



# Juvenile Dependency Hearings

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# Overview

- o Timelines
- o Citizen Review Board
- o Model Forms
- o Secondary Resources
- o Rules of Evidence and Procedure
- o Legal Parties
- o Grandparents
- o Foster Parents
- o Appointment of Counsel

# Dependency Timelines

- Shelter: 24 hours
- Jurisdiction and Disposition: 60 days
- Review (Court or CRB): every six months
- Permanency: 12 months from “entry”
- Termination of Parental Rights: six months





# Citizen Review Board



- o Provides case review when child is in substitute care every six months. ORS 419A.106
  - o Full judicial review hearing or permanency hearing that meets the statutory requirements replaces CRB review.
- o CRB reviews usually last longer, are more in depth and cover well being measures not typically addressed in court setting. No formal rules of evidence.
- o Findings and recommendations are submitted to the court. ORS 419A.116.
  - o Party may request judicial review within 10 days of receipt. ORS 419A.116(4).
- o No reasonable efforts findings may impact ASFA timeline. ORS 419B.498(2)(b)(C); ORS 419B.476(5)(d).

# Model Forms

- o Shelter
- o Admission
- o Jurisdiction/Disposition
- o Review
- o Permanency
- o Court Report

**IN THE CIRCUIT COURT OF THE STATE OF OREGON**  
**FOR \_\_\_\_\_ COUNTY**

In the Matter of: \_\_\_\_\_ ) Case Number: \_\_\_\_\_  
 \_\_\_\_\_ )  
 \_\_\_\_\_ ) **SHELTER ORDER**  
 A Child. \_\_\_\_\_ ) (ORS 419B.180 et seq.)

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**This matter came before the Court on: \_\_\_\_\_, 20\_\_\_\_.**

**Persons appearing:**

<b>Legal Father (name):</b>	Attorney:
<b>Putative Father (name):</b>	Attorney:
<b>Mother:</b>	Attorney:
<b>Child:</b>	Attorney:
<b>Tribe:</b>	Tribal <b>Atty Rep:</b>

<b>CASA:</b>	<b>Deputy D.A.:</b>
<b>Guardian:</b>	<b>Assist. Atty Gen<sup>1</sup>:</b>
<b>DHS Caseworker:</b>	<b>Other:</b>
<b>Guardian Ad Litem:</b>	<b>Other:</b>

**DHS Documentation:** The Department of Human Services (DHS) ☐ **did** ☐ **did not** provide the Court with the documentation required by ORS 419B.185.

**Evidence Considered:**

☐ Stipulations by the parties.

☐ The exhibits admitted by the Court.

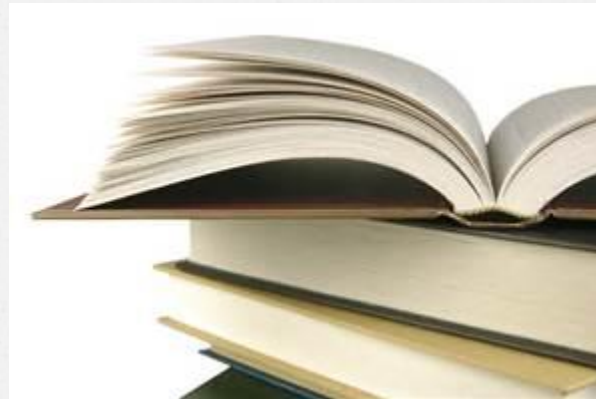
# Resources

- o Primary

- o ORS, OAR, ICWA, Case law, Title IVE of the Social Security Act

- o Secondary

- o Benchcards
  - o Benchbook
  - o Case law outline
  - o Hearing modules





# Rules of Evidence

- o Rules of evidence apply in jurisdictional, termination hearings.
  - o Motions to dismiss are considered jurisdictional.
- o For purposes of determining disposition:
  - o Court may consider:
    - o Testimony, reports or other material relating to the ward's mental, physical and social history and prognosis without regard to competency or relevancy. ORS 419B.325(2); ORS 40.015(4)(i).
  - o Permanency hearings are considered "dispositional"

# Rules of Procedure

- o ORS 419B.800 to 929.
  - o ORCP does not apply
  - o Court may regulate pleading, practice and procedure in any manner not inconsistent. ORS 419B.800(3)
- o Consolidation. ORS 419B.806
- o Required court notices. ORS 419B.816 (jurisdiction); 419B.820 (permanent guardianship or TPR)
- o Discovery. ORS 419B.881
- o Modifying or setting aside order or judgment. ORS 419B.923.



# Service

- o Service of petition and summons. ORS 419B.823 (generally) and 419B.824 (method)
- o Summons must be issued within 30 days of filing petition and must be served with petition on:
  - o Parents
  - o Legal guardian
  - o Some putative fathers
  - o Person who has physical custody of the child
  - o Child, if 12 years of age or older
  - o Guardian ad litem, if appointed ORS 419B.839; 419B.812(3)
- o Jurisdictional hearing reasonable time after service. ORS 419B.812(9)
- o Subsequent papers. ORS 419B.851

# Notice to Person who Contests Petition

- o If summons directs person to appear personally to admit/deny or to file an answer within 30 days, if the person contests the petition:
  - o Court must issue written or oral order:
    - o Time, place purpose
    - o Personal appearance
    - o Attorney may not appear in place of person
    - o Person may appear as court permits in ORS 419B.918
    - o Consequences of failure to appear

ORS 419B.816 (See also ORS 419B.820 for petition to establish permanent guardianship or TPR)

# Findings

- Must be based on evidence in the record:
  - Sworn testimony
  - Admitted exhibit
  - Party stipulation
  - Judicial notice





# Judicial Notice

- o Facts must not be "reasonably in dispute."
- o Court must attach a list with reference to source.
- o Must provide the parties with the opportunity to object. ORS 419A.253(1)(b). *Dept of Human Services v. A.A.*, 276 Or App 223 (2016)
- o Do not take judicial notice of entire documents.
- o ORS 40.060 -40.085; 40.090
- o *State ex rel Juv. Dept. v. Lewis*, 193 Or App 264, 271 (2004).

