRST PLACEMENT (AS IS TRUE FOR THE KIDS IN THIS SKIT), ALL THINGS BEING EQUAL, THERE'S A DECENT CHANCE THAT THEY'LL ACHIEVE A SUCCESSFUL PERMANENT PLACEMENT. IN CONTRAST, KIDS THAT MOVE AROUND A LOT HAVE DRAMATICALLY REDUCED CHANCES OF ACHIEVING PERMANENCY. IN FACT, BY THE TIME KIDS HAVE AS MANY AS 5-6 PLACEMENT CHANGES, OUR DATA SHOW THEY HAVE ONLY ABOUT A 10% CHANCE OF ACHIEVING PERMANENCY. THIS IS IMPORTANT FOR THREE REASONS: (1) COSTS ARE MUCH HIGHER FOR KIDS WHO STAY IN CARE, AND THERE'S EVEN RESEARCH FROM ENGLAND THAT SHOWS THAT COSTS TO RE-PLACE CHILDREN FOLLOWING DISRUPTIONS INCREASES EXPONENTIALLY WITH EACH SUBSEQUENT DISRUPTION; (2) INSTABILITY IS ASSOCIATED WITH SUBSTANTIALLY HIGHER LEVELS OF EMOTIONAL AND BEHAVIORAL DISORDERS. CAUSAL DIRECTIONS OF THIS ASSOCIATION ARE NOT COMPLETELY CLEAR, BUT IT'S PROBABLY A LITTLE OF EACH (TROUBLED KIDS MOVE

MORE, AND MOVING MAKES KIDS MORE TROUBLED); (3) OUR RESEARCH SHOWS THAT MOVING A LOT CAN AFFECT THE DEVELOPMENT OF AN AREA OF THE BRAIN INVOLVED IN WHAT PEOPLE CALL “EXECUTIVE FUNCTION.” YOU CAN THINK OF EXECUTIVE FUNCTION AS LIKE THE “AIR TRAFFIC CONTROLLER” IN THE BRAIN. [I’LL PROVIDE MORE DETAILS HERE]. AS YOU CAN IMAGINE, DEFICITS IN EXECUTIVE FUNCTION ARE ASSOCIATED WITH A HOST OF OTHER DIFFICULTIES, INCLUDING SCHOOL AND PEER PROBLEMS, ADHD, SUBSTANCE ABUSE, DELINQUENCY, ETC.

Narrator: Child Welfare has a number of strategies they are pursuing to reduce the number of children who are removed from their homes.

On the next court day, the case will come before the juvenile court for a shelter hearing. The purpose of the hearing is to determine whether there was probable cause to remove the children, did the agency make reasonable or active efforts to prevent the removal, and if it is in the children’s best interest to remain in care. Simultaneously, the mother has a criminal case proceeding on the drug charge. In many counties attorneys will be available to represent the parents and children at this first hearing. In some counties, however, there are no attorneys present. This is an important hearing. There are legal issues to be decided. The parties may also have relevant information that is not known to the state. An unrepresented party who has criminal charges pending is at risk of disclosing information that may affect the criminal case. The parent is put in the awkward position of saying nothing about the circumstances or of possibly providing incriminating information without knowing it. Judges try to prevent this, but it may also prevent parents from having any input into the decisions that the court is going to be making. Our skit takes place in a county where attorneys are not present at this initial hearing.

Among the issues that may arise at this hearing, including those mentioned above, is the question of whether the case is covered by the Indian Child Welfare Act, which is a federal law and referred to as “ICWA”. If it is, there are a number of legal and procedural differences in the way the case will be handled. Information about how the court proceeds in cases with families covered by the Indian Child Welfare Act is included in one of the bench cards in your materials. This card reminds the judge of the important issues that arise in ICWA cases.

EVENT TWO: SHELTER HEARING - Judge, Deputy D.A., Police Officer, Worker

Judge: We are here today for a shelter hearing in the matter of Justin, Jason, and Jennifer Lewis. I am going to appoint a lawyer for Jennifer and a separate lawyer for the younger children. It has been determined that the mother and father are eligible for court appointed counsel, and I will appoint a lawyer to represent each of them. You will each be provided with information about how to contact your lawyer when you leave the courtroom. I am also going to appoint a Court Appointed Special Advocate (CASA) for the children to advocate for the best interests of each child.

