Permanency Hearing

ORS 419B.746

Contents

1. Timing

A permanency hearing is only required if the child is in substitute care. ORS 419B.470.

A. Involuntary cases.

I. General rule.

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 in substitute care, whichever is first. At a minimum, subsequent permanency hearings should be held every 12 months thereafter. ORS 419B.470 (3) & (6); *see also* 42 U.S.C. §675(5)(C). Holding a permanency hearing is a prerequisite to filing a TPR. The Department of Human Services (DHS) can not file a TPR petition until the court has changed the permanency plan to adoption. ORS 419B.498(3).

II. Children who are in and out of substitute care.

If the child is returned home on a trial reunification (for no longer than six months), the clock keeps ticking unless the court dismisses jurisdiction. If the child re-enters substitute care after the dismissal, the 12/14 month period starts over. ORS 419B.470 (8).

III. Circumstances that may require an earlier hearing.

a. Aggravated circumstances finding. If the court has made an aggravated circumstances finding under ORS 419B.340(5) and DHS has determined it will not make reasonable efforts to reunify the family, the court shall hold a permanency hearing within 30 days of the judicial finding. ORS 419B.470(1).

b. Ward removed from court sanctioned permanent foster care. Permanency hearing required within three months after the change in placement. ORS 419B.470 (3).

c. Ward legally free and not physically placed for adoption within six months. Permanency hearing required within 30 days of DHS court report required by ORS 419B.440 (2)(b); ORS 419B.470 (4). Permanency hearings required every six months until the child is placed. ORS 419B.470 (7).

d. Special request. Unless good cause is shown, upon request of DHS, parents whose rights have not been terminated, an attorney for the child, CASA, CRB, tribal court, agency responsible for care of child, or on the court's motion, the court shall hold a permanency hearing. ORS 419B.470 (5).

B. Voluntary cases.

When a child is placed pursuant to a voluntary placement agreement, the court is required to hold a permanency hearing no later than 14 months after the child's original placement. ORS 418.312. Until a petition is filed and jurisdiction is established, the court will not have a legal basis for

judging a parent or guardian's progress, which is a pre-requisite to changing the permanency plan. *See Dept of Human Services v. D.L.H.*, 253 Or App 600 (2012).

2. Purpose

Review the case in accordance with ORS 419B.476 and determine whether the permanency plan for the child will be:

- Reunification
- Adoption
- Guardianship (Permanent)
- Guardianship (Durable)
- Placement with a Fit and Willing Relative
- Another Planned Permanent Living Arrangement (APPLA) (children age 16 and up)

3. Discovery

Discovery is generally due no later than 10 days prior to the permanency hearing. Information received or discovered less than 10 days prior to the hearing should be promptly disclosed. ORS 419B.881(2)(a)(C).

4. Evidence

A. Dispositional determinations.

The rules of evidence apply to jurisdictional determinations in juvenile court proceedings but not to "proceedings to determine disposition." ORS 40.015 (1) & (4)(i). The many different steps the court must take to arrive at a permanency decision are all considered to be "dispositional." The court may consider testimony, reports or other material relating to the ward's mental, physical and social history and prognosis without regard to competency or relevancy for the purpose of determining appropriate disposition of the ward. ORS 419B.325 (2); ORS 419B.476 (1). Disposition includes consideration of reasonable efforts to effect reunification and parental progress under ORS 419B.476 (2)(a). *Dept. of Human Services v. J.B.V.*, 262 Or App 745 (2014).

B. Jurisdiction/motions to dismiss.

If the parent or child files a motion to dismiss, the exception to the requirement of competent evidence in ORS 419B.325 (2) does not apply to that portion of the proceeding, which is considered adjudicatory in nature. *Dept. of Human Services v. J.B.V.*, 262 Or App 745 (2014). The rules of evidence apply.

5. Standard of proof

The standard of proof is a preponderance of the evidence. ORS 419B.310 (3); ORS 419B.449 (2). However, if ICWA applies, the standard of proof is clear and convincing evidence. 25 U.S.C. §1912 (e).

