



# Oregon Juvenile Dependency Bench Book

A judicial resource on juvenile dependency in Oregon



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# Oregon Juvenile Dependency Bench Book

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# Adoption

ORS 419B.529

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### **1. Court and Citizen Review Board reviews**

After a child's permanency plan has been changed to adoption at a permanency hearing under ORS 419B.476, the court and the Citizen Review Board continue to review the Oregon Department of Human Services (ODHS) efforts to place the child for adoption and complete the adoption process. If the child is legally free and has not been placed, a court review is required every six months. *See* ORS 419B.440(1) and 419B.470(4) and (8). ODHS has agreed to submit an adoption tracking page to the court and Citizen Review Board that provides an itemization of the steps the agency has taken to complete the adoption, as well as the steps that remain uncompleted.

### **2. Completing the adoption after the child is legally free**

After parental rights are terminated or relinquished, the juvenile code allows the court to complete the adoption according to the requirements in ORS 419B.529. If the child is an Indian child under the Indian Child Welfare and Oregon Indian Child Welfare Acts, additional requirements apply. The court should review ODHS efforts to determine whether the child is an Indian child. The court has an obligation to make inquiries about the child's status at any hearing related to the adoption. Consult the [Oregon Indian Child Welfare Act Benchbook](#) for details.

### **3. Assessing ODHS efforts to complete the adoption**

The court and Citizen Review Board should insist on submission of the adoption tracking page to assist the court and CRB in assessing what steps have been completed and what remains to be done. The steps ODHS must take to free the child and complete the adoption are outlined on the next page.

# Adoption Process Flowchart

## Freeing Process

**Critical Elements Addressed**

- \*All legal parties identified
- \*ICWA Inquiry
- \*Relative Search/Engagement
- \*Absent Parent Search
- \*Birth Certificate

**Staffing:**  
With worker, supervisor, LAS and AAG/DDA for adoption approval

Relinquishment

TPR

\*Adoption Referral Packet to C.O.  
\*OR-Kids Adoption Referral opened

Release/Surrender documents issued by C.O.

Release/Surrender documents signed by parent(s)

Affidavits completed (if applicable)

\*To AAG/DDA: digital copy of file and witness list;  
\*To C.O: Adopt. Ref. packet  
\*OR-Kids Adoption Referral opened

TPR Petition filed

TPR trial scheduled/held

Appeal process if applicable

## Placing Process

**Permanency Committee (if applicable)**

- Sibling Planning

**Permanency Staffing (if applicable)**

- \*Relative Caregiver
- \*Current Caretaker

**Identify/Study Prospective Adoptive Families:**

- \*Relatives
- \*Current Caretaker
- \*Adoption Recruitment

ICPC Adoption Study and Approvals (if applicable)

### Adoption Selection Process

**USE APPLICABLE OPTION FROM FOLLOWING:**

- \*Caseworker Adoption Selection after input from child's team and consultation with supervisor
- \*Local Adoption Committee-Adoption Decision Specialist
- \*Central Adoption Committee-Adoption Decision Specialist

Full disclosure of information to adoptive parent

Transition, Placement, Supervision, Support

Placement Designation after all documents to C.O.

Mediation (when possible)

## Finalization Process

Adoption Assistance Application, Negotiations, Agreements

Additional materials needed prior to adoption consent submitted to C.O. (notice of adoption registry, medical records, recommendation to finalize, etc.)

### Legal Adoption Finalization

Consent for Adoption Materials prepared by C.O. and sent to attorney

Petition or Motion for Adoption and Exhibits filed by attorney

Adoption Finalization and Judgment signed

# Disposition

ORS 419B.325

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### 1. Timing

The court is required to hold the jurisdictional hearing and determine disposition within 60 days of when the petition was filed. The court may continue the hearing for good cause. ORS 419B.305(1). Cases postponed pursuant to ORS 419B.305 shall be given the highest possible priority on the court’s docket at the expiration of the continuance. ORS 419B.305(4).

## 2. Purpose

Once the court has determined it has jurisdiction over the child, it is required to make the child a ward. ORS 419B.328. Disposition addresses: (1) placement, legal custody and guardianship of the child; (2) services for the parents; (3) services for the child; (4) a visitation plan with parents and siblings; and (5) the appropriateness of the concurrent plan. ORS 419B.325 to 419B.352.

## 3. Evidence

Most of the rules of evidence do not apply to the dispositional hearing. *See* ORS 40.015(4)(i) (privileges continue to apply). When the court determines the disposition of the ward, the court may consider testimony, reports or other materials relating to the ward’s mental, physical and social history and prognosis without regard to competency or relevancy. ORS 419B.325(2)

## 4. Legal custody, placement and guardianship

When the court determines it would be in the best interest and welfare of the ward, the following placement decisions may be made.

### A. Legal custody to parents, person with whom ward is living, relative or foster home approved by the court.

The court may place the ward under protective supervision and direct the ward to be placed in the legal custody of the parent, person whom the ward is living, relative or other placement approved by the court. ORS 419B.331. The court can also grant guardianship as an incident of custody to a “suitable person or entity,” if guardianship “appears necessary \* \* \* in the interests of the ward.” ORS 419B.372(2).

### B. Placement out of state.

The court may place the ward in another state while under protective supervision if there is an interstate compact or agreement or informal arrangement with another state. ORS 419B.334.

### C. Legal custody to ODHS.

The court may place the ward in the legal custody of ODHS for care, placement and supervision. ORS 419B.337. If the court places the child in the legal custody of ODHS, the court generally can not direct ODHS place the child in a specific placement. *See* ORS 419B.349(1); *Dept. of Human Services v. S.E.K.H./J.K.H.*, [283 Or App 703 \(2017\)](#). However, the court can review the appropriateness of the placement or proposed placement under ORS 419B.349 and direct the child be placed in one of the placement categories outlined in that statute after finding the current placement is not in the child’s best interest. Note, however, the court may not direct ODHS to place or maintain a child where the effect would be to remove the child or prevent placement with a person who has been approved as the adoptive placement, and that selection is final. ORS 419B.349(2).

#### D. Guardianship.

Typically, the court grants guardianship to ODHS if it has granted legal custody of the child to ODHS. ORS 419B.372(1). If, however, the court has granted legal custody to a person or entity other than ODHS, it may also grant guardianship to that person or entity if it appears necessary to do so in the interests of the ward. ORS 419B.372(2). If the court does not grant guardianship to the entity or person with legal custody of the child, *the court* has the duties and authority of guardian. ORS 419B.372(3). Note that the authority of a guardian under ORS 419B.376 is broader than that of a legal custodian under ORS 419B.373, and includes the authority to consent to adoption and marriage, as well as authorize surgery and enlistment in the U.S. Armed Forces.

### 5. Required findings if the child is placed out of home

#### A. Best interests.

The court must determine whether the child's removal from the home or continuation in care is in the best interest of the child. ORS 419B.337(1)(a); 42 U.S.C. §672(2)(a)(finding required at time of first court order authorizing removal.)

#### B. Efforts to place with a caregiver or relative; siblings together.

ODHS has a continuing obligation to make diligent efforts to place the child with a relative or a person who has a caregiver relationship as defined in ORS 419B.116. When the court orders disposition, the court must make a finding about whether those efforts have been sufficient. ORS 419B.337(1)(c). The court may determine that placement with a relative is not in the child's best interest, but must make written findings setting forth the reasons for the finding. ORS 419B.192(4).

In addition, ODHS must make efforts to place the siblings that are in foster care together, or to explain why siblings must be placed apart. ORS 419B.192(2). The court must determine whether these efforts are sufficient. ORS 419B.337(1)(c). The court may make a finding that placement of the siblings together is not in the child's or the sibling's best interest. ORS 419B.192(2).

#### C. Reasonable or active efforts.

The court must determine whether ODHS made reasonable efforts, or active efforts if ICWA/ORICWA applies, to prevent the child's removal from the home and to safely return the child home. ORS 419B.337(1)(b); 419B.340. ODHS efforts must be rationally related to the jurisdictional bases. ORS 419B.343(1)(a). In support of its determination, the court is required to include a brief description of what preventative 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)

## I. Efforts not required.

### a. Emergencies

The court shall consider *reasonable or active efforts* to have been made if the first contact with the family occurred during an emergency in which the child could not remain at home without being in jeopardy even with services provided. ORS 419B.340(3).

### b. Aggravated circumstances

If the court makes a finding of aggravated circumstances, the court may relieve ODHS of the obligation to provide reasonable efforts. Aggravated circumstances includes, but is not limited to, three main categories: (1) circumstances where the parent has subjected any child to serious physical injury, rape, sodomy, sexual abuse, intentional starvation, torture, or has caused the death of a child (or attempted, solicited or conspired to cause the death of a child); (2) the parent has been convicted of certain crimes, or (3) the parent's rights to another child have been terminated involuntarily. ORS 419B.340(5)(a)-(c). Please note that *cases subject to ICWA/ORICWA are not eligible for an aggravated circumstances finding*.

If the court makes an aggravated circumstances finding and ODHS determines it will not make reasonable efforts, the court must hold a permanency hearing within 30 days. ORS 419B.340(6).

## 6. Case planning and orders regarding services

### A. ODHS case plan

Federal and state law require ODHS to develop a case plan within 60 days of the child's entry into foster care. See ORS 419B.343 and 42 U.S.C. §675 for required plan contents. ODHS is responsible for ensuring the case plan is rationally related to the jurisdictional findings. ORS 419B.343(1)(a). Conditions of return are conditions that must exist in order for ODHS to return the child home to a parent or guardian with an in-home safety plan.

**Practice tip: Ask why can't the child go home today?** ODHS should be able to explain to the judge and the parent why the child can't be safe at home based on the parent's current circumstances, and what must be done before the child can be safely returned home.

### B. Child's permanency plan and concurrent plan

The permanency plan for the child at the time of the first dispositional hearing is reunification. However, if the child's permanency plan has already changed based on an earlier petition during the same episode of care, the plan for that child remains what the judge ordered at the last permanency hearing. See *Dept. of Human Services v. M.J.H.*, [278 Or App 607 \(2016\)](#)

Once a child is in foster care, ODHS is required to develop a concurrent plan in case the parent is not able to adjust his or her conditions or circumstances to make it safe for the child to return home within a reasonable time. ORS 419B.343(2)(b). The possible concurrent plans in order of preference are: (1) adoption, (2) guardianship, (3) placement with a fit and willing relative, and

another planned permanent living arrangement (APPLA). ORS 419B.476(5)(b). If the concurrent plan is not adoption, ODHS should provide a reason why a lesser plan is more appropriate for the child.

### C. Services for child and parents

When a child is placed in ODHS custody, the court has the authority to specify the type of care, supervision and services to be provided to children and parents. ORS 419B.337(2); 419B.387. Reunification services must be rationally related to the jurisdictional bases. ORS 419B.343(1)(a).

#### I. Visits

Parents and children who have early and frequent contact are more likely to achieve reunification. In all cases, visits should be frequent enough to maintain the parent, child bond. The court may make an order regarding the child's visitation with parents or siblings, and ODHS must develop and implement a visitation plan consistent with the court's order. ORS 419B.337(3).

#### II. Services for the child

Children who have been neglected or abused are at greater risk for medical and mental health problems. The state is required to have the child assessed and provide appropriate follow up services to ensure the child's safety, health and well-being. At the time of disposition (within 60 days of entry into care), the child should have already been referred for dental, medical and mental health assessments. The caseworker should be able to report on the status of required assessments, visitation with parents and siblings, and the child's school status.

## 7. Model forms

Legally sufficient Model Dependency forms are available for local court use on the [JCIP Model Forms webpage](#). A combination jurisdiction and disposition form is available for when the court determines jurisdiction and disposition at the same time. This is considered best practice. Separate jurisdiction hearing and disposition hearing judgment forms are also available for when the hearings are bifurcated. A separate version of each form is available for cases in which ICWA/ORICWA applies.

## 8. Future hearing dates

Setting out future hearing dates with everyone in court minimizes work for court staff in coordinating schedules, ensures notice to those who are present, and makes it more likely the court will be able to comply with federal timelines for permanency hearings. Future hearings may include:

- Citizen Review Board (CRB) Review.

When the child is in substitute care, dependency cases are reviewed by the CRB six months after the child was removed from the home, and every six months thereafter unless the court has conducted a full judicial review. ORS 419A.106(1)(b). Some courts have worked out an arrangement with the CRB to set the first CRB review date in court. For cases not set by the

court, the CRB will automatically set the case for review between five and six months after the child entered foster care.

- Review hearings. ORS 419B.449

Some courts hold reviews at four and nine months after the child's entry into care and allow the CRB to review the case at six months (assuming the child is in substitute care).

- Permanency hearings.

The first permanency hearing must be held no later than 12 months after the ward is found within the jurisdiction of the court under ORS 419B.100 or 14 months after the child was placed into substitute care, whichever is first. ORS 419B.470(3); *see also* 42 U.S.C. §675(5)(C).

# Emancipation

ORS 419B.550 – 419B.558

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## 1. Filing

### A. Application

No particular form is mandated by statute. For practical purposes, many courts maintain their own forms.

### B. Filing fee

A filing fee under ORS 21.135 is required. ORS 419B.555(6).

### C. Notice

Notice of the proceeding to the parents is required pursuant to ORS 419B.812 to 419B.839. ORS 419B.555(3).

## D. Domicile

If the juvenile court already has jurisdiction under ORS 419B.100 or 419C.005, domicile is in the same court that already has jurisdiction. Otherwise, domicile is the legal residence or domicile of the custodial parent or guardian. ORS 419B.550(1) and (5).

## 2. Preliminary hearing

### A. Required within 10 days

The hearing must be held within 10 days of the date an application for emancipation is filed, unless waived. ORS 419B.555(1); *see State ex rel. Juvenile Department of Columbia County v. Adams*, 114 Or App 133 (1992) (permitting waiver where the objectives of the hearing have already been satisfied).

### B. Must advise minor of rights and liabilities

The court is required to advise the minor of the civil and criminal liabilities of an emancipated minor. ORS 419B.555(4). Note that this information must also be recited in the judgment. *See also, Effect of Judgment*, Section 3(D)(III) below.

### C. Temporary orders

The court may issue a temporary custody order, stay any pending proceedings or enter any other temporary order appropriate to the circumstances. ORS 419B.555(1)

## 3. Final hearing

### A. Must be held within 60 days

The final hearing must be held no later than 60 days from the date on which the application was filed. ORS 419B.555(2).

### B. Waiver

The child and parent or parents may waive the hearing. ORS 419B.555(5).

### C. Required findings: ORS 419B.558(1)

The court may enter a judgment of emancipation when the minor is at least 16 years old *and* the court finds that the best interests of the minor will be served by emancipation. In making this determination, the court shall take into consideration:

- Whether the parent of the minor consents to the proposed emancipation;
- Whether the minor has been living away from the family home and is substantially able to be self-maintained and self-supported without parental guidance and supervision; and
- Whether the minor can demonstrate to the satisfaction of the court that the minor is sufficiently mature and knowledgeable to manage the minor's affairs without parental assistance.

## D. Judgment of Emancipation

### I. Requirements

The judgment must contain:

- An instruction that the applicant obtain an Oregon driver's license or an Oregon identification card through the Department of Transportation and that the Department of Transportation make a notation of the minor's emancipated status on the license or identification card. ORS 419B.558(2).
- The recitation of the civil and criminal liabilities provided by the judge at the preliminary hearing. ORS 419B.555(4)

### II. Copy to applicant

The court must provide a copy of the judgment to the applicant. ORS 419B.558(2)

### III. Effect of judgment

#### *a. The minor is recognized as an adult for purposes of:*

- contracting and conveying,
- establishing a residence,
- suing and being sued, and
- being subject to the jurisdiction of the adult courts for all criminal offenses. ORS 419B.552(1)(a).

○ Note that in some circumstances, unemancipated minors can contract for a dwelling unit and utilities without parental consent. ORS 109.697.

#### *b. Otherwise, the minor isn't considered to have reached the age of majority.*

The minor is still subject to age qualifications for purchasing alcoholic liquor and obtaining a marriage license. ORS 419B.552(2); ORS 109.510 (age of majority); ORS 109.060 (consent to marriage when child under age 18).

#### *c. Parent, child legal relationship.*

The following aspects of the parent, child legal relationships are terminated:

- ORS 108.045 (stepparent liability for educational expenses);
- ORS 109.100; ORS 419B.400 – 408; ORS 419C.550 – 600 (parent duty of support);
- ORS 419B.373 (duties of legal custodian when child is ward);
- ORS 109.010 (parent and child duty of mutual support terminated until child reaches age of majority).