Narrator: After advising parents of their legal rights and the allegations of the Petition that has been filed by Child Welfare, receiving a sworn statement from the Worker, and hearing any information provided by Mrs. Lewis, the court finds as follows:

Judge: I have read the police report and protective custody report which says that law enforcement and the agency’s worker went to the home yesterday and found methamphetamine in the home. The house was extremely unsanitary, and there was no edible food in the home. I have received the photos. The mother, Sally Lewis, was disoriented and Justin had just been brought home by a neighbor. He had been wandering around the neighborhood asking for food. The mother was taken into custody and is currently lodged in jail. Jennifer was not at home and her whereabouts were unknown to the mother. Jennifer contacted the worker when Jennifer went to the mother’s house last night and found the worker’s contact information on the door. She told the worker she would like to stay with friends; however, she has agreed to stay in the foster home with the boys until the friend’s home can be evaluated. Are there legal fathers in this case? What is their status?

Worker: There is a legal father for the boys. He is in prison serving the second year of a two year sentence. We have not been able to contact Jennifer's father but believe he is also a legal father. We understand he may be living out of state.

Judge: Are there any Indian Child Welfare Act issues in the case? Do the parents have Native American heritage?

Worker: We are uncertain at this time, your Honor. The mother has named one tribe, and we will need to contact that tribe to determine ICWA status.

Judge: Based on the fact that someone has identified a possible tribal affiliation, the case will proceed as if it is an ICWA case until it is determined that it is not an ICWA case.

Judge: Are the children placed together?

Worker: Yes.

Judge: Are they placed with a relative?

Worker: Not at this time but we are pursuing relative resources.

Judge: Have visits with the mother been arranged?

Worker: They will be when she is released from jail, your Honor. Jennifer will be permitted to visit with her mother in jail, but she has not yet decided whether she will.

Judge: Where is Jennifer today? Did you offer to bring her to the hearing?

Worker: I did but she was still in bed when I arrived and refused to come with me.

Mother: I would like to have my children returned when I get out of jail. Their grandmother is here. I would like them to stay with her until they can come home.

Judge to Worker: Has grandmother been certified as a relative foster care provider?

Worker: No, your Honor, we haven't completed the process yet to certify grandmother, but we're working on it.

Judge: How long will that take?

Worker: We should know by tomorrow whether we are able to certify the grandmother.

Judge: Ms. Lewis,, do you understand what this hearing is about?

Mother: I think so.

Judge: Are there other family members or close family friends who should be here today?

Mother: Nobody I can think of right now.

Judge: Please give the Worker information about any other relatives who may be able to provide a temporary home for your children. and any family or friends who might be able to provide other help like transportation, support for you and the children, etc. Do you know how we can reach Jennifer's father?

Mother: No. He hasn't been around for years, and she doesn't want anything to do with him.

Judge: We are still required to contact him. Any information you can provide about his whereabouts would be helpful. Please discuss this with your attorney.

Deputy D.A.: Your honor, as for the mother, according to the criminal history records, Ms. Lewis has been arrested for Possession of a Controlled Substance, Failure to Appear and DUII within the last 2 years. Ms. Lewis will be arraigned in criminal court on the current charge this afternoon. I do not expect her to be released prior to the release hearing which will be scheduled within a couple of days. The State urges the Court find probable cause to believe the conditions in the family and home reasonably appear to jeopardize the children's welfare, and temporarily commit the children to the custody of the Department of Human Services/Child Welfare and continue them in foster care.

Judge: As required by the Indian Child Welfare Act, I find by clear and convincing evidence that the agency has made active efforts to prevent the placement given that the children were in imminent danger of serious emotional or physical harm and in need of immediate care due to the mother's arrest, and that the children should remain in foster care with a plan of reunification. This case will be set for a jurisdiction and disposition hearing in 60 days. The court orders the agency to prepare a written action agreement or letter of expectation as planned and to implement the recommended visitation schedule when appropriate. Attorneys and CASA will contact the family as soon as possible.

Judge, to mother: Do you understand what happened here today?

Mother: I think so.

Judge: Do you have any questions for me?

Mother: Just about getting my kids back.

Judge: Do you know what the next steps are? Since you are in custody, you'll need to find out about release. You will need to talk with your lawyer as soon as possible and discuss what steps the lawyer recommends you take.

Narrator:

The decisions made at this hearing are important ones. In this case, with both parents in custody, the children cannot be returned to them. Placement with the grandmother or other appropriate friend or family member known to the children is preferred once Child Welfare has had an opportunity to talk with them and do a background check. In order to minimize the impact of removal on children and to preserve family relationships Child Welfare has adopted new rules regarding placement with relatives.

The district attorney may or may not be present at this hearing depending on the county. If there is no attorney from the district attorney's office present, the DHS worker must present the case. If witnesses are called or evidence submitted at this hearing, DHS is at a significant disadvantage since caseworkers are not permitted to question witnesses, offer evidence or make legal arguments. If necessary, the caseworker would ask the court to postpone or continue the shelter hearing until the Agency can access legal advice through the Attorney General's office. The District Attorney that is present does not represent the agency.