6. Findings and orders

A. Comprehensive transition planning and aging out.

DHS is required to provide case planning to address the child's needs and goals for a successful transition to independent living, including needs and goals related to housing, physical and mental health, education, employment, community connections and supportive relationships. ORS 419B.343(3).

I. Requirements for children age 14 and older.

Teens age 14 and older must have a comprehensive transition plan (T2), addressing the items discussed above. ORS 419B.343(3); *See* OAR 413-030-0445.

a. Benchmark review.

Six months prior to the teen's 18th birthday, DHS is required to hold a meeting called a "benchmark review" to identify plans for housing, supportive relationships, community resources, medical resources and decision making, etc., to plan for the teen's transition out of care.

b. Oregon Foster Children's Bill of Rights requirements.

The Oregon Foster Child Bill of Rights requires DHS to provide teens 14 and older with written information on how to establish a bank account, acquire a driver's license, remain in foster care past 18, get tuition or fees waived, obtain a credit report, obtain health services without consent, and be provided the "transition toolkit" described above. ORS 418.201 (4). In addition, DHS must provide the teen with a document setting forth his or her rights that must be acknowledged by the teen in writing and that the rights were explained in an age appropriate manner. ORS 418.201(5)(d).

c. Case planning requirements.

The child's permanency plan must be developed in consultation with the child. At the option of the child, he or she may select up to two members of the permanency planning team. The child's foster parent and caseworker do not count as part of the two. DHS may reject an individual if it has good cause to believe the individual would not act in the best interests of the child. One individual selected may be designated to be the child's advisor and advocate with respect to the application of the reasonable and prudent parent standard. 42 U.S.C. §675(5)(C).

d. Required court findings.

The court shall review the adequacy of the transition plan to ensure it addresses the items necessary for the teen to successfully transition to independent living, whether DHS has offered appropriate services pursuant to the plan; and whether DHS has involved the teen in the development of the plan. The court may require DHS to further develop certain areas of the plan, provide the teen with resources needed to achieve goals identified in the plan, and update the plan periodically. ORS 419B.476 (3).

e. Terminating wardship.

Wardship may continue until the ward reaches age 21. ORS 419B.328. Prior to that time, the juvenile court may terminate wardship upon finding that: (ORS 419B.337)

- DHS has provided case planning that addresses the ward's needs and goals for a successful transition to independent living, including needs and goals relating to housing, physical and mental health, education, employment, community connections and supportive relationships;
- DHS has provided appropriate services pursuant to the case plan;
- DHS has involved the youth in the development of the case plan and in the provision of appropriate services; and
- The ward has safe and stable housing and is unlikely to become homeless.
- Transition toolkit required. At the time the court relieves DHS of custody, DHS is required to provide the ward with a "Transition Tool Kit" containing documents the ward will need regarding his or her medical history, for employment purposes and to continue post-secondary education. OAR 413-030-0460. It must include:
    - Family history;
    - Placement history;
    - Location, status and contact information for siblings;
    - Health and immunization records;
    - Education summary and records;
    - Original birth certificate;
    - Official proof of citizenship or residence;
    - Social security card;
    - Driver's license or other state identification;
    - Parent's death certificate (if applicable);
    - Written verification of placement in substitute care between the ages of 14 to 18.

    - Washington County example. Judges in Washington County provide a folder in which the documents in the "transition toolkit" as well as contact information for important people in the child's life are collected in anticipation of termination of wardship. Progress in completing the toolkit is reviewed at each hearing. Ensuring these documents are being collected by DHS in advance of the hearing to terminate wardship has improved DHS compliance with this requirement. Here are the forms used in Washington County:


Teen Ward Checklist - Contact L


Teen Ward Checklist - Final.pdf

f. Additional resources.