# Legal Parties

- o The child
- o The parent(s), guardian(s) or Indian custodian(s)
- o Putative fathers
- o The state (represented by the DA, AG)
- o The Juvenile Department
- o Court Appointed Special Advocates (CASA)
- o DHS, when agency has temporary custody
- o The Tribe, when ICWA applies
- o Intervenors under ORS 419B.116

ORS 419B.875

# Grandparents

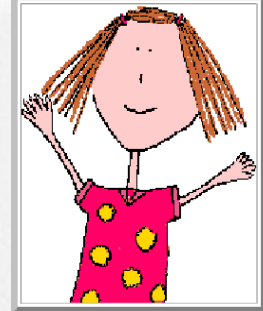
- o DHS must make diligent efforts to locate
- o DHS to give notice of hearings
  - o Court may relieve DHS of this requirement for good cause
- o If grandparent is present, has the right to be heard
- o Court findings
- o May request visitation with the ward at any hearing (except TPR), provided notice was given to DHS and parties at least 30 days in advance. Applies even after parent's rights terminated (1/1/16 – HB 3014)



# Foster parents

- o No legal party status
- o DHS must provide notice of hearings
- o Has right to be heard. ORS 419B.875(6).
- o May intervene if “caregiver relationship”.  
ORS 419B.116
- o May qualify as “current caretaker” under ORS  
419A.004 and ORS 419B.349 (SB 741: 1/1/16)

# Children in Court



- o Notice and transportation. DHS is required to notify the child of the hearing and transport the child to hearings when appropriate. ORS 418.201.
- o Telephone appearance. The court may allow the child to appear telephonically, or by other means. ORS 419B.918
- o Exclusion of others. The court may exclude the child's parents and other persons during the child's testimony if determined to be in the child's best interests. ORS 419B.310.
- o Must ask before APPLA. The court must ask the child about his or her desired permanency outcome prior to designating a permanency plan of APPLA. 42 U.S.C. 675(a)(2)(A).
- o NCJFCJ "best practice" recommendation



# Education



- Stability. Federal law requires DHS to ensure that the child stays in the school in which he or she was enrolled at the time of placement, unless it is not in the child's best interest to do so. 42 U.S.C. §675(1)(G)(ii).
- Best interests. Oregon law allows the court to find it is in the best interests of the child to continue to attend the school the child attended prior to placement by DHS. ORS 339.133(4).
- Transportation. DHS is required to provide the child with transportation to and from school when the need for transportation is due to the placement by DHS, and funds have been designated for this purpose. ORS 339.133(4)(b), (c). DHS policy requires the caseworker to assess the school district's available transportation options and, if none is available, arrange the most reliable, safe, cost-effective transportation. OAR 413-100-0915(8).



# Appointment of Counsel

- o Appoint for parents. ORS 419B.205.
- o Required if requested for child. ORS 419B.195
  - o Best practice to appoint.
- o Timing of appointment



# Dependency Hearings

Shelter

Jurisdiction/Disposition

Review

Permanency

# Shelter Hearings

ORS 419B.183 and 419B.185



“TO THE WORLD YOU MAY BE ONLY ONE PERSON BUT  
TO ONE PERSON YOU ARE THE WORLD”

We just  
took that  
world away



# Shelter Hearings

- o Purpose: Can the child be made safe in the home until the petition can be resolved?
- o Model Forms: Shelter Order (ICWA/non-ICWA)
  - o Other forms to consider (on intranet):
    - o Model narrative for advice of rights
    - o Notice of Obligations/Rights of Parents (ORS 419B.117)(available in Spanish)
    - o Juvenile Restraining Order (ORS 419B.845)

# Shelter Hearing Statutes

- Speedy hearing required within 24 hours, excluding weekends and holidays. ORS 419B.183
- Evidentiary hearing and required findings. ORS 419B.185
- Subject matter jurisdiction is subject to the requirements of the Uniform Child Custody Jurisdiction Act. ORS 109.767(2).



# Notice Findings

- o Foster parents
- o Grandparents
- o Mothers
- o Fathers (including putative Stanley)
- o Relatives contacted? Family finder? Child support locator?
- o Notice to parent of hearing. ORS 419B.160(3)

# Notice to Parents/Guardians

- o Oral and written notice required. ORS 419B.117
  - o Box in shelter order to check
- o Rights and obligations:
  - o Obligation to pay:
    - o Support for child in DHS care
    - o For court-appointed counsel
    - o Child support rights assigned to DHS
    - o Right to appeal (10 days from referee; 30 days from circuit court judge)

# UCCJEA Findings: Section 3

- o UCCJEA ORS 109.701 -109.834
- o Petition is required to contain all the elements listed in ORS 419B.809(4)(b).
- o ORS 109.704 (7) defines “home state.”
- o ORS 109.741: defines when Oregon can take initial jurisdiction.





# Critical Question 1:

Why can't  
this child  
go home  
today?  
ORS  
419B.185(1)



# Reasonable/Active Efforts

## Findings: Section 4

- o Efforts to prevent the need for removal?
  - o Strengthening, Preserving and Reunifying Families – ORS 418.595(1)
- o Efforts to permit the child to safely return home?
- o What evidence is in the record?
  - o Has an exhibit been offered, admitted and attached to judgment?



# In-Home Placement: Section 5

- Court may place child in temporary custody of parents in the home.





## Critical Question 2:

Is out of home placement proposed in child's best interest, and in the least disruptive and most family like setting?



# Substitute Care: Section 6

- o **Best interests finding.** The court must include a written finding in every order of removal that describes why it is in the best interests of the child that the child be removed from the home or continued in care. ORS 419B.185(1)(d); 42 U.S.C. §672(a)(1)-(2)
- o See *also* 45 C.F.R. §1356.21(c)  
(continuation would be contrary to the welfare, or placement would be in the child's best interest).
- o Not a “probable cause” finding.
- o **Least restrictive setting.** Placement must be in least restrictive most family like setting.



# Substitute Care Placement

- o If the court orders substitute care, it must determine:
  - o Temporary custody: ORS 419B.809(5)
  - o Reasonable efforts: ORS 419B.185(1)(a)
  - o ICWA: ORS 419B.185(1)(f)
  - o Diligent efforts to place with siblings and relatives : ORS 419B.185(2)(b)



# Diligent efforts to place

- Relatives and caregivers

- Siblings in care

- 419B.192(2): allows finding that sibling placement not in best interest



# RO Findings and Order: Section 7

- o If petition alleges child has been physically or sexually abused. Court must find:
    - o PC to believe abuse occurred and the person to be restrained committed the abuse;
    - o Order is in best interest of child.
- ORS 419B.845(1)(a)
- o JF7 Juvenile Court RO = Optional JCIP form



# Critical Question 3:

What is the Visitation plan and why?

- o **419B.337(3) court has authority to enter order re visitation with parents and siblings. Use Section 6 of order.**
- o Make detailed plan.
- o Don't just adopt a stipulation.
- o Don't accept one visit a week in the office.