You will notice that the court appointed separate attorneys for Jennifer and her half brothers. The court did this in order to prevent the lawyer from facing a conflict of interest between his clients. Because of the difference in age, the court is assuming that Jennifer will have strong opinions about her own case and will probably be entitled to make the decisions that are the client's to make in this kind of proceeding. The judge is also assuming that the two younger boys are similarly situated and that the lawyer for these boys will probably conclude that on most matters they are not capable of "considered judgment." Under these circumstances the lawyer will be obligated to obtain as much information as possible about them and their situation, and then the lawyer will use all this information to make decisions about the direction of the case on behalf of the children.

Child Welfare will be required to search for the named fathers of the children and determine their legal status. If either father does not have legal status, he will need to establish that before the end of the case if he wishes to be considered as a placement for his child(ren).

Also, if there is a reasonable possibility that a child placed out of the home would qualify as an "Indian Child" under the Indian Child Welfare Act, the case is to be treated as an ICWA case until and unless ICWA is ruled out. This means that the burden of proof is "clear and convincing evidence" (vs. just a "preponderance of the evidence") and there must be evidence that leaving the child at home would result in serious emotional or physical damage to the child.

Narrator: The next event is a team decision meeting in order to develop the case plan and determine the most appropriate placement for the children. There are several junctures in a case where a facilitated team meeting is helpful in the decision making process. A Family Decision Meeting is a facilitated meeting with parents, extended family, community partners, service providers, attorneys for the parties, the CASA and Child Welfare staff for the purpose of making child safety and child placement decisions. Currently, Family Meetings do not occur in every district because of a lack of resource to facilitate the meetings. In those districts where they do not have Family Meetings, these decisions are made by the department with input from the other interested parties.

EVENT THREE: Family Decision Meeting - worker, mother, grandmother, attorneys and CASA

Mo. Attorney: We have all discussed what my client needs to address, and my client agrees to participate in a drug and alcohol evaluation and parenting classes. We have prepared a limited waiver of confidentiality to permit Child Welfare to have access to treatment information. We recommend that the children be placed with their paternal grandmother, Mrs. Bridger, and now that the mother is out of jail we would like to see frequent visits with the children. The boys' grandmother can supervise if agency staff can't.

Atty for boys: I haven't met my clients yet but plan to see them tonight in the foster home. I spoke with the grandmother, and she believes that the children may have been exposed to meth and need medical evaluations.

Jennifer's attorney: I was able to meet with Jennifer, and she is okay with the foster home at this time and likes being with her brothers. She is attending school, and she and I will be talking about her longer term plans in the near future.

Mom: I am worried about my kids and need to see them more. I know there are things I need to work on and I need to know my kids are okay while I do that. I want them with their grandmother cause they know her and know her home. .

Worker: We will set up weekly visits at the Child Welfare office between you and the children. Mrs. Bridger has been approved for placement and the children will be transitioning to her home. We already have medical appointments scheduled for the children. I have received a number of reports from family members about a history of significant drug use by Jennifer. I would like to arrange for an evaluation and will be discussing this further with her counsel after the meeting.

Mom: Thank you for getting them to their grandmother's. Will I get to know what the medical appointments and the evaluation say? I am worried about Jennifer.

Worker: Yes, we will keep you updated on the children's medical information as well as their school information. It may be possible for you to accompany them to the medical appointments. We will see what we can arrange.

Narrator: Note that prior to this meeting all of the attorneys should have made contact with their clients and be prepared to represent their interests at the meeting. Mother's attorney will have discussed possible courses of action mother could take and how her actions in this case could affect her criminal case. She will have discussed the pros

and cons of participating in services such as drug treatment before there has been a trial or a finding that the case is appropriate for jurisdiction. Because the time frame for making decisions about how to handle the case is so limited under the federal Adoption and Safe Families Act, if the mother delays participation in treatment in the hope that the court will not find jurisdiction later at the trial, she may be jeopardizing her ability to resolve the issues that brought her children into care in time to prevent implementation of an alternate permanent plan such as adoption or guardianship. Many drug dependent parents choose to access treatment immediately even if they disagree with some or all of the allegations in the petition.

The attorney for the boys has not yet met with her clients. She is expected to do so promptly after her appointment, not only to begin gathering information about the children's condition upon coming into care and the appropriateness of the foster placement, but to begin developing a relationship of trust with her clients. Until recently it was not uncommon for some lawyers to never meet with very young clients during the whole course of their representation and to base their representation on information that they read or learned from others. The Public Defense Services Commission's contracts with providers require that attorneys see their clients within specified periods of time. A one page discussion of the obligation of attorneys to young clients, entitled "The role of counsel," is included in your materials and has been provided to all contractors who represent children. The Oregon Rules of Professional Conduct, which are binding on all lawyers, include specific provisions for representing clients with "diminished capacity" such as very young children. Jennifer's lawyer is following an "expressed wishes" standard in representing her client. As with adult clients, Jennifer's lawyer will follow the client's direction regarding decisions which are the client's to make, such as whether she wants the court to take jurisdiction, where she wants to live, etc. She will of course counsel with her client about the most appropriate options available to her and how to make it more likely that the court will approve of her plan. The boys' attorney will make a determination of what he believes is in the children's best interests, since they are too young to decide, and advocate for this plan.