ORS 419B.552 (b) – (c).

# Guardianships

ORS 419B.365 – 419B.371

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## 1. Types of guardianship

### A. Durable: [ORS 419B.336 \(most common\)](#)

Provides for juvenile guardianship on behalf of children in dependency cases when the child cannot safely return home within reasonable time, and the court has determined one of the circumstances provided in [ORS 419B.498\(2\)](#) is applicable. At any time, the parent(s) may request the court to vacate a durable guardianship order.

### B. Permanent: [ORS 419B.365](#)

Permanent guardianship is less common. The grounds for granting a permanent guardianship are the same as those for termination of parental rights. Once ordered, the parent(s) may not petition the court to vacate a permanent guardianship order. [ORS 419B.368\(7\)](#).

### C. Community: [ORS 419B.371](#)

Community guardianship provides a durable guardianship to a child-care agency licensed under [ORS 418.205 to 418.310](#), provided that certain requirements are met.

### D. Note about guardianship assistance

The guardian will cease to receive payments when the child turns 18. In limited circumstances, assistance may continue after the child turns 18 provided the guardian requests continued assistance at least 30 days prior to the child’s 18th birthday. See [OAR 413-070-0918](#)

## 2. Establishing a durable guardianship: ORS 419B.366

### A. Who can file the motion?

- A party; *or*
- A person granted rights of limited participation for the purpose of filing a guardianship motion. ORS 419B.366(1)

### B. Evidence and standard of proof

As an initial matter, the court must determine whether there is reason to know the child is an Indian child under the Indian Child Welfare Act (ICWA)/Oregon Indian Child Welfare Act (ORICWA). Or Laws 2020, ch.14, §15 (1<sup>st</sup> Spec Sess).

The court may receive testimony and reports or other materials relating to the child’s mental, physical and social history and prognosis without regard to their competency and relevancy under the rules of evidence. ORS 419B.366(4).

For non-Indian children, the facts supporting any finding must be established by a preponderance of the evidence. ORS 419B.366(2). If the Indian Child Welfare Act (ICWA)/Oregon Indian Child Welfare Act (ORICWA) apply, some findings must be established by clear and convincing evidence. ORS 419B.366(3)(a)(C)(i). Please see the next section for additional details.

### C. Required findings

#### I. Grounds for durable guardianship (ORS 419B.366(5)):

If the court has approved a plan of guardianship under ORS 419B.476, the court may grant the motion if the court finds, after a hearing, that:

- The child cannot safely return to a parent within a reasonable time;
- Adoption is not an appropriate plan for the child;
- The proposed guardian is suitable to meet the child’s needs and is willing to accept the duties and authority of a guardian; and
- Guardianship is in the child’s best interests. In determining this, the court shall consider the child’s wishes.
- If the ICWA/ORICWA applies, the court must find (ORS 419B.366(3):
  - Notice to the tribe, parents, Indian custodian (if applicable), and the Bureau of Indian Affairs has been provided as set forth in Section 16 of ORICWA. [Or Laws 2020, ch 14 \(1st Spec Sess\)](#)
  - By clear and convincing evidence, including testimony from a Qualified Expert Witness, that continued custody by the parents or Indian Custodian would result in serious emotional or physical harm to the child. ORS 419B.366(3); 25 U.S.C. §1912(e);
  - The court has offered the parties the opportunity to participate in mediation as required under ORS 419B.517;

- If requested by the tribe, an agreement is in place that requires the proposed guardian to maintain connection between the Indian child and the Indian child’s tribe.

## II. Grounds for durable community guardianship: ORS 419B.371(2)

The court may appoint a community guardian when, in addition to the requirements of ORS 419B.366 (durable guardianship):

- The child is 16 years of age or older;
- The child has spent three or more years in substitute care;
- The proposed community guardian has provided care or services to the child under ORS 418.205 to 418.310 in the 12 months immediately preceding the filing of the motion;
- Except for Another Planned Permanent Living Arrangement (APPLA), there is no other appropriate permanency plan under ORS 419B.476(5);
- The guardianship would provide planning and guidance for the child’s transition to successful adulthood, including addressing crisis intervention, housing, physical and mental health, education, employment, community connections and supportive relationships;
- The child has access to court-appointed counsel; and
- The child gives *informed consent* to the community guardianship.
  - Informed consent: The court, the Oregon Department of Human Services (ODHS), or the proposed community guardian must provide information in writing to the child about the consequences of establishing a community guardianship, including any loss of benefits that may be available under another permanency plan, and the child must provide written consent to this information; and
- The child must provide written acknowledgement that he or she cannot be placed in substitute care in the legal custody of ODHS after reaching age 18.

## III. Home study

ORS 419B.369 requires that when the child is in ODHS custody before guardianship is established, ODHS must conduct a study of the proposed guardian’s home, report on whether the potential guardian is suitable and whether the placement is in the child’s best interests. If the child is not in ODHS custody, the court may (but is not required to) order the proposed guardian to obtain a study at the proposed guardian’s expense. ORS 419B.369(2).

## IV. Type of hearing required.

ORS 419B.366 does not explicitly require a specific type of hearing or that the hearing be conducted in a specific manner; rather, a party contesting the guardianship must be given the opportunity to be heard at a “meaningful time and in a meaningful manner.” *Dept. of Human Services v. K.H.*, [256 Or App 242 \(2013\)](#)

### 3. Establishing a permanent guardianship

#### A. Who can file the petition? ORS 419B.365(1)

- A party; *or*
- A person granted rights of limited participation for the purpose of filing a guardianship petition. ORS 419B.365(1)

#### B. Standard of proof

The facts supporting any finding must be established by *clear and convincing evidence*. ORS 419B.365(3). If the Indian Child Welfare Act (ICWA)/Oregon Indian Child Welfare Act (ORICWA) apply, some findings must be established beyond a reasonable doubt. Please see the [Oregon Indian Child Welfare Act Benchbook](#) for additional details.

#### C. Required findings

Grounds for permanent guardianship: Same as grounds for termination of parental rights. ORS 419B.365(2). The court shall grant a permanent guardianship if it finds that:

- The grounds cited in the petition are true, and
- It is in the best interest of the child that the parent never have physical custody of the child but that other parental rights and duties should not be terminated.
- If the ICWA/ORICWA applies, additional findings are required. Consult the [Oregon Indian Child Welfare Act Benchbook](#) for details.
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### 4. Order establishing guardianship, letters of guardianship and annual reports.

#### A. Letters of guardianship

Upon granting a motion or petition for guardianship, the court shall issue letters of guardianship in substantially the same form as provided in ORS 419B.367. The purpose is to provide the guardian with documentation to use as necessary to demonstrate his/her authority to fulfill the duties of a guardian.

#### B. Annual guardian's report

In the order appointing the guardian, the court shall require the guardian to file an annual report and summary sheet with the court (due within 30 days after each anniversary of the appointment). ORS 419B.367(3). A model annual report and summary sheet are available on the [JCIP Model Forms webpage](#).

#### C. Agreement with Tribe.

If the child is an Indian child and an agreement is in place between the child's tribe and the guardian that requires the guardian to maintain contact between the child and the tribe, the order must include the terms of that agreement. ORS 419B.367(2).

#### D.. Discretionary orders: ORS 419B.367(3)

In the order, the court *may*:

- Specify the frequency and nature of visitation or contact between the child and relatives, including siblings;
- Enter an order for child support pursuant to ORS 419B.400 that complies with ORS 25.275; and
- Make any other order to provide for the child’s continuing safety and well-being.

#### E.. Duties; authority; limited liability of guardian: ORS 419B.373 and 419B.376.

The guardian has legal custody of the child and has the duties and authority of legal custodian and guardian under ORS 419B.373 and 419B.376. ORS 419B.367(6).

##### I. Duties and authorities

The guardian’s duties and authorities generally include (but are not limited to):

- Having physical custody and control of the child;
- Supplying food, clothing, shelter and other necessities for the child;
- Providing care, education, and discipline for the child;
- Authorizing medical care, surgery, dental, mental and other remedial care and treatment for the child;
- Making reports and requiring such information as the court requires;
- Applying for Social Security, public and medical assistance for the child;
- Consenting to military enlistment, marriage, adoption, and other decisions of substantial legal significance for the child.

##### II. Limited liability

The guardian is not liable to third persons for acts of the child solely by reason of being appointed guardian. ORS 419B.367(6).

#### F. Court review of the annual report

Upon receipt of the annual report, the court shall review and maintain it. ORS 419B.367(4)(a). The report is filed in the supplemental confidential file, while the summary sheet with the name of the submitting person and date of submission is stored in the record of the case. ORS 419B.367(3); ORS 419A.255(1) and (2).

##### I. Court review options: ORS 419B.367(4)

The court may (if timely received) or must (if report not received in a timely manner):

- Conduct a court review of the case;
- Appoint a court visitor to file a report with the court (subject to availability of funds); or
- Direct the local citizen review board (CRB) to conduct a review. (Note: Before referral, confirm with the local field manager that a program for review of guardianship cases exists in your county.)

##### II. CRB review: ORS 419A.109

If the court refers the case for CRB review:

- The court, in its request, must provide the names and addresses of the parties.
- The review must take place within 45 days (or as soon as practicable) after receiving the court’s request.
- CRB must send notice of review to all parties.
- CRB must forward its findings and recommendations to the court and all parties.
- Upon receipt of CRB findings and recommendations, the court shall (ORS 419A.120):
  - Review the findings and recommendations of the CRB within 10 days of receipt;
  - If the court finds it appropriate, the court may schedule a review hearing on its own motion;
  - Notify the CRB if the court modifies, alters, or takes other action as a result of the CRB’s recommendations;
  - Cause the findings and recommendations to become part of the juvenile court file.

## 5. Review, modification and vacation of guardianship order

### A. Court Review

#### I. Generally

The court *may* review a guardianship order on its own motion or on the motion of a party. ORS 419B.368(1)

#### II. Community guardianships

The court *must* review ORS 419B.371 (community) guardianships at least 60 days before the child reaches the age of 18. At the hearing, the court shall inform the child that after turning 18, he/she may not be placed in substitute care in the legal custody of ODHS. ORS 419B.368(8).

### B. Modification

The court may modify a guardianship order on its own motion or on the motion of a party if, after a hearing, the court determines the modification would be in the child’s best interest. ORS 419B.368(2)

- “Best interest” includes (but is not limited to) consideration of:
  - The child’s emotional and developmental needs;
  - The child’s need to maintain existing attachments and relationships and to form new ones;
  - The child’s health and safety; and
  - The child’s wishes. ORS 419B.368(5)

### C. Vacation

The court may vacate a guardianship order on its own motion or on the motion of a party. ORS 419B.368 (1).

### I. Permanent guardianship

A parent is prohibited from moving to vacate a (permanent) guardianship under ORS 419B.365 for the purpose of returning the child to the parent(s). ORS 419B.368(7).

### II. Service required

A party filing a motion to vacate a guardianship shall complete service as required by ORS 419B.851 and serve the motion upon ODHS. ORS 419B.368(6).

### III. Required findings to return child to parent (without a motion to terminate wardship). ORS 419B.368(3)

- It is in the child’s best interest to vacate the guardianship (see “best interest” considerations listed under modification above);
- The conditions and circumstances necessitating the guardianship have been ameliorated; and
- The parent is presently able and willing to adequately care for the child.

### IV. Required findings to return child to parent when motion to terminate wardship is filed

If a parent files a motion to terminate the wardship, the court conducts the two part inquiry in *Dept. of Human Services v. T.L.*, [279 Or App 673 \(2016\)](#); *Dept. of Human Services v. J.C.*, [365 Or 223 \(2019\)](#):

- Do the original bases for jurisdiction continue to pose a current threat of serious loss or injury?
- If so, is the risk likely to be realized?
- When the plan is no longer reunification, a parent making a motion to dismiss based on lack of jurisdiction has the burden of proof if requested by the proponents of jurisdiction.

### V. Required finding when guardian is unable or unwilling to serve. ORS 419B.368(4)

The court may vacate a guardianship order after determining that the guardian is no longer willing or able to fulfill the duties of a guardian.

#### *a. Hearing required*

If the court vacates the guardianship order under these circumstances, the court is required to:

- Conduct a hearing within 14 days, make writing findings required in ORS 419B.185(1)(a), (d), and (e), and make any other order directing disposition of the child that the court is authorized to make under ORS 419B; *and*
- Hold a permanency hearing pursuant to ORS 419B.476 within 90 days of the order vacating guardianship. ORS 419B.368(4)

## **6. Duration of guardianship**

Unless vacated, a guardianship continues as long as the ward is subject to the court’s jurisdiction as provided in ORS 419B.328. ORS 419B.365(5) (permanent guardianship); 419B.366(6)(durable guardianship). Jurisdiction over the ward continues until:

- The court dismisses the petition concerning the ward;
- The court transfers jurisdiction over the ward;

- The court enters an order terminating the wardship;
- A judgment of adoption of the ward is entered by a court of competent jurisdiction; or
- The ward becomes 21 years of age. ORS 419B.328(2)

#### A. Guardianship assistance

Although the guardianship may continue beyond age 18, the guardian will cease to receive guardianship assistance payments when the child turns 18. In limited circumstances, assistance may continue after the child turns 18 provided the guardian requests continued assistance at least 30 days prior to the child's 18<sup>th</sup> birthday. See [OAR 413-070-0918](#)

# Jurisdiction

ORS 419B.305

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## **1. Timing**

The court is required to hold the jurisdictional hearing and determine disposition within 60 days of when the petition was filed. The court may continue the hearing for good cause. ORS 419B.305(1). Cases postponed pursuant to ORS 419B.305 shall be given the highest possible priority on the court's docket at the expiration of the continuance. ORS 419B.305(4).

## **2. Purpose**

The purpose of the hearing is to determine if the legal standard for dependency jurisdiction in ORS 419B.100 has been met.

Any services that the parents are required to complete must bear a rational relationship to the basis of jurisdiction. ORS 419B.343(1)(a) and (2)(a). Subsequent court determinations about whether the child will remain in care will be judged by whether the conditions identified in the jurisdictional bases have been ameliorated. A basis for jurisdiction that doesn't adequately reflect the underlying problem that led to the child's entry into foster care can set the child up for re-entries into the foster care system.

## **3. Discovery**

Discovery must be provided no later than 30 days after the petition is filed. ORS 419B.305(2); 419B.881(2)(a)(A).

## **4. Parent service and appearance**

### **A. Summons**

A true copy of the petition and summons must be served on each parent within 30 days of the petition filing. ORS 419B.812; 419B.815.

### **B. Required Court Notice**

If the parent appears as directed by the summons and contests the petition, the court must, orally or in writing, order the parent to appear at subsequent proceedings following the procedures set forth in ORS 419B.816. This is typically done at a status conference prior to the jurisdictional hearing. A form of notice that complies with ORS 419B.816 is available on the [JCIP model forms webpage](#).

### **C. Manner of appearance**

Parents must appear personally if summoned or ordered by the court. ORS 419B.815(8). Parties may appear by telephone or video if the court permits. ORS 419B.918(1). *See also* [current statewide judicial orders and information regarding COVID-19](#).

## D. Parent can't be identified to be served

If diligent efforts have failed to reveal the identity or whereabouts of the parent, the court may proceed with the case without service. ORS 419B.914. Note that no order of support may be issued unless the person is served as provided in ORS 419B.812 to 419B.839.

## E. Parent does not appear after service

### I. Initial appearance

If a party was served and fails to appear or provide a written answer as directed by the summons, the court may establish jurisdiction and order removal of the child from the home without further notice to the party. ORS 419B.815(7).

### II. Subsequent appearances

A parent who has been provided the notice in ORS 419B.816 may be found in “default” under the provisions of ORS 419B.815(7), notwithstanding the appearance of his or her attorney. *See Dept. of Human Services v. S.C.T.*, [281 Or App 246 \(2016\)](#) (the attorney may not make evidentiary objections when the parent is in default, although may explain why the parent is absent, or make a motion to continue the hearing).

### III. Affidavit regarding military service

Before the court may enter a default judgment against a parent, ODHS must file an affidavit stating whether the parent is in the military service and showing necessary facts to support the affidavit or stating ODHS is unable to determine whether the parent is in the military service. 50 U.S.C. §521(b).