# Court Orders

- “At any time after petition filed, court may make an order providing for temporary custody of the child” 419B.809(5)
  - Should the court give temporary custody to DHS?
    - Commitment to DHS: Court can specify type of care but not particular placement. 419B.337(2).
  - Court has authority to place temporarily and grant temporary guardianship to a “suitable person”. 419B.809(5); 419B.372(2).

# Court Orders

- o Recent improvements
  - o “Orders” at end of document to align with Odyssey version of forms
  - o Space to allow appointment of CASA
  - o Space to allow appointment of attorneys
  - o Clarification of Temporary Custody options
  - o DHS Disclosure language modified
- o Be sure to order Visitation plan as well as make Section 6 Visitation findings
- o Next appearance: State it orally and ORDER IT
  - o Practice varies as to how many dates are set at Shelter.



# Consolidation is Mandatory:

## ORS 419B.806(2)

- o Juvenile case involving legal or physical custody + domestic relations, filiation or guardianship involving child = consolidation in juvenile court. ORS 419B.806(2).
- o 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.
- o Consolidation of cases puts 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.



# Consolidation

- o Juvenile Court hears all actions. Actions are not merged in procedure or substance. Parties to one case are not parties to another. 419B.806 (4) & (5).
- o The judge determines, in the best interest of the child, which case should proceed, with statutory presumption in favor of the juvenile case.  
419B.806(4)



# Status/Settlement Conferences

# Policy

- ORS 419B.517: Mediation to be encouraged.
  - ASFA considerations
  - Inability to order disposition until jurisdiction resolved for both parents
  - Each day in foster care can put child in further jeopardy



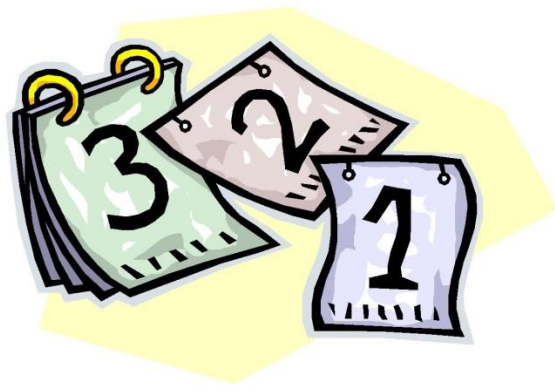


# Jurisdictional and Dispositional Hearings

ORS 419B.305

# Timely Resolution of the Petition

- o Discovery. Required within 30 days of the petition. ORS 419B.305(2); ORS 419B.881
- o Disposition. Absent a finding of good cause, court must hold a hearing on the petition and enter a dispositional order **no later than 60 days** after the filing of the petition. ORS 419B.305(1).



# Which Model Form?

- JF3: Jurisdiction Judgment Use this form when the court will not enter a disposition judgment at the time the jurisdiction judgment is entered.
- JF4: Disposition Judgment  
Use this form when the court determines jurisdiction and orders disposition in separate proceedings at different times.
- JF4B: Jurisdiction and Disposition Judgment  
Use this form when the court determines jurisdiction and orders disposition as part of the same proceeding



# Summons and Notice Findings:

## Section 1

### o ► Parties Summoned:

- o Mother was summoned to the hearing and appeared. Mother was summoned to the hearing and failed to appear, and she **is is not** a person in the military service who is entitled to the protections of the Service Members Civil Relief Act. Other:
- 

- o Father was summoned to the hearing and appeared. Father was summoned to the hearing and failed to appear, and he **is is not** a person in the military service and who is entitled to the protections of the Service Members Civil Relief Act. Other:
- 

- o Mother    Father    Guardian(s) was/were provided the notice of obligations and rights required by ORS 419B.117.

# Missing a Parent?

- o The court can assert jurisdiction without a parent if:
  - o after diligent efforts, the parent cannot be identified to be served ORS 419B.914; or
  - o the parent does not appear after service ORS 419B.815(7).
- o DHS must file an affidavit stating whether the parent is in the military service or stating DHS is unable to determine.
- o No order of support may be issued unless the person is served as provided in ORS 419B.812 to 419B.839.





# Service: Recent Cases

- o **M.C.-C. 275 Or App 121 (2015)**(Hague Service Convention requires service through Mexican Central Authority but party who appeared and requested relief waived right to contest defect in service because Oregon law requires claim of lack of personal jurisdiction to be raised at earliest possible occasion.)
- o **K.L. 272 Or App 216 (2015)** (Due Process does not require DHS to use service method outlined in ORS 419B. 823 in order for service to be valid if, under facts, notice reasonably calculated to apprise parties of action and afford opportunity to be heard)



# Grandparents:

## Section 1

### ► Grandparent(s) - Notification and Participation:

- DHS **made** **did not make** diligent efforts to identify, obtain contact information for, and notify all grandparents of the hearing.

No grandparents attended the hearing.

The maternal grandmother grandfather

paternal grandmother grandfather

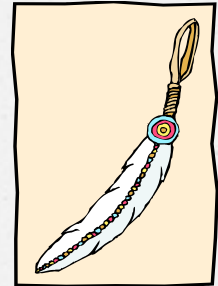
attended the hearing and had an opportunity to be heard.

The grandparents who attended the hearing were informed of the date of a future hearing.

DHS **did not** give the legal grandparents notice of the hearing because: \_\_\_\_\_.

For good cause shown, the court has relieved DHS of the responsibility to provide notice of this hearing.

# INDIAN CHILD WELFARE ACT (ICWA) FINDINGS: SECTION 2



- o The ICWA **does not** apply.
- o The ICWA applies to this case, because the Court **has determined has reason to know** that the child is an “Indian child” under the ICWA, and is an enrolled member of, or is eligible for membership in, the following tribe(s):  
\_\_\_\_\_, 25 USC § 1903(4). The tribe(s) **has/have been has/have not been** notified of this proceeding, as required by 25 USC § 1912(a). This Court **has does not have** jurisdiction under 25 USC § 1911 to proceed with the case. This Court **has does not have** temporary emergency removal/placement jurisdiction under 25 USC § 1922. Additional findings/orders:
  - o (Orders): At this time, the Court **does not have reason to believe that the ICWA applies**, but DHS shall continue its inquiry whether the child is an “Indian child” and report the results of the inquiry to the Court.



# Jurisdiction: Section 3

- o UCCJEA
- o ORS 419B.100
  - o Are the allegations legally sufficient?
  - o Have the contested allegations been proved by a preponderance of competent evidence in a non-ICWA case
  - o By clear and convincing evidence in an ICWA case?