The CASA will have met with as many of the parties as possible. The CASA is considered the "eyes of the court" and will be advocating for the best interest of all of the children.

Assuming a close bond between the mother and these children, weekly visits are not really sufficient. Research shows that the more frequent the visits, the greater the chance of family reunification. This is primarily a resource issue. One way of making more visits possible is to enlist the aid of family members in providing transportation or in supervising visits if supervision is required. The agency will spend the days before the jurisdiction/disposition hearing working with the mother and the children and arranging their participation in services. The agency, during this period of time, will also be working with the attorneys and the CASA to develop the service plan for the case. Child Welfare will make contact with the boys' father in the penitentiary to gather information about his circumstances and will also complete a foster home certification process for the grandmother. The father's attorney will be in contact with the father and will be prepared to advocate for the father's position in the case and either request to have his client transported for the hearing or arrange for him to appear by telephone or video conference. Child Welfare will also try to contact Jennifer's father. He has been determined to be Jennifer's legal father. Child Welfare has not been able to locate him or identify any additional relatives who might be resources for the children. He had recent contact a year ago with the child welfare department in Kentucky regarding a younger half sibling but did not provide that agency with any information about where he could be reached. Child Welfare is preparing notice by newspaper publication in Oregon and Kentucky to attempt to advise the father of the pendency of this matter involving his daughter.

Following this meeting, in some cases like ours, the parent or parents actually begin services directed at addressing issues affecting their ability to provide a safe environment for their children. As soon as the children's needs are assessed, referrals are sent to possible providers and services are begun as soon as possible.

PHIL'S SECOND COMMENT GOES HERE: THE FOCUS WILL BE ABOUT HOW RESEARCH ON HOW STRESS AFFECTS THE DEVELOPING BRAIN CAN BE USEFUL IN UNDERSTANDING THE CHILDREN'S NEEDS. HERE I WILL MAKE FOUR POINTS:

1. HELPFUL TO THINK ABOUT 3 LEVELS OF STRESS; POSITIVE, TOLERABLE; TOXIC. [EXPLAIN EACH]. IN TERMS OF TOXIC STRESS, THERE'S CONCLUSIVE RESEARCH THAT LONG-TERM EXPOSURE TO IT CAN LEAD TO HEART DISEASE, DIABETES, AND OTHER HEALTH PROBLEMS. NOW, WE'RE ALSO LEARNING THAT IT CAN AFFECT THE BRAIN,

ACTUALLY LEADING TO A DECREASE IN THE “BRANCHING” OF NERVE CELLS, AND THUS LIMITING THE STRENGTH AND NUMBER OF THE CONNECTIONS AND CIRCUITS IN THE BRAIN.