#### a. 90 day stay.

The Servicemembers Civil Relief Act (“SCRA”) provides for the temporary suspension of judicial proceedings that may adversely affect the civil rights of servicemembers during their military service. 50 U.S.C. §§502, 512(b). A servicemember’s application for a temporary stay under the SCRA must include two letters: (1) one stating facts that show how military duty materially affects the servicemember’s ability to appear and giving a date for when the servicemember will be available, and (2) one from his/her commanding officer explaining the servicemember’s military duty prevents appearance and that leave is not authorized. 50 U.S.C. §522(b)(2). On satisfactory application, servicemembers are entitled to a stay of proceedings for at least 90 days. 50 U.S.C. §522(b)(1). Subsequent stays are discretionary. 50 U.S.C. §522(d). Although no Oregon appellate case has dealt with SCRA in a dependency case, language has been added where relevant to the model forms.

## 5. Evidence

The rules of evidence apply to the jurisdictional hearing. ORS 40.015(1).

## 6. Standard of Proof

Allegations not admitted must be proven by a *preponderance of the evidence*. ORS 419B.310(3). If the case is subject to the Indian Child Welfare Act (ICWA)/Oregon Indian Child Welfare Act (ORICWA), the standard is *clear and convincing* evidence. 25 U.S.C. §1912(e); ORS 419B.310(3)(a)(B). In addition, before the court can order an out of home placement in an ICWA/ORICWA case, the hearing must include testimony of a “qualified expert witness” establishing that the child will suffer serious emotional or physical damage if not removed from the parent or Indian custodian. 25 U.S.C. §1912(e); ORS 419B.310(3)(b). Refer to the [Oregon Indian Child Welfare Act \(ORICWA\) 2021 Judicial Benchbook](#) for additional information.

## 7. Court determination regarding jurisdiction

The following requirements must be met before the court enters a jurisdictional judgment.

### A. Allegations resolved as to both parents

Each identified parent has been served (or the court has allowed the case to proceed under ORS 419B.914) and allegations have been resolved as to each parent who has appeared in the proceeding. *Dept. of Human Services v. W.A.C.*, [263 Or App 382 \(2014\)](#).

### B. Child under 18 when petition filed

At the time the petition is filed, the child was under 18 years old. *State v. L.P.L.O.*, [280 Or App 292 \(2016\)](#) (juvenile court jurisdiction attaches at the initiation of the proceeding and is not lost if the child turns 18 before wardship established).

### C. Oregon has jurisdiction under the UCCJEA

Juvenile court jurisdiction is subject to ORS 109.701 to 109.834 (the Uniform Child Custody Jurisdiction and Enforcement Act). ORS 419B.803(2). There must be evidence in the record to establish that Oregon has jurisdiction to make an initial child custody determination under ORS 109.741, or temporary emergency jurisdiction under ORS 109.751.

### D. The legal standard in ORS 419B.100 has been met.

The court must determine whether the facts admitted or proven are sufficient to meet the legal standard provided in ORS 419B.100. Most cases are filed under ORS 419B.100(1)(c), which is commonly referred to as “conditions and circumstances jurisdiction.”

## I. General standard.

ODHS must show:

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

## II. Case examples

Conditions and circumstances jurisdiction has been extensively litigated in Oregon’s appellate courts. Many cases have been reversed where there is insufficient proof of the currency of the harm, or there is insufficient proof regarding the nexus between the parent’s behavior and potential harm to the child. Case law summaries are available by subject matter (domestic violence, substance abuse, etc.) in the cumulative case law outline, available as part of this [benchbook](#) (go to “Appellate Updates”).

### **8. Dismissal at conclusion of petitioner’s case**

After the proponent of the petition has completed the presentation of evidence, any other party, without waiving the right to offer evidence, may move for dismissal of any or all allegations on the ground that the proponent has failed to prove the allegations, or if proven, the allegations do not constitute a legal basis for the relief sought. ORS 419B.890. The court may order dismissal of one or more allegations, or may decline to issue an order until the close of all of the evidence.

### **9. Request to set aside judgment**

#### A. Challenge regarding service

A parent may challenge adequate service within 10 days of the court’s entry of the order for which the new hearing is sought. ORS 419B.920. The court shall reopen the case for full consideration if: (1) the person required to be summoned was not served; or (2) person was served on such short notice that the parent did not have a reasonable opportunity to appear at the hearing.

#### B. Excusable neglect, clerical errors and newly discovered evidence

A parent may file a request to set aside or modify a judgment based on clerical mistakes in judgments, orders or other parts of the record, excusable neglect, or newly discovered evidence that by due diligence could not have been discovered in time to present it at the hearing. ORS 419B.923. A motion must be filed within a reasonable time and must be accompanied by an affidavit that states with reasonable particularity the facts and legal basis for the motion. ORS 419B.923(2) & (3).

## 10. Model forms

Legally sufficient Model Dependency forms are available on the [JCIP Model Forms webpage](#).

### A. Jurisdiction and Disposition Forms

A combination jurisdiction and disposition form is available for when the court determines jurisdiction and disposition at the same time. This is considered best practice. Separate jurisdiction hearing and disposition hearing judgment forms are also available for when the hearings are bifurcated. A separate version of each form is available for cases in which ICWA/ORICWA applies.

### B. Admissions to Petition Form.

An “Admissions to Petition” form is available to document a parent’s admission. In addition to the form, recommended best practice is to place the admission on the record.

## 11. Future hearing dates

Setting out future hearing dates with everyone in court minimizes work for court staff in coordinating schedules, ensures notice to those who are present, and makes it more likely the court will be able to comply with federal timelines for permanency hearings. Future hearings may include:

- Trial on unresolved petition allegations
- Dispositional hearing
  - Disposition must be determined within 60 days of the filing of the petition, unless the court finds good cause to continue the case. ORS 419B.305(1)
  - Cases postponed pursuant to ORS 419B.305 shall be given the highest priority on the court’s docket when the continuance expires.
- Citizen Review Board (CRB) Review.

When the child is in substitute care, dependency cases are reviewed by the CRB six months after the child was removed from the home, and every six months thereafter unless the court has conducted a full judicial review. ORS 419A.106(1)(b). Some courts have worked out an arrangement with the CRB to set the first CRB review date in court. For cases not set by the court, the CRB will automatically set the case for review between five and six months after the child entered foster care.
- Review hearings. ORS 419B.449  
Some courts hold reviews at four and nine months after the child’s entry into care, and allow the CRB to review the case at six months (assuming the child is in substitute care).
- Permanency hearing.

The first permanency hearing must be held no later than 12 months after the ward is found within the jurisdiction of the court under ORS 419B.100 or 14 months after the child was placed into substitute care, whichever is first. ORS 419B.470(3); *see also* 42 U.S.C. §675(5)(C).

# Permanency Hearing

ORS 419B.746

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## 1. Timing

A permanency hearing is only required if the child is in substitute care. ORS 419B.470.

### A. Involuntary cases.

#### I. General rule.

The first permanency hearing must be held no later than 12 months after the ward is found within the jurisdiction of the court under ORS 419B.100 or 14 months after the child was placed in substitute care, whichever is first. ORS 419B.470 (2). At a minimum, subsequent permanency hearings should be held every 12 months thereafter. ORS 419B.470 (7); *see also* 42 U.S.C. §675(5)(C). Holding a permanency hearing is a prerequisite to filing a TPR. The Oregon Department of Human Services (ODHS) can not file a TPR petition until the court has changed the permanency plan to adoption. ORS 419B.498(3).

#### II. Children who are in and out of substitute care.

If the child is returned home on a trial reunification (for no longer than six months), the clock keeps ticking unless the court dismisses jurisdiction. If the child re-enters substitute care after the dismissal, the 12/14 month period starts over. ORS 419B.470 (9).

#### III. Circumstances that may require an earlier hearing.

*a. Aggravated circumstances finding.* If the court has made an aggravated circumstances finding under ORS 419B.340(5) and ODHS has determined it will not make reasonable efforts to reunify the family, the court shall hold a permanency hearing within 30 days of the judicial finding. ORS 419B.470(1).

*b. Ward removed from court sanctioned permanent foster care.* Permanency hearing required within three months after the change in placement. ORS 419B.470 (3).

*c. Ward legally free and not physically placed for adoption within six months.* Permanency hearing required within 30 days of ODHS court report required by ORS 419B.440 (1)(b)(B); ORS 419B.470 (4). Permanency hearings required every six months until the child is placed. ORS 419B.470 (8).

*d. Special request.* Unless good cause is shown, upon request of ODHS, parents whose rights have not been terminated, an attorney for the child, CASA, CRB, tribal court, agency responsible for care of child, or on the court's motion, the court shall hold a permanency hearing. ORS 419B.470 (6).

### B. Voluntary cases.

When a child is placed pursuant to a voluntary placement agreement, the court is required to hold a permanency hearing no later than 14 months after the child's original placement. ORS 418.312. Until a petition is filed and jurisdiction is established, the court will not have a legal basis for

judging a parent or guardian’s progress, which is a pre-requisite to changing the permanency plan. *See Dept of Human Services v. D.L.H.*, [253 Or App 600 \(2012\)](#).

## **2. Purpose**

Review the case in accordance with ORS 419B.476 and determine whether the permanency plan for the child will be:

- Reunification
- Adoption
- Guardianship (Permanent)
- Guardianship (Durable)
- Placement with a Fit and Willing Relative
- Another Planned Permanent Living Arrangement (APPLA) (children age 16 and up)

## **3. Discovery**

Discovery is generally due no later than 10 days prior to the permanency hearing. Information received or discovered less than 10 days prior to the hearing should be promptly disclosed. ORS 419B.881(2)(a)(C).

## **4. Evidence**

### **A. Dispositional determinations.**

The rules of evidence apply to jurisdictional determinations in juvenile court proceedings but not to “proceedings to determine disposition.” ORS 40.015 (1) & (4)(i). The many different steps the court must take to arrive at a permanency decision are all considered to be “dispositional.” The court may consider testimony, reports or other material relating to the ward’s mental, physical and social history and prognosis without regard to competency or relevancy for the purpose of determining appropriate disposition of the ward. ORS 419B.325 (2); ORS 419B.476 (1). 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 \(2014\)](#).

### **B. Jurisdiction/motions to dismiss.**

If the parent or child files a motion to dismiss, 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 \(2014\)](#). The rules of evidence apply.

## **5. Standard of proof**

The standard of proof is a preponderance of the evidence. ORS 419B.476(1); ORS 419B.310 (3)(a)(A); . However, if ICWA/ORICWA applies, the standard of proof is clear and convincing evidence. 25 U.S.C. §1912 (e); ORS 419B.310(3)(a)(B).

## 6. Findings and orders

### A. Comprehensive transition planning and aging out.

ODHS is required to provide case planning to address the child’s needs and goals for a successful transition to independent living, including needs and goals related to housing, physical and mental health, education, employment, community connections and supportive relationships. ORS 419B.343(3).

#### I. Requirements for children age 14 and older.

Teens age 14 and older must have a comprehensive transition plan (T2), addressing the items discussed above. ORS 419B.343(3); *See* OAR 413-030-0445.

##### *a. Benchmark review.*

Six months prior to the teen’s 18th birthday, ODHS is required to hold a meeting called a “benchmark review” to identify plans for housing, supportive relationships, community resources, medical resources and decision making, etc., to plan for the teen’s transition out of care.

##### *b. Oregon Foster Children’s Bill of Rights requirements.*

The Oregon Foster Child Bill of Rights requires ODHS to provide teens 14 and older with written information on how to establish a bank account, acquire a driver’s license, remain in foster care past 18, get tuition or fees waived, obtain a credit report, obtain health services without consent, and be provided the “transition toolkit” described above. ORS 418.201 (4). In addition, ODHS must provide the teen with a document setting forth his or her rights that must be acknowledged by the teen in writing and that the rights were explained in an age appropriate manner. ORS 418.201(5)(d).

##### *c. Case planning requirements.*

The child’s permanency plan must be developed in consultation with the child. At the option of the child, he or she may select up to two members of the permanency planning team. The child's foster parent and caseworker do not count as part of the two. ODHS may reject an individual if it has good cause to believe the individual would not act in the best interests of the child. One individual selected may be designated to be the child's advisor and advocate with respect to the application of the reasonable and prudent parent standard. 42 U.S.C. §675(5)(C).

##### *d. Required court findings.*

The court shall review the adequacy of the transition plan to ensure it addresses the items necessary for the teen to successfully transition to independent living, whether ODHS has offered appropriate services pursuant to the plan; and whether ODHS has involved the teen in the development of the plan. The court may require ODHS to further develop certain areas of the plan, provide the teen with resources needed to achieve goals identified in the plan, and update the plan periodically. ORS 419B.476 (3).

##### *e. Terminating wardship.*

Wardship may continue until the ward reaches age 21. ORS 419B.328. Prior to that time, the juvenile court may terminate wardship upon finding that: (ORS 419B.337)

- ODHS has provided case planning that addresses the ward’s needs and goals for a successful transition to independent living, including needs and goals relating to housing, physical and mental health, education, employment, community connections and supportive relationships;
- ODHS has provided appropriate services pursuant to the case plan;
- ODHS has involved the youth in the development of the case plan and in the provision of appropriate services; and
- The ward has safe and stable housing and is unlikely to become homeless.
- Transition toolkit required. At the time the court relieves ODHS of custody, ODHS is required to provide the ward with a “Transition Tool Kit” containing documents the ward will need regarding his or her medical history, for employment purposes and to continue post-secondary education. OAR 413-030-0460. It must include:
  - Family history;
  - Placement history;
  - Location, status and contact information for siblings;
  - Health and immunization records;
  - Education summary and records;
  - Original birth certificate;
  - Official proof of citizenship or residence;
  - Social security card;
  - Driver’s license or other state identification;
  - Parent’s death certificate (if applicable);
  - Written verification of placement in substitute care between the ages of 14 to 18.
  - Washington County example. Judges in Washington County provide a folder in which the documents in the “transition toolkit” as well as contact information for important people in the child’s life are collected in anticipation of termination of wardship. Progress in completing the toolkit is reviewed at each hearing. Ensuring these documents are being collected by DHS in advance of the hearing to terminate wardship has improved ODHS compliance with this requirement. Here are the forms used in Washington County:



Teen Ward



Teen Ward

Checklist - Contact I Checklist - Final.pdf

*f. Additional resources.*

- ODHS Policy on Youth Transitions, [OAR 413-030-0400 thru 0460](#)
- [ODHS Child Welfare Manual, Chapter IV](#)

## B. Findings of fact under ORS 419B.449(3).

The court is required to make the same findings of fact under ORS 419B.449(3) that are applicable to review hearings. *See* ORS 419B.476(2)(d). These findings relate to services for the child, which are discussed in more depth in the “Review Hearing” section of this benchbook.

## C. Concurrent planning.

When the child is in substitute care and the plan is reunification, ODHS is required to develop a concurrent plan in case the parent is not able to adjust his or her conditions or circumstances to make it safe for the child to return home within a reasonable time. ORS 419B.343 (2)(b). The concurrent plan should be set forth in the ODHS case plan. The possible concurrent plans in order of preference are as follows:

- Adoption
- Guardianship
- Placement with a Fit and Willing Relative
- Another Planned Permanent Living Arrangement (APPLA, children age 16 and older)

Practice tip: If the concurrent plan is not adoption, ODHS should provide a reason why a lesser plan is more appropriate for the child.

## I. Findings.

Determine what efforts ODHS has made to develop the concurrent plan (including ODHS’s efforts to identify appropriate in and out-of-state permanent placement options and identification and selection of a suitable adoptive placement if the concurrent plan is adoption). The court may make a finding concerning whether efforts to develop the concurrent plan are sufficient. ORS 419B.476 (4)(e).

## II. Concurrent planning steps.

- Absent parent search;
- All legal and Stanley fathers have been filed on;
- Letters sent to putative fathers;
- Pending petition allegations resolved;
- Action agreements/letters of expectation provided to parents;
- ASFA timelines explained to parents;
- Assessments completed on child;
- Diligent relative search and engagement of relatives;
- ICPC requests made on out of state relatives;
- Siblings visit plan established if living apart;
- Collection of birth and medical records;
  - o ICWA inquiry resolved;
  - o Suitability of current caretaker or relatives reviewed at staffing.

## D. Findings when plan is reunification.

### I. Reasonable/active efforts

When the plan is reunification, the court determines whether ODHS made reasonable efforts, or active efforts if ICWA/ORICWA applies, to make it possible for the ward to safely return home. ORS 419B.476 (2)(a). Along with the court's determination, the court order shall include a brief description of the efforts ODHS has made. ORS 419B.476(5)(a). In making a "reasonable" or "active" efforts determination, the court must:

- Consider the child's "health and safety the paramount concerns." ORS 419B.340 (1); ORS 419B.476 (2)(a).
- Consider whether referral of a child to a Strengthening, Preserving and Reunifying Families program (SPRF) is or was in the child's best interest. ORS 418.595. These are local programs that are provided through SPRF funds.
- 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).

