

Shelter Hearing

ORS 419B.185

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1. Timing

A shelter hearing is required within 24 hours (excluding holidays and weekends) of placement of the child in substitute care. ORS 419B.183

2. Purpose

The primary purpose of a shelter hearing is to determine whether a child who is (or who may be) taken into protective custody and is alleged to be within the juvenile court’s dependency jurisdiction can be maintained safely in the home, pending adjudication of the petition. There are also legal findings that must be made to ensure that DHS has considered placement with relatives and caregivers, that DHS has made reasonable and/or active efforts to prevent removal, and that out of home placement is in the child’s best interests. These last two findings are necessary to enable DHS to claim federal Title IVE fund reimbursement for the foster care episode.

3. Preliminary Matters

A. Identify parents (or guardians) and provide required notices.

DHS is required to make diligent efforts to identify and notify the child’s parent, guardian or other person responsible for the child of the hearing. ORS 419B.160(3) At the first appearance by the parents or guardian, *the court is required to verbally inform and provide written notice to the parent regarding their obligations and rights under ORS 419B.117.* A JCIP Model Form – [JF11 Notice to Parents](#) – is available for court use. Review the petition with the parents and make sure they understand what the hearing is about.

I. Putative fathers.

A putative father who has not established paternity is not entitled to notice unless he has demonstrated a “direct and significant” commitment to the child by assuming, or attempting to assume, responsibilities normally associated with parenthood. ORS 419B.875(1)(a)(C). Putative fathers who meet the statutory criteria are treated as a parent until the court confirms paternity or finds that he is not the legal or biological father. ORS 419B.875(3). Failure to identify and work

with fathers limits the possible resources available to protect a child and can delay permanency if the child is unable to return home.

II. If no father is identified.

Inquire with DHS as to efforts to locate the father:

- Has DHS asked mother and her relatives about the identity and location of the father?
- Has DHS asked mother about the location of father's relatives?
- Has DHS asked the child or child's siblings about contact with the father or father's relatives?
- Has DHS used available technology, such as the child support locator or family finding to locate father or his relatives?

B. Appoint counsel.

The current practice in Oregon is to appoint counsel for each parent or guardian and the child or children, provided they are financially eligible. ORS 419B.205 (counsel shall be appointed for parent when due process requires); ORS 419B.195 (counsel shall be appointed for child when requested by the child, parent or guardian).

C. Determine if there are other custody cases involving the child.

If there is a custody, parenting time, visitation, restraining order, filiation, or certain Family Abuse Prevention Act actions involving the child, all actions must be consolidated. ORS 419B.806(2). The cases shall be heard together in juvenile court. ORS 419B.806(4). The court shall hear the juvenile matters first unless the court finds it is in the best interest of the child to proceed otherwise. ORS 419B.806(4).

D. Determine if grandparents and/or foster care providers are present.

Grandparents and foster parents have the right to be notified of the proceeding and the right to be heard. ORS 419B.875(6) & (7). DHS also is required to make diligent efforts to identify and obtain contact information for grandparents.

4. Evidence

A. Application of rules of evidence.

Although the rules of evidence apply generally to juvenile dependency proceedings, most of those rules don't apply to the shelter hearing. *See* ORS 419B.185(1)(g). The rules that do apply to the shelter hearing include relevance and privilege.

B. DHS report.

DHS is required to provide the court a written report outlining efforts to prevent removal, efforts to place the child with relatives and other persons the child has a caregiver relationship with, and documentation why protective custody is in the child's best interests. ORS 419B.185(2)(a)-(c).

C. Presentation from parent(s) and child.

The court must provide the child and parent(s) the opportunity to present evidence that the child can be returned home without further danger of suffering physical injury or emotional harm, endangering or harming others, or not remaining within the reach of the court process prior to adjudication.

5. Standard of Proof.

The standard of proof is a preponderance of the evidence. In ICWA cases, the standard is clear and convincing. 25 U.S.C. §1912(e).