2. THE IMPORTANCE OF UNDERSTANDING THAT IT’S NOT JUST TRAUMA RESULTING FROM ABUSE THAT PRODUCES TOXIC STRESS. ESPECIALLY FOR INFANTS AND YOUNG CHILDREN HEALTHY DEVELOPMENT OCCURS IN THE CONTEXT OF THE PARENT CHILD RELATIONSHIP, IN A PROCESS THAT IS JUST LIKE “SERVE AND RETURN” IN TENNIS. [I’LL ELABORATE]. AS SUCH OUR RESEARCH SHOWS THAT THE ABSENCE OF EXPECTED MATERNAL CARE (I.E., NEGLECT) IS ALSO CLEARLY A FORM OF TOXIC STRESS, AND IMPACTS THE DEVELOPMENT OF THE HEALTHY BRAIN, PARTICULARLY IN A SYSTEM THAT PRODUCES HORMONES TO HELP THE BODY REGULATE STRESS. THIS IS IMPORTANT TO THE CASE WE’RE DICUSSING TODAY BECAUSE IT’S A NEGLECT CASE. I ALSO WANT TO POINT OUT, HOWEVER, THAT MOM’S SUBSTANCE ABUSE IS A POTENTIAL PROBLEM IN THIS REGARD. AS YOU WELL MIGHT IMAGINE SUBSTANCE ABUSING PARENTS HAVE A GREAT DEAL OF DIFFICULTY WITH THE “SERVE AND RETURN” PROCESS.
3. OUR RESEARCH ALSO SHOWS THAT ALTHOUGH THE BRAIN HAS A GREAT DEAL OF PLASTICITY AND CAN RECOVER TO SOME EXTENT FROM TOXIC STRESS, IT IS CRITICALLY IMPORTANT THAT THE RIGHT SUPPORTS BE IN PLACE TO HELP THOSE CARING FOR THE CHILD PROVIDE A CONSISTENT AND NURTURING ENVIRONMENT. IN THE ABSENCE OF SUCH SUPPORT, MANY CHILDREN FROM NEGLECTFUL AND ABUSIVE BACKGROUNDS WILL CONTINUE TO HOLD ON TO WHAT ARE ESSENTIALLY SURVIVAL STRATEGIES IN THEIR FAMILIES OF ORIGIN, AND MAKE VERY LITTLE PROGRESS DEVELOPMENTALLY AND EMOTIONALLY.
4. THERE ARE A NUMBER OF EVIDENCE-BASED PROGRAMS THAT HAVE BEEN DEVELOPED HERE IN OREGON [DISCLOSURE THAT I’VE BEEN INVOLVED IN DEVELOPING THEM] WHICH HAVE BEEN SHOWN TO GREATLY IMPROVE THE CHANCES FOR PERMANENCY, IMPROVE CHILDREN’S ATTACHMENT TO CAREGIVERS, AND EVEN IMPROVE BRAIN FUNCTIONING IN KEY AREAS. RECENT EVIDENCE SHOWS THAT FOR CHILDREN WHO HAVE HAD MULTIPLE PLACEMENTS BY THE TIME THEY ARE 4 OR 5 YEARS OLD, THESE PROGRAMS ALSO SAVE QUITE A BIT OF MONEY. INTERESTINGLY, THESE PROGRAMS ARE BEING IMPLEMENTED ON A WIDE-SCALE BASIS IN OTHER STATES AND THROUGHOUT EUROPE, BUT MUCH LESS IN OREGON (ESPECIALLY OUTSIDE OF LANE COUNTY).

EVENT FOUR: CASE STATUS

Mother: I was released from jail and am living with friends. The criminal charges have been postponed until this case is resolved. My lawyer got the state to agree that if I admit Child Welfare’s allegations in the dependency case I would receive probation in the criminal case. I was evicted after the arrest, and my health insurance ends at the end of the month. I am staying with a friend, I have no income and no car. I have a 10th grade education. My boys are now living with their grandmother. Jennifer was there too but recently ran away again. She has dropped out of school, and I have not seen her. I visit with the boys at the Child Welfare office each week. As long as I stay clean and am participating in services, I am also permitted to have an additional visit with the boys at their grandmother’s once a week. I have participated in a drug and alcohol evaluation and treatment was recommended. But there is a waiting list at the local treatment program, and I do not want to leave town as I will not be able to visit my children. My lawyer talks with me on a regular basis to prepare for the hearing next month.

CASA: The children have had medical exams. Both boys are slightly below developmental norms for their ages but the prognosis for them is good. Jason continues in Head Start. His grandmother is providing transportation. We are

working closely with DHS and the boy's lawyer to make sure the children's needs are being met. Jennifer was supposed to start adolescent drug treatment but ran away from the grandmother's home. Family members believe she is living on the street, staying occasionally with friends. Child Welfare is exploring residential treatment options for Jennifer when she is located.

Caseworker: We have developed the service plan for Ms. Lewis and she is participating in services. We have met and outlined the conditions for return which are the safety issues she must deal with before the children return to her home. It is not required that all the needed services be completed before the children are returned home, but we must be able to resolve the safety issues before return. Once that is done, we will continue to work with the mother to complete the rest of her services so jurisdiction can be dismissed and the case closed. It is not required that the parent complete all of the services before the children return home, but there does need to be sufficient progress made that the children would be safe in the home environment. We have also identified the Conditions for Return that need to be met for the children to return to the parent's care. Finally, we have begun conversation with the mother about the Concurrent Plan, the plan for the children should she not be able to address the issues that brought them into care.

Narrator: We will now see the jurisdiction/disposition hearing. The jurisdiction hearing is also called an "adjudicatory hearing" and is the trial in the case. The purpose of the jurisdiction hearing is for the court to determine whether the allegations of the petition are true. The State is required to present evidence to prove those allegations, and all parties have the right to call witnesses and present evidence, as well as to question any witnesses who testify. If after hearing the evidence, the Court find that the allegations are true, there will then be a "dispositional" hearing (usually immediately after the evidence has been presented and the Court has found the allegations to be true). The purpose of the dispositional hearing is for the court to review the case plan, determine what the parents need to do in order for the children to be returned home and the case to be dismissed, and address any other needs of the parents and the children.

EVENT FIVE - JURISDICTION/DISPOSITIONAL HEARING

Judge: We are here today for the adjudicatory hearing in this case.