**Active efforts** is a higher standard than reasonable efforts. ODHS is required to do more than create a reunification plan and require the parent to execute independently. ODHS must assist the parent through the steps. See [Oregon Indian Child Welfare Act Benchbook](#) for details.

#### a. General principles.

The appellate courts have used the following principles to guide reasonable and active efforts determinations.

- Determinations are case specific. The particular circumstances of each case dictate the type and sufficiency of efforts the state is required to make and whether the types of actions it has required parents to take are reasonable. In addition, reasonable efforts are to be evaluated under a "totality of the circumstances." *Dept. of Human Services v. M.K.*, [257 Or App 409 \(2013\)](#).
- The court analyzes efforts over the life of the case, and is not constrained to periods of time between court reviews. *Dept. of Human Services v. T.S.*, [267 Or App 301 \(2014\)](#).
- Services must be related to the basis of jurisdiction. The services provided by ODHS should have a rational relationship to the basis of jurisdiction. ORS 419B.343(1)(a).
- Efforts must be made as to each parent, even if one is incarcerated or out of state. ODHS cannot ignore one parent based on the rationale that the child is more likely to be reunified with the other parent. *Dept. of Human Services v. T.S.*, [267 Or App 301 \(2014\)](#). ODHS's request for a home study through ICPC did not constitute reasonable efforts to reunify when ODHS had no contact with father for seven months between the filing of the petition and the dispositional hearing. *Dept. of Human Services v. J.F.D.*, [255 Or App 742 \(2013\)](#).
- Opportunity to become minimally adequate. The reasonable efforts inquiry focuses on whether ODHS provided the parent with an opportunity to demonstrate improvement regarding the jurisdictional bases. ODHS may not withhold a potentially beneficial service to a parent simply because reunification with the child is ultimately unlikely even

if the parent successfully engages in the services and programs that ODHS provides. *Dept. of Human Services v. C.L.H.*, [283 Or App 313 \(2017\)](#)

- **Uncooperative parent.** If a parent is unable to benefit or has demonstrated an unwillingness to participate in services, ODHS may stop providing those services, or decide not to provide others. *Dept. of Human Services v. M.K.*, [257 Or App 409 \(2013\)](#). However, a parent’s resistance does not categorically excuse ODHS from making meaningful efforts towards the parent. *Dept. of Human Services v. S.M.H.*, [283 Or App 295 \(2017\)](#). Generally speaking, ODHS must provide evidence that reunification efforts have been attempted for a period of time that is sufficient to provide the parent an opportunity to demonstrate s/he can be a minimally adequate parent. Consult the cumulative case law outline section of this benchbook for a discussion of specific cases.
- **When cost is an issue.** If service is “key” to reunification and ODHS has declined to fund the service, the court must weigh the benefits of ODHS providing the service and the burden of associated costs when deciding whether ODHS made reasonable efforts. *Dept. of Human Services v. M.K.*, [257 Or App 409 \(2013\)](#); *See also Dept. of Human Services v. C.L.H.*, [283 Or App 313 \(2017\)](#)

#### *b. Reasonable efforts findings not required*

ODHS is not required to make reasonable efforts finding in the following cases.

##### *i. Aggravated circumstances.*

When the court has made an aggravated circumstances finding under ORS 419B.340(5), relieving ODHS of having to provide reasonable efforts and ODHS determines it will not make such efforts, the court is required to conduct a permanency hearing within 30 days of making the aggravated circumstances finding. ORS 419B.340(6); *See also* 42 U.S.C. §671(15)(D). A non-exclusive list of circumstances that may constitute aggravated circumstances is provided in ORS 419B.340(5).

- **Incarcerated parents.** Incarceration alone does not constitute an aggravated circumstance. *State ex rel Juv.Dept. v. Williams*, [204 Or App 496 \(2006\)](#).
- **Cases subject to the Indian Child Welfare Act (ICWA)/Oregon Indian Child Welfare Act (ORICWA).** When the child is covered under ICWA/ORICWA, the court may not relieve the requirement that ODHS provide active efforts. ORS 419B.340(6).

## II. Parental progress

The court must determine whether the parent has made sufficient progress to make it possible for the ward to safely return home and provide that determination in the order. ORS 419B.476 (2)(a) & (5)(a).

#### *a. Judicial inquiry.*

- ***What progress has the parent made toward ameliorating the basis for jurisdiction?***  
**Note:** the court may not continue wardship based on conditions or circumstances that are not explicitly state or implied by the jurisdictional judgment. *Dept. of Human Services v. A.R.S.*, [256 Or App 653 \(2013\)](#). *See also Dept. of Human Services v. N.M.S.*, [246 Or App](#)

[284 \(2011\)](#) (court erred in relying on facts extrinsic to those upon which jurisdiction was established when determining whether DHS made reasonable efforts and mother made sufficient progress under ORS 419B.476 (2)(a)); and *Dept. of Human Services v. C.E.*, [288 Or App 649 \(2017\)](#) (When a jurisdictional judgment or attached documentation specifically identifies a potential cause underlying a jurisdictional finding, it can be fairly implied that the identified cause will be a referent for measuring the parent's progress.)

- **Why is continued substitute care necessary?**
  - If there are remaining safety issues, can those be managed in the child’s home with supervision or conditions?
  - Do the conditions of return adequately describe what the parent has to do in order for the child to be returned?
  - Can the caseworker explain to you what the parent has to do in order for the child to be returned?
- **If continued substitute care is necessary, the findings shall state (ORS 419B.449 (3)(a)):**
  - Why continued care is necessary;
  - The expected timetable for return or other permanent placement;
  - Whether ODHS has made diligent efforts to place the child with relatives.

*b. Case examples (for a complete list, please refer to the Appellate Update section of this Benchbook under “Cumulative Cases”).*

- **Failure to participate in treatment.** DHS did not meet its burden to prove that mother's progress toward ameliorating the effects of her substance abuse qualified as insufficient for purposes of ORS 419B.476(2)(a) where mother refused to continue in treatment. Though mother’s participation in the services recommended by DHS bears on the progress she has made toward reunification, the paramount concern in ORS 419B.476 is the health and safety of the child. The caseworker confirmed that when mother relapsed, she was still meeting B’s needs. The evidence from the foster provider and therapist was that mother was able to provide B with support and care and recognize his needs and that there were no indicators of any current safety concern. Also, B has a strong bond with mother and has expressed a desire to return to her care. Finally, B’s therapist expressed concern that B would experience distress the longer the separation from mother continued. *Dept. of Human Services v. C. W.*, [312 Or App 572 \(2021\)](#)
- **Domestic violence:** The record contained sufficient evidence for the juvenile court’s finding that father made insufficient progress based on the fact that despite completing therapy for domestic violence, father continued to be emotionally abusive during visits and blamed the children for ODHS involvement. Father's counselor also testified father did not express empathy for the children. *Dept. of Human Services v. G.N.*, [263 Or App 287 \(2014\)](#).
- **Incarceration.** The juvenile court’s finding that father had not made sufficient progress was supported by evidence in the record when the juvenile court found: (1) reunification would be at least until his release date nine months from the permanency hearing, and likely longer because he would need to complete a substance abuse evaluation, address

his parenting skills and substance issues, complete an action agreement, and find housing and employment, and that those services would be necessary to parent the child; (2) the delay was due in part to discipline issues for bad behavior in prison; and (3) the child would be in foster care for at least 21 months. *Dept. of Human Services v. D.A.N.*, [258 Or App 64 \(2013\)](#).

- **Independent parenting.** The juvenile court's determination that mother had made insufficient progress was supported by evidence in the record when: (1) service providers expressed significant concerns about mother's parenting abilities; (2) her failure to develop a parental role with the child; (3) her lack of knowledge about how to meet the child's needs; (4) her inability to independently care for herself and M; and (5) her continuing lack of insight into the cause of ODHS involvement with the family. Mother's proposed safety plan was not sufficient because it would only require members of mother's support network to check in twice a day to monitor mother. *Dept. of Human Services v. C.M.E.*, [278 Or App 297 \(2016\)](#).
- **Lack of contact with child.** The record was legally sufficient to support the juvenile court's determination that father had made insufficient progress in ameliorating the jurisdictional basis of limited contact when father had only two visits with the child over two years, and limited phone contact. *Dept. of Human Services v. D.W.C.*, [258 Or App 163 \(2013\)](#).
- **Mental Health.** It was permissible for the juvenile court to consider mother's mental health issues when determining sufficient progress even though that issue was not expressly provided in the bases for jurisdiction. In this case, mental health issues are implied by the allegations (impulsive behavior, and behaviors exemplifying her lack of parenting knowledge and skills necessary to keep her children safe), there is evidence in the record that mother's mental health issues are not new, and the record doesn't indicate that mother would have been provided with any different services had the jurisdictional judgment more particularly identified her mental health problems. *Dept. of Human Services v. R.B.*, [263 Or App 735 \(2014\)](#).
- **Physical discipline.** When jurisdiction is based on inappropriate discipline and father continues to assert he still believes that some physical discipline is an option under Christian scriptures but testifies he would not use it, the appropriate inquiry is not what father believes, but what he is likely to do at the time of the permanency hearing. *Dept. of Human Services v. J.M.*, [260 Or App 261 \(2013\)](#).
- **Unexplained injury.** The assessment of a parent's progress towards addressing an unexplained injury ordinarily requires a determination of the cause of the injury. Because there was never any admission, stipulation, or finding as to the cause of the injury, parents' attempt to introduce evidence that the injury resulted from rickets does not represent a collateral attack on any prior admission, stipulation or finding as to the cause of the injury. *Dept. of Human Services v. J.M.*, [262 Or App 133 \(2014\)](#).

#### E. Findings when plan is not reunification

When the plan, at the time of the permanency hearing, is something other than reunification the court must determine:

- whether ODHS has made reasonable efforts to:
  - place the ward in a timely manner;

- complete the steps necessary to finalize the permanent placement. ORS 419B.476 (2)(b) & (5)(a).
- whether ODHS has considered permanent placement options, including, if appropriate, in state and out of state placement options. ORS 419B.476 (2)(c) & (5)(a).

## F. Court determination of the permanency plan.

The court must include a determination of the permanency plan for the ward that includes whether and, if applicable, when the ward will be:

- returned to the parent;
- placed for adoption and a petition for termination of parental rights will be filed;
- referred for establishment of legal guardianship;
- placed with a fit and willing relative; or
- placed in another planned permanent living arrangement.

## I. Plan hierarchy

The plans above are listed according to the most preferred plan, to the least preferred plan. As you move down the list, the child is provided with less permanency.

## II. Burden of proof

The proponent of a change in plan bears the burden of proof. *Dept. of Human Services v. M.S.*, [284 Or App 604 \(2017\)](#). Once ODHS has met its burden to show the requirements for changing a permanency plan from reunification to adoption, it is the parent or child's burden to show there is a compelling reason under ORS 419B.498(2) for DHS not to proceed with a petition to terminate parental rights. *Dept. of Human Services v. S.J.M.*, [364 Or 37 \(2018\)](#).

## III. Required at every hearing.

The determination is required at every permanency hearing, and the findings justifying the determination must be made regardless of whether the plan is being changed or continued. ORS 419B.476 (5); *See Dept. of Human Services v. M.H.*, [266 Or App 361 \(2014\)](#).

## IV. Required findings to change plan.

### a. Generally

Before changing a plan away from reunification, the court must find:

- ODHS made reasonable (or active, if ICWA/ORICWA applies) efforts to reunify the family; and
- the parent has not made sufficient progress to allow the child to return home safely. *Dept of Human Services v. D.L.H.*, [253 Or App 600 \(2012\)](#)

If the court determines that the plan should be reunification because further efforts will make it possible for the ward to safely return home within a reasonable time, the court shall include a determination of the services in which the parents are required to participate, the progress the parents are required to make and the time period in which the progress must be made. ORS 419B.476 (4)(c) & (5)(c); ORS 419B.498 (2)(b)(A) & (3) (this circumstance is also listed as a

compelling reason that would negate the requirement that the state file a petition to terminate parental rights and would prevent the court from changing the plan to adoption).

- Reasonable time defined. A period of time that is reasonable given a child or ward’s emotional and developmental needs and ability to form and maintain lasting attachments. ORS 419A.004 (23). The court considers the child’s particular needs and circumstances and any barriers the parents might face. For example:
  - whether the child's placement in substitute care would be unacceptably long given her age;
  - the amount of time the child had already spent in foster care;
  - the child's unique permanency needs;
  - how long the parent would have to remain in services before the child could safely return home, and how such a delay would impair the child's best interests;
  - whether the parent suffers from drug or alcohol addiction, or that the parent has mental health issues that are too severe to alleviate within the foreseeable future; and
  - the parent's participation and progress in services at the time of the permanency hearing.

*Dept. of Human Services v. D.I.R.*, [285 Or App 60 \(2017\)](#)

### *b. Time Frames for Achieving Reunification and Filing Petition to Terminate Parental Rights.*

#### *i. General rule.*

When the child has been in foster care 15 out of the last 22 months, ODHS has an obligation to file a petition to terminate parental rights. ORS 419B.498 (1); 42 U.S.C. §475(5)(E).

#### *ii. Date entered foster care defined.*

The child is considered to have entered foster care on the date of the first judicial finding that the child has been subjected to abuse or neglect, or 60 days after the date on which the child is removed from the home, whichever is first. 42 U.S.C. §475(5)(F). The Title IV -E agency may use a date earlier than that required by this definition, such as the date the child is physically removed from the home. 45 C.F.R. §1355.20.

#### *iii. Trial home visits.*

These are not included in calculating the 15 months in foster care. 45 C.F.R. §1356.21 (i)(C). A trial home visit may not exceed six months in duration, unless a court orders a longer trial home visit. 45 C.F.R. §1356.21 (e).

#### *iv. Court must change the plan before ODHS files petition to terminate parental rights.*

ODHS can’t file a petition to terminate parental rights until the court has changed the permanency plan to adoption. ORS 419B.476 (3).

### *c. Adoption*

In order to change the permanency plan to adoption, the court must find:

- ODHS has made reasonable (or active, if the child is subject to ICWA/ORICWA) efforts and the parent has made insufficient progress to make it possible for the child to safely return home; and
- None of the following circumstances apply: (ORS 419B.476(5)(d)).
  - Relative placement. The child or ward is being care for by a relative and that placement is intended to be permanent (in a plan other than adoption). ORS 419B.498(2)(a).
  - Compelling reason. There is a compelling reason documented in the case plan for determining termination would not be in the best interest of the child or ward, which may include, but is not limited to:
    - Parent successfully participating in services. The parent is participating in such a way that it will be possible for the child or ward to safely return home within a reasonable time. ORS 419B.498 (2)(b)(A).
    - Another permanent plan is better suited to meet the health and safety needs of the child or ward, including the need to preserve sibling attachments and relationships. ORS 419B.498 (2)(b)(B).
    - No reasonable efforts finding. The court or Citizen Review Board determined at a prior review or hearing at a time when the plan was reunification that ODHS did not make reasonable efforts (active efforts if ICWA/ORICWA applies) to make it possible for the child or ward to be safely returned home. ORS 419B.498 (2)(b)(C).
    - ODHS needs additional time to provide services. ODHS has not provided such services within the time period in the case plan as ODHS deems necessary for the child or ward to safely return home, if reasonable efforts to safely return home are required. ORS 419B.476(1)(c).

#### *d. Guardianship*

The court must determine that placement with a parent, nor the plan of adoption, are appropriate. ORS 419B.476 (5)(e).

#### *e.. Placement with a fit and willing relative*

The court must determine that placement with the child's parents, adoption and placement with a legal guardian are not appropriate. ORS 419B.476(5)(f).

#### *f. Another planned permanent living arrangement (APPLA)*

The child must be at least 16 years of age. The court must determine there is a compelling reason that is documented in the case plan, why it would not be in the best interests of the ward to be returned home, placed for adoption, placed with a legal guardian or placed with a fit and willing relative. ORS 419B.476 (5)(g). The permanency judgment form guides you through steps to rule out return to parent, adoption, guardianship and placement with a relative. The court must make these findings at every permanency hearing, even if the plan was APPLA at the last permanency hearing. *Dept. of Human Services v. T.H.*, [254 Or App 394 \(2012\)](#). The court must ask the child about his or her desired permanency outcome prior to designating the plan APPLA. ORS 419B.476(6).

