

# Appellate and Legislative Update

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## Overview

- **Appellate Update:**

- Standard for jurisdiction
- Delegation of care to third party
- Reasonable efforts

- **Legislative Update:**

- New placement category: “current caretaker”

# Appellate Update

Jurisdiction  
Delegation of Care to Third Party  
Reasonable Efforts

## Jurisdiction

- o Basic test: ORS 419C.100(1)(c)
  - o Child's conditions or circumstances expose the child to a current ***threat of serious loss or injury*** that is likely to be realized.
  - o When a petition is based on a parent's conduct, DHS must prove a ***nexus*** between ***the conduct and a current threat of serious loss or injury***.



## Current threat of serious loss or injury

- o CRB Findings

- o Finding #6: The parents have made sufficient progress to make it possible for the child to safely return home.
- o Finding #10: There is a continuing need for placement.



## Current threat of serious loss or injury

- o Methamphetamine, domestic violence, chaotic living, lack of emotional and behavioral regulation

- o DHS v. A.W., 276 Or App 276 (2016).

- o No jurisdiction when:

- o No evidence of drug use while caring for child, or evidence that use impaired parenting
- o No evidence that A was exposed to parents' behavior and no evidence that arguments had turned violent.
- o No evidence that A had seen or heard disagreements, or that such exposure put A at risk of serious harm or injury.



## Current threat of serious loss or injury



- Alcohol
  - *DHS v. H.R., 274 Or App 601 (2015)*
    - Repeated DUII convictions between 2002 and 2009 resulting in repeated incarceration
    - Testimony:
      - Stopped drinking and enrolled in treatment
      - Back pain – started drinking again to help sleep
      - Consumption varied every 3 to 5 days when kids were asleep
      - Girlfriend with him “24 hours a day”
    - Court found father’s testimony not credible
      - Even small amounts of alcohol a problem for father (admitted alcoholic + prison + depends on alcohol for sleep)
    - Jurisdictional judgment affirmed

## Current threat of serious loss or injury

- Alcohol, unexplained injury and domestic violence
  - *DHS v. K.V., 276 Or App 782 (2016)*
    - Jurisdiction over A when:
      - Mother had protected A from father; but now mother was no longer living in the house.
      - Father failed to protect S from mother; father didn’t believe there were any issues with mother’s parenting that would have led to the injury of S
      - Father committed acts of domestic violence while intoxicated
        - Minimal evidence that father had completed a substance abuse assessment; community reports he was still using alcohol.
      - Nexus between father’s alcohol use, domestic violence and risk of harm to A supported by expert testimony that domestic violence between spouses is a risk factor for child abuse.

## Current threat of serious loss or injury

- o Unexplained injury. *DHS v. J.M.*, [275 Or App 429 \(2015\)](#).
  - o When a parent has participated in some services, but there is concern the parent hasn't internalized better parenting techniques, the dispositive question is what the parent will likely do.
  - o Legally sufficient evidence links the lack of insight to the risk of harm.
  - o Totality of circumstances.



## Current threat of serious loss or injury

- o Allegations no longer "current". *DHS v. M.M.*, [277 Or App 120 \(2016\)](#)
  - o Facts:
    - o Father attempted suicide in February, 2014
    - o He would provide his prescription drugs to mother to help her deal with illicit drug use
    - o Father had untreated PTSD
    - o Jurisdiction judgment entered April, 2015
  - o Court of Appeals
    - o Reversed.
    - o Parents separated for almost a year.
    - o No evidence regarding father's mental health since June, 2014.
    - o Father's circumstances had changed substantially since suicide attempt.



## Child in care of third party

- o Grandparents.
  - o DHS v. A.H., [275 Or App 788 \(2015\)](#).
  - o Child was removed from her parents and placed with grandparents.
  - o At the time of the jurisdictional hearing, no evidence was presented that grandparents were unsafe.
  - o The child's placement would continue without juvenile court jurisdiction or DHS involvement.
  - o Jurisdictional judgment reversed.



## Reasonable Efforts



- o Six month delay in disclosing diagnosis of child's developmental delay to parents. DHS v. J.M., [275 Or App 429 \(2015\)](#).
- o Reasonable efforts considerations:
  - o Totality of circumstances
  - o Ward's health and safety
  - o Burdens the state would bear and what benefit might reasonably be expected to flow
- o In this case, the record supports the inference that providing the information earlier would not have made a difference.

## Reasonable Efforts

- o Five and a half month delay in referring father to services not reasonable. *DHS v. R.W.*, [277 Or App 37 \(2016\)](#).

- o **Facts:**

- o Initial offer of services made 2 days after removal; father refused services and did not sign any releases of information.
- o Three months later, the court established jurisdiction.
- o Two and a half months later, the court held a dispositional hearing.
- o Two days prior to this, father requested service referrals and signed a release. DHS made a referral the same day as the dispositional hearing.

- o **Court of Appeals:**

- o In determining whether DHS made reasonable efforts, the court considers a parent's lack of cooperation within the context of DHS's conduct and the case circumstances.
- o Although father was initially uncooperative, DHS did not demonstrate any subsequent attempts to provide, or even offer, father services.
- o No explanation as to why DHS made no additional attempts to obtain a release.
- o The fact that the teenage daughter did not want to visit with father doesn't matter in analysis.

