

APPELLATE UPDATE – 2019 ANNUAL CRB CONFERENCE

Jurisdiction

Provides the foundational framework for analyzing reasonable efforts, sufficient progress and for a change in permanency plan.

- **Rational relationship:** DHS shall ensure that case planning for reunification bears a rational relationship to the jurisdictional findings. ORS 419B.343.

Reasonable Efforts

Finding 4: Has DHS made reasonable/active efforts to provide services to make it possible for the child to safely return home?

•General rules:

- Efforts must be rationally related to the jurisdictional requirements.
- Efforts must be made for *each* parent, including incarcerated parents (see back for examples).
- DHS must provide appropriate services to allow the parent the opportunity to adjust his or her circumstances, conduct or conditions to make it possible for the child to safely return home within a reasonable time.
- The focus is on DHS conduct, and a parent's resistance to DHS efforts does not categorically excuse DHS from making meaningful efforts toward that parent. However, evidence specifically tied to the parent's willingness and ability to participate in services may be considered when assessing DHS efforts.
- If the case is subject to ICWA, the caseworker must make active efforts by assisting the parent through the steps of reunification.

•Timing:

- Efforts are evaluated over the entire duration of the case, with an emphasis on a period before the hearing sufficient in length to afford a good opportunity to assess parental progress.

Sufficient Progress

Finding 6: Have the parents made sufficient progress to make it possible for the child to safely return home.

•Prerequisites:

- Does the parent have notice of what is required (is it implied by the jurisdictional bases)?
- Have reasonable efforts been provided?
- Has adequate time been provided to allow the parent to show s/he can be minimally adequate?
- **Has the behavior or condition identified in the jurisdictional judgment been ameliorated?**
- If the parent has completed the required services, has the parent also changed his or her behavior?

•Will the parent be able to make sufficient progress within a reasonable time?

- A reasonable time is a period of time that is reasonable given a child's emotional and developmental needs and ability to form and maintain lasting attachments. ORS 419A.004(23) (see back for additional considerations)

Permanency Plan Determination

Finding 9: Is the permanency plan the most appropriate for the child?

•Reunification:

- Has DHS made reasonable efforts?
- Has the parent made sufficient progress?
- Will the parent make sufficient progress within a reasonable time?

•Adoption: Considerations that may rule it out....

- The child is being cared for by a relative in a placement that is intended to be permanent and a different plan is more appropriate.
- Another permanent plan is better suited to meet the health and safety needs of the child, including the need to preserve the child's sibling attachments and relationships.
- The parent is successfully participating in services that will make it possible for the child to return home within a reasonable time.
- The court or CRB made a previous "no reasonable efforts" finding.

•Guardianship

- Must rule out reunification and adoption.

•Placement with a Fit and Willing Relative

- Must rule out reunification, adoption and guardianship.

•Another Planned Permanent Living Arrangement (APPLA)

- Allowable only if child is at least 16 and DHS has provided a "compelling reason" why a higher level plan is not appropriate.

Reasonable efforts considerations for incarcerated parents.

•**Has the caseworker:**

- Had regular contact with the parent?
- Assessed the parent's strengths and weaknesses?
- Provided services that bear a rational relationship to the basis for jurisdiction, or explained why the service has not been provided? (If DHS is relying on services within the facility, the caseworker needs to assess whether they are sufficiently tailored to the basis of jurisdiction.)
- Arranged for contact or visitation with the child, or explained why it's not appropriate?
- Communicated the conditions of return to the parent and discussed how those conditions might be satisfied, even if the parent won't be available to have physical custody of the child. This may include exploring whether the parent will make a plan for someone else to care for the child while the parent is incarcerated.
- Communicated with the parent's prison counselor and service providers about the parent's progress?
- If the parent is willing to engage and if the parent would benefit from additional services that would materially contribute to the goal of ameliorating the jurisdictional basis, has DHS met the parent's efforts in kind?

Reasonable time considerations.

- Reasonable time defined:** A period of time that is reasonable given a child's emotional and developmental needs and ability to form and maintain lasting attachments.
- The court considers the child's particular needs and circumstances and any barriers the parents might face.
Considerations may include:
 - whether the child's placement in substitute care would be unacceptably long given her age;
 - the amount of time the child has 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 a drug or alcohol addiction, or 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.