



A TECHNICAL SUPPORT BULLETIN FOR JUDICIAL OFFICERS

THE PERMANENCY HEARING

Juvenile Court Improvement Project
Oregon Judicial Department

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THE POLICY OF THE ADOPTION AND SAFE FAMILIES ACT (PL 105-89)

The law governing child abuse and neglect law has become complicated and esoteric, with confusing state and federal time lines and requirements for findings, hearings and presumptions. It helps to keep in mind their common underlying policy: expeditious permanency for children in foster care.

In 1997, Oregon passed the “Best Interest of the Child” legislation (SB 689). For the first time, there were time limits for adjudicating cases, time frames for attempting reunification, and deadlines for making permanency decisions for children. Later that year, Congress passed the Adoption and Safe Families Act (ASFA), which, in essence, required all states to adopt the policy that Oregon had adopted. Both legal reforms intended the same result: to end foster care drift. Long stays in foster care are associated with increased risk of negative outcomes for children, such as delinquency, substance abuse, school drop-out, teen pregnancy and the perpetuation of child abuse and neglect when these children become parents.

The permanency hearing is a crucial means of

- implementing the policy of expeditious permanency for children;
- ending foster care drift; and
- ensuring agency compliance with federal requirements for casework.

WHAT IS THE PURPOSE OF A PERMANENCY HEARING?

ASFA describes a permanency hearing as a procedure to

- ensure that the court carefully reviews the situation of a child in foster care under state supervision to determine a permanency plan in light of the policy of expeditious permanency. 42 USC 675(5)(c); and
- make one or more reasonable efforts findings or, if the Indian Child Welfare Act applies to the case, active efforts findings.

Although the “dispositional hearing” previously held under federal law at 18 months had a similar purpose, renaming the hearing and moving it up to 12 or 14 months emphasizes the underlying policy of ASFA: expeditious permanency.

The goal of ASFA is to end to foster care drift and its uncertainty by developing a plan within a time that keeps the child healthy and safe. Oregon law characterizes this as a “reasonable time.”

“The permanency hearing represents a deadline for the court to determine the final plan to move the child out of foster care and into a safe, nurturing and permanent home.”¹
This decision is based on the conditions and circumstances of the individual child and that

¹ Adoption and Permanency Guidelines, National Council of Juvenile and Family Court Judges, p. 18

of the child's parents. The court can make this decision only after an independent and thorough examination of all relevant facts about the individual child and family.

“Reasonable Time” is defined in terms of a given child’s emotional and developmental needs and ability to form and maintain lasting attachments. ORS 419A.004(21).

Beyond merely naming the plan, *the permanency hearing results in a judgment composed of orders that define the steps and time lines to implement the plan.* ORS 419B.476(5)(b). This judgment is the blueprint that the Department of Human Services (DHS) must follow to achieve permanency for the child.

TIMING OF THE PERMANENCY HEARING

A permanency hearing can or must be held under several conditions defined in ORS 419B.470. Almost all are expressed in terms of a length of time; note that all times are maximums. For example, ORS 419B.470(2) provides that the permanency hearing is to be held no later than 12 months after the child was found to be within the jurisdiction of the court or 14 months after the child was placed in substitute care, whichever comes first. If the plan approved for a particular child at the time of disposition is reunification, but it is clear after six months that following such a plan is not going to result in the child coming safely home in a reasonable time, the court should hold the permanency hearing without delay to determine a plan that will result in placement consistent with the child's developmental and permanency needs.² For efforts to continue, the child's right to permanency in a reasonable time requires that the parents make progress and that

² The concurrent plan should have been developed to the point that it can be adopted by the court and implemented without delay.

this progress results in the child coming home before the child's development or ability to attach is compromised.

The “12/14 month rule” will most often determine when to hold a permanency hearing. Again, the court must hold the permanency hearing if the child is in substitute care no later than 12 months after jurisdiction is established or 14 months after the child comes into care, whichever comes first.

Several common questions arise in applying the “12/14 month rule”:

How do breaks in substitute care periods of time when the child was at home during the 12/14 months affect the timing of the permanency hearing?

Breaks in substitute care do not affect the timing unless the petition was dismissed. The 12/14 month time line to the permanency hearing is not cumulative. Regardless of how much or how little of the appropriate time period the child has actually spent in care, the

court must hold the permanency hearing so long as the child is in care at the 12/14 month point.