### *g. Change back to reunification from something else*

If the plan is something other than reunification at the time of the permanency hearing, and a parent requests the plan be changed to reunification, the inquiry is whether it is possible for the child to return home within a reasonable time. A parent's sufficient progress is not part of the inquiry under ORS 419B.498 (2)(b)(A). Instead, the focus of that provision is "child-centered, and requires a determination whether it is in the child's best interests not to file a petition for termination because the child can be returned home within a reasonable time." *Dept. of Human Services v. C.L.*, [254 Or App 203 \(2012\)](#) (in considering whether child can return home within a reasonable time, court could rely on facts that did not form the basis for the court's jurisdiction, derived from evidence offered for the first time at the permanency hearing, of a parent's physical abuse of child and sibling, as long as there are procedural safeguards that allow the parent a reasonable opportunity to respond to the evidence offered at the hearing.)

### G. Timeline for issuing judgment

The court must issue a judgment within 20 days after the permanency hearing. ORS 419B.476 (5). Recommended best practice is to allocate sufficient judicial resources and time to allow the judge or court staff to fill out the judgment at the time of the hearing.

## 7. Motion to dismiss

### A. Motions generally.

Unless raised orally in court, a motion must be in writing, stating with particularity the factual and legal grounds for the motion and setting forth the relief or order sought. ORS 419B.860. The juvenile code governs procedure in juvenile cases, and the Oregon Rules of Civil Procedure do not apply. ORS 419B.800 (1). The court may regulate pleading, practice and procedure in any manner not inconsistent with ORS 419B.800 to 419B.929. ORS 419B.800 (3).

### B. Analysis.

On a motion to dismiss dependency jurisdiction, a juvenile court must determine: (a) whether the jurisdictional bases pose a current threat of serious loss or injury to the ward, and if so, (b) whether that threat is reasonably likely to be realized. *Dept of Human Services v. T.L.*, [279 Or App 673 \(2016\)](#)

- Evidence that another person is able to assist in caring for a child in a way that would mitigate the risk posed by the jurisdictional bases is probative of the second element of that inquiry, and a juvenile court errs when it excludes that evidence or otherwise fails to take it into account in assessing whether dependency jurisdiction continues. *Dept of Human Services v. T.L.*, [279 Or App 673 \(2016\)](#)

### C. Burden of proof.

When the plan is reunification, ODHS has the burden of proof. If the permanency plan for a child is something other than reunification, there is a presumption that the child cannot safely return home. ODHS may invoke this presumption, requiring a parent seeking dismissal of dependency jurisdiction to prove the jurisdictional bases no longer endanger the child. *Dept of Human Services v. T.L.*, [279 Or App 673 \(2016\)](#)

#### D. Evidence.

The rules of evidence apply to the motion to dismiss as they would to a jurisdictional hearing. *Dept. of Human Services v. J.B.V.*, [262 Or App 745 \(2014\)](#). The relaxed evidentiary standard in ORS 419B.325(2) allowing testimony, reports or other material relating to the ward’s mental, physical and social history and prognosis to be received without regard to competency or relevancy does not apply to a motion to dismiss. Id.

### **8. Model forms**

JCIP maintains two permanency judgments – one for involuntary cases, and a second for voluntary placements under ORS 418.312. The forms can be accessed on the [JCIP Dependency Model Court Forms](#) web page.

# Pre-trial Hearing and Settlement Conferences

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## 1. Timing

These appearances are generally set to occur between 30 and 45 days after the petition is filed.

## 2. Purpose

The petition must be resolved within 60 days, unless the court has made a finding that good cause exists to continue the hearing. ORS 419B.305. Note that the time-lines are different if an Indian child, as defined by the Indian Child Welfare Act (ICWA) and Oregon Indian Child Welfare Act (ORICWA) is involved. Please consult the [Oregon Indian Child Welfare Act \(ORICWA\) Benchbook](#) for additional information. The purpose of the pre-trial hearing is to allow a parent to admit or deny allegations in the petition, provide required notices, attempt to settle the case (in some districts), and to ensure that discovery and other issues are proceeding in a timely manner.

## 3. Service of summons and petition

The court may not make an order establishing jurisdiction until after the summons and petition have been served in accordance with ORS 419B.812, 419B.823, 419B.824, 419B.827, 419B.830, 419B.833 and 419B.839. ORS 419B.815(1).

### A. Methods of service

Personal service, substituted service, office service and service by mail (with receipt signed) are allowed under ORS 419B.823; ORS 419B.824 (1) – (4). *See* ORS 419B.833 for proof of service requirements.

### B. Alternative service

The court may order service by mail, posting or publication if the parent can not be served by the methods provided above. The court shall order the method or methods most reasonably calculated to notify the parent of the existence and pendency of the action. ORS 419B.824 (5) – (6).

### C. Actual notice

If the court finds the parent received actual notice of the substance and pendency of the action, the juvenile code provides the court shall disregard certain errors relating to the form of summons, issuance of summons or who may serve the summons. The court shall disregard any error in the *content* of the summons that does not materially prejudice the substantive rights of the party to whom summons was issued. The statute also allows the court to disregard any error in the *service* of summons that does not violate the due process rights of the party against whom summons was issued if service is made in any manner complying with ORS 419B.812 to 419B.839. *See* ORS 419.836.

### D. Parent lives abroad

If a parent is in a foreign country, service of a dependency petition must be made consistent with the [Hague Service Convention](#), which was created in 1965 to provide a standardized method of service of process for signatory countries. Each contracting “state” (country) designates a

Central Authority to receive requests for service. The Central Authority or other “appropriate agency” designated by the Central Authority carries out service in accordance with its nation’s laws or by a method requested by the sending state unless the method is incompatible with its laws. After attempting service, the Central Authority for the receiving state completes a certificate of service either stating that the document has been served, including the method, place, and date of service and the person to whom the document was delivered, or that the document was not served and the reasons which prevented service. The certificate is forwarded to the requesting party.

#### I. Exclusions and waiver

The Convention does not apply when the address of the person to be served is not known. [Article 1](#). Oregon courts have also held a parent can waive the requirement of service under the Convention by appearing in the proceeding and failing to object. *See Dept. of Human Services v. M.C.C.*, [275 Or. App 121 \(2015\)](#)

#### E. Putative father

A putative father is entitled to notice if he meets the criteria in ORS 419B.875 (1)(a)(C) (has assumed or attempted to assume responsibilities of parenthood), unless a court has found him not to be the child’s legal father. *See* ORS 419B.839 (1) & (4). Note the court has subject matter jurisdiction to make a paternity determination pre-jurisdiction. *Dept. of Human Services v. C.M.H.*, [369 Or 96 \(2021\)](#)

## 4. Parent response

Unless the court specifies how admissions or denials are to be made pursuant to ORS 419B.800, admissions and denials may be made orally in court or in writing. ORS 419B.869(1). Allegations that are not admitted or denied are considered denied. ORS 419B.869(2).

### A. Admissions.

#### I. Process

- Put admissions on the record
- Make sure the parent understands the consequences of the admission (see sample colloquy below)
- Have the parties fill out and sign an “Admissions to Petition” form (available on the [JCIP Model Forms webpage](#))
- If jurisdiction is established as to both parents, fill out the model Jurisdiction Judgment (and Disposition Judgment if ready to decide disposition under ORS 419B.325(2)).

#### II. Sample admit colloquy with parents (adapted from Circuit Judge Pro Tem Heidi Strauch)

- ODHS has filed a petition that describes what it thinks is going on with your child(ren) and asks the court to take jurisdiction over your child(ren).
- If the court takes jurisdiction then ODHS would have the authority to say where your child lives, who s/he sees, what services s/he gets, etc. ODHS would also have the

authority to say when you would be able to visit and require you to participate in services with the initial goal of reunifying you with your child(ren).

- Have you read the petition and talked to your attorney about it?
- You have the right to a trial where ODHS would try to prove what they've said in the petition. They would put on evidence and call witnesses. You would have the chance to challenge that evidence with your lawyer helping you – to question ODHS's witnesses, call your own witnesses, speak for yourself, and present other evidence.
- At the trial, if I find that ODHS has proved what the petition says, the court would take jurisdiction and have the authority over you and your child(ren) that I've just described.
- So, you have the right to a trial, but you don't have to have a trial. You may waive your trial and admit to what ODHS is saying in the petition, if that's what you want to do. But if you do admit then I will take jurisdiction over the child(ren).
- Your lawyer tells me you want to admit today, is that true? You understand that if you admit you will not have a trial – that you are giving up that right – and I will take jurisdiction?
- If yes, read the allegation and ask the parent if it is true.
- Make a finding that it is a knowing and voluntary admission and that the admission supports the finding of jurisdiction.

### III. If one parent contests

If both parents have been served and appear, but only one admits and the other contests, the court may not establish jurisdiction over the child until the allegations have been resolved as to the second parent. *Dept. of Human Services v. W.A.C.*, [263 Or App 382 \(2014\)](#). In this instance, the court should take the parent's admissions on the record, receive that parent's admission form as an exhibit and order the admitting parent to appear for disposition at a date when the non-admitting parent will next appear to resolve the petition.

### B. Denials

When a parent contests the allegations and requests a trial, the court is required to provide the parent the following notices by oral or written order (ORS 419B.816):

- Inform the person of the time, place and purpose of the next hearing or hearings related to the petition;
- Require the person to appear personally at the next hearing or hearings related to the petition;
- Inform the person that his or her attorney may not attend the hearing in his or her place (unless the person is the child who has been served);
- If the court has permitted the person to appear telephonically or electronically (ORS 419B.918), advise the person he or she may appear in that fashion.
- Inform the person that if he or she fails to appear as ordered for any hearing related to the petition, the court may establish jurisdiction without further notice, and may take any other action authorized by law including making the child a ward and removing the child from the legal and physical custody of the parent, or other person having legal or physical custody of the child.

A model form of order that complies with the ORS 419B.816 notice requirements is available on the [JCIP Model Forms webpage](#).

## 5. Parent non-appearance

### A. Authority to enter judgment of jurisdiction

If the parent fails to appear and service has been completed, the court has authority to conduct a prima facie hearing and establish jurisdiction without further notice on the date specified in the summons (or order) or on a future date. The court may make the child a ward, remove the child from the legal and physical custody of the parent or other person having legal or physical custody of the child. ORS 419B.803 (jurisdiction over a party who has been served); 419B.815 (4) (a) & (7). Please note that ODHS will also need to submit an affidavit indicating whether the parent is in the military service according to the Servicemembers Civil Relief Act, which applies to dependency proceedings. This is discussed in more depth in the Jurisdiction section of this benchbook.

#### I. At a subsequent hearing

If the prima facie hearing is set over and the parent subsequently appears, recent case law in the termination of parental rights context calls into question the authority of the court to proceed without the parent. *See Dept. of Human Services v A.D.G.*, [260 Or App 525 \(2014\)](#).

### B. Parent living abroad

If a parent living abroad is subject to the Hague Service Convention and no proof of service has been provided in accordance with the Convention, the Convention allows the court to enter a judgment without proof of service if all of the following are met:

- The document was transmitted by one of the approved Convention methods;
- A period of time of not less than six months, considered adequate by the judge, has elapsed since the date of transmission of the document; and
- No certificate of any kind has been received even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed (where the parent lives). *See Article 15.*

## 6. Discovery

Parties have 30 days after the petition is filed to complete the discovery required by ORS 419B.305(2). Information that must be disclosed is set out in ORS 419B.881(1), and exceptions to disclosure are provided in ORS 419B.881(5). Disclosure must be made “as soon as practicable following the filing of a petition” and no later than 30 days after the petition has been filed. Remedies for discovery violations are provided in ORS 419B.881(10).

## 7. Settlement

At any time, at the request of a party or on the court’s own motion, the court may order a settlement conference. ORS 419B.890(3). If the case is subject to ORICWA, the Court must provide notice to the Indian child’s tribe that includes a description of the settlement process, the procedure used to schedule the settlement conference, and the date the next hearing will occur if settlement is not reached. ORS 419B.890(4). In addition, the use of mediation “shall be

encouraged” in juvenile dependency cases. ORS 419B.517. Currently, Oregon courts do not receive dedicated funding for mediation and consequently aren’t staffed to provide mediation services for resolution of jurisdictional allegations. Courts do, however, provide judicial settlement conferences in some judicial districts, and/or scheduled appearances for parties to work together and try to negotiate a resolution. In the latter circumstance, these appearances may immediately precede the pre-trial hearing, giving the parties an opportunity to put the admission on the record if an agreement is reached. Courts who employ these practices are able to create more docket space for the setting of timely jurisdictional trials.

## 8. Jurisdictional hearing date

### A. Set hearing within 60 days

If a trial date was not set at the time of the shelter hearing, it should be set at this time. Best practice is to reserve sufficient time on the calendar to hear the case in one day, so inquire with the attorneys as to the expected length of the trial. Extensions beyond the 60-day period delay services and potentially, permanency for the child.

- Practice tip: if cases customarily extend beyond the 60-day period meet with your Model Court Team to discuss possible solutions. If lack of judicial resources prevent cases from being heard timely, discuss this issue with your Presiding Judge.

### B. Continuances

#### I. Good cause required

The court may continue the case upon written order supported by “factual findings of good cause.” ORS 419B.305 (1).

#### II. Highest priority on the docket

Once the continuance expires, the case is to be given the highest priority on the court docket. ORS 419B.305 (5).

#### III. Unresolved criminal allegations

The decision in *Dept. of Human Services v. W.A.C.*, [263 Or App 382 \(2014\)](#), compels prompt resolution of petitions notwithstanding a pending criminal case. In *W.A.C.*, the court delayed resolution of the allegations as to father for 6 months due to a pending criminal case but took jurisdiction over the child based on mother’s conduct. The Court of Appeals held that the court could not take jurisdiction over the child until the petition allegations were resolved as to both parents, if both have been served, summoned and appeared.

Parents can not be ordered to engage in services until jurisdiction is established. ORS 419B.387 allows the court to order services “to correct the circumstances that resulted in wardship.” *Dept. of Human Services v. S.P.*, [249 Or App 76, 85 \(2012\)](#). As a result of the pending case, the parent with pending charges probably can’t be a placement resource and the other parent can not be

required to engage in services (except on a voluntary basis) until all allegations are resolved. This makes delaying a case for pending criminal case untenable and not a basis for “good cause.”

The harm to the children caused by such delay is not justified by any overarching right of the parent. The court does not violate a parent’s due process rights by holding the trial in the dependency case. The parent may be in an uncomfortable spot but he or she is still being provided due process and ODHS still has to prove its case. Moreover, an acquittal in the criminal case does not mean there is no basis for jurisdiction, given the difference in the burden of proof. Therefore, in many cases, the juvenile hearing still would need to occur, even if postponed.

# Review Hearing

ORS 419B.449

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## 1. Timing

An agency who has been granted legal custody or guardianship of the child pursuant to court order (typically ODHS) is required to provide regular court reports according to the schedule set forth in ORS 419B.440. These reports trigger discretionary and mandatory review hearings under ORS 419B.449. At a minimum, a court or CRB review is required at least every six months. ORS 419A.106; 419B.449. Most courts have developed protocols regarding their frequency of review and coordinate with the CRB to alternate reviews.

Circumstances requiring a mandatory review are outlined in ORS 419B.449(1):

- Child not placed for adoption. Parental rights have been terminated and the child has not been placed for adoption for six months. 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 from the court that a required report was received. ORS 419B.449 (1)(b).
- Child in physical custody of parent (or guardian) and in legal custody of ODHS: review required six months after placement. ORS 419B.449 (1)(c); ORS 419B.449 (1)(d).
- Child moved (or about to be moved) to a different substitute care placement and the child has lived in the foster home for 12 consecutive months or pursuant to a permanent foster care agreement. ORS 419B.449(1)(e). Hearing shall be held within 10 days of receiving report under ORS 419B.440(1)(c).

## 2. Purpose

The purpose of the review hearing is to:

- determine whether the court should continue jurisdiction and wardship of the child or order modifications in the care, placement and supervision of the child;
- review the progress of the family and ODHS’s efforts to provide services to make reunification as safe as possible within a reasonable time;
- consider whether the services to the child are adequate to ensure health, safety and well-being;
- determine if the case plan needs to be modified;
- review the development of the concurrent plan; and
- make the required findings in ORS 419B.449.

## 3. Discovery

Parties are required to comply with the discovery requirements in ORS 419B.881 at least three days before the review hearing. Information received or discovered less than three days prior to the hearing must be disclosed as soon as practicable. ORS 419B.881(2)(B). ODHS has an additional obligation to disclose the case plan, modifications to the case plan and any written material or information about services provided to the child or parents under the case plan. ORS 419B.881(3). Disclosure is required within 10 days of completion or modification of the plan, or receipt by ODHS of written material or information about services provided under the plan.

