

# 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.

The facts must be established by clear and convincing evidence. ORS 419B.521(1). If ICWA applies, the standard is beyond a reasonable doubt. ORS 419B.521(4).

### 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. 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 DHS mediation program. The mediator is paid through DHS 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.

##### b. Right to counsel

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

##### c. Discovery

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

##### d. 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.

##### e. 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. 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.

*f. 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. 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 cases, unless admitted, facts must be established by clear and convincing evidence. ORS 419B.521(1).
- If ICWA applies, facts not admitted must be supported by 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

## 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., DHS) 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 DHS 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 DHS 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(7). Annual permanency hearings are required until the child leaves substitute care. ORS 419B.470(6).