If a child has been in care, returned home, and the court

completely dismissed the petition/jurisdiction and then the child is returned to care on a completely new petition, the time for holding the permanency hearing runs from the new entry into care or the new finding of jurisdiction. ORS 419B.470(6).

Unlike the “non cumulative” nature of the 12/14 month rule, the “15 of 22 month rule,” which determines when it is the state's duty to file a termination of parent rights petition arises, is cumulative, stopping and starting as

The parents are not entitled to any specific time period to work a service agreement

the child leaves and re-enters care. See ORS 419B.498(1)(a).

When must the court hold the permanency hearing if a child does not initially come into substitute care but is later removed from home after jurisdiction?

When a child is not removed from home until after jurisdiction, the date of jurisdiction determines when the court must hold the permanency hearing. A child who does not come into care until eleven and one half months after the court finds jurisdiction must have a permanency hearing two weeks later (12 months after jurisdiction).

Does the permanency hearing date change if jurisdiction is established “as to” one parent at a later date than the other?

No. If 12 months following the initial jurisdictional finding is sooner than 14 months following the entry of the child into substitute care, that is when the permanency hearing is held. Although separate allegations must be pleaded and proved as to each parent, it is the child, not the parent who is within the court’s jurisdiction. See ORS 419B.310(3).

When a child is living at home is a permanency hearing still necessary?

Yes. Sometimes a child is home on a “trial home visit.” DHS makes this designation and notes it in the case plan (the “147B”). A child at home on a trial home visit is technically in substitute care. This means that permanency hearings and CRB reviews must be held and, should the child need to be removed, there is no need for a shelter hearing or new reasonable/active efforts or best interest findings.

Although most permanency hearings will be subject to the 12/14 month rule, there are three other situations when the court must hold the hearing sooner:

1 When the court finds that “aggravated circumstances” apply to the case, the court may excuse DHS from making reasonable efforts return the child home. If DHS decides not make such efforts, the court must hold a permanency hearing within 30 days. ORS 419B.470(1).

2 The court must hold a permanency hearing upon the court’s own motion or at the request of almost any party, except for an intervenor or the District Attorney, unless the court finds good cause to do otherwise. ORS 419B.470(4).

Although there is no policy reason to bar a District Attorney, who is involved in the case, from requesting such a hearing, there is a sound reason to bar the intervenor: An intervenor cannot request to be named the permanent placement resource for the child until the court has determined at a permanency hearing that the permanent plan should be something other than return to parent. ORS 419B.116(10)(b). This is to prevent an intervenor from depriving the parents of a fair chance to ameliorate the conditions that led to the removal.

Another party, of course, can request a permanency hearing if that party wishes to advocate changing the plan from reunification to a concurrent plan of placement with the intervenor.

3 The court must hold a permanency hearing within 90 days of removal from a court sanctioned permanent foster care placement. ORS 419B.470(3).

SUBSEQUENT PERMANENCY HEARINGS

The court must hold subsequent permanency hearings within 12 months of the initial permanency hearing and every 12 months thereafter, for as long as the child is in substitute care. ORS 419B.470(5), ORS 419A.004(28).

The reason for a subsequent review is most obvious when the court finds that the permanency plan should be to continue reunification efforts. The court must hold a subsequent permanency hearing at an appropriate time to determine whether to continue or adjust the reunification plan if the child cannot be returned within the time frame ordered earlier by the court. ORS 419B.476(5)(c).

There are two reasons for this continuing review when the court decides to implement a concurrent plan. The first is to ensure that DHS continues to make reasonable efforts to place the child in a timely manner and complete the steps necessary to finalize the plan. Otherwise, DHS might “let up” and turn to other crises once the court decides to implement the concurrent plan, especially in situations where the parents have relinquished their rights or had their rights terminated or where the child is already placed where the concurrent plan dictates.