## 4. Evidence

The rules of evidence apply to juvenile court proceedings. ORS 40.015(1). However, in a review hearing, the court may consider testimony, reports or other material relating to the ward's mental, physical and social history and prognosis without regarding to competency or relevance for the purpose of determining appropriate disposition of the ward. ORS 419B.325(2); ORS 419B.449(2).

### A. Motion to dismiss.

If the parent files a motion to dismiss, the exception to the requirement of competent evidence in ORS 419B.325 (2) does not apply to that portion of the proceeding. *Dept. of Human Services v. J.B.V.*, [262 Or App 745 \(2014\)](#). In other words, the rules of evidence apply to a motion to dismiss, as they do to jurisdictional proceedings. For this reason, the court may wish to bifurcate the hearing to allow for application of the appropriate rules of evidence to each part of the proceeding if the review hearing and motion to dismiss are scheduled to proceed at the same time.

## 5. Standard of proof

The standard of proof is a *preponderance of the evidence*. 419B.449(2); ORS 419B.310(3);. If ICWA/ORICWA applies, the standard is *clear and convincing evidence*. 25 U.S.C. §1912(e); ORS 419B.449(2); ORS 419B.310(3).

## 6. Findings and orders

When the court holds a review hearing pursuant to ORS 419B.449, certain findings are required by ORS 419B.449 (2)-(5), explained in detail below. The court may also direct ODHS to consider additional information in development the case plan or concurrent case plan. ORS 419B.449 (6).

### A. Wardship and placement.

Determine whether the court should continue jurisdiction and wardship of the child or order modifications in the care, placement and supervision of the child. ORS 419B.449(1)

#### I. Judicial inquiry.

- *What progress has the parent made toward ameliorating the basis of jurisdiction?* The court may not continue wardship based on conditions or circumstances that are not explicitly stated or implied by the jurisdictional judgment. *Dept. of Human Services v. A.R.S.*, [256 Or App 653 \(2013\)](#).
- Why is continued substitute care necessary?
  - If there are remaining safety issues, can those be managed in the child's home with supervision or conditions?
  - Do the conditions of return adequately describe what the parent has to do in order for the child to be returned?
  - Can the caseworker explain what the parent has to do in order for the child to be returned?

- Are the child’s well-being needs being met? Have any problems developed in the foster home that may lead to a placement disruption? Does the child or foster parent need additional supports to help avoid a placement disruption (ie., respite care, transportation, counseling, etc..)
- *Is the current placement in the child’s best interests?* If not, the court may order ODHS to remove the child from the current placement and may specify the *type* of placement to place the child, but cannot order ODHS to place the child in a specific placement (unless otherwise required by law). *See* ORS 419B.349 for placement categories. Also, the court may not direct placement if the effect would be to prevent placement with or remove the child from the final adoptive placement. ORS 419B.349(2).
- *If the child is covered by ICWA/ORICWA, have the placement preferences been followed?* 25 U.S.C. §1915(b); ORS 419B.192(5)). An Indian child can be placed outside of the placement preferences only if the court finds good cause to deviate from those preferences. For additional information, refer to the [Oregon Indian Child Welfare Act Benchbook](#).

## II. Insufficient parental progress.

If additional progress must be made to allow the child to return home, include in the order:

- A timetable for the parent to complete necessary additional services and progress;
- What services the parent must participate in; and
- What progress the parent is expected to make.

Services ordered must be rationally related to the bases of jurisdiction. ORS 419B.343(1)(a); *See* ORS 419B.387 and 419B.337(2) for court’s authority to order parents into services.

## III. Continued substitute care.

If the court finds continued substitute care is necessary, the findings shall state (ORS 419B.449(3)(a)):

- Why continued care is necessary;
- The expected timetable for return or other permanent placement;
- Whether ODHS has made diligent efforts to place the child with relatives.

## IV. Appropriateness of out-of-home placement

ODHS has an ongoing responsibility to search for and place the child with relatives. ORS 419B.192. In the event the child can not be placed with relatives, consideration should be given to the ability of the foster parent to provide an environment that nurtures the customs, values and beliefs of the child’s culture and the capability to use the child’s native language in the home.

## V. Placement with parent.

If the child is to be placed with a parent, but is still in the legal custody of ODHS, the court must find:

- Why it is necessary and in the child’s best interest to continue the ward in the legal custody of ODHS; and the expected timetable for dismissal. ORS 419B.449 (4).

## B. Reasonable or active efforts.

### I. When the permanency plan is reunification.

When the child is in the legal custody of ODHS, the court must determine whether ODHS made “reasonable efforts” (OR, if the case is subject to ICWA/ORICWA, “active efforts”) to allow the child to safely return home. ORS 419B.340 (1).

#### a. General test.

The particular circumstances of each case dictate the type and sufficiency of efforts the state is required to make and whether the types of actions it has required parents to take are reasonable. In addition, reasonable efforts are to be evaluated under a “*totality of the circumstances.*” *Dept. of Human Services v. M.K.*, [257 Or App 409 \(2013\)](#). The totality of the circumstances includes ODHS efforts over the life of the case, and is not constrained to periods of time between court reviews. *Dept. of Human Services v. T.S.*, [267 Or App 301 \(2014\)](#). In making the “reasonable”/“active” efforts determination, the court 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.
- 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).

In addition:

- ***Services must be related to basis of jurisdiction.*** The services provided by ODHS should have a rational relationship to the basis of jurisdiction. ORS 419B.343(1)(a).
- ***Efforts must be made as to each parent, even if one is incarcerated or out of state.*** ODHS cannot ignore one parent based on the rationale that the child is more likely to be reunified with the other parent. *Dept. of Human Services v. T.S.*, [267 Or App 301 \(2014\)](#). ODHS’s request for a home study through ICPC did not constitute reasonable efforts to reunify when ODHS had no contact with father for seven months between the filing of the petition and the dispositional hearing. *Dept. of Human Services v. J.F.D.*, [255 Or App 742 \(2013\)](#). ODHS is required to provide reunification efforts to a parent who is incarcerated, even when those services are not available through the institution. ODHS may present evidence regarding the costs of doing so, and the court may only relieve ODHS of the obligation to provide reunification efforts after engaging in a cost-benefit analysis. *Dept. of Human Services v. K. G. T.*, [306 Or App 368 \(2020\)](#)
- ***When cost is an issue.*** If service is “key” to reunification and ODHS has declined to fund the service, court must weigh the benefits of ODHS providing the service and the burden of associated costs when deciding whether ODHS made reasonable efforts. *Dept. of Human Services v. M.K.*, [257 Or App 409 \(2013\)](#).
- ***Active efforts is a higher standard than reasonable efforts.*** Active efforts must:
  - Include assisting the Indian child’s parent, parents or Indian custodian through the steps of a case plan and assisting with accessing or developing the resources necessary to satisfy the case plan;
  - Include providing assistance in a manner consistent with the prevailing social and cultural standards and way of life of the Indian child’s tribe;

- Be conducted in partnership with the Indian child and the Indian child’s parents, extended family members, Indian custodians and tribe; and
- Be tailored to the facts and circumstances of the case. [Or Laws 2020, ch 14, §18\(4\) \(1<sup>st</sup> Spec Sess\).](#)

*b. Finding of no active efforts.*

ODHS is required to active efforts toward reunification throughout the dependency case, even after the permanency plan has changed away from reunification. If the court finds that ODHS failed to provide active efforts, the court is required to order that the child be immediately returned to the child’s parent unless doing so will result in substantial and immediate danger or threat of danger to the child. ORS 419B.449(7). In the latter circumstance, the court must:

- Determine the period of time during which active efforts were not provided;
- Order ODHS to provide those services necessary for the provision of active efforts;
- Order ODHS to continue placement of the child pursuant of the placement preferences;
- Order ODHS to continue to foster relationships with any individuals identify by ODHS as long-term placement resources meeting the placement preferences of ORICWA. ORS 419B.449(7)

*c. Reasonable Efforts Findings Not Required.*

The court may relieve ODHS from making reasonable efforts when one of the circumstances in ORS 419B.340(5) exists. These include circumstances outlined in the statute as aggravated circumstances, specific criminal convictions, and when a parent has had his or her rights terminated to another child. Note that incarceration alone does not constitute an aggravated circumstance for purposes of ORS 419B.340(5). *See State ex rel Juv. Dept. v. Williams, 204 Or App 496 (2006).* Also, the statute does not provide for relief from the obligation to provide active efforts, therefore ICWA/ORICWA cases are not subject to a finding under ORS 419B.340(5).

If ODHS determines it will not make reasonable efforts following a finding under ORS 419B.340(5), the court must hold a permanency hearing within 30 days. ORS 419B.340(6).

**II. When the permanency plan is not reunification.**

If the permanency plan has been changed from reunification at a permanency hearing, ODHS is required to make reasonable efforts to complete the steps necessary to finalize the permanent plan that was ordered by the court: adoption, guardianship, placement with a fit and willing relative, or another planned permanent living arrangement. The court must assess the steps ODHS has taken to finalize the plan to determine whether reasonable efforts have been made. If the permanency plan has been changed to adoption, ODHS should be submitting an “Adoption Tracking” report that details the status of various steps that have been taken by ODHS to complete the adoption. An “adoption process flowchart” is provided below to help new judges understand the adoption process.

ICWA/ORICWA does not require active efforts to finalize the plan after it has changed from reunification, however, ORICWA requires ODHS to continue to provide active efforts towards reunification. ORS 419B.449(7).

- Additional Resources:

[OAR Chapter 413, Division 70](#): Substitute Care (includes rules on Guardianship and APPLA)

#### Adoption Process Flowchart



Adopt Proc  
Flowchart '18.pdf

#### JELI Timeliness of Adoptions



JELITimeliness of  
Adoptions.pdf

### C. Services to the child.

Children who have been neglected or abused are at greater risk for medical and mental health problems. ODHS is required to have the child assessed and provide appropriate follow up services to ensure the child's safety, health and well-being. The parent(s), the foster parent(s) and the caseworker may all have relevant information about the child's needs.

**Practice tip:** Inquire with the child, the parent(s) and the foster parents regarding whether the child's needs are being met. The caseworker should be able to report on the status of required assessments, visitation and the child's school status, as explained further below.

- **Initial inquiry:** Is the child present in court, and if not, why not?
  - ODHS is required to notify and transport age and developmentally appropriate children to court hearings. ORS 418.201 (2).
  - Seeing and hearing from children enhances informed judicial decision making. For specific suggestions on what to look for, and what to ask when children appear in your courtroom, refer to: [ABA Bench Cards on Engaging Children in the Courtroom](#).
- **Has ODHS ensured the child's safety and well-being over this review period?**  
Consider the following:
  - **Oregon Health Plan.** Children in foster care are automatically enrolled in the Oregon Health Plan. *See* ODHS Policy I-C.4.1 The OHP is delivered through coordinated care organizations that integrate treatment for physical, dental, mental health and addictions.
  - **Assessments due at 30 and 60 days.** Medical and dental assessments are required

within 30 days of the child’s entry into foster care. A mental health assessment is due within 60 days for children four and up. OAR 413-015-0465. For children age 3 and younger, a developmental screening through Early Intervention is due within 30 days.

- Ongoing medical examinations. A minimum schedule is set forth in ORS 418.325.
- Immunizations and screenings. Within 90 days, ODHS is required to ensure the child is immunized, and other screenings are completed. *See* ORS 418.325(4). Oregon law requires the case plan to include information regarding the ward’s immunizations, any known medical problems of the ward and the wards medications.
- Treatment recommendations. It is the caseworker’s responsibility to ensure any treatment recommendations are followed in a timely manner. *See* ODHS Policy I-C.4.1

- **Practice tip:** Inquire as to what the treatment recommendations were, and ask the caseworker, foster parent and children’s attorney if the recommendations have been followed.

- Children with special medical needs: report to court. When the child is in need of medical care or other “special treatment” because of a physical or mental condition, ODHS is required to prepare a plan of care within 14 days of assuming custody of the child. ORS 419B.346. A copy of the report, along with a schedule for implementation is to be sent to the court. The court may request progress reports.

- Children age 14 years or older. ORS 418.201(4) requires ODHS to give the child written information within 60 days of placement or any change of placement about how to obtain medical, dental, vision, mental health or other treatment services available without parental consent.

- Psychotropic medications.

- Hearing. A parent, attorney or CASA may request a hearing to object to the use or prescribed dosage of a prescribed psychotropic medication for the child. The court has the authority to order an independent evaluation and may order modification of the dosage or discontinuation of use of the drug upon a showing that either are inappropriate. ORS 418.517(5).

- Annual review. When a child under age six is on a psychotropic medication, or any ward is taking more than two psychotropic medications, ODHS is required to ensure an annual review of the medications by a licensed medical professional, a qualified mental health professional with authority to prescribe drugs, other than the prescriber. ORS 418.517(3)(d).

- Additional resources:

- ODHS Policy: [OAR 413-070-0400 thru 0490](#)

- [Psychotropic Medication and Children in Foster Care, Tips for Advocates and Judges](#) American Bar Association

- **Required findings:**

- Face to face contact: whether the number of face to face contacts with the caseworker is in the best interests of the child. ORS 419B.449 (3). ODHS is required to visit the child at least one time each calendar month and must have this contact with the child in the foster home every other month. OAR 413-080-0054. These contacts are

essential to ensuring the child’s safety and that adequate services and care are being provided to the child.

- Education. Oregon law requires the case plan to include information regarding the ward’s school record, the grade level of the ward’s academic performance and whether the ward’s placement takes into account proximity to the school in which the ward is enrolled at the time of placement. ORS 419B.343 (4).
  - Changes in placement and school.
    - Federal law requires ODHS 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).
    - Oregon law requires ODHS to maintain the child in his or her “school of origin” unless the court finds it is not in the child’s best interest to continue attending the school of origin. ORS 339.133 (4).
    - Transportation. ODHS is required to provide the child with transportation to and from the school of origin when the need for transportation is due to the placement by ODHS. Funds have been designated for this purpose. ORS 339.133 (4)(c).
  - If the child is 14 years of age or older, the court must find whether the child is progressing adequately toward graduation from high school, and if not, the efforts ODHS has made to assist the child to graduate. ORS 419B.449(3)(d);
  - Whether the number of schools attended is in the child’s best interests. ORS 419B.449(3)(c).
  - Visitation with parent(s), sibling(s). ORS 419B.337 (3). The court may make an order regarding visitation by the ward’s parents or siblings, and ODHS must develop and implement a visitation plan consistent with the court’s order.
- Areas of judicial inquiry:
- If the child is pre-school age, is Head Start an option?
  - Are there any issues with school stability that need review?
  - Is the child at grade level in math and reading?
  - If not, has the child been evaluated for special education?
  - If the child is in high school, is she or he on track to graduate?
  - Does the child want to go to college, and if so, what assistance is being provided?

**Practice tip:** Inquire as to what the visitation plan is and determine if it is adequate to maintain the parent, child bond. Parents and children who have frequent contact are more likely to achieve reunification.

- Consider the age of the child.
  - Young children need frequent contact with the primary caregiver in order to maintain familiarity, attachment and promote healthy brain development. This may mean several visits per week or, for infants and toddlers, daily visits if possible.
  - For older children, consideration should be given to their school schedule and after school activities. In addition to regular visits, contact through programs such as Skype and telephone contact can help keep the parent and child connected.

- *In all cases, visits should be frequent enough to maintain the parent child bond.* Research has shown that increasing contact between parent and child increases the chances of reunification and decreases a child’s stay in substitute care.
- **Additional resources:**
  - [OAR 413-070-0800 Visits and Other Types of Child and Family Contact](#) (ODHS Policy)
  - [Visitation with Infants and Toddlers in Foster Care: What Judges and Attorneys Need to Know.](#)
  - Sheryl Dicker, *Reversing the Odds: Improving Outcomes for Babies in the Child Welfare System* (2009).
- **Required findings:**

The number of visits the child has had with parents or siblings since being in the guardianship or legal custody of ODHS and whether the frequency of these is in the child’s best interest. ORS 419B.449(3)(c).
- **Transition Planning for Teens.**

Beginning at age 14, ODHS is required to provide case planning to address the teen’s needs and goals for a successful transition to a successful adulthood, including needs and goals related to housing, physical and mental health, education, employment, community connections and supportive relationships. ORS 419B.343 (3).