## Conditions and Circumstances Jurisdiction: ORS 419B.100(1)(c)

- o Legal standard:
  - o *A current threat of serious loss or injury to the child*
  - o *A nexus between the allegedly risk-causing conduct and the harm to the child*
  - o *The risk is present at the time of the hearing.*

Example: Dept. of Human Services v. C.J.T.,  
258 Or App 57 (2013).

- o In this case, the record lacked legally sufficient evidence to establish a nexus between mother's marijuana use and a current threat of harm, when there was no evidence presented that mother used marijuana for the three months prior to the date of jurisdiction.

# One Parent Admits One Parent Contests

- o A juvenile court cannot assert jurisdiction over a child based on admissions of one parent when the other parent has been served and summoned, appears, and contests the allegations. W.A.C .263 Or App (2014).
- o The court should take an admission on the record of the parent willing to admit. Use Admissions to Petition JCIP Model Form.
- o Place the Admissions form in the file and order that parent to appear for disposition at the date when non-admitting parent will appear to resolve the petition.
- o Court can make findings about one parent prior to another but all conditions and circumstances must still be current at time of jurisdictional hearing. A.F. 268 Or App 382(2014)



# DISPOSITIONAL FINDINGS AND ORDERS

PLACEMENT, LEGAL  
CUSTODY, PARENT ACTION  
PLAN, CHILD CENTERED  
CASE PLAN, CONCURRENT  
PLAN, VISITATION.





# Disposition

- o Court must order disposition. At the termination of the hearing(s) the court shall enter an order directing the disposition to be made of the case. ORS 419B.325(1).
- o Timing. Recommended best practice is to decide disposition at the same time as the jurisdictional hearing.
  - o ORS 419B.305 requires that absent a finding of “good cause” the court must hold a hearing on the petition and enter a dispositional order “no later than 60 days” after the filing of the petition
- o At disposition, the court determines:
  - o placement, legal custody and guardianship;
  - o services for the parents;
  - o services for the child;
  - o visitation with parents and siblings;
  - o appropriateness of the concurrent plan

# Out-of-Home Placement

- o “Placement or continuation in substitute care is in the child’s best interest and for the child’s welfare, based on the jurisdictional findings under ORS 419B.100 and because:” **MAKE FINDINGS**
  - o Non-ICWA case: “The child cannot be safely returned home/maintained in the home without further danger of suffering physical injury or emotional harm or endangering or harming others.” Additional findings: **MAKE FINDINGS**
  - o ICWA: Clear and convincing evidence and QEW
- o Legal custody/guardianship to DHS or to a “suitable person” pursuant to ORS 419B.331 or ORS 419B.334.

# Diligent efforts and placement preferences

- o DILIGENT EFFORTS: ORS 419B.192
  - o RELATIVES
  - o SIBLINGS
    - o May find that placing siblings together not in their best interest.
- o PLACEMENT
  - o Least restrictive most family like environment and in reasonable proximity to child's home.
  - o ICWA: Must follow placement preferences



# Reasonable or Active Efforts Findings

## o When Not Required

- o if child currently in home and not removed from home prior to this judgment.
- o In a non-ICWA case DHS can be relieved of making reasonable efforts under ORS 419B.340(5) & (6).

## o Otherwise Required

- o Best practice to attach detailed statement as an exhibit.
- o Making no reasonable efforts in an emergency is reasonable efforts. ORS 419B.340(3)

# Concurrent Planning Checklist

## Sample Concurrent Planning Milestones Checklist

- By **30 days** of substitute care, the following concurrent planning tasks should be completed:
  - \_\_\_\_ Birth and Medical Records requested for each child
  - \_\_\_\_ Relative search request filled out thoroughly and submitted to admin unit
  - \_\_\_\_ Fathers Questionnaire filled out by a trained staff with each child's mother
  - \_\_\_\_ ICWA (1270) form filled out by each parent of each child
  - \_\_\_\_ Parent search initiated if necessary
  - \_\_\_\_ Ongoing Safety Plan and Visitation Plan
  - \_\_\_\_ Relative search completed

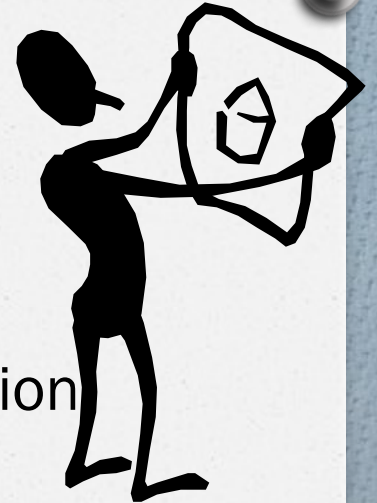


# Concurrent Planning Checklist

By **60 days** of substitute care, the following concurrent planning tasks should be completed:

- \_\_\_\_ All legal and Stanley type fathers filed on
- \_\_\_\_ orders of non-paternity completed for presumed legal fathers
- \_\_\_\_ Letters sent to putative fathers (Randolph Jones)
- \_\_\_\_ Case Plan developed w/initial Action Agreement
- \_\_\_\_ Mental health on all children 3 and under or ASQ SE on all other children
- \_\_\_\_ Identification of concurrent plan for each child
- <http://courts.oregon.gov/OJD/docs/OSCA/cpsd/courtimprovement/jcip/2014EyesConf/Eyes1.PreSession2.2014AdoptionsToolkit.pdf>

# Case Plans



- o Case plan:
  - o If the permanency plan is reunification must bear rational relationship to jurisdictional basis.
  - o Federal law requires initial case plan at 60 days and revisions every six months.
- o Each parent has a case plan and the child has a “child specific case plan”.
- o Parents also receive an “Action Agreement” or a “Letter of Expectation”



# Child Specific Case Plan: More than just Placement and Safety

- o Has DHS prepared a *written case plan* that complies with the requirements of ORS 419B.343?
- o Health/Mental Health: *Child has suffered trauma*
- o Education
  - o Same school/After school activities
  - o Educational surrogate
- o Transition planning (Age 14 and older)
- o Zero to Three
  - o Attachment and bonding: “goodness of fit” with caregiver.
  - o Appropriate child care
  - o Abernethy, P. & Hall, M.A. ( 2009). Improving Outcomes for Infants and Toddlers in the Child Welfare System. *Zero to Three*, 29 ( 6), 28-33.