The other reason for continuing review is that for some children, certain developments may cause DHS to change the child’s permanent plan and seek approval for doing so by the court. This is especially true for children whose permanent plan after the initial permanency hearing is not “permanent.” For example, a child who is placed in a residential facility because of treatment issues that render the child “unadoptable” may well make progress to the extent the child can succeed in a family situation. Then, too, the situation of a placement resource that could commit only to permanent foster care may change from one year to the next and adoption could become feasible. It may be, for example, that the compelling reasons not to proceed with a termination of parental rights that exist over time may no longer exist the next. The court should examine the child’s circumstance in detail at each permanency hearing to ensure the child’s current situation, and not the situation

one year or more ago, in overseeing the planning for the child.³

TIMING -- RELATIONSHIP BETWEEN PERMANENCY HEARING AND TERMINATION HEARING

A case is eligible for foster care funding from the federal government only when the court complies with mandated time lines. Although it may seem like a waste of court time to hold a permanency hearing in, say, June, when a termination hearing is set for August, it is nonetheless necessary. The court makes different findings at a permanency hearing, which focuses on the most appropriate plan for the child, than it makes at a termination of parental rights hearing, which focuses on the parents’ conditions and circumstances and the applicability of the alleged grounds.

The court can hold the permanency hearing at the same time as a termination hearing, so long as the court makes necessary findings and sets them out in a separate judgment, and enters the permanency hearing judgment timely. In the example above, the court can not delay the June permanency hearing until the August termination hearing, but if the situation were reversed, with the termination scheduled for June and the permanency hearing for August, the court could combine the two hearings.

The court should not, however, combine the two judgments. The permanency hearing findings should be set out in a separate judgment, where they can be readily identified for federal and state audits.

³ Adoption and Permanency Guidelines, p. 51-59.

**CONDUCTING THE PERMANENCY HEARING --
PARTIES AND OTHERS
WHO SHOULD BE PRESENT**

All legal parties should be present for a permanency hearing because it is when the court hears evidence to determine the permanent plan for the child. It is especially important that the DHS worker who is primarily responsible for the case planning and casework attend. This is the worker who is most familiar with the family and with the treatment issues presented.

The parents, the child (if age appropriate), their attorneys, and CASA should also be present with a report to the court; like all discovery, this report should have been provided to all parties at least three days before the permanency hearing. ORS 419B.881(2)(a)(B).

Who should attend?

- * **Parent(s)**
- * **Attorneys**
- * **Child (if age appropriate)**
- * **Tribe**
- * **DHS workers**
- * **CASA**
- * **Foster Parent(s)**
- * **Grandparent(s)**
- * **Intervenor(s)**

If ICWA applies in the case, it is important that tribal representatives be present, even if the tribe has not yet intervened in the case. Including the tribe in the decision-making throughout the case is critical. The tribe should be aware of all planning at the earliest possible time.

Intervenor(s) should be present, especially if they are or hope to become the permanent placement for the child. Because the court cannot entertain a motion to grant custody to an intervenor until the permanent plan is changed, this is the opportunity for the intervenor to either present themselves to the court or to at least put the court on notice they would like to be considered, should the plan to reunify the family be abandoned. ORS 419B.116(9)(b).

Foster parents can be a valuable source of information for the judge in determining the child's condition and whether taking more time to allow reunification plans to work will be of benefit or harm to the child. If the foster parents are not present, the court should ask the caseworker whether they were informed of the hearing and their right to be heard. ORS 419B.875(5). The court should ask the same questions to the child's legal grandparents. ORS 419B.875(6). Foster parents and grandparents who cannot attend, or do not feel safe attending, should be offered the opportunity to call or write letters to get pertinent information they might have.

**CONDUCTING THE PERMANENCY HEARING --
PROOF**

The permanency hearing is an evidentiary hearing; the court's findings must be based on a preponderance of the competent evidence. ORS 419B.476(1).⁴ The statute governing introduction of evidence regardless of competency or relevancy under the rules of evidence also applies. ORS 419B.476(1).⁵ Read together, these two statutes allow the court to consider evidence presented about the child's mental, physical and social history and the prognosis regardless of "competency or relevancy under the rules of evidence," but otherwise require competent and relevant evidence. Evidence about a parent's progress in treatment and other issues must have the proper evidentiary foundation to be admissible.

**CONDUCTING THE PERMANENCY HEARING --
REASONABLE/ACTIVE EFFORTS FINDINGS**

Reasonable or active efforts findings are among the most important made at a permanency hearing. These findings are how courts ensure that constitutional rights are preserved during government intrusion pursuant to child protection.

⁴ ORS 419B.476(1) incorporates ORS 419B.310(3).

⁵ ORS 419B.476(1) incorporates ORS 419B.325.