  - **Court review:** The court may review the adequacy of the transition plan to ensure it addresses the items necessary for the teen to successfully transition to adulthood. The court may require ODHS to further develop certain areas of the plan, provide the teen with resources needed to achieve goals identified in the plan, and update the plan periodically. Although specific findings regarding the plan are only required at the time of the permanency hearing, more frequent review of ODHS progress is recommended to ensure an adequate plan is developed and appropriate services are able to be provided prior to the teen’s exit from care. *See* ORS 419B.449 (findings required at review hearing); ORS 419B.476(3)(findings required regarding transition planning at permanency hearing)
  - **Benchmark review:** Six months prior to the teen’s 18<sup>th</sup> birthday, ODHS is required to hold a meeting called a “benchmark review” to identify plans for housing, supportive relationships, community resources, medical resources and decision making, etc., to plan for the teen’s transition out of care.
  - Oregon Foster Children’s Bill of Rights requires ODHS to provide teens age 14 and up with written information on how to establish a bank account, acquire a driver’s license, remain in foster care past 18, get tuition or fees waived, obtain a credit report, obtain health services without consent, and be provided the “transition toolkit” described below. ORS 418. 201 (4).
- **Aging out and terminating wardship.**

Wardship may continue until the ward reaches age 21. ORS 419B.328. Prior to that time, the juvenile court may terminate wardship upon finding that: (ORS 419B.337)

- ODHS has provided case planning that addresses the ward’s needs and goals for a successful transition to independent living, including needs and goals relating to housing, physical and mental health, education, employment, community connections and supportive relationships;
- ODHS has provided appropriate services pursuant to the case plan;
- ODHS has involved the youth in the development of the case plan and in the provision of appropriate services; and
- ***The ward has safe and stable housing and is unlikely to become homeless.***
- **Transition toolkit required.** At the time the court relieves ODHS of custody, ODHS is required to provide the ward with a “Transition Tool Kit” containing documents the ward will need regarding his or her medical history, for employment purposes and to continue post-secondary education. OAR 413-030-0460. It must include:
  - Family history;
  - Placement history;
  - Location, status and contact information for siblings;
  - Health and immunization records;
  - Education summary and records;
  - Original birth certificate;
  - Official proof of citizenship or residence;
  - Social security card;
  - Driver’s license or other state identification;
  - Parent’s death certificate (if applicable);
  - Written verification of placement in substitute care between the ages of 14 to 18.
- **Washington County example.** Judges in Washington County provide a folder in which the documents in the “transition toolkit” as well as contact information for important people in the child’s life are collected in anticipation of termination of wardship. Progress in completing the toolkit is reviewed at each hearing. Ensuring these documents are being collected by ODHS in advance of the hearing to terminate wardship has improved ODHS compliance with this requirement.



Teen Ward  
Checklist - Final.doc

- Washington County document list:

#### D. Concurrent planning.

If the child is in substitute care, ODHS is required to develop a concurrent plan in case the parent is not able to adjust his or her conditions or circumstances to make it safe for the child to return home within a reasonable time. ORS 419B.343(2)(b). The concurrent plan should be set forth in the ODHS family report. The possible concurrent plans in order of preference are as follows:

- Adoption
- Guardianship
- Placement with a Fit and Willing Relative
- Another Planned Permanent Living Arrangement (APPLA, for children age 16 and older)

**Practice tip:** If the concurrent plan is not adoption, ODHS should provide a reason why a lesser plan is more appropriate for the child.

- **Required findings:** Determine what efforts ODHS has made to develop the concurrent plan (including ODHS’s efforts to identify appropriate in and out-of-state permanent placement options and identification and selection of a suitable adoptive placement if the concurrent plan is adoption). Make a finding concerning whether efforts to develop the concurrent plan are sufficient. ORS 419B.449(5)
- Concurrent planning steps:
  - Absent parent search;
  - All legal and Stanley fathers have been filed on;
  - Letters sent to putative fathers;
  - Pending petition allegations resolved;
  - Action agreements/letters of expectation provided to parents;
  - ASFA timelines explained to parents;
  - Assessments completed on child;
  - Diligent relative search and engagement of relatives;
  - ICPC requests made on out of state relatives;
  - Siblings visit plan established if living apart;
  - Collection of birth and medical records;
  - ICWA/ORICWA inquiry resolved;
  - Suitability of current caretaker or relatives reviewed at staffing.

## 7. Motion to dismiss

### A. Key findings

The juvenile court must determine whether the jurisdictional bases pose a current threat of serious loss or injury to the ward, and if so whether that threat is reasonably likely to be realized. *Dept. of Human Services v. T.L.*, [279 Or App 673 \(2016\)](#)

### B. Burden of proof

When the plan is reunification, the burden of proof is on ODHS. If the permanency plan is something other than reunification, there is a presumption that the child cannot safely return home. ODHS may invoke this presumption, requiring a parent seeking dismissal of dependency jurisdiction to prove the jurisdictional bases no longer endanger the child. *Dept. of Human Services v. T.L.*, [279 Or App 673 \(2016\)](#)

### C. Rules of evidence

The rules of evidence apply to the portion of the proceeding relating to the motion to dismiss. However, the court may consider testimony, reports or other material relating to the ward’s mental, physical and social history and prognosis over objections of competency or relevancy for purposes of determining disposition (including reasonable effort and progress determinations). ORS 419B.325(2); *See Dept. of Human Services v. J.B.V.*, [262 Or App 745 \(2014\)](#).

## **8. Model forms**

### **A. Review subject to ORS 419B.449**

Whenever a hearing is triggered under ORS 419B.449(1), the court has to make the findings required by ORS 419B.449(3) to (5). A model form with the required findings is provided on the [JCIP Model Forms webpage](#).

### **B. Short review form**

If a full review hearing is not triggered under ORS 419B.449, the court may use an abbreviated form that is also located on the [JCIP Model Forms webpage](#).

# Shelter Hearing

ORS 419B.185

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## 1. Timing

A shelter hearing is required within 24 hours (excluding holidays and weekends) of placement of the child in substitute care. ORS 419B.183

## 2. Purpose

The primary purpose of a shelter hearing is to determine whether a child who is (or who may be) taken into protective custody and is alleged to be within the juvenile court’s dependency jurisdiction can be maintained safely in the home, pending adjudication of the petition. There are also legal findings that must be made to ensure that the Oregon Department of Human Services (ODHS) has considered placement with relatives and caregivers, that ODHS has made reasonable and/or active efforts to prevent removal, and that out-of-home placement is in the child’s best interests. These last two findings are necessary to enable ODHS to claim federal Title IVE fund reimbursement for the foster care episode.

## 3. Preliminary Matters

### A. Identify parents (or guardians) and provide required notices.

ODHS is required to make diligent efforts to identify and notify the child’s parent, guardian or other person responsible for the child of the hearing. ORS 419B.160(3) At the first appearance by the parents or guardian, *the court is required to verbally inform and provide written notice to the parent regarding their obligations and rights under ORS 419B.117.* A JCIP Model Form – [JF11 Notice to Parents](#) – is available for court use. Review the petition with the parents and make sure they understand what the hearing is about.

#### I. Putative fathers.

A putative father who has not established paternity is not entitled to notice unless he has demonstrated a “direct and significant” commitment to the child by assuming, or attempting to assume, responsibilities normally associated with parenthood. ORS 419B.875(1)(a)(C). Putative fathers who meet the statutory criteria are treated as a parent until the court confirms paternity or finds that he is not the legal or biological father. ORS 419B.875(3). Failure to identify and work with fathers limits the possible resources available to protect a child and can delay permanency if the child is unable to return home.

## II. If no father is identified.

Inquire with ODHS as to efforts to locate the father:

- Has ODHS asked mother and her relatives about the identity and location of the father?
- Has ODHS asked mother about the location of father's relatives?
- Has ODHS asked the child or child's siblings about contact with the father or father's relatives?
- Has ODHS used available technology, such as the child support locator or internet search engines such as Family Finders or Ancestry.com to locate father or his relatives?

### B. Appoint counsel.

The current practice in Oregon is to appoint counsel for each parent or guardian and the child or children, provided they are financially eligible. ORS 419B.205 (counsel shall be appointed for parent when due process requires); ORS 419B.195 (counsel shall be appointed for child when requested by the child, parent or guardian).

### C. Determine if there are other custody cases involving the child.

If there is a custody, parenting time, visitation, restraining order, filiation, or certain Family Abuse Prevention Act actions involving the child, all actions must be consolidated. ORS 419B.806(2). The cases shall be heard together in juvenile court. ORS 419B.806(4). The court shall hear the juvenile matters first unless the court finds it is in the best interest of the child to proceed otherwise. ORS 419B.806(4).

### D. Determine if grandparents and/or foster care providers are present.

Grandparents and foster parents have the right to be notified of the proceeding and the right to be heard. ORS 419B.875(6) & (7). ODHS also is required to make diligent efforts to identify and obtain contact information for grandparents.

## 4. Evidence

### A. Application of rules of evidence.

Although the rules of evidence apply generally to juvenile dependency proceedings, most of those rules don't apply to the shelter hearing. *See* ORS 419B.185(1)(g). The rules that do apply to the shelter hearing include relevance and privilege.

### B. ODHS report.

ODHS is required to provide the court a written report outlining efforts to prevent removal, efforts to place the child with relatives and other persons the child has a caregiver relationship with, and documentation why protective custody is in the child's best interests. ORS 419B.185(2)(a)-(c).

### C. Presentation from parent(s) and child.

The court must provide the child and parent(s) the opportunity to present evidence that the child can be returned home without further danger of suffering physical injury or emotional harm, endangering or harming others, or not remaining within the reach of the court process prior to adjudication.

## 5. Standard of Proof.

The standard of proof is a preponderance of the evidence.

## 6. Legal issues and written findings.

### A. Venue.

Venue is appropriate in the county of wardship or where the child resides. ORS 419B.118(1). The action may also be brought in the county where the behavior took place or where the child is present when the proceeding begins. ORS 419B.118(2) & (3)

### B. Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

Dependency jurisdiction is subject to the UCCJEA, which governs whether an Oregon court has jurisdiction to make a child custody determination. ORS 419B.803(2). Information about where the child has lived for the past five years, participation and knowledge of other proceedings involving the child, and other parties who may have legal rights to the child must be provided in the initial pleading. ORS 419B.809(8); 109.767(1). If the information is not provided, the court may stay the proceeding until it is. ORS 109.767(2).

In most cases, “home state” jurisdiction will apply because the child has lived in the state for at least six consecutive months prior to the filing, or since birth, if the child is less than six months old. Temporary absences of the parent or child are counted as part of the six months. ORS 109.741(1)(a); 109.704(7). If the court lacks home state jurisdiction, there are other bases for the court to assert jurisdiction provided in ORS 109.741(1)(b) through (d). The court may also take temporary emergency jurisdiction if the child is present in Oregon and has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse. ORS 109.751

### C. Indian Child Welfare Act (ICWA); Oregon Indian Child Welfare Act (ORICWA).

The court is required to inquire whether a child is an “Indian child” under ICWA at each hearing. [Or Laws 2020, ch 14, §15\(3\)\(a\) \(1<sup>st</sup> Spec Sess\)](#); 25 C.F.R. §23.107. If the court knows or has reason to know that an Indian child is involved, the court must treat the case as an ICWA/ORICWA case until it determines that it is not an ICWA/ORICWA case. Please refer to the [ICWA/ORICWA Benchbook](#) for a comprehensive overview of the requirements. ODHS is required to collect information about each parent’s ancestry to determine if the child may be eligible for tribal membership and subject to ICWA/ORICWA. This information should be provided to the court at the shelter hearing.

#### D. Refugee children.

Special rules apply to “refugee children” as defined in ORS 418.295. The court may not remove a refugee child absent clear and convincing evidence that preventative services have failed and that return home will likely result in psychological or physical damage. ORS 418.933. ODHS and the juvenile court shall consider the child’s culture and tradition when making a placement decision. *See* ORS 418.937 for placement preferences.

#### E. Temporary legal custody and out-of-home placement.

The court must consider whether the child can be maintained safely at home pending adjudication of the petition. ORS 419B.185(1). Even if conditions were unsafe at the time of removal, if they are remedied by the time of the hearing, or a plan has been put in place to keep the child safe at home, the court may order an in-home placement. The court may grant ODHS temporary legal custody under ORS 419B.809(5) even if the order provides for an in-home placement (this also provides ODHS with party status under ORS 419B.875(1)(a)(G)).

#### F. Reasonable/Active efforts.

The court must make written findings as to whether ODHS has made reasonable or active efforts to prevent or eliminate the need for removal of the child from the home and to make it possible for the child to safely return home. If no services were provided, but the court finds that reasonable services would not have eliminated the need for protective custody, the court shall consider ODHS to have made reasonable or active efforts. ORS 419B.185(1)(a).

#### G. Best interests.

The court is required to make a finding in every order of removal that describes why it is in the child’s best interests to be removed from the home or continued in care. ORS 419B.185(1)(d). Failure to make this finding in the first order of removal will prevent ODHS from claiming federal reimbursement under Title IVE of the Social Security Act for the child’s foster care episode.

#### H. Diligent efforts to place with a relative or caregiver and siblings.

If the court orders an out-of-home placement, the court must make findings concerning whether “diligent efforts” have been made to identify and place the child with a relative or someone who has a caregiver relationship (defined in ORS 419B.116) with the child *and with other siblings who are in substitute care*. ORS 419B.192(1)-(2).

Key inquiries:

- Has the caseworker requested relative information from both parents and followed up to determine if the relatives are placement resources?
- Has ODHS used available technology to search for relatives?
- Has anyone asked the child about placement preferences?
- What has ODHS done to keep siblings in care together?

Practice tip: Ask the parents whether they have provided all relative and caregiver names to ODHS.

#### I. When placement with sibling or relative not in child's best interest.

The court may find placement with a sibling is not in the child's best interest. ORS 419B.192(2). Similarly, the court may find that placement with a specified relative is not in the child's best interest under ORS 419B.192(4) and may direct placement in accordance with ORS 419B.349. The court may not, however, direct ODHS to place the child with a specific person. ORS 419B.349(1)

#### I. Visitation (Parenting Time).

Inquire as to scheduled visitation. Removal from the home can be especially traumatic for the child. Having a visit or even a telephone conversation with a parent soon after the removal can help alleviate some of the stress associated with the removal. ODHS policy requires caseworkers to arrange for a first visit within one week of the child's entry into care, or document why the visit didn't occur. The caseworker is also required to develop a temporary visitation plan when the child first enters substitute care or at the time of the shelter hearing. OAR 413-070-0860. ODHS should address any barriers to visitation, such as lack of transportation.

##### I. Visitation orders.

The court has authority to make orders regarding visits with parents and siblings. ORS 419B.337(3). ODHS is responsible for implementing a visitation plan consistent with the court's order. At the hearing, ask whether the caseworker has arranged for a first visit between the parent(s) and child. A space is available on the model Shelter Order to order a first visit if the court deems it appropriate.

- Visitation should be frequent enough to maintain the parent-child bond. Research has shown that increasing contact between parent and child increases the chances of reunification and decreases the length of the child's stay in substitute care.
- *Young children* need frequent contact with a primary caregiver to maintain familiarity, attachment and promote healthy brain development. This may mean several visits per week or, for infants and toddlers, daily visits if possible.
- For *older children*, consideration should be given to their school schedule and after school activities. In addition to regular visits, contact through Skype and telephone can help keep parent and child connected.

##### Additional resources:

ODHS Policy: [OAR 413-0070-0800](#) Visits and Other Types of Child and Family Contact  
ABA Practice and Policy Brief: [Visitation with Infants and Toddlers in Foster Care: What Judges and Attorneys Need to Know](#).

#### J. Restraining Orders.

Consider using a juvenile restraining order as an alternative to removal of the child from the home. When a petition alleges the child has been physically or sexually abused, the court may enter an order restraining the alleged perpetrator of the abuse from having contact with the child and requiring the alleged perpetrator to move from the household where the child lives. ORS 419B.845(1)(a). The court must find there is probable cause to believe the abuse occurred, the

person to be restrained committed the abuse and the order is in the best interests of the child. A JCIP Model Form – [JF7 Juvenile Restraining Order](#) – is available for court use on the JCIP Model Forms Webpage.

#### I. Other children in the home.

When the court finds that an order controlling contact between the alleged abuser and other children in the household would aid in protecting the victim, an appropriate order may be entered. ORS 419B.845(1)(b).