- DHS Policy on Youth Transitions, OAR 413-030-0400 thru 0460
- DHS Child Welfare Manual, Chapter IV

B. Findings of fact under ORS 419B.449(3).

The court is required to make the same findings of fact under ORS 419B.449(3) that are applicable to review hearings. See ORS 419B.476(2)(d). These findings relate to services for the child, which are discussed in more depth in the "Review Hearing" section of this benchbook.

C. Concurrent planning.

When the child is in substitute care and the plan is reunification, 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 concurrent plan should be set forth in the DHS case plan. The possible concurrent plans in order of preference are as follows:

- Adoption
- Guardianship
- Placement with a Fit and Willing Relative
- Another Planned Permanent Living Arrangement (APPLA, children age 16 and older)

Practice tip: If the concurrent plan is not adoption, DHS should provide a reason why a lesser plan is more appropriate for the child.

I. Findings.

Determine what efforts DHS has made to develop the concurrent plan (including DHS's efforts to identify appropriate in and out-of-state permanent placement options and identification and selection of a suitable adoptive placement if the concurrent plan is adoption). The court may make a finding concerning whether efforts to develop the concurrent plan are sufficient. ORS 419B.476 (4)(e).

II. Concurrent planning steps.

- Absent parent search;
- All legal and Stanley fathers have been filed on;
- Letters sent to putative fathers;
- Pending petition allegations resolved;
- Action agreements/letters of expectation provided to parents;
- ASFA timelines explained to parents;
- Assessments completed on child;
- Diligent relative search and engagement of relatives;
- ICPC requests made on out of state relatives;
- Siblings visit plan established if living apart;
- Collection of birth and medical records;
  o ICWA inquiry resolved;
  o Suitability of current caretaker or relatives reviewed at staffing.

D. Findings when plan is reunification.

I. Reasonable/active efforts

When the plan is reunification, the court determines whether DHS made reasonable efforts, or active efforts if ICWA applies, to make it possible for the ward to safely return home. ORS 419B.476 (2)(a). Along with the court's determination, the court order shall include a brief description of the efforts DHS has made. ORS 419B.476(5)(a). In making a "reasonable" or "active" efforts determination, the court must:

- Consider the child's "health and safety the paramount concerns." ORS 419B.340 (1); ORS 419B.476 (2)(a).
- Consider whether referral of a child to a Strengthening, Preserving and Reunifying Families program (SPRF) is or was in the child's best interest. ORS 418.595. These are local programs that are provided through SPRF funds.
- Make written findings in support of the determination by briefly describing "what preventive 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).

Active efforts require a higher standard than reasonable efforts. DHS is required to do more than create a reunification plan and require the parent to execute independently. DHS must assist the client through the steps. *See Dept. of Human Services v. M.D.*, 266 Or App 789 (2014).

a. General principles.

The appellate courts have used the following principles to guide reasonable and active efforts determinations.

- Determinations are case specific. The particular circumstances of each case dictate the type and sufficiency of efforts the state is required to make and whether the types of actions it has required parents to take are reasonable. In addition, reasonable efforts are to be evaluated under a "totality of the circumstances." *Dept. of Human Services v. M.K.*, 257 Or App 409 (2013).
- The court analyzes efforts over the life of the case, and is not constrained to periods of time between court reviews. *Dept. of Human Services v. T.S.*, 267 Or App 301 (2014).
- Services must be related to the basis of jurisdiction. The services provided by DHS should have a rational relationship to the basis of jurisdiction. ORS 419B.343(1)(a).
- Efforts must be made as to each parent, even if one is incarcerated or out of state. DHS cannot ignore one parent based on the rationale that the child is more likely to be reunified with the other parent. *Dept. of Human Services v. T.S.*, 267 Or App 301 (2014). DHS's request for a home study through ICPC did not constitute reasonable efforts to reunify when DHS had no contact with father for seven months between the filing of the petition and the dispositional hearing. *Dept. of Human Services. v. J.F.D.*, 255 Or App 742 (2013).
- Opportunity to improve. The reasonable efforts inquiry focuses on whether DHS provided the parent with an opportunity to demonstrate improvement regarding the jurisdictional bases. DHS may not withhold a potentially beneficial service to a parent simply because reunification with the child is ultimately unlikely even if the parent successfully engages in the services and programs that DHS provides. *Dept. of Human Services v. C.L.H.*, 283 Or App 313 (2017)