In addition, federal reviewers, as well as compliance managers in local DHS offices, look at permanency hearing judgments to see that the court has made these findings. Federal funding to support the child who is the subject of the hearing depends on DHS making these efforts. It is the court's role, and the purpose of the reasonable/active efforts findings, to certify to the federal government that DHS is making efforts. Without that certification in the form of those findings, foster care funding from the federal government is cut off.

The link between making the efforts and federal money is intended to give DHS incentive to make to the efforts. If DHS does not make the efforts, the state must pay to support the foster care placement. If DHS makes the efforts, the federal government takes the financial burden of the placement.

This "incentive program," however, creates a problem for Oregon, because the legislature has determined that the state cannot expend funds to support relative placements; even in the absence of federal funding to support them. Ordinarily, the lack of a finding, or a finding that the efforts were not made, will require that state funds "back fill" the federal funds. But in the case of a relative placement, the lack of this finding limits the subsidy available to the vastly inferior "Non Needy Relative Grant"

available through TANF. In that case, the court may, given the time constraints of the case, continue the hearing and make specific findings as to what the agency must do to satisfy reasonable/active efforts before the hearing resumes.

The Active Efforts standard required by ICWA only applies upon removal of an Indian child or when the child has been removed and DHS is pursuing a plan to return the child to Indian parents or to an Indian custodian.

If the plan at the time of the hearing is to return the child home, the court must make a

finding whether DHS made reasonable efforts, or active efforts if the Indian Child Welfare Act applies, to return the child safely home. ORS 419B.476(2)(a).

In addition to this federally required finding, state law requires the court to find whether the

Efforts Findings

A. Reasonable or Active Efforts to make it possible for the child to safely return home, or

B. Reasonable Efforts to take steps to place the child in accordance with the permanent plan

parents have made sufficient progress to make it possible for the child to safely return home holding the child's health and safety paramount. ORS 419B.476(2)(a).

If the plan at the time of the hearing is something other than return to parent, the court

must find whether DHS has made reasonable efforts to place the child in a timely manner and has completed the steps necessary to finalize the plan. This is a reasonable efforts finding even if the case is subject to ICWA. ORS 419B.476(2)(b).

The court must make these findings as to the plan that is in place at the time of the permanency hearing. The court may also make findings about DHS efforts to implement any other plan that was in place during the period under review. Such findings have impact if the court believes that failure to make reasonable/active efforts on a previous plan so damaged to the parent's chances to have the child come home, it negates to the duty to file a termination that arises under the 15 of 22 months rule. ORS 419B.498(2)(b)(C). Failure to make efforts, in and of itself, does not require or provide enough basis for an exception to the duty to file. If the court allows more time for the parents to work toward reunification, the court must find that it is in the best interest of the child. ORS 419B.498(2)(b)(C).

In addition to making findings required by the individual case, the court must provide a brief description of the efforts that DHS made. ORS 419B.476(5)(a). The court can append the DHS report to the judgment if the report clearly outlines the efforts.

DETERMINING THE PERMANENT PLAN FOR THE CHILD

Aside from the mandated findings regarding reasonable/active efforts, the most important finding in a permanency hearing is the permanent plan. In some cases, DHS will present one plan with other parties in agreement. In other cases, parties will disagree and present competing plans for the court to consider. ***In all cases, the court must make an independent inquiry into the child's circumstances and to make an independent determination of the plan that best meets the health and safety needs of the child.***

The court retains the final word as to what the plan will be. ORS 419B.476(5)(b). Any party to the case may develop and propose a case plan for the court's consideration. When the initial jurisdiction is established, the court has the responsibility to enter an appropriate disposition judgment. ORS 419B.325(1). DHS may change the case plan at any time, and need not seek court approval to do so, but an agency determination that one or another plan is best for the child is not binding on the court.

Unlike the inquiry under ORS 419B.476(2), as to reasonable/active efforts, the court does not, in determining the permanent plan pursuant to section five of the statute, begin with the plan that is in effect when the hearing begins. ORS 419B.476(5) requires the court to consider whether the plan should be return to parent and if the court makes written findings that this is not the appropriate plan, then the court next considers adoption. If the court determines that adoption is not the appropriate plan it must make written findings to that effect before considering guardianship and then, in the same

manner, planned permanent living arrangement.

Before considering any plan, the court must be aware of the child's specific needs, including

- updates on the child's health and education;
- the current placement and behavior;
- services that have been provided;
- progress that the child has made;
- issues yet to be addressed;
- cultural needs; and
- sibling status, relationship and contact.