Deputy District Attorney: Good Morning Your Honor. We have confirmed that this case is not subject to the Indian Child Welfare Act. Both parents before the court are prepared to resolve the matter without a trial. During the pretrial conference, the mother's attorney, Ms. Lewis, and I discussed the allegations in the petition, and it is my understanding the mother does not want to contest the petition, does not want to have a trial where the State would be required to prove by a preponderance of evidence that the allegations in the petition are true. Instead, she intends to admit to Allegation 2A. She will admit that she has an alcohol and substance abuse problem which impairs her ability to provide adequate care to the children and creates a substantial risk of harm. I have also discussed the matter with the attorney for the boys' father, and it is my understanding he will admit he is currently incarcerated and that he needs drug treatment upon his release from custody in order to be able to provide adequate care for his children. Jennifer's father has not yet been located. We are attempting to get service by publication on him and would ask to postpone further proceedings with regard to him until service is made.

Mo.Atty: Your honor, we are prepared to admit Allegation 2A of the petition.

Judge: Counsel for Mother, Have you advised your client of the rights she gives up by admitting the petition and the legal consequences of doing that?

Mo.Atty: Yes, your honor.

Judge: Ms. Lewis, do you understand the rights that you give up by admitting these things and do you understand the legal consequences of admitting allegation 2A of the petition?

Mother: Yes.

Judge: Ms. Lewis, do you admit that the children's condition or circumstances are such as to endanger their welfare due to the fact that you have an alcohol and substance abuse problem which impairs your ability to provide adequate care to the children and creates a substantial risk of harm to them?

Mother: Yes, your Honor.

Judge: Counsel for Father, is your client willing to admit to the allegations in the petition and have you advised him of the rights he gives up by admitting the petition and the legal consequences of doing that?

Fa. Atty: Yes, your Honor, and we are prepared to admit the petition.

Judge: Mr. Jones, do you understand the rights you give up by admitting the allegations of the petition and the legal consequences of doing that?

(Father is on phone; Narrator acknowledge he said yes)

Judge: Mr. Jones, do you admit that your children's condition or circumstances are such as to endanger their welfare due to the fact that you are currently incarcerated and that you need drug treatment upon your release from custody in order to be able to provide adequate care for your children?

(Father is on phone; Narrator acknowledge he said yes)

Judge: Is the State in agreement? Is the CASA in agreement?

Deputy D.A. and CASA: Yes, your Honor.

Judge: I have received a case plan and court report from Child Welfare, a CASA report, and letters of support from Mother's attorney. Is there any objection to the court marking and receiving these as evidence?

[Narrator: There is no objection. The court admits the exhibits and reviews them.]

Judge to caseworker: What is the current status of the case and the concurrent plan?

Worker: The mother has completed a drug and alcohol evaluation. Out-patient treatment was recommended. Child Welfare has moved the children to their paternal grandmother's home. She is a certified relative placement. The mother has been referred for services. There is a wait list for her drug and alcohol treatment service, so the mother is participating in random UAs and is attending Narcotics Anonymous meetings. Visitation through the agency continues, and mother is also having one visit a week at the grandmother's home as long as she is not using. We sent a letter to the boys' father regarding some of the treatment that is available in prison. The plan is to return the children to their mother if she evidences an ability to safely parent the children. The concurrent plan is adoption by the grandmother.

Boys' Atty: Your honor, Justin has been having some behavioral difficulties at home. I recommend that Child Welfare arrange an assessment to determine whether he needs early intervention services. Some of his difficulties may be related to the separation from his mother. The current visitation schedule is insufficient and we would ask that Child Welfare make appropriate efforts to find resources to increase contact.

PHIL'S THIRD COMMENT GOES HERE: THE NEED FOR HIGH QUALITY ASSESSMENT. THE PROBLEMS JUSTIN IS HAVING ARE IMPORTANT TO ADDRESS FOR A VARIETY OF REASONS. IF THEY CONTINUE TO INCREASE, THEY COULD LEAD TO A PLACEMENT DISRUPTION. THEY COULD HAVE AN IMPACT ON HIS SCHOOL AND COMMUNITY ADJUSTMENT. BUT MOST IMPORTANT, WE REALLY DON'T KNOW WHY HE'S STRUGGLING. IF WE ASSUME IT'S ATTACHMENT AND INCREASE VISITS, THIS MIGHT ACTUALLY BACKFIRE. SIMILARLY, IF WE ASSUME IT'S DUE TO PAST TRAUMA AND TRY TO HELP HIM PROCESS THESE EXPERIENCES, WE MAY MAKE THINGS WORSE. IT'S POSSIBLE THAT WE'RE STARTING TO SEE SOME OF THE EFFECTS OF PRENATAL DRUG AND

ALCOHOL EXPOSURE. OR IT'S POSSIBLE THAT HIS GRANDMOTHER NEEDS SOME PARENTING SUPPORT AND SKILL BUILDING. IF WE TRY TO HELP JUSTIN WITHOUT UNDERSTANDING WHAT'S AT THE ROOT OF THE PROBLEMS, WE COULD EASILY END UP NOT HELPING, OR EVENING MAKING THINGS WORSE.