- Uncooperative parent. If a parent is unable to benefit or has demonstrated an unwillingness to participate in services, DHS may stop providing those services, or decide not to provide others. *Dept. of Human Services v. M.K.*, 257 Or App 409 (2013). However, a parent's resistance does not categorically excuse DHS from making meaningful efforts towards the parent. *Dept. of Human Services v. S.M.H.*, 283 Or App 295 (2017). Generally speaking, DHS must provide evidence that reunification efforts have been attempted for a period of time that is sufficient to provide the parent an opportunity to demonstrate s/he can be a minimally adequate parent. Consult the cumulative case law outline section of this benchbook for a discussion of specific cases.
- When cost is an issue. If service is "key" to reunification and DHS has declined to fund the service, the court must weigh the benefits of DHS providing the service and the burden of associated costs when deciding whether DHS made reasonable efforts. *Dept. of Human Services v. M.K.*, 257 Or App 409 (2013); *See also Dept. of Human Services v. C.L.H.*, 283 Or App 313 (2017)

b. Reasonable efforts findings not required

DHS is not required to make reasonable efforts finding in the following cases.

i. Aggravated circumstances.

When the court has made an aggravated circumstances finding under ORS 419B.340(5), relieving DHS of having to provide reasonable efforts and DHS determines it will not make such efforts, the court is required to conduct a permanency hearing within 30 days of making the aggravated circumstances finding. ORS 419B.340(6); *See also* 42 U.S.C. §671(15)(D). A non-exclusive list of circumstances that may constitute aggravated circumstances is provided in ORS 419B.340(5).

- Incarcerated parents. Incarceration alone does not constitute an aggravated circumstance. *State ex rel Juv.Dept. v. Williams*, 204 Or App 496 (2006).
- Cases subject to the Indian Child Welfare Act (ICWA). When the child is covered under ICWA, the court may not relieve the requirement that DHS provide active efforts under the provisions of ORS 419B.340(6). *See also* ORS 419B.340(7).

II. Parental progress

The court must determine whether the parent has made sufficient progress to make it possible for the ward to safely return home and provide that determination in the order. ORS 419B.476 (2)(a) & (5)(a).

a. Judicial inquiry.

- ***What progress has the parent made toward ameliorating the basis for jurisdiction?*** Note: the court may not continue wardship based on conditions or circumstances that are not explicitly state or implied by the jurisdictional judgment. *Dept. of Human Services v. A.R.S.*, 256 Or App 653 (2013). *See also Dept. of Human Services v. N.M.S.*, 246 Or App 284 (2011) (court erred in relying on facts extrinsic to those upon which jurisdiction was established when determining whether DHS made reasonable efforts and mother made

sufficient progress under ORS 419B.476 (2)(a)); and *Dept. of Human Services v. C.E.*, 288 Or App 649 (2017) (When a jurisdictional judgment or attached documentation specifically identifies a potential cause underlying a jurisdictional finding, it can be fairly implied that the identified cause will be a referent for measuring the parent's progress.)

- Why is continued substitute care necessary?
  - If there are remaining safety issues, can those be managed in the child's home with supervision or conditions?
  - Do the conditions of return adequately describe what the parent has to do in order for the child to be returned?
  - Can the caseworker explain to you what the parent has to do in order for the child to be returned?