To support findings about the permanent plan on appeal, it is not sufficient that the information be in the court file from previous hearings. It must be considered, in some manner consistent with ORS 419B.325 or OEC 201(b), at the permanency hearing itself, before the court designates it a part of the record for the purposes of appeal. See, *State ex rel DHS v. Lewis*, 193 Or App 264, 270 (2004).

All parties, as well as foster parents and grandparents, will have information, some of which DHS or another party may not have known or considered in developing a plan.

The court must make a similar inquiry regarding the parents if jurisdiction is based on parental behavior:

- Have they ameliorated the problems that led to the child coming into care?
- What services have been provided to them, how have they responded to these services, and how much progress is left to be made, if any, before the child can be safely returned, if that is possible?

Judges must ensure that any information obtained from DHS or others is shared with all the parties. The court should determine whether it needs additional reports and may decide it necessary to hear from those making the reports and to ask questions about recommendations of treatment providers and others.

Only when the court is familiar with all the details should it consider whether the plans presented adequately address the paramount concern, the child's health and safety needs.⁶

At every permanency hearing, regardless of the plan(s), each party presenting a plan should make a thorough presentation of how they concluded that this particular plan is the best one, even if the permanent plan is agreed to by all. The court must hear enough evidence to be satisfied the plan does meet the health and safety needs of the child. The court must also question the parties to ensure they understand the ramifications of a plan to which they agree, especially if the stipulation seems based on some kind of negotiated agreement.

The court must order the plan that best fulfills the requirement to make the child's health and safety the paramount concern, not just any plan to which all involved have agreed. Even if the court does ratify a permanent plan to which all parties have agreed, the court must still ensure that sufficient evidence supports implementation of the plan, including such things as transition.

Subsequent permanency hearings, held each year for so long as the child is in substitute care, have the same requirements as the first one. For example, at a subsequent permanency

Even if the parties agree, the court must still delve into all the circumstances and conditions of the child and parent:

*** What are the child's specific needs?**

*** What are parent's specific circumstances?**

*** Has all information been shared with all parties?**

*** How was it determined that the proposed plan was the best plan?**

hearing held one year after the creation of a permanent foster care placement, the court must reconsider return to parent, adoption, and guardianship before once again finding that a permanent foster care placement is still the best available plan for the child and make all of the required findings, based on evidence considered in that subsequent hearing.

CONSIDERING REUNIFICATION AS THE PERMANENT PLAN

Even if DHS rules out reunification, the court must still inquire whether DHS could have provided other services and whether it could provide any in the future that would make reunification an option. The plan can be reunification even if return is not imminent, although return must be within a reasonable time, that is, consistent with the developmental and attachment needs of the child. ORS 419A.010(20).

If, contrary to DHS recommendations, the court determines that reunification is the appropriate plan, it has broad powers to determine the adequacy of the case plan or to order the agency to develop or expand the case plan. ORS 419B.476(4)(d) and (f). If the court finds, either sua sponte or at the request of another party, that further efforts will make it possible for the child to return safely home within a reasonable time, the court must list specific services that the parents must engage in for a specific period of time and the specific progress required in the period of time ordered. ORS 419B.476(4)(c).

Return to Parent Findings

A. Time line for return

B. Services to be provided

In determining whether reunification should be the case plan, the court should ask whether the conditions and circumstances that led to the

⁶ Greenbook, p. 19-20; ABA p. 1

removal have changed, and why reunification would be in the best interest of the child.

The visitation experience in the case can indicate whether reunification is appropriate. How frequent is visitation? What is the impact of visitation on the child? Has an expert analyzed the visitation situation?

The court that designates reunification as the case plan must contain a finding as to when the child will return home. ORS 419B.476(5)(b)(A). The designated date will depend on factors such as transition planning and the plan for support and supervision after return, as well as planning for school, childcare, respite care and the like.

CONSIDERING ADOPTION AS THE PERMANENT PLAN

If a child cannot return to the parents, ASFA presumes that the best concurrent permanency plan is to terminate parental rights and pursue adoption. An adoption is “the most immune from future legal attack and ends the need for continued state oversight.”⁷

Some factors, however, that may make adoption inappropriate for a child who cannot safely return home:

- An older child may object to being adopted.
- A younger child may be so bonded to a parent that, despite the fact that the parent will never regain custody of the child, the damage done to the child by severing the parent-child relationship will outweigh the benefit of adoption.

