



Legislative Update 2017

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Dependency

Task Force on Legal Representation in Juvenile Dependency Recs (Pending)

▶ **HB 5006, Budget Note**

- ▶ Directs DHS, DOJ, OJD and PDSC to work together at both the state and local level to develop and implement strategies to improve the effectiveness and efficiency of Oregon's juvenile dependency systems and to determine the appropriate level of legal services.
 - ▶ Agencies are expected to identify and begin implementing strategies no later than 7/1/18. Options for providing more effective and cost-efficient legal and other services should also be reviewed and analyzed.
 - ▶ Joint report on progress due to Ways and Means or Emergency Board by October 2018.
 - ▶ Each agency to include an update in its budget presentation during the 2019 session on its specific role, activities, strategies and costs to improve the effectiveness and efficiency of Oregon's juvenile dependency system.
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▶ SB 5526

▶ DOJ Civil Enforcement Division – Child Advocacy Section:

- ▶ 35 permanent full-time positions for full agency representation

- ▶ Phase I by 1/1/18:

- Benton, Coos, Gilliam, Grant, Hood River, Josephine, Lane, Lincoln, Linn, Morrow, Polk, Sherman, Tillamook, Wasco, Wheeler

- ▶ Phase II by 7/1/18:

- Columbia, Crook, Deschutes, Douglas, Harney, Jackson, Jefferson, Klamath, Lake, Malheur, Umatilla, Yamhill

- ▶ Phase III by 1/1/19:

- Baker, Clackamas, Clatsop, Curry, Marion, Multnomah, Union, Washington, Wallowa



Oregon Foster Sibling Bill of Rights

1/1/18

▶ HB 2216

New

- ▶ Establishes foster siblings bill of rights:
 - ▶ Obtain substitute care placements together
 - ▶ Maintain contact and visits with siblings, including electronic and phone (and actively participate in development of contact plan)
 - To be provided with transportation for visits
 - To ensure that contact with siblings will be encouraged in any adoptive or guardianship placement.
 - To have more private or less restrictive communication with siblings as compared to communications with others (who are not siblings)
 - To be immediately notified of placement changes or catastrophic events
 - ▶ To be placed with foster parents and caseworkers who have been trained on the importance of sibling relationships
- ▶ BOR to be provided within 60 days of any placement change; when the case plan is considered and reviewed; and annually.
- ▶ Many rights qualified “as safe and appropriate”



Children of Incarcerated Parents BOR 1/1/18

▶ SB 241

New

- ▶ Directs DOC in cooperation with a public body to develop guidelines as a set of guiding principles for policy and procedure decisions that impact incarcerated parents, and policy and funding recommendations with partners that adhere to the guidelines.
- ▶ Sets out certain essential rights for children:
 - ▶ To be protected from additional trauma at the time of parental arrest
 - ▶ To be informed of the arrest in an age-appropriate manner.
 - ▶ ***To be heard and respected by decision makers when decisions are made about the child.***
 - ▶ ***To be considered when decisions are made about the child's parent.***
 - ▶ To be cared for in the absence of the child's parent in a way that prioritizes the child's physical, mental and emotional needs.



Children of Incarcerated Parents (cont)

- ▶ *To speak with, see and touch the incarcerated parent.*
- ▶ To be informed about local services and programs that can provide support to the child as the child deals with the parents incarceration.
- ▶ To not be judged, labeled or blamed for the parent's incarceration.
- ▶ To have a lifelong relationship with the incarcerated parent.



Remote Testimony

6/6/17

▶ SB 131

ORS 45.400

- ▶ Response to *Dept. of Human Services v. K.A.H.*, [278 Or App 284 \(2016\)](#)
- ▶ Court may allow remote testimony *upon a showing of good cause* by a moving party.
 - ▶ However, the court may not allow remote testimony *if it would result in prejudice to a non-moving party and the prejudice outweighs the good cause.*
- ▶ Provides for an open-ended list of factors the court may consider in finding good cause and another list of factors for finding prejudice.
- ▶ Telephone testimony limited.
 - ▶ May authorize telephone testimony only if video not available.



Service

(Pending) 1/1/18

▶ SB 719

ORS 419B.851

- ▶ Allows for service by electronic mail, or electronic service through the court's electronic filing system, whenever service is required under ORS 419B.800 to 929, unless the party or party's attorney is exempted from service in this manner through order of the court.
- ▶ Specifies when service is complete
- ▶ Proof of service:
 - ▶ Fax: affidavit or declaration of the person making service or a certificate of an attorney with the printed confirmation of receipt
 - ▶ E-mail: affidavit or declaration of the person making service, or certificate of any attorney, stating either that the party consent to service by e-mail or that the person received confirmation that the message and attachment were received by the party and specifying the method by which the person received confirmation from the party
 - ▶ Electronic service: Affidavit or declaration of person making service, or by certificate of any attorney, specifying that service was completed by electronic service.