- If continued substitute care is necessary, the findings shall state (ORS 419B.449 (3)(a)):
  - Why continued care is necessary;
  - The expected timetable for return or other permanent placement;
  - Whether DHS has made diligent efforts to place the child with relatives.

b. Case examples

- Domestic violence: The record contained sufficient evidence for the juvenile court's finding that father made insufficient progress based on the fact that despite completing therapy for domestic violence, father continued to be emotionally abusive during visits and blamed the children for DHS involvement. Father's counselor also testified father did not express empathy for the children. *Dept. of Human Services v. G.N.*, 263 Or App 287 (2014).
- Incarceration. The juvenile court's finding that father had not made sufficient progress was supported by evidence in the record when the juvenile court found: (1) reunification would be at least until his release date nine months from the permanency hearing, and likely longer because he would need to complete a substance abuse evaluation, address his parenting skills and substance issues, complete an action agreement, and find housing and employment, and that those services would be necessary to parent the child; (2) the delay was due in part to discipline issues for bad behavior in prison; and (3) the child would be in foster care for at least 21 months. *Dept. of Human Services v. D.A.N.*, 258 Or App 64 (2013).
- Independent parenting. The juvenile court's determination that mother had made insufficient progress was supported by evidence in the record when: (1) service providers expressed significant concerns about mother's parenting abilities; (2) her failure to develop a parental role with the child; (3) her lack of knowledge about how to meet the child's needs; (4) her inability to independently care for herself and M; and (5) her continuing lack of insight into the cause of DHS involvement with the family. Mother's proposed safety plan was not sufficient because it would only require members of mother's support network to check in twice a day to monitor mother. *Dept. of Human Services v. C.M.E.*, 278 Or App 297 (2016).
- Lack of contact with child. The record was legally sufficient to support the juvenile court's determination that father had made insufficient progress in ameliorating the jurisdictional basis of limited contact when father had only two visits with the child over

two years, and limited phone contact. *Dept. of Human Services v. D.W.C.*, 258 Or App 163 (2013).

- Mental Health. It was permissible for the juvenile court to consider mother's mental health issues when determining sufficient progress even though that issue was not expressly provided in the bases for jurisdiction. In this case, mental health issues are implied by the allegations (impulsive behavior, and behaviors exemplifying her lack of parenting knowledge and skills necessary to keep her children safe), there is evidence in the record that mother's mental health issues are not new, and the record doesn't indicate that mother would have been provided with any different services had the jurisdictional judgment more particularly identified her mental health problems. *Dept. of Human Services v. R.B.*, 263 Or App 735 (2014).
- Physical discipline. When jurisdiction is based on inappropriate discipline and father continues to assert he still believes that some physical discipline is an option under Christian scriptures but testifies he would not use it, the appropriate inquiry is not what father believes, but what he is likely to do at the time of the permanency hearing. *Dept. of Human Services v. J.M.*, 260 Or App 261 (2013).
- Unexplained injury. The assessment of a parent's progress towards addressing an unexplained injury ordinarily requires a determination of the cause of the injury. Because there was never any admission, stipulation, or finding as to the cause of the injury, parents' attempt to introduce evidence that the injury resulted from rickets does not represent a collateral attack on any prior admission, stipulation or finding as to the cause of the injury. *Dept. of Human Services v. J.M.*, 262 Or App 133 (2014).

E. Findings when plan is not reunification

When the plan, at the time of the permanency hearing, is something other than reunification the court must determine:

- whether DHS has made reasonable efforts to:
  - place the ward in a timely manner;
  - complete the steps necessary to finalize the permanent placement. ORS 419B.476 (2)(b) & (5)(a).
- whether DHS has considered permanent placement options, including, if appropriate, in state and out of state placement options. ORS 419B.476 (2)(c) & (5)(a).

F. Court determination of the permanency plan.

The court must include a determination of the permanency plan for the ward that includes whether and, if applicable, when the ward will be:

- returned to the parent;
- placed for adoption and a petition for termination of parental rights will be filed;
- referred for establishment of legal guardianship;
- placed with a fit and willing relative; or
- placed in another planned permanent living arrangement.

I. Plan hierarchy

The plans above are listed according to the most preferred plan, to the least preferred plan. As you move down the list, the child is provided with less permanency.