A professional able to assess those considerations should present information to the court, or the court should order a professional assessment if similar factors are present in a case.

⁷ Child Law Practice, Volume 20, No. 2, p. 23.

When an adoptive parent is identified and willing to participate, one option is an “open” or “cooperative” adoption, whereby the biological parents relinquish parental rights and enter into an agreement with the adopting parents for future contact. ORS 109.305. Future contact can be direct, face-to-face visits with the child, correspondence between birth and adoptive family, or providing information to the birth family about the child’s situation. DHS has a Cooperative Adoption Mediation Program that may be useful in these circumstances.

If the court finds adoption the appropriate plan for the child, it should consider whether DHS’s adoption plan is realistic. Although there are some issues with the policy in Oregon, ASFA does not require adoptive parents be identified before a child is freed for adoption. ASFA does require that DHS recruit and find an adoptive placement if one has not presented itself.⁸

Adoption Findings:

A. Applicability of the “15/22 Month Rule”

B. Why the plan is in the best interest of the child

Scrutiny of DHS’s efforts to find adoptive placements is appropriate, including whether DHS considered relatives. If the court finds other avenues to explore, it may order DHS to do so. ORS 419B.476(4)(f).

If adoptive placement is the plan, the court should consider whether DHS has made resources available to the parents to ease the transition, including:

- counseling services; and
- planning for support, including access by the adoptive parents to all medical, treatment and educational records of the child.

A judgment that designates adoption as the permanent plan must contain a finding on the

⁸ Child Law Practice, Volume 20, No. 2, P. 23.

“15/22 month rule.” ORS 419B.498(1)(a). This rule requires the state to file a termination of parental rights petition by the end of the 15th month (with limited exceptions) if a child has been in foster care for 15 of the most recent 22 months. ORS 419B.498(2). A judgment designating adoption as the plan requires a finding that one of these exceptions does **not** exist. ORS 410B.476(5)(d).

If the child will not return home, but some factor makes a plan other than adoption best for the child, the court must make a finding to that effect as part of ordering that other plan. ORS 419B.476(5)(e) and (f). A related finding is required when the child has been in foster care for 15 of the most recent past 22 months and the court orders some plan other than adoption. ORS 419B.498. One example is when the court considers termination and adoption for an Indian child. Many Indian tribes do not support adoptions that cut children off from their culture, and it is in the best interest of the children to maintain those ties, according to the Indian Child Welfare Act.

The 15/22 month rule is not expressly limited to the first permanency hearing. If a child is in permanent foster care and has been in substitute care under the supervision of the DHS for 15 of the most recent 22 months, it appears that the provisions of ORS 419B.498 applies.

CONSIDERING GUARDIANSHIP AS THE PERMANENT PLAN

In the hierarchy of AFSA’s placement preferences, guardianship is to be considered only when a child cannot return home and adoption is not appropriate.

Oregon has two guardianships that meet ASFA requirements for permanency. The juvenile court guardianship (ORS 419B.366 et seq) and the permanent guardianship (ORS 419B.365). ***A judgment designating guardianship as a permanent plan must state why these two more durable permanent plans are not***

appropriate for the child. ORS 419B.476(5)(e). These may include considerations discussed above in determining whether adoption is the best plan for the child.

Just as it does for adoption plans, the court should inquire into the planning to implement the guardianship:

- What is the plan for transition?
- What resources have been made available to the guardian?
- Have the guardians received all the education and medical records they will need to effectively parent the child?

Guardianship Findings:

A. Why return to parent or adoption is not in the best interest of the child

B. Why the guardianship is in the best interest of the child

Guardianship opens the possibility for continued contact between the child and the biological parent, which may be the reason guardianship was chosen as the plan. The court

remains involved in a guardianship (although DHS is relieved of temporary custody), retaining jurisdiction to enter orders governing visitation and child support.

CONSIDERING A PLANNED PERMANENT LIVING ARRANGEMENT AS A PERMANENT PLAN

The Planned Permanent Living Arrangement (PPLA) is considered the least desirable permanency plan because it is the least durable. ***For that reason, a judgment designating PPLA as a permanent plan must contain findings that there is a compelling reason why one of the more durable placements is not appropriate to meet the child's needs and must document what that reason is.*** ORS 419B.476(5)(f).