6. Legal issues and written findings.

A. Venue.

Venue is appropriate in the county of wardship or where the child resides. ORS 419B.118(1). The action may also be brought in the county where the behavior took place or where the child is present when the proceeding begins. ORS 419B.118(2) & (3)

B. Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

Dependency jurisdiction is subject to the UCCJEA which governs whether an Oregon court has jurisdiction to make a child custody determination. ORS 419B.803(2). Information about where the child has lived for the past five years, participation and knowledge of other proceedings involving the child, and other parties who may have legal rights to the child must be provided in the initial pleading. ORS 419B.809(8); 109.767(1). If the information is not provided, the court may stay the proceeding until it is. ORS 109.767(2).

In most cases, “home state” jurisdiction will apply because the child has lived in the state for at least six consecutive months prior to the filing, or since birth, if the child is less than six months old. Temporary absences of the parent or child are counted as part of the six months. ORS 109.741(1)(a); 109.704(7). If the court lacks home state jurisdiction, there are other bases for the court to assert jurisdiction provided in ORS 109.741(1)(b) through (d). The court may also take temporary emergency jurisdiction if the child is present in Oregon and has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse. ORS 109.751

C. Indian Child Welfare Act (ICWA).

The court is required to inquire whether a child is an “Indian child” under ICWA at each hearing. ORS 419B.878; 25 C.F.R. §23.107. If the court knows or has reason to know that an Indian child is involved, the court must treat the case as an ICWA case until it determines that it is not an ICWA case. Please refer to the ICWA section of the bench book for a comprehensive overview of its requirements. DHS is required to collect information about each parent’s ancestry to determine if the child may be eligible for tribal membership and subject to ICWA. This information should be provided to the court at the shelter hearing.

I. Indian child defined.

An Indian child is defined as an unmarried person less than 18 years of age who is a member of an Indian tribe, or eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. ORS 419A.004 (16); 25 U.S.C. §1903(4).

II. Foster care placement.

If the court determines ICWA applies, the court may not order a foster care placement unless the standard for emergency placement is met, *or* the ICWA protections are followed.

a. Emergency placement.

The court may order an out of home placement if it finds it is necessary to prevent imminent physical damage or harm to the child. 25 U.S.C. §1922. The placement may not exceed 30 days absent additional findings. 25 C.F.R. §23.113.

b. If emergency not present.

If the court does not find a basis for an emergency placement, before ordering an out of home placement, the court must find: (1) DHS has provided notice of the proceeding to the parent or Indian custodian and the tribe at least 10 days prior to the shelter hearing, and (2) continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The latter finding must be supported by clear and convincing evidence, including the testimony of an expert. 25 U.S.C. §1912; ORS 419B.340(7). Please refer to the ICWA section of the bench book for a complete listing of ICWA requirements.

D. Refugee children.

Special rules apply to “refugee children” as defined in ORS 418.295. The court may not remove a refugee child absent clear and convincing evidence that preventative services have failed and that return home will likely result in psychological or physical damage. ORS 418.933. DHS and the juvenile court shall consider the child’s culture and tradition when making a placement decision. *See* ORS 418.937 for placement preferences.

E. Temporary legal custody and out of home placement.

The court must consider whether the child can be maintained safely at home pending adjudication of the petition. ORS 419B.185(1). Even if conditions were unsafe at the time of removal, if they are remedied by the time of the hearing, or a plan has been put in place to keep the child safe at home, the court may order an in-home placement. The court may grant DHS temporary legal custody under ORS 419B.809(5) even if the order provides for an in-home placement (this also provides DHS with party status under ORS 419B.875(1)(a)(G)).

F. Reasonable/Active efforts.

The court must make written findings as to whether DHS has made reasonable or active efforts to prevent or eliminate the need for removal of the child from the home and to make it possible for the child to safely return home. If no services were provided, but the court finds that reasonable services would not have eliminated the need for protective custody, the court shall consider DHS to have made reasonable or active efforts. ORS 419B.185(1)(a).

