

# 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 DHS.

The court may place the ward in the legal custody of DHS for care, placement and supervision. ORS 419B.337. If the court places the child in the legal custody of DHS, the court generally can not direct DHS 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 under ORS 419B.349.

### D. Guardianship.

Typically, the court grants guardianship to DHS if it has granted legal custody of the child to DHS. ORS 419B.372(1). If, however, the court has granted legal custody to a person or entity other than DHS, 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.

DHS 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 interests, but must make written findings setting forth the reasons for the finding. ORS 419B.192(4).

In addition, DHS 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 DHS made reasonable efforts, or active efforts if ICWA applies, to prevent the child's removal from the home and to safely return the child home. ORS 419B.337(1)(b); 419B.340. DHS 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 DHS 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 are not eligible for an aggravated circumstances finding*.

If the court makes an aggravated circumstances finding and DHS 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. DHS case plan

Federal and state law require DHS 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. DHS 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 DHS 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?** DHS 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, DHS 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, DHS 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 DHS 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 DHS 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 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.

## 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).