Educational Stability

(Pending) 7/1/17

- ▶ **SB 20: Implements Every Student Succeeds Act (ESSA) of 2015**
ORS 339.133
 - ▶ Requires DHS to maintain the child in his or her school district of origin for the duration of time in care and be provided free of charge, transportation between the child's home and the school district of origin.
 - ▶ Juvenile court must find it is not in the child's best interest to attend "school of origin" before DHS can move the child to a new school.
 - ▶ Defines "school of origin": School the child attended before s/he was placed in care or before the foster placement changed.
 - ▶ If court finds not in best interest to attend school of origin, the child shall immediately be enrolled new school, even if unable to produce required records for enrollment.



Current Caretaker

1/1/18

▶ SB 830

ORS 419A.004(11)

- ▶ Expands definition of current caretaker:
 - ▶ Foster parent who is currently caring for a ward who is in the legal custody of DHS and who has a permanency plan or concurrent plan of adoption; and
 - ▶ Who has cared for the ward, or at least one sibling of the ward, for at least **12 cumulative months** or for one-half of the ward's or sibling's life if younger than two years of age, **calculated cumulatively**.
- ▶ Applies to persons who are foster parents on or after 1/1/18.



Independent Living Programs

1/1/18

- ▶ **HB 2344: Independent Residence Facilities ORS 418.205 & 475**
 - ▶ Requirements for placement:
 - ▶ At least 16 years old but not older than 20
 - ▶ Been placed in at least one substitute care resource
 - ▶ Have been determined by DHS to be suitable and *possess the skills and level of responsibility required for the transition to adulthood.*
 - ▶ Have received permission from juvenile court.
 - ▶ Removes requirement that ward be unsuitable for placement with a substitute care resource
 - ▶ Resident must maintain DHS approved independent living plan:
 - ▶ Requires the plan to include education, employment or *volunteer activities*
 - ▶ Removes requirement that these amount to *full time activity.*
 - ▶ DHS may approve an *exception* to requirement that ward pay a portion of costs for reasons of temporary loss of employment or other financial support.
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Child Safety Bills

- ▶ **HB 2903:**

- ▶ Allows DHS to immediately place conditions on the license of child caring agency. (5/24/17)

- ▶ **SB 243:**

- ▶ Technical fixes to ensure that the same notification, reporting and investigation processes apply to children in different types of out of home care when abuse is alleged. Adds CRB to list of entities entitled to reports when abuse in out of home care has been substantiated. (Pending)

- ▶ **SB 244:**

- ▶ Clarifies who DHS is required to notify when there are suspected abuses or deficiencies in a child caring agency. (6/22/17)



Critical Incident Response Teams 6/22/17

▶ SB 819

ORS 419B.024

- ▶ Directs DHS to assign CIRT to review case after DHS becomes aware of a child fatality that was likely the result of abuse or neglect if the child:
 - ▶ Was in DHS care;
 - ▶ Was the subject of a cps assessment, pending child welfare case, or pending adoption within 12 months prior to the fatality (or siblings or other children in the household)
- ▶ Juvenile judge is now a member of the CIRT – to be appointed by Chief Justice.
- ▶ CIRT to review and investigate case and submit report to DHS within 60 days, including conclusions, recommendations and identification of systemic issues that led to the fatality.





Dependency and Delinquency

Physical Restraints

1/1/18

▶ SB 846

419A (new)

- ▶ Prohibits use of restraints in the courtroom in juvenile dependency, termination and delinquency proceedings unless:
 - ▶ Court finds the use of restraints is ***necessary due to an immediate and serious risk of dangerous or disruptive behavior***.
 - Court may consider whether youth has a history of dangerous/disruptive behavior that has placed the youth or others in potentially harmful situations; and whether the youth presents a substantial risk of :
 - inflicting harm on himself or others; and
 - Flight from the courtroom or premises.
 - ▶ ***and there are no less restrictive alternatives***. The court may consider the presence of court personnel, law enforcement officers, juvenile department staff/counselors, or bailiffs. Restraints may not be used as a punishment, or convenience or as a substitute for staff supervision.



Physical restraints (cont)



- ▶ Party requesting restraint must file written request with the court and present it to the court and parties prior to the youth's appearance.
 - ▶ The request must describe discrete, recent, concrete and observable examples of behaviors or risk factors that justify the use of restraints.
 - ▶ The court must provide the youth or youth's attorney the opportunity to be heard prior to ordering the use of restraints.
 - ▶ If restraints are ordered, written findings of fact are required in support of the order.
 - ▶ Any restraints used must allow the youth limited movement of the hands; youth may not be restrained to a stationary object or person.

Unless restraints are allowed by the court, restraints must be removed prior to youth being brought into the courtroom.

- ▶ If the means aren't available to remove the restraints prior to entering the courtroom, they must be removed prior to starting the proceeding.



Statewide Placement Management

(Pending; eClause)

▶ SB 944

- ▶ Requires Oregon Health Authority to contract with non-profit to operate a 24-hour call center dedicated to tracking and providing information about available placement settings for children and adolescents needing high acuity behavioral health services.