# Child Well Being

- o **Treatment plan.** DHS is required to prepare a plan for care or treatment within 14 days after assuming custody of the ward if the child is in need of medical care or other special treatment. A copy of this plan should be sent to the court. The court may request regular progress reports.
- o **Medical and dental assessments.** Referrals required within 30 days of entering care. OAR 413-015-0465.
- o **Developmental and mental health screening.** Referral is required within 60 days of entering care. Children age three and under are referred for developmental assessments while children age four and over are referred for mental health assessments. Some children may receive both depending on their needs. OAR 413-015-0465.
- o **Court may direct the child be examined or treated.** ORS 419B.352. If the court determines this examination or treatment should be provided through services delivered through DHS, DHS shall determine the appropriate services or placement in consultation with the court and other affected agencies.



# Visitation “Family Time” Plan

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

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

**OAR 413-070-0800 Visits and Other Types of Child and Family Contact**

# Visitation: Infants and Toddlers

- ▶ Near bioparents
- ▶ Foster parents as untapped resource
- ▶ Kinship care
- ▶ Caveats: boundaries, education, support
- ▶ Medical/therapeutic visits
- ▶ Visit is to enhance relationship
- ▶ How to afford developmentally meaningful visitation for infants
- ▶ Fostering Attachment Treatment Court model
- ▶ Baby bonding group
- ▶ Dyad Therapy
- ▶ Visitation with Infants and Toddlers in Foster Care: What Judges and Attorneys Need to Know.



# Parent's plan:

## Conditions of Return

- o What does the parent have to do so the child can come home today?
  - o MAKE SURE CONDITIONS ARE CONCRETE
    - o Specific behaviors, conditions or circumstances that must exist within a home prior to child's return with in-home safety plan.
  - o MAKE SURE PARENTS UNDERSTAND: Is this simple so as to be understood by all?
  - o MAKE SURE CONDITIONS ARE DOCUMENTED IN CASE PLAN with EXPECTED OUTCOMES
  - o CHARACTERISTICS OF PLAN: Simplicity, specificity, accountability, reliability and doability.
    - o E.G. "X" WEEKS CLEAN WITH RANDOM, OBSERVED UA'S
- o TIMETABLE: Return within a "reasonable time"

# “the court orders”

- o In-Home
- o Out-of-Home
- o Parents to Comply with Action Agreement
- o CASA appointed ( CASA “shall be appointed in every case.” ORS 419B.112)
- o Visitation Plan
- o ICWA Determination
- o Next Hearing
  - o CRB sets its own date except in counties where the Court and CRB have developed a joint calendar.



# Review Hearings

ORS 419B.449

# When to hold a Review Hearing

- o DHS Court Reports. The court may hold a review upon receiving required reports about the child. ORS 419B.449(1)
  - o Reports are required every six months from placement
  - o The required content of the report = ORS 419B.443
- o CRB review. The Citizen Review Board is required by statute to review substitute care cases every six months. ORS 419A.106(1)(a).
- o The court may only waive the CRB if the court holds a “complete judicial review,” as defined in ORS 419A.106(1)(b), within 60 days prior to the next scheduled CRB review.



# Legally required reviews

- Child not placed for adoption for six months after TPR. ORS 419B.449(1)(a); see *also* ORS 419B.470(4)(court required to hold permanency hearing at same interval).
- Upon request by the child, child's attorney, the parents, or the custodial agency within 30 days of receipt of notice that the court received a required report. ORS 419B.449(1)(b).
- Child in physical custody of parent & legal custody of DHS review 6 months after placement. ORS 419B.449(1)(c); ORS 419B.449(1)(d).
- Certain placement moves. 10 day hearing required. ORS 419B.449(1)(e).

# Which Model Form?

JF6 Review  
Judgment

Use this form for review hearings that are required, or authorized, by ORS 419B.449.

JF6B: Non ORS  
419B.449

For “limited” review hearings – *i.e.*, those held to resolve questions that do not require all the findings required by ORS 419B.449 -- use form JF6B.



# Purpose of the Review Hearing

1. Is there a continued basis for jurisdiction?  
Motion to Dismiss should be set separately.
2. Has DHS made progress on the concurrent plan?
3. Did DHS make reasonable/active efforts to provide services to make reunification possible within a reasonable time or to finalize other permanent plan?
4. How is the child doing? Are the services to the child adequate to ensure health, safety and well-being?
  - o Diligent efforts to place child with relatives & siblings?
5. Have parents made sufficient progress for a return?
6. How is the visitation or “family time” plan working?



# Relevant Dates/Current Placement

## o Dates:

- o Entry into Substitute Care
- o Jurisdiction
- o Current Placement
  - o Type of placement

# DHS Court Reports

**ORS 419B.443 Time and content of reports.** (1) An agency described in ORS 419B.440 shall file the reports required by **ORS 419B.440 (1)(b)** at the end of the initial six-month period and no less frequently than each six months thereafter. The agency shall file reports more frequently if the court so orders. The reports shall include, but not be limited to: \* \* \*."

**ORS 419B.440(1)(c): Amended 2015** to require report to the court upon removal of child from permanent foster care or a placement > 12 months. (Exceptions apply: abuse, health and safety, moved to adoptive placement.)

## **New DHS Court Report**

A statewide form used by DHS to comply with ORS 449.440.

<https://apps.state.or.us/Forms/Served/ce1302i.pdf>



# Jurisdiction: Section 1

## Motion to Dismiss

- o ORS 419B.449 puts jurisdiction at issue in a review hearing. Best practice is to set a separate time for the motion to dismiss.
  - o ORCP does not apply. ORS 419B.800(1). However, court may regulate practice and procedure as long as consistent with juvenile code of procedure in ORS 419B.800 to 419B.929.
  - o DHS has burden of proof to prove factual bases for jurisdiction persist.
  - o A retrial of the original allegations is not required. The evidence is limited to whether the conditions that were originally found to endanger a child persist. The conditions or circumstances must present a threat of danger (serious loss or injury) that is current and not speculative. *Dept. of Human Services v. A.R.S.*, [258 Or App 624,636 \(2013\)](#) (ARS III).
  - o ORE applies. No relaxed evidentiary standard in this part of hearing.



# Notice and Participation:

## Section 2

- o “Current caretaker” is new category of foster parent is currently caring for a ward and who has cared for the ward or one sibling for a least the immediately prior 12 consecutive months or 1//2 of the ward or sibling’s life if younger than 2. ORS 419A.004(11).
  - o Purpose of 2015 legislation was to recognize child’s attachments in adoption decisions and give the current caretaker equal weight with relatives.
- o Very important to hear from those who really know about the child
  - o The child
  - o The foster parents
  - o The CASA
  - o The CRB reports
  - o Parents, grandparents and other relatives, depending on contact
  - o The child’s attorney (but note ethical obligation of that attorney is to the child’s view not to the child’s well being from an objective perspective.)

