

# Jurisdiction

ORS 419B.305

## Contents

1. Timing .....	2
2. Purpose .....	2
3. Discovery .....	2
4. Parent service and appearance .....	2
A. Summons .....	2
B. Required Court Notice .....	2
C. Manner of appearance .....	2
D. Parent can't be identified to be served .....	3
E. Parent does not appear after service.....	3
I. Initial appearance .....	3
II. Subsequent appearances .....	3
III. Affidavit regarding military service .....	3
5. Evidence .....	4
6. Standard of Proof .....	4
7. Court determination regarding jurisdiction.....	4
A. Allegations resolved as to both parents.....	4
B. Child under 18 when petition filed .....	4
C. Oregon has jurisdiction under the UCCJEA .....	4
D. The legal standard in ORS 419B.100 has been met.....	4
I. General standard.....	5
II. Case examples .....	5
8. Dismissal at conclusion of petitioner's case .....	5
9. Request to set aside judgment.....	5
A. Challenge regarding service .....	5
B. Excusable neglect, clerical errors and newly discovered evidence .....	5
10. Model forms.....	6
A. Jurisdiction and Disposition Forms .....	6
B. Admissions to Petition Form. ....	6
11. Future hearing dates .....	6

## **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).

## 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, DHS must file an affidavit stating whether the parent is in the military service and showing necessary facts to support the affidavit or stating DHS 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. For additional information, please refer to [A Judge’s Guide to the Servicemembers Civil Relief Act](#) by Mark E. Sullivan.

## 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), the standard is *clear and convincing* evidence. 25 U.S.C. §1912(e). In addition, before the court can order an out of home placement in an ICWA 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). See the ICWA section of this 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.

DHS 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.

### **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.

### 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).