CASA: I have met with the younger children in their grandmother's home. They appeared to be nicely settled in and flourishing in the home. I recommend the children remain in the home and DHS continue to offer services to the mother until the children can be returned home. I have not been able to meet with Jennifer since she ran away.

Judge: Is the grandmother present?

G'ma: Yes, your honor. I am glad this family is finally getting the help they need. The transition of my grandchildren from the foster home has gone well. The foster parents are good people, and they have offered to take the boys for a weekend if I need a break.

Judge: And what is Jennifer's situation?

Worker: We were able to do a partial screening that cannot be completed until Jennifer is able to participate but we are looking at possible residential treatment options. Her school records are included in the materials and disclose a long history of absence. When we locate Jennifer we also need to address her educational needs, as well as suspected drug use and a possible history of physical abuse by her father, which were issues included in the materials.

Judge: Thank you very much. The court is prepared to proceed to disposition on all three children today, although jurisdiction has not yet been established as to Jennifer's father. The court finds the children to be within the jurisdiction of the court and orders that the children be made wards of the court with continued custody to Child Welfare. The Court finds that Child Welfare has made reasonable efforts to make it possible for the children to return home and that it is in the children's best interests to continue in out of home placement. The court orders the agency to develop an action agreement with the boys' father addressing services he may access in prison and appropriate contact with the children, and to continue to seek service on Jennifer's father. The court approves the primary plan of return to mother and the concurrent plan of adoption. Child Welfare is to continue the services as outlined in the action agreement and to evaluate whether additional visits can be supervised by the grandmother if the mother remains clean and sober. The court also orders DHS to explain the adoption process to the grandmother and begin work on the concurrent plan should the primary plan not be achieved. I will also set the permanency hearing in this case one year from today. The Citizen Review Board will review the case in four months from this date.

Narrator: It is important to note here that some parents choose to have a trial where the State calls witnesses and attempts to prove the allegations in the petition by a preponderance of the evidence (unless ICWA applies, and then the proof must meet a "clear and convincing" standard). If there is a trial, there is no jury—the court decides whether the allegations are true, the rules of evidence apply, parties can call witnesses and can cross examine the witnesses and submit evidence. This trial is required to be held within 60 days of the children being removed from a parent, unless the court finds good cause to set it later.

Narrator: We are now six months into the case and will see the Citizen Review Board hearing.

EVENT SIX - CRB REVIEW - mother, worker, lawyers, CASA, grandmother

CRB: Good Morning. We are here today to review the case plan for Justin, Jason, and Jennifer Lewis. We are volunteers appointed by the Chief Justice of the Oregon Supreme Court to impartially review cases of children in foster care. We are required to make findings that address efforts made by DHS, progress made by parents, and the safety and well-being of children in care. We will ask specific questions of the parties as we address each finding.

The children have been in foster care for six months, and the boys are placed with their grandmother. Jennifer was placed with the grandmother as well, but she is currently at the Girls' Ranch where she is receiving drug treatment.

Narrator: Parents, attorneys, CASAs, caseworkers, foster parents, service providers, relatives, and foster children age 14 and older are invited to participate in CRB reviews. Each participant attending the review provides the board with information on the status of the case and inform the board if they have any suggested recommendations in the case. The board will then make written findings and recommendations.

CRB: A copy of our Findings and Recommendations will be sent to the court, DHS, and required parties. Thank you. Your input is appreciated.

Narrator: The Citizen Review Board reviews all cases of children in foster care. The reviews occur every six months unless the court itself has reviewed the case and waived the CRB review. The purpose of the CRB is to ensure that there is an appropriate plan for the children and that the plan is consistently monitored by an objective group of lay citizens. Citizen Review Board members are community volunteers who have undergone special training in these types of cases. In this case, the board found the plan to be appropriate but made some recommendations for services, including exploration of treatment services in which the children could be placed with the mother. The board also recommended that the agency work to develop an action agreement with the father of the boys to address the long range plan for the children.

Another CRB hearing will be held six months after the first. This review is an opportunity to make final recommendations as to the permanency plan for the children prior to the permanency hearing which will be held by the court. The permanency hearing must be held within 12 months after a child is found to be within the jurisdiction of the court or 14 months after the child was placed in substitute care, whichever is the earlier, unless the court has excused reasonable efforts to reunify the children with a parent due to aggravated circumstances—in which case, the permanency hearing must be held within 30 days of the court's finding of aggravated circumstances.