# How To Talk So People Can Listen and Listen So People Can Talk

Developing a Trauma-Informed  
Child Welfare System

<https://www.childwelfare.gov>





# The Critical Question: How is the child doing?



- o Child well being findings are required in five sections:
  - o Section 3 Number of placements, contacts with caseworker, visits with parents and siblings, and schools
  - o Section 5 RE/AE findings: “Child Treatment and Care”
  - o Section 6 DHS case plan and progress
  - o Section 7 Placement Findings
  - o Section 8 Diligent efforts re placement relatives/siblings
  - o Section 9 Education re child 14 or older
  - o Section 10 APPLA plan: Extracurricular activities/Reasonable and prudent parent standard

# Child Well Being: Section 3

- o Why continued care is necessary, and what the timetable is for the child's return home or other permanent placement?
  - o Placement instability is devastating to child well-being.  
*Strategies to Minimize Placement Disruptions:*  
<https://www.childwelfare.gov/topics/outofhome/placement/strategies/>.
- o What are the number of school changes, placements, visits, and case worker contacts the child has had "and whether the frequency of each of these is in the best interests of the child,"
  - o 65% of foster care alumni in Oregon and Washington experienced seven or more school changes from elementary through high school. (2005 study of 479 alumni of foster care in Oregon and Washington (the Northwest Alumni Study) Conducted by Casey Family Programs)
  - o Parent-child relationship building is important especially for infants and toddlers. Questions every judge and lawyer should ask about infants and toddlers in the child welfare system:  
[http://acnj.org/downloads/2015\\_08\\_14\\_childprotection\\_questions\\_every\\_judge\\_should\\_ask.pdf](http://acnj.org/downloads/2015_08_14_childprotection_questions_every_judge_should_ask.pdf)
  - o Sibling connection can be a life-line for kids, especially in later life.



# CHILD HEALTH RESOURCES



## o Checklist for Health Care:

- o <http://courts.oregon.gov/OJD/docs/OSCA/cpsd/citizenreview/2014Conf/B4.CRBChecklistHealthCare.pdf>





# Other Well Being Resources

- o <http://childwelfaresparc.org/wp-content/uploads/2014/11/Improving-Child-Well-Being.pdf>
- o Sheryl Dicker, *Reversing the Odds: Improving Outcomes for Babies in the Child Welfare System* (2009). (In JCIP Library).
- o [Abernethy, P. & Hall, M.A. \( 2009\). Improving Outcomes for Infants and Toddlers in the Child Welfare System. \*Zero to Three\*, 29 \( 6\), 28-33.](#)
- o **NCJFCJ RESOURCE GUIDELINES**
- o **NCJFCJ CHECKLISTS**

# Concurrent Planning:

## Section 4

- o There **is** a concurrent plan (in order of preference):
  - o Adoption
  - o Permanent guardianship under ORS 419B.365
  - o Guardianship under ORS 419B.366
  - o Placement with a fit and willing relative
  - o A planned permanent living arrangement (APPLA), which is: ( ) permanent foster care ( ) permanent connections and support (residential treatment, independent living, substitute caregiver).
- o What are DHS efforts to develop the concurrent plan? Are those efforts sufficient?



# Concurrent Planning Checklist:

- o <http://courts.oregon.gov/OJD/docs/OSCA/cpsd/courtimprovement/jcip/2014EyesConf/Eyes1.PreSession2.2014AdoptionsToolkit.pdf>
- o JELI ADOPTIONS TOOLKIT AT PAGE 23

# Section 5 :

## Reasonable/Active Efforts

Make written findings in support of the determination by briefly describing “what preventive and reunification efforts were made and why further efforts could or could not have prevented or shortened the separation of the family.” ORS 419B.340(2).



# Section 5:

## Reasonable/Active Efforts

- Must bear a rational relationship to basis of jurisdiction. ORS 419B.343(1)(a).
- Efforts must be made as to each parent. DHS can not ignore one parent based on the rationale that the child is more likely to be reunified with the other parent
- When cost is an issue. If service is “key” to reunification and DHS has declined to fund the service, court must weigh the benefits of DHS providing the service and the burden of associated costs when deciding whether DHS made reasonable efforts
- Must consider the child’s “health and safety the paramount concerns.” ORS 419B.340(1).
- Consider whether referral of a child to a Strengthening, Preserving and Reunifying Families program is or was in the child’s best interest. ORS 418.595.
- Active efforts requires a higher standard than reasonable efforts. DHS is required to do more than create a reunification plan and require the parent to execute independently. DHS must assist the client through the steps.

# Section 5:

## Reasonable/Active Efforts

- o Reunification: reasonable efforts NOT required
  - o Child not in substitute care.
  - o Aggravated circumstances (non ICWA cases only )
- o Reasonable efforts to finalize the permanent plan. If the permanency plan has been changed from reunification at a permanency hearing, DHS is required to make reasonable efforts to complete the steps necessary to finalize the permanent plan.
  - o Standard is reasonable even in ICWA cases.



# Case Plan Compliance and Progress: Section 6

- o Reasonable efforts is over the life of the case. *T.S. 267 Or App 301(2014)*
- o Cost benefit analysis applied to whether DHS failure to provide service was reasonable. *M.K. 257 Or App 409(2013).*
- o Parents progress can be marked sufficient but still not legally compliant. *R.S. 270 Or App 522(2015).*
- o Progress that is only possible with the considerable help of service progress can be determined not sufficient. *T.M.S 273 Or App 286(2015).*
- o Progress within a “reasonable time” is defined in **ORS 419A.004(23)** and is based on the child’s emotional and developmental needs and ability to form and maintain lasting attachments.

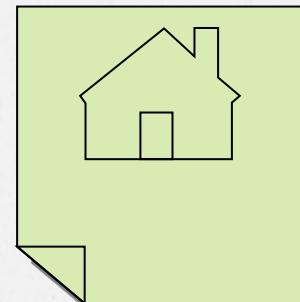
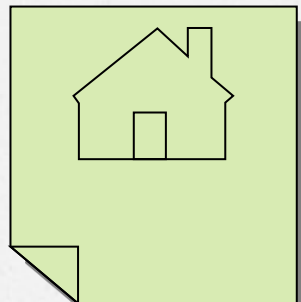
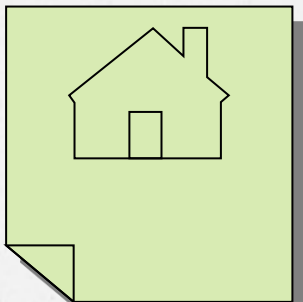
# Permanency Hearings

ORS 419B.876



# Purpose: Permanency Hearing

- o To reach a decision concerning a permanent plan for a child and to approve a permanent plan, which may be reunification, adoption, guardianship, placement with a fit and willing relative, or another planned permanent living arrangement (“APPLA”).
- o To review the progress of both the family and DHS and review the case plan for needed modification.
- o To ensure compliance with deadlines within which final permanency decisions should be made.