The court must consider the factors it considers with any other plan:

- Were reasonable/active efforts made to reunify?
- Were all resources applied to the case?
- Has there been a full disclosure of all the child's needs and conditions?
- What role will the parents play in the child's life?

PPLA Findings:

A. Why return to parent, adoption or guardianship is not in the best interest of the child

B. Why the PPLA is in the best interest of the child

PPLAs are appropriate in two situations. The first is permanent foster care where the child cannot return home and, but for one of several reasons, would be adopted. This plan is implemented by contract in which

the caretaker and DHS agree that the child will be reared to majority in the placement and the agency will provide support, barring some development that would make the child adoptable or make a guardianship appropriate.

Despite its name, however, and despite the signed agreement to rear the child to majority, the obligation remains on the agency to make efforts, reasonable to the circumstances of the child, parents and permanent foster parents, to convert the PPLA into one of the more durable placements. Those efforts form the basis of the reasonable efforts inquiry at future permanency hearings.

Other Findings:

A. Tribal affiliation if ICWA applies

B. A timetable of for return home or permanent placement, if current placement is not intended to be permanent

The second situation is not intended to be permanent. Some children are simply "unplaceable" at the time the permanency hearing takes place. They may be in residential treatment, or in a group living situation, or not able to function in a family setting. Although a PPLA may be, for the present, the appropriate permanent plan, DHS must continue efforts to return the child home or place the child in a guardianship or an adoptive placement. The judgment must contain a projected time line for return home or for another placement. ORS 419B.476(5)(g).

In this second situation the presumption is that there must be a plan for permanent, durable placement, even if it is not possible, at that time, to implement it. In this circumstance, best practice would also dictate including, within the permanency hearing judgment, the treatment plan the agency intends to follow to reach its goal of "promoting" the child to a more permanent placement in the future. The court will review the case in the future to ensure that progress is made toward permanent placement, which is commensurate with the child's circumstances.

THE JUDGMENT

The judgment must recite the court's determination of the permanent plan, as well as the findings appropriate to support that plan, as outlined above.

The permanency hearing judgment must be entered within 20 days of the hearing. Failure to hold a permanency hearing within the time lines may put the case out of compliance for the purpose of foster care reimbursement under Title IV-E, if no previous reasonable or active efforts (if the child is an Indian child and the plan remains return to parent) in the previous year. Holding the hearing, or any hearing at which the court may make the required findings at a later time results in the reimbursement beginning again from the time the judgment is entered, if the required efforts findings are

positive and made **within 60 days** of the time that the finding (a) was due, but not made, or (b) was earlier made in the negative.

The judgment should also contain information about the tribal affiliation of the child, if the Indian Child Welfare Act applies to the case, and the placement preferences of the Act apply to the case. ORS 419B.476(5)(h).

The next hearing date should also be included in the permanency hearing judgment.

SUMMARY

The permanency hearing is the time for the court to make an independent inquiry into the efforts made by all parties and into the plans proposed for the child. With a mandate to prevent the risks to the child of foster care drift, the court has great flexibility and powerful tools to fashion a permanency plan for the particular child who is the subject of the hearing. The court must have all the parties and all the information to make a good decision about what plan best meets the health and safety needs of the child, and must take great care in preparing the judgment to ensure it is not only adequate as a “compliance document,” but is practical guide to completing the steps to permanency for the child.

SUMMARY OF FINDINGS

- I. Efforts Findings
 - A. Reasonable/Active Efforts to make it possible for the child to safely return home, or
 - B. Reasonable Efforts to take steps to place the child in a timely manner and complete the steps necessary to finalize the permanent plan
- II. Permanent Plan
 - A. Return to parent
 - 1. Time line for return
 - 2. Services to be provided
 - 3. Progress expected
 - B. Adoption
 - 1. Applicability of 15/22 month rule
 - 2. Why plan is in best interest of the child
 - C. Guardianship
 - 1. Why neither return to parent nor adoption is in the child’s best interest
 - 2. Why plan is in the best interest of the child
 - D. Planned Permanent Living Arrangement
 - 1. Why neither return to parent, adoption nor guardianship is in the child’s best interest
 - 2. Why plan is in the child’s best interest
- III. Other findings
 - A. Tribal affiliation of the child if ICWA applies
 - B. If placement not intended to be permanent, a timetable for return home or to be placed in a placement intended to be permanent.