## Legislative Update

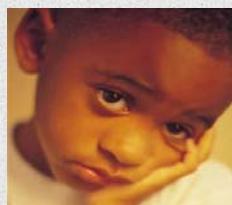
Senate Bill 741:  
Current Caretaker

## Current Caretaker: SB 741 (2015)

- o Background
- o State policy
- o “Current Caretaker” defined
- o Report to court
- o 10 day hearing
- o Review requirements
- o Orders regarding placement
- o DHS evaluation of prospective adoptive parents
- o Overlap with caregiver relationships (ORS 419B.116)
- o Best practices

## Background

- o Relatives who have had little contact with foster child given preference over foster parent in adoption selection decisions
- o Attachment needs of children ignored



## Court Authority to Review Placement

- o Court authority to review placement.
  - o Prior to January 1, 2016, when the child was committed to the legal custody of DHS, ORS 419B.349 provided the court with the ability to review the child's placement, and if the court found the placement was not in the child's best interest, direct DHS to place the child in the care of parents, relatives, non-relatives, residential care, group care, or some other type of residential placement.
  - o SB 741 expands the court's authority to direct placement with a current caretaker.

## SB 741: Overview

- o Creates new category of foster parent: a current caretaker
- o Allows court to direct placement with a current caretaker pursuant to the provisions of ORS 419B.349
- o Requires DHS to consider prospective adoptive parents on basis of ability to meet the individual needs of the child for safety, attachment and well-being; relatives and current caretakers equal status.

## Revised State Policy

- o Juvenile court policy:

- o It is the policy of the State of Oregon to safeguard and promote each child's right to safety, stability and well being, and to safeguard and promote each child's relationships with parents, siblings, grandparents, other relatives **and adults with whom a child develops healthy emotional attachments.** ORS 419B.090(3)



## “Current Caretaker” Defined

- o A foster parent who:

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

ORS 419A.004(11)

## Current Caretaker Defined

Foster parent currently caring for ward  
+permanency plan or concurrent plan of adoption

+ cared for ward or sibling for:

- ➡ immediately prior 12 consecutive months,  
*or*
- ➡ one-half of the ward's or sibling's life (ward  
or sibling under age 2)

❖ How many current caretakers can a child have?

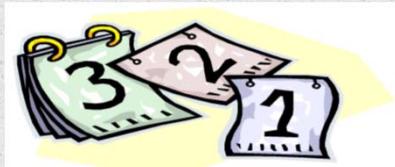


## Report to Court

- When required: (ORS 419B.440(1)(c))
  - DHS **removes or plans to remove** a child or ward for purposes of placing in a different substitute care placement if:
    - The child or ward has resided for 12 consecutive months or more in the foster home; or
    - The child or ward resides or resided in the foster home pursuant to a permanent foster care agreement
- Exceptions: (ORS 419B.440(2))
  - Removal is foster parent related:
    - founded allegation of abuse or neglect;
    - imminent threat to the health or safety of the child or ward pending completion of an investigation of reported abuse or neglect;
    - Removal at foster parent's request.
  - Adoptive placement is final. DHS placed the child with the selected adoptive parent, when the selection has become final after the expiration of administrative or judicial review procedures under ORS chapter 183.

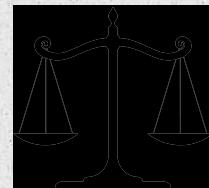
## New Hearing Requirement

- o Once the report is received, the court is required to hold a hearing within 10 days.  
ORS 419B.449(1)(e).
  - o The 10 day period is calculated using calendar days. The period starts running the day after the report is filed. The last day is included in the period, unless it falls on a Saturday or legal holiday, in which event the period runs until the end of the next day that is not a Saturday or legal holiday. ORS 419B.854(1).



## Court Authority to Review Placement – New Category

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



ORS 419B.349

## Court Authority to Direct Placement - Limitations



- o **Specific placement.** Unless otherwise required by law, the court may not direct a specific placement.
  - o The actual planning and placement of the child is the responsibility of DHS.
  
- o **Adoptive placement.** May not direct DHS to place or maintain child where the effect would be to remove child or prevent placement with the selected adoptive placement after administrative and judicial review procedures under ORS Chapter 183 have expired.

## Prospective Adoptive Parents



- o DHS rules for adoption home studies and placement reports must require DHS to:
  - o Consider each prospective adoptive parent on the basis of that person's ability to meet the **individual needs** of the child for **safety, attachment and well-being; and**
  - o Consider a child's relatives and current caretaker as having **equal status** and priority as prospective adoptive parents in the consideration of their respective abilities to meet the child's individual needs for safety, attachment and well-being; **and**
  - o Give a **child's relatives and current caretaker a greater weight** in the consideration of suitability as prospective adoptive parents **as compared to others who are not relatives or current caretakers.**

ORS 109.306

## DHS Temporary Rules

(1/1/16- 6/28/16)

- Identification and Consideration of Potential Adoptive Resources:
  - [OAR 413-120-0700 to OAR 413-120-0760](#)
  
- DHS Child Welfare Manual:
  - [Chapter 5: Adoption, Guardianship and Other Permanency Plans](#)

## Relationship to Caregiver Status

### Current Caretaker: ORS 419A.004 (9)

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



### Caregiver Relationship: ORS 419B.116

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

## Implications

- o Review diligent efforts to place with relatives and caregivers.
  - o Has DHS asked the following people for information about relatives and persons with an emotionally significant relationship with the child and checked relevant records?
    - o Parents
    - o Child
    - o Family members
    - o Teachers and school staff
    - o Day care providers
    - o Family's spiritual or church leaders
    - o Previous child welfare records
    - o Other available state databases
    - o Internet search engines