# Type of Permanency Hearing

- **Annual Review:** 12 months after jurisdictional finding or 14 months after child's placement in substitute care, or subsequent annual review. ORS 419B.470(2) and (6).
- **At the request of:** \_\_\_\_\_ **or by order of the court.** ORS 419B.470(5).
- **Delayed initiation of adoption proceedings/placement:** six months have passed since child was surrendered or parental rights were terminated (permanency hearing required every six months until child is placed, or adoption proceedings initiated). ORS 419B.470(4) and (7).
- **Child removed from court sanctioned permanent foster care** (hearing within 90 days). ORS 419B.470(3).
- **Special circumstances:** within 30 days when DHS has determined it will not provide reunification services based on a judicial finding that DHS is not required to make reasonable efforts . ORS 419B.340(5); 419B.470(1).
- **Child in substitute care 15/22 months.**
- **Parent convicted of crime listed in ORS 419B.498(1)(b)**
- **Abandoned child.** ORS 419B.498(1)(c)



# The Initial Hearing: Timing

“[W]hen a child or ward is in substitute care, the court shall conduct a permanency hearing no later than 12 months after the ward was found within the jurisdiction of the court under ORS 419B.100 or 14 months after the child or ward was placed in substitute care, whichever is the earlier. **ORS 419B.470(2)**

**NOTE: Reasonable-time considerations may require a permanency hearing sooner than the 12-month, or 14-month, mark in a particular case.**

# ASFA Timely Permanency

- ◉ When the child has been in foster care 15 out of the last 22 months, DHS has an obligation to file a petition to terminate parental rights. ORS 419B.498 (1); 42 U.S.C. §475(5)(E).
  - Date entered foster care is 60 days after removal or date of adjudication whichever comes first.
  - Trial home visits not included in calculating 15 months in care.
- Exceptions to TPR: ORS 419B.498(2)
  - Compelling reason that TPR not in the child's BL.
  - Examples:
    - Child is cared for by a relative – intended to be permanent
    - Parent is successfully participating in services and child can be returned in reasonable time
    - Other plan better than adoption
    - No reasonable/active efforts finding – court or CRB
    - DHS hasn't provided services consistent with the time period in the case plan as DHS deems necessary.

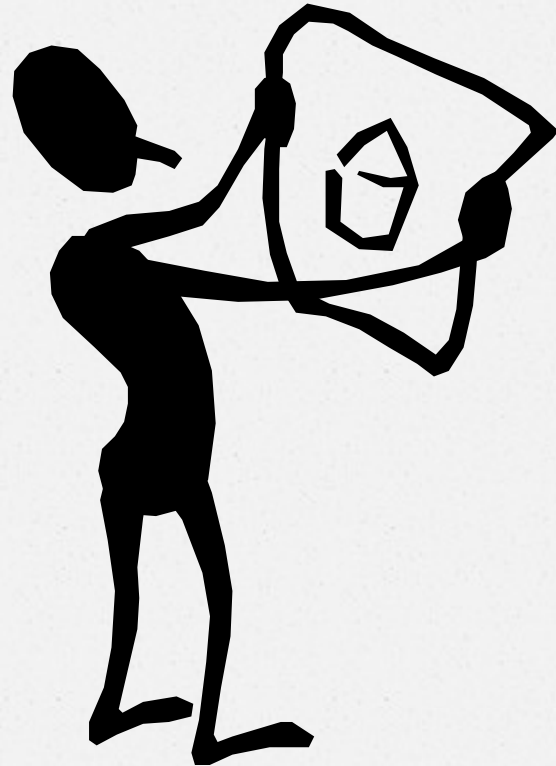


# Which Model Form?

JF5

Permanency

Judgment



# Motion to Dismiss

- o DHS has the burden to prove, by a preponderance of the evidence that the factual bases for jurisdiction persist to a degree that they pose a current threat of serious loss or injury that is reasonably likely to be realized. *Dept. of Human Services v. A.R.S.*, 258 Or App 624 (2013) (ARS III).
- o A retrial of the original When the child has been in foster care 15 out of the last 22 months, DHS has an obligation to file a petition to terminate parental rights. ORS 419B.498 (1); 42 U.S.C. §475(5)(E).
  - o Date entered foster care is 60 days after removal or date of adjudication whichever comes first.
  - o Trial home visits not included in calculating 15 months in care.
- o Exceptions to TPR: ORS 419B.498(2)
  - o Compelling reason that TPR not in the child's BI.
  - o Examples:
    - o Child is cared for by a relative – intended to be permanent
    - o Parent is successfully participating in services and child can be returned in reasonable time
    - o Other plan better than adoption
    - o No reasonable/active efforts finding – court or CRB
    - o DHS hasn't provided services consistent with the time period in the case plan as DHS deems necessary. allegations is not required.
  - o The evidence is limited to whether the conditions that were originally found to endanger a child persist. *Id* at 636.



# Rules of Evidence

- o Applies to Motion to Dismiss.
  - o If the parent or child files a motion to dismiss jurisdiction, the exception to the requirement of competent evidence in ORS 419B.325 (2) does not apply to that portion of the proceeding, which is considered adjudicatory in nature. *Dept. of Human Services v. J.B.V.*, 262 Or App 745 (2014).
- o Doesn't apply to the rest of the hearing.
  - o “Disposition” includes consideration of reasonable efforts to effect reunification and parental progress under ORS 419B.476 (2)(a). *Dept. of Human Services v. J.B.V.*, 262 Or App 745 (2014).

# Placement findings: Section 2

## o Court authority to change placement. ORS 419B.349:

- o If court finds placement not in child's best interest the court may direct DHS to place or maintain the child in the care of: child's parents in foster care with: a relative, **current care taker**, non-relative, non-current caretaker, residential care, group care, some other specific type of residential placement.
- o The court may not otherwise direct specific placement
- o The court may not direct DHS to place or maintain the child where the effect would be to remove the child or prevent placement with the selected adoptive placement after review procedures under ORS Chapter 183 have expired 419B.440(2).

## o Additional considerations:

- o Are the child's well being needs being met to help avoid a placement disruption based on behavior? Does the child need any additional supports?
- o Is the foster parent having any difficulties in caring for the child that warrant respite care, transportation, counseling or other assistance from DHS?
- o If the placement is in risk of disruption, is DHS continuing the relative search, engaging relatives and assessing the child's placement needs?