II. Burden of proof

The proponent of a change in plan bears the burden of proof. *Dept. of Human Services v. M.S.*, 284 Or App 604 (2017). Once DHS has met its burden to show the requirements for changing a permanency plan from reunification to adoption, it is the parent or child's burden to who there is a compelling reason under ORS 419B.498(2) for DHS not to proceed with a petition to terminate parental rights. *Dept. of Human Services v. S.J.M.*, 364 Or 37 (2018).

III. Required at every hearing.

The determination is required at every permanency hearing, and the findings justifying the determination must be made regardless of whether the plan is being changed or continued. ORS 419B.476 (5); *See Dept. of Human Services v. M.H.*, 266 Or App 361 (2014).

IV. Required findings to change plan.

a. Generally

Before changing a plan away from reunification, the court must find:

- DHS made reasonable (or active, if ICWA applies) efforts to reunify the family; and
- the parent has not made sufficient progress to allow the child to return home safely. *Dept of Human Services v. D.L.H.*, 253 Or App 600 (2012)

If the court determines that the plan should be reunification because further efforts will make it possible for the ward to safely return home within a reasonable time, the court shall include a determination of the services in which the parents are required to participate, the progress the parents are require to make and the time period in which the progress must be made. ORS 419B.476 (4)(c) & (5)(c); ORS 419B.498 (2)(b)(A) & (3) (this circumstance is also listed as a compelling reason that would negate the requirement that the state file a petition to terminate parental rights and would prevent the court from changing the plan to adoption).

- Reasonable time defined. A period of time that is reasonable given a child or ward's emotional and developmental needs and ability to form and maintain lasting attachments. ORS 419A.004 (23). The court considers the child's particular needs and circumstances and any barriers the parents might face. For example:
    - whether the child's placement in substitute care would be unacceptably long given her age;
    - the amount of time the child had 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 drug or alcohol addition, or that the parent 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.

Dept. of Human Services v. D.I.R., 285 Or App 60 (2017)

b. Time Frames for Achieving Reunification and Filing Petition to Terminate Parental Rights.

i. General rule.

When the child has been in foster care 15 out of the last 22 months, DHS has an obligation to file a petition to terminate parental rights. ORS 419B.498 (1); 42 U.S.C. §475(5)(E).

ii. Date entered foster care defined.

The child is considered to have entered foster care on the date of the first judicial finding that the child has been subjected to abuse or neglect, or 60 days after the date on which the child is removed from the home, whichever is first. 42 U.S.C. §475(5)(F). The Title IV-E agency may use a date earlier than that required by this definition, such as the date the child is physically removed from the home. 45 C.F.R. §1355.20.

iii. Trial home visits.

These are not included in calculating the 15 months in foster care. 45 C.F.R. §1356.21 (i)(C). A trial home visit may not exceed six months in duration, unless a court orders a longer trial home visit. 45 C.F.R. §1356.21 (e).

iv. Court must change the plan before DHS files petition to terminate parental rights.

DHS can't file a petition to terminate parental rights until the court has changed the permanency plan to adoption. ORS 419B.476 (3).

c. Adoption

In order to change the permanency plan to adoption, the court must find:

- DHS has made reasonable (or active, if the child is subject to ICWA) efforts and the parent has made insufficient progress to make it possible for the child to safely return home; and
- None of the following circumstances apply: (ORS 419B.476 (5)(d)).
  - Relative placement. The child or ward is being care for by a relative and that placement is intended to be permanent (in a plan other than adoption). ORS 419B.498(2)(a).
  - Compelling reason. There is a compelling reason documented in the case plan for determining termination would not be in the best interest of the child or ward, which may include, but is not limited to:
    - Parent successfully participating in services. The parent is participating in such a way that it will be possible for the child or ward to safely return home within a reasonable time. ORS 419B.498 (2)(b)(A).
    - Another permanent plan is better suited to meet the health and safety needs of the child or ward, including the need to preserve sibling attachments and relationships. ORS 419B.498 (2)(b)(B).