▶ The call center shall also:

- ▶ Collect data to assess and monitor, on a daily basis, statewide capacity;
 - ▶ Record the time from the first contact with the call center to the location of an appropriate placement; and
 - ▶ Document the need for high acuity behavioral health services for children and adolescents.
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Information Sharing

Pending

▶ SB 397

New

- ▶ Common release form.
 - ▶ Requires DHS to convene a work group to develop a common and comprehensive client confidentiality release form that may be used by public bodies and community organizations.
- ▶ Law reform
 - ▶ DOJ to identify state statutes that could be modified to better facilitate communication between and among public bodies and community organizations engaged in the provision of social services. Legislative proposals to be submitted for 2019 session.
- ▶ Information sharing guide by 12/31/18
 - ▶ State and federal laws governing the release of educational, juvenile justice, adult correctional, mental health treatment, substance abuse treatment and health information.





Delinquency

Waiver of Counsel

1/1/18

▶ HB 2616

ORS 419C.200 & 245

- ▶ Requires appointment of counsel for:
 - ▶ Misdemeanors and felonies
 - ▶ Proceedings concerning an order of probation
 - ▶ Any case in which the youth would be entitled to counsel if the youth were an adult charged with the same offense.
- ▶ May appoint counsel for any other offense charged under ORS 419C.005.



Waiver of Counsel (cont)



- ▶ Restricts waiver to cases in which:
 - ▶ Youth is at least 16 years of age
 - ▶ Youth has met with counsel (appointed or retained) who has advised youth of right to counsel
 - ▶ A written waiver, signed by youth and youth's counsel is filed with the court; and
 - ▶ A hearing is held on the record where the youth's counsel appears and the court, after consulting with the youth, finds the waiver was knowingly, intelligently and voluntarily made and not unduly influenced by the interests of others, including the interests of youth's parents or guardians.
- ▶ Formal accountability agreements: youth may waive if:
 - ▶ Juvenile department counselor has advised of right to counsel in writing; and
 - ▶ The waiver is in writing, signed by the youth and presented to the youth's juvenile department counselor.



Law Enforcement Interviews

1/1/18

▶ HB 3242

ORS 133.400

- ▶ Felony investigation (person under 18): Requires custodial interview conducted by a peace officer in a law enforcement facility to be recorded.
 - ▶ Provides for a number of exceptions
- ▶ If the state offers an unrecorded statement and no exception applies:
 - ▶ In a criminal proceeding, upon request of the defendant, the court shall instruct the jury regarding the recording requirement and superior reliability of electronic recordings compared with testimony.
 - ▶ In a delinquency proceeding, the court shall consider the superior reliability of electronic recordings when compared with testimony when determining the evidentiary value of the statement.



Fitness to Proceed

1/1/18

▶ SB 49

ORS 419C.380(7); 419C.398

▶ Evaluation – placement:

- ▶ If the court orders that the youth be evaluated, the youth may not be removed from his or her placement unless s/he is in a detention or youth correction facility.

▶ Restorative services – placement:

- ▶ If the court orders placement for restorative services, the court may *specify the type of care* to be provided by OHA to any youth placed in the custody of DHS. The OHA, in coordination with DHS, the local juvenile department and youth's family *may place the youth*. If the youth is removed for purposes of restorative services, the youth shall immediately be returned to the youth's placement upon conclusion of the provision of services unless the youth has been placed in detention or a youth correction facility.
- ▶ OHA to provide restorative services where youth is placed.



Isolation

1/1/18

▶ SB 82

ORS 420.108

- ▶ Prohibits the Oregon Youth Authority from placing youth alone in a locked room.



Uniform Trial Court Rules

Effective August 1, 2017

UTCRC 3.170 (9)

An attorney is not required to associate with local counsel or pay the fee established by UTCRC 3.170 (6) if the applicant establishes to the satisfaction of the Bar that:

- (a) The applicant seeks to appear in an Oregon court for the limited purpose of participating in a child custody proceeding as defined by 25 USC §1903, pursuant to the Indian Child Welfare Act of 1978, 25 USC §1901 et seq.;
- (b) The applicant represents an Indian tribe, parent, or Indian custodian, as defined by 25 USC §1903; and
- (c) One of the following:
 - (i) If the applicant represents an Indian tribe, the Indian child's tribe has executed an affidavit asserting the tribe's intent to intervene and participate in the state court proceeding and affirming the child's membership or eligibility of membership under tribal law; or
 - (ii) If the applicant represents a parent or Indian custodian, the tribe has affirmed the child's membership or eligibility of membership under tribal law.



UTCRC 11.100

▶ Certificate of Readiness for Juvenile Cases

- ▶ Must serve proposed order/judgment on counsel (or provide statement no objection exists) and self represented parties unless:
 - ▶ Prepared in open court with parties present;
 - ▶ Proposed order or judgment is not one for which service is required;
 - ▶ Orders/judgments in delinquency proceedings;
 - ▶ Orders for transport of in-custody parties.
- ▶ Provides for required contents of certificate.