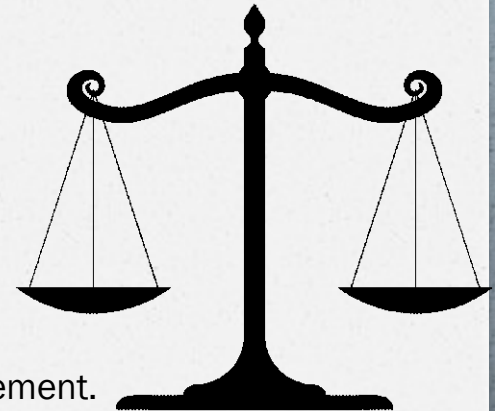
# “Current Caretaker” Defined

- o A foster parent who:
  - o Is currently caring for a ward in the legal custody of DHS who has a permanency plan, or concurrent plan of adoption; **and**
  - o Who has cared for the ward, ***or at least one sibling of the ward***, for at least the immediately prior 12 consecutive months **or** for one-half of the ward's or sibling's life where the ward or sibling is younger than two years of age.

ORS 419A.004(11)

# Court authority to review placement – new category

- o Court may review child's placement or proposed placement.
- o After finding that placement is not in child's best interest, the court may direct DHS to place or maintain the child in the care of:
  - o The child's parents;
  - o In foster care with:
    - o a relative
    - o **current caretaker (is or has been)**
    - o non-relative, non-current caretaker
    - o residential care
    - o group care
    - o some other specific type of residential placement.



ORS 419B.349



# Relationship to caregiver status

Current Caretaker:  
ORS 419A.004 (9)

Caregiver Relationship:  
ORS 419B.116

- Limited to foster parent
- Plan or concurrent plan must be adoption
- Covers siblings not in physical custody of foster parent



- May include relationship that existed prior to entering care (should also qualify as “relative” under DHS policy)
- If foster parent, relationship must be for at least 12 consecutive months
- Must’ve had physical custody and provided child with love, nurturing and other necessities required to meet the child’s psychological and physical needs.
- May file motion to intervene; if allowed, has party status
- DHS must make diligent efforts to place with caregiver. ORS 419B.192

# Diligent efforts (4), concurrent planning (6): child well being,

5,11,12

- Similar to inquiry in REVIEW
- IMPORTANT TO HAVE CHILD PRESENT





# Current Permanency Plan is Reunification: Section 7

- o SKIP TO SECTION 8 IF THE PLAN AT THE TIME OF THE HEARING IS OTHER THAN REUNIFICATION.
- o Reasonable/Active Efforts Determination to:
  - o Reunify
  - o Finalize plan
- o MUST Continue current plan or change to a different plan
- o NOTE THAT THE “ORDER” IS INCLUDED IN SECTION 7 RATHER THAN BEING AT THE BACK.
- o AFTER THE “ORDER” GO TO SECTION 9 TO SPECIFY THE PLAN.

# Current Permanency Plan Not Reunification: Section 8

- o Reasonable Efforts.
  - o Determine whether DHS “has made **reasonable efforts** to place the [child] in a timely manner in accordance with the plan,” and “whether [DHS] has considered permanent placement options for the [child].”
- o Appropriateness of permanency plan.
  - o Determine whether the current case plan is in the child’s best interests and should continue, or should be changed to another permanent plan, including reunification with a parent. ORS 419B.476(2)(a), (4)(c) and (5).
- o GO TO SECTION 9 TO ORDER THE PLAN CHANGED OR CONTINUED



# Court's Determination of Plan (Section 9): Reunification

- o Court must describe specific services and time frame in which parent is to make progress.
  - o Do the conditions of return adequately describe what the parent has to do in order for the child to be returned?
  - o Can the caseworker explain to you what the parent has to do in order for the child to be returned?

# Within a Reasonable time

- o If parent has not made enough progress for return home but is successfully participating in services, court must then consider whether its possible for child to return home “within a reasonable time.” ORS 419B.476 (4)(c) & (5)(c).
- o The court must determine what the “reasonable time” is for the specific child.
- o The court should hear expert testimony in “psychological and developmental terms regarding the particular child’s requirements.” *State ex rel SOSCF v. Stillman*, 33 Or 135 (2001).



# SECTION 9: Change plan from reunify to Adoption

- o Court must first find that parent has not made sufficient progress for child to safely go home within a reasonable time in **Section 7** of JF 5.
- o Court must also find that none of following circumstances apply (Section 9):
  - o ORS 419B.498(2) Circumstances not present:
  - o Child placed with relative and placement intended to be permanent;
  - o Compelling reason not to file TPR such as
    - o parent successfully participating in services that will make return possible within “reasonable time.”
    - o Another permanent plan is better than adoption
    - o Health and safety needs/Sibling attachment.
    - o CRB or court made no reasonable efforts finding

# Section 9: Change plan to less than adoption

- o In order to change plan to something less than adoption, court must determine why the ward should not be placed in a higher level in the plan hierarchy, moving down the list from return to parent, adoption, legal guardianship, “placement with a fit and willing relative,” APPLA.
- o This finding must be made at every permanency hearing even if (especially if) APPLA is proposed.



# Guardianship Considerations

- o JCIP Guardianship forms include
  - o Letter to guardian
  - o Annual Report
  - o Order After Guardians Report
- o State funded guardianships now available for children not IV-E eligible
- o Court should provide copy of any order vacating guardianship to DHS so it can discontinue assistance payments in appropriate cases. See ORS 419B.368 (process and findings for vacation of guardianship).
- o If the court changes plan to guardianship, it then must receive a petition or motion for guardianship and hold a guardianship hearing. See ORS 419B.365(permanent –grounds same as TPR); ORS 419B.366 (durable).
- o Must comply with ICWA.

# Placement with a Fit and Willing Relative

- Must have a relative (as defined by DHS policy) who is willing to make a long term commitment
- Wardship and legal custody with DHS continue.
- Foster parent continues to receive foster care payment.



# APPLA Considerations

- APPLA limited to age 16 and older (October 1, 2015)
- New law requires DHS at the permanency hearing to document intensive on-going efforts, unsuccessful efforts to achieve a higher level permanency plan before the plan is designated APPLA.
- Child should be asked about his or choice of plan.
- Relatives are defined to include current foster parents where child placed in DD-funded placement.

# THE JUDGMENT – Findings and Orders

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

**DON'T GET REVERSED FOR LACK OF FINDINGS.**