#### K. Orders regarding school placement

Oregon law requires ODHS to maintain the child (age 4 to 21) in his or her “school of origin”. ORS 339.133. The child’s school of origin is the school the child attended before he or she was placed in foster care. The law requires that free transportation be provided to the child from his or her new foster home to the school of origin. The juvenile court may make a determination that it’s not in the child’s best interest to continue attending the school of origin. ORS 339.133(4) If this occurs, the child is to be immediately enrolled in a new school, which becomes the child’s new school of origin. ORS 339.133(4)(a)

## 7. Setting Next Court Review Dates

#### A. Second shelter hearing.

Continue or extend the shelter hearing if issues can not be resolved for lack of information, if parties have not been notified, or if you order an emergency placement under ICWA/ORICWA.

#### B. Status conference.

The court may schedule a time for parents to admit or deny allegations within 30 days after the petition is filed. ORS 419B.869. Note that any allegations that are not admitted or denied are considered denied. ORS 419B.869(1). Parties must also provide discovery within 30 days. ORS 419B.305(2); 419B.881(2)(a)(A).

#### C. Jurisdictional hearing.

The hearing must be held no later than 60 days after the petition is filed. ORS 419B.305(1). The court may set out the hearing beyond the 60 days for good cause (written order with factual findings required), although this is not recommended. ORS 419B.305(3). The court can not order the parents into services until jurisdiction has been established, although parents may voluntarily participate. If a continuance is granted, the court must give the case the highest priority on the docket after the continuance has expired. ORS 419B.305(4).

# Termination of Parental Rights

ORS 419B.500

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## 1. Requirements for filing, timelines and statutory grounds

### A. Requirements

#### I. The plan must be adoption.

The court must hold a permanency hearing and enter a permanency judgment changing the case plan to adoption. A TPR petition may be filed only for the purpose of freeing the child for adoption. ORS 419B.498(3). An appeal of an underlying permanency judgment does not preclude the court from proceeding with adjudication of the TPR petition. ORS 419A.200(7)(b).

#### II. Who may file.

Only the state or the ward may file a TPR petition. ORS 419B.500

#### III. Clear and convincing evidence required unless ICWA/ORICWA applies.

The facts must be established by clear and convincing evidence. ORS 419B.521(1). If ICWA/ORICWA applies, the standard is beyond a reasonable doubt. ORS 419B.521(4). Please consult the [Oregon Indian Child Welfare Act Benchbook](#) for additional information about requirements that apply if the child is an Indian child under the act.

### B. Timely resolution of the petition

The hearing to adjudicate the petition:

- may not be held any earlier than 10 days after service or final publication of the summons, and
- must be held within six months from the date on which the summons is served (except for good cause shown). ORS 419B.521(1) and (2).

### C. Statutory grounds for termination

The court is authorized to order termination of a parent’s rights to a child only if: (1) a petitioner proves the independent statutory grounds for termination and (2) the court finds termination is in the best interests of the ward. ORS 419B.500. The independent statutory grounds are:

- Extreme Conduct. ORS 419B.502
- Unfitness. ORS 419B.504 (most common)
- Neglect. ORS 419B.506
- Abandonment. ORS 419B.508
- Child conceived as a result of rape. ORS 419B.510.

#### I. Unfitness. ORS 419B.504

##### a. Findings

The court must find:

- (1) the parent has engaged in some conduct or is characterized by some conditions; and
- (2) the conduct or condition is “seriously detrimental” to the child.
- (3) If the parent has met the foregoing criteria, the court must find that the integration of the child into the home is improbable within a reasonable time due to conduct or conditions not likely to change. *See State ex rel SOSCF v. Stillman*, [333 Or 135, 146 \(2001\)](#).

##### b. Case law

- Fitness is assessed by the parent’s conduct and conditions as they exist at the time of the TPR trial. *Dept. of Human Services v. H.L.R.*, [244 Or App 651 \(2011\)](#). The listed examples of conduct or conditions that may qualify as unfitness under ORS 419B.504 is *non-exclusive*. *State ex rel SOSCF v. Stillman*, [333 Or 135, 146 \(2001\)](#).
- Seriously detrimental. For conduct or condition to be deemed “seriously detrimental,” petitioner must show its effect on the child, looking at the child’s specific needs. *Dept. of Human Services v. K.M.M.*, [260 Or App 34, 45 \(2013\)](#).
- “Reasonable time” is a period of time that is reasonable given a child’s age, developmental needs, and ability to form lasting attachments. ORS 419A.004(23) The finding is relative to the individual child before the court and may need to be supported by expert testimony. The state must specifically show how a delay in permanency would affect the child’s emotional and developmental needs or the ability to form lasting attachments. *Dept. of Human Services v. F.J.S.*, [259 Or App 565, 580 \(2013\)](#). *See also Dept. of Human Services v. D.I.R.*, [285 Or App 60 \(2017\)](#) (factors court considers in assessing “reasonable time” in context of permanency hearing).
- Father’s pattern of reacting in an inappropriately aggressive manner when considered in the context of his psychological deficits and his historical pattern of behavior constituted a condition that was seriously detrimental to the child, despite the fact that father had completed services. The child could not be reintegrated into father’s home within a reasonable time after father had almost three years to address his anger problem and the child was at risk for attachment issues. *Dept. of Human Services v. F.J.S.*, [259 Or App 565, 580 \(2013\)](#).
- Record demonstrated by clear and convincing evidence that mother's untreated schizophrenia is harmful to the child and mother is unable to provide the child with proper care, and that because she continues to refuse to take medication, her condition is

unlikely to change so as to allow the child to be integrated into her home within a reasonable time. The court further concluded termination was in the child's best interest due to her need for permanency and stability, and her preference to live permanently with her adoptive parents. *Dept. of Human Services v. K.M.M.*, [260 Or App 34 \(2013\)](#).

## II. Neglect. ORS 419B.506

The court must find that the parent failed or neglected *without reasonable and lawful cause* to provide the child's basic physical and psychological needs for *six months* prior to the filing of a petition.

- A non-exclusive list of factors is provided in the statute:
  - o Failure to provide care or make reasonable payments for substitute care if child is in custody of others.
  - o Failure to maintain regular visitation or other contact with the child that was designed and implemented to reunite the child with the parent.
  - o Failure to contact or communicate with the child or the child's custodian.
- Additional considerations:
  - o The court shall disregard any incidental or minimal expressions of concern or support. ORS 419B.506.

## III. Extreme conduct toward any child. ORS 419B.502

The court must find the parent or parents are unfit by reason of a single or recurrent incident of extreme conduct toward any child. The statute provides a non-exclusive list of circumstances for the court to consider:

- Rape, sodomy, or sex abuse of any child by the parent.
- Intentional starvation or torture of any child by the parent.
- Abuse or neglect of any child by the parent, which results in death or serious physical injury.
- Parental conduct that aids or abets another person who has caused the death of a child due to abuse or neglect.
- Parental conduct attempting, soliciting, or conspiring to cause the death of a child.
- Previous involuntary termination of parental rights to another child *if* conditions giving rise to such termination are not ameliorated.
- Knowingly exposing a child of the parent to the storage or production of methamphetamines from precursors.

Reasonable efforts not required. A finding of extreme conduct requires “no efforts... be made by the available social agencies... to make it possible for the child or ward to safely return home within a reasonable amount of time.” ORS 419B.502. *See also* ORS 419B.340(5) for circumstances in which the court may relieve DHS from the requirement to make reasonable efforts to make it possible for the ward to safely return home.

#### IV. Abandonment. ORS 419B.508

The court must find:

- the parent(s) have abandoned the child or the child was left under circumstances such that the identity of the parent(s) was unknown and could not be ascertained, despite diligent searching, and
- the parent(s) have not come forward to claim the child within three months following the finding of the child.

#### V. Child conceived as a result of rape. ORS 419B.510

A parent's rights may be terminated if the court finds the child was conceived as the result of an act that led to the parent's conviction for rape under ORS 163.365 or 163.375 or other comparable law of another jurisdiction. Termination of parental rights under this section does not relieve parent of the obligation to pay child support. ORS 419B.510(2).

## 2. Suggested best practices for timely disposition

### A. Preliminary hearing.

Hold within 30 days of permanency hearing when plan is changed to adoption.

#### I. Issues to address.

##### *a. Application of ICWA/ORICWA*

The court must ask, on the record, each individual present whether they know or have reason to know the child is an Indian child as defined under the federal Indian Child Welfare Act and the Oregon Indian Child Welfare Act. Or Laws 2020, ch. 14, §15 (1<sup>st</sup> Spec Sess). If the child is subject to the Act, additional requirements apply. Consult the [Oregon Indian Child Welfare Act Benchbook](#) for further information.

##### *b. Settlement*

The parent may voluntarily relinquish parental rights under ORS 418.270 at any time. The relinquishment is revocable until the child is physically placed in the adoptive placement. ORS 418.270(4).

- Encourage mediation through the ODHS mediation program. The mediator is paid through ODHS and works with the adoptive resource and birth parents on continuing contact issues. ORS 419B.517(2).
- Refer the case for a settlement conference with another judge in your court.

If the case is subject to ORICWA, the Court must offer the parties an opportunity for mediation under ORS 419B.517 and the opportunity, if requested by the tribe, to put in place a cultural agreement between the child's tribe and prospective adoptive placement (if known). ORS 419B.521(4)(b); ORS 419B.529(1)(c)

##### *c. Right to counsel*

Inform parties of right to counsel and appoint counsel if appropriate. ORS 419B.518; 419B.875(2)(b).

#### *d. Discovery*

Address any discovery issues. *See* ORS 419B.881(1) for items that must be disclosed.

#### *e. Set pre-trial and trial dates*

The trial must be held no later than six months from the date on which the summons for the petition was served. ORS 419B.521(2). Set the pre-trial a week or so before the trial. Order the parties to appear for a settlement conference, the pre-trial and the trial.

#### *f. Provide required notice to parents who appear*

##### *i. ORS 419B.820 notice.*

If the parent appears and contests the petition as provided in ORS 419B.819(2)(b) or (c), the court is required to provide an additional oral or written order providing the parent with notice of the items in ORS 419B.820(1) through (5). A form of order is available on the [JCIP website](#) that is compliant with the statutory criteria. If the written order is used, it must be provided to the parent in person or mailed to the parent at the address provided by the parent. ORS 419B.820. A written order served by publication is not sufficient to meet the requirements of the statute. *Dept. of Human Services v. J.C.G.*, [312 Or App 461 \(2021\)](#) It is plain error to terminate parental rights in a parent's absence, prior to providing the requisite notice set forth in ORS 419B.820. *Dept. of Human Services v. K.M.J.*, [276 Or App 823 \(2016\)](#)

Order (orally on the record or in writing) the parent to appear personally at the next hearing or hearings (court may allow telephonic appearance under ORS 419B.918):

- The time, place and purpose of the next hearing or hearings related to the petition.
- Require the parent to appear personally at the next hearing or hearings related to the petition.
- If the parent is represented by an attorney, the parent's attorney may not attend the hearing in place of the parent.
- If the parent fails to appear as ordered for any hearing related to the petition, the court may terminate the parent's rights, or take any other action authorized by law. ORS 419B.820.

#### *g. Non-appearance by parent*

ORS 419B.819(7) authorizes the juvenile court to terminate a parent's parental rights when a parent fails to appear at a hearing related to the petition after being served with a summons and a true copy of the petition under ORS 419B.819(1) and (2). Note that if the parent has already appeared and contested the petition, the court must have provided the required notice referenced above in subsection (e) prior to entering a default judgment. If the parent later moves to set aside the judgment, the court has authority to set aside or modify any order or judgment based on clerical mistakes in judgments, orders or other parts of the record, excusable neglect and for newly discovered evidence that by due diligence could not have been discovered in time to present it to the court at the hearing. ORS 419B.923. A parent's reasonable, good faith mistake in failing to appear for a pretrial hearing in a TPR proceeding may constitute excusable neglect as a matter of law, which under the totality of the circumstances may require a juvenile court to grant the parent's subsequent motion to set aside the judgment. *Dept. of Human Services v. K.M.P.*, [251 Or App 268 \(2012\)](#).

### 3. Trial

#### A. Parties

The parties to a TPR proceeding are provided in ORS 419B.875(1).

#### B. Appearance by parent

A parent is generally not allowed to appear through counsel if the summons requires the parent to appear personally, or if the court has ordered the parent to appear personally in the manner provided in ORS 419B.820. ORS 419B.819(8). However, the court may permit a parent to participate in the hearing in any manner that complies with the requirements of due process, including by telephone or other electronic means, provided the parent makes the request in advance and the court finds good cause. ORS 419B.918. Note that recent [Chief Justice](#) and Presiding Judge orders regarding court operations may also authorize remote appearances. The rules regarding a parent’s failure to appear are provided in the preceding subsection (f).

#### C. Timing

The TPR hearing is held no earlier than 10 days and no later than 6 months after service of or final publication of the summons, unless the court finds good cause exists to allow a continuance and makes appropriate written findings. ORS 419B.521(1) & (2). When determining whether “good cause” exists to grant a continuance, the judge should consider the child’s age and potential adverse effects of delay. ORS 419B.521(2).

#### D. Evidentiary standards and requirements.

##### I. Rules of evidence

The Oregon Evidence Code applies to TPR proceedings. ORS 40.015; *See also State ex rel. Juvenile Dept. of Lincoln County v. Ashley*, 312 Or. 169 (1991).

- The court should not rely on exhibits admitted in the prior dependency case. Those exhibits were admitted for a different purpose and, except at adjudication, were admitted without application of the OEC. *See* ORS 419B.185(1)(g); 419B.325(2); 419B.449(2) and 419B.476(1).
- The court can take judicial notice of particular facts in the record but only of facts “not reasonably in dispute.” ORS 40.060 – 40.085.

##### II. Testimony from child witness

- The court, on its own motion or the motion of a party, may take testimony from any child appearing as a witness and may exclude the child’s parents if the court finds this would likely be in the best interest of the child. The court may not exclude attorneys and the testimony must be recorded. ORS 419B.521(3).

##### III. Burden of proof

- In non-ICWA/ORICWA cases, unless admitted, facts must be established by clear and convincing evidence. ORS 419B.521(1).
- If ICWA/ORICWA applies, facts not admitted must be supported by competent evidence beyond a reasonable doubt, and include testimony of a qualified expert witness, that

continued custody is likely to result in serious emotional or physical harm to the child. ORS 419B.521(4).

#### IV. Recording.

The hearing must be recorded in compliance with ORS 8.340. ORS 419B.521(1).

#### E. Required findings for granting petition

The court must determine that TPR is in the best interest of the child *and* that the state has met the applicable burden of proof with respect to the statutory grounds set forth in the petition. ORS 419B.500. Note that for cases subject to ICWA/ORICWA, the best interest standard does not apply. ORS 419B.500.

### 4. Judgment and appeal. ORS 419B.527

#### A. Legal custody and guardianship

The court may place the ward in the legal custody and guardianship of a public or private institution or agency (e.g., ODHS) authorized to consent in loco parentis to the adoption of children, or make any order directing disposition of the ward that it is empowered to make under ORS Chapter 418B. ORS 419B.527(1).

#### B. Effect of termination on subsequent dependency and adoption proceeding

The rights of one parent may be terminated without affecting the rights of the other parent (ORS 419B.500), however, the authority to consent to the adoption of the ward is only effective with respect to the parent whose rights have been terminated. ORS 419B.527(2). Parents have no standing to appear in subsequent proceedings unless an appeal has been filed. ORS 419B.524.

#### C. Appeal

##### I. Stay

On its own motion or on the motion of a party, the court may stay the effect of the order or judgment pending appeal as provided in ORS 19.335, 19.340 and 19.350 or other provision of law. ORS 419B.926.

##### II. Consolidation

The appeal of any TPR judgment must be consolidated with any pending appeal of a disposition order, review hearing judgment or a permanency judgment. ORS 419A.200(7)(c).

### 5. Continuing wardship

Wardship continues until a judgment of adoption is entered. ORS 419B.328(2)(d). After parental rights have been terminated, the court continues to monitor the case to ensure for the safety and welfare of the ward, and timely completion of adoption proceedings.

#### A. Permanency hearings.

Although permanency hearings typically run on a yearly schedule until the child leaves substitute care, when a legally free child has not been physically placed for adoption or if ODHS has not initiated adoption proceedings within six months from the surrender of parental rights or entry of the order terminating parental rights, the court shall conduct a permanency hearing within 30 days of receiving the ODHS court report that is due under ORS 419B.440(1)(b)(B). ORS 419B.470(4). Subsequent permanency hearings shall be held every six months until the child is placed for adoption or adoption proceedings have been initiated. ORS 419B.470(8). Annual permanency hearings are required until the child leaves substitute care. ORS 419B.470(7).