EVENT SEVEN - PERMANENCY HEARING - Judge, worker, lawyers, mother, CASA, paternal grandmother

Judge: Now is the time for the permanency hearing for Justin, Jason, and Jennifer. ORS 419B.370(2) requires that a permanency hearing be held in their cases at this time, because they are in substitute care and they have been within the juvenile court's jurisdiction for the last 12 months. The threshold questions that I must decide today are whether the parents have made sufficient progress to permit the children to be safely returned to their care and whether DHS has made reasonable efforts to make the children's safe return home possible. If the agency's reunification efforts are reasonable, but the parents have not made sufficient progress to permit the children's safe return home, I must decide whether the plan to reunify the family should continue OR whether the case plan should be changed to adoption or some other permanent plan. I have received a case plan and court report from Child Welfare, a CASA report, psychological reports for mother and the boys' father and the children, reports from treatment providers, and letters of support from Mother's attorney. Is there any objection to these being marked and received as exhibits?

[*Narrator:* There is no objection. The court has reviewed the exhibits.]

Judge: What is the agency's plan for the children?

Worker: We plan to continue offering services to the mother until she can have the children returned to her care, which we anticipate will take place in about 60 days. She did have three months of clean UA's, with one relapse. She now realizes she needs to continue her treatment and will be entering an in-patient program next week. Jennifer was charged with a felony drug offense while on the run from the Girls' Ranch. A delinquency petition has been filed, and when Jennifer is located we will ask that she be held at the detention center while we attempt to locate another placement. This may well be a case where the Oregon Youth Authority is in a better position than Child Welfare to care for this young woman. Jennifer's father has still not been located and has not responded to our efforts to contact him.

Mo. Atty: We agree with the plan for the boys, your Honor. Mother made significant progress in her initial treatment, but, as the court is aware, relapse is not uncommon in the treatment process. In order to have the best chance of success the mother is willing to engage in an in-patient program. She has been evaluated and found eligible for this level of treatment and is on a waiting list for a program that permits children to reside with the parent after an established period of sobriety. There are services available to the children in this program that will help them deal with their separation issues.

Fa. Atty: My client has been released from prison. He is not present today. I am able to represent to the court, however, that he supports permanent placement with his mother (the boys' grandmother), where they've been living for most of the past year.

Boys' Atty: Your Honor, while Justin has expressed a strong desire to be returned to his mother, in view of his age and lack of maturity I am representing both children's best interests today, and I cannot agree with the continuation of the plan to return the children to their mother. She has a long history of drug use even though this is her first encounter with the justice system. She has now relapsed, and the program she is entering is a 12 month program. We will not know for much of that time what the prospects for her long-term success. The children have adjusted well to their grandmother's home, and while ongoing contact with their mother will be important, they need stability and permanency. We do believe, however, that guardianship – rather than adoption -- is the most appropriate plan for the children, and I understand that to be the grandmother's preference as well.

CASA: I cannot fully agree with the boys' attorney. The children have waited long enough for a permanent home. I believe the plan needs to be changed to adoption by the grandmother. The children are doing very well in that home and need the continued stability that the grandmother can offer. The mother has had at least one dirty UA in the past three months and is facing a probation violation hearing which I believe may be the real reason for her recent interest in treatment.

G'ma: Of course I am willing to care for my grandchildren but I really believe the mother should be given a chance now that she is ready to enter treatment. The children love her and miss her.

Jennifer's lawyer: Your honor, this is not the time to go into details about a plan for Jennifer. When she is located it will certainly be my position that although there is a delinquency petition pending, her needs would be much more appropriately addressed in this dependency proceeding. As the court is aware, she made a certain amount of progress in treatment and is struggling with issues related primarily to the neglect and abuse she experienced as a child.

Narrator: Before we hear what the judge decides on what the permanent plan should be, there are a lot of issues that the judge must consider: Getting and staying clean and sober is a difficult task for long-term users. It takes time, and timelines are short in these cases. In addition, once a person is clean and sober it is not unusual for other issues to begin to surface for people who have sometimes been self-medicating. Parents must often deal with their own family of origin issues, mental and emotional conditions, lack of education and employment, housing, transportation, and other major challenges.

Adolescents can require very different services from young children. Jennifer is 16 now and still very unsettled. Although she has been found in possession of drugs, is the delinquency system the appropriate place to deal with her issues? Are there alternatives available through Child Welfare, particularly if she refuses to stay in a non-secure placement? She will be in need of independent living skills to help her get ready for being on her own in the near future. Child Welfare, her attorney, the CASA all need to be involved in helping her to take advantage of the services and support that is available to her.

Judge: **[Makes intriguing closing comment to committee about how the plan at this point could go either way, and then asks them:] What would your decision be?**