- No reasonable efforts finding. The court or Citizen Review Board determined at a prior review or hearing at a time when the plan was reunification that DHS did not make reasonable efforts (active efforts if ICWA applies) to make it possible for the child or ward to be safely returned home. ORS 419B.498 (2)(b)(C).
- DHS needs additional time to provide services. DHS has not provided such services within the time period in the case plan as DHS deems necessary for the child or ward to safely return home, if reasonable efforts to safely return home are required. ORS 419B.476 (1)(c).

d. Guardianship

The court must determine that placement with a parent, nor the plan of adoption, are appropriate. ORS 419B.476 (5)(e).

e.. Placement with a fit and willing relative

The court must determine that placement with the child's parents, adoption and placement with a legal guardian are not appropriate. ORS 419B.476(5)(f).

f. Another planned permanent living arrangement (APPLA)

The child must be at least 16 years of age. The court must determine there is a compelling reason that is documented in the case plan, why it would not be in the best interests of the ward to be returned home, placed for adoption, placed with a legal guardian or placed with a fit and willing relative. ORS 419B.476 (5)(g). The permanency judgment form guides you through steps to rule out return to parent, adoption, guardianship and placement with a relative. The court must make these findings at every permanency hearing, even if the plan was APPLA at the last permanency hearing. *Dept. of Human Services v. T.H.*, 254 Or App 394 (2012). The court must ask the child about his or her desired permanency outcome prior to designating the plan APPLA. ORS 419B.476(6).

g. Change back to reunification from something else

If the plan is something other than reunification at the time of the permanency hearing, and a parent requests the plan be changed to reunification, the inquiry is whether it is possible for the child to return home within a reasonable time. A parent's sufficient progress is not part of the inquiry under ORS 419B.498 (2)(b)(A). Instead, the focus of that provision is "child-centered, and requires a determination whether it is in the child's best interests not to file a petition for termination because the child can be returned home within a reasonable time." *Dept. of Human Services v. C.L.*, 254 Or App 203 (2012) (in considering whether child can return home within a reasonable time, court could rely on facts that did not form the basis for the court's jurisdiction, derived from evidence offered for the first time at the permanency hearing, of a parent's physical abuse of child and sibling, as long as there are procedural safeguards that allow the parent a reasonable opportunity to respond to the evidence offered at the hearing.)

G. Timeline for issuing judgment

The court must issue a judgment within 20 days after the permanency hearing. ORS 419B.476 (5). Recommended best practice is to allocate sufficient judicial resources and time to allow the judge or court staff to fill out the judgment at the time of the hearing.

7. Motion to dismiss

A. Motions generally.

Unless raised orally in court, a motion must be in writing, stating with particularity the factual and legal grounds for the motion and setting forth the relief or order sought. ORS 419B.860. The juvenile code governs procedure in juvenile cases, and the Oregon Rules of Civil Procedure do not apply. ORS 419B.800 (1). The court may regulate pleading, practice and procedure in any manner not inconsistent with ORS 419B.800 to 419B.929. ORS 419B.800 (3).

B. Burden of proof.

DHS has the burden to prove, by a preponderance of the evidence that the factual bases for jurisdiction persist to a degree that they pose a current threat of serious loss or injury that is reasonably likely to be realized. *Dept. of Human Services v. A.R.S.*, 258 Or App 624 (2013) (ARS III). A retrial of the original allegations is not required. The evidence is limited to whether the conditions that were originally found to endanger a child persist. *Id* at 636.

C. Evidence.

The relaxed evidentiary standard in ORS 419B.325(2) allowing testimony, reports or other material relating to the ward's mental, physical and social history and prognosis to be received without regard to competency or relevancy does not apply to this portion of the proceeding. *Dept. of Human Services v. J.B.V.*, 262 Or App 745 (2014).

8. Model forms

JCIP maintains two permanency judgments – one for involuntary cases, and a second for voluntary placements under ORS 418.312. The forms can be accessed on the JCIP Dependency Model Court Forms web page.