G. Best interests.

The court is required to make a finding in every order of removal that describes why it is in the child's best interests to be removed from the home or continued in care. ORS 419B.185(1)(d). Failure to make this finding in the first order of removal will prevent DHS from claiming federal reimbursement under Title IVE of the Social Security Act for the child's foster care episode.

H. Diligent efforts to place with a relative or caregiver and siblings.

If the court orders an out of home placement, the court must make findings concerning whether "diligent efforts" have been made to identify and placement the child with a relative or someone who has a caregiver relationship (defined in ORS 419B.116) with the child *and with other siblings who are in substitute care*. ORS 419B.192(1)-(2).

Key inquiries:

- Has the caseworker requested relative information from both parents and followed up to determine if the relatives are placement resources?
- Has DHS used available technology to search for relatives?
- Has anyone asked the child about placement preferences?
- What has DHS done to keep siblings in care together?

Practice tip: Ask the parents whether they have provided all relative and caregiver names to DHS.

I. When placement with sibling or relative not in child's best interest.

The court may find placement with a sibling is not in the child's best interest. ORS 419B.192(2). Similarly, the court may find that placement with a specified relative is not in the child's best interest under ORS 419B.192(4) and may direct placement in accordance with ORS 419B.349. The court may not, however, direct DHS to place the child with a specific person. ORS 419B.349(1)

I. Visitation (Parenting Time).

Inquire as to scheduled visitation. Removal from the home can be especially traumatic for the child. Having a visit or even a telephone conversation with a parent soon after the removal can help alleviate some of the stress associated with the removal. DHS policy requires caseworkers to arrange for a first visits within one week of the child's entry into care, or document why the visit didn't occur. The caseworker is also required to develop a temporary visitation plan when the child first enters substitute care or at the time of the shelter hearing. OAR 413-070-0860. DHS should address any barriers to visitation, such as lack of transportation.

I. Visitation orders.

The court has authority to make orders regarding visits with parents and siblings. ORS 419B.337(3). DHS is responsible for implementing a visitation plan consistent with the court's order. At the hearing, ask whether the caseworker has arranged for a first visit between the parent(s) and child. A space is available on the model Shelter Order to order a first visit if the court deems it appropriate.

- Visitation should be frequent enough to maintain the parent child bond. Research has shown that increasing contact between parent and child increases the chances of reunification and decreases the length of the child’s stay in substitute care.
- *Young children* need frequent contact with a primary caregiver to maintain familiarity, attachment and promote healthy brain development. This may mean several visits per week or, for infants and toddlers, daily visits if possible.
- For *older children*, consideration should be given to their school schedule and after school activities. In addition to regular visits, contact through Skype and telephone can help keep parent and child connected.

Additional resources:

DHS Policy: [OAR 413-0070-0800](#) Visits and Other Types of Child and Family Contact
 ABA Practice and Policy Brief: [Visitation with Infants and Toddlers in Foster Care: What Judges and Attorneys Need to Know.](#)

J. Restraining Orders.

Consider using a juvenile restraining order as an alternative to removal of the child from the home. When a petition alleges the child has been physically or sexually abused, the court may enter an order restraining the alleged perpetrator of the abuse from having contact with the child and requiring the alleged perpetrator move from the household where the child lives. ORS 419B.845(1)(a). The court must find there is probable cause to believe the abuse occurred, the person to be restrained committed the abuse and the order is in the best interests of the child. A JCIP Model Form – [JF7 Juvenile Restraining Order](#) – is available for court use on the JCIP Model Forms Webpage.

I. Other children in the home.

When the court finds that an order controlling contact between the alleged abuser and other children in the household would aid in protecting the victim, an appropriate order may be entered. ORS 419B.845(1)(b).

K. Orders regarding school placement

Oregon law requires DHS to maintain the child (age 4 to 21) in his or her “school of origin”. ORS 339.133 The child’s school of origin is the school the child attended before he or she was placed in foster care. The law requires that free transportation be provided to the child from his or her new foster home to the school of origin. The juvenile court may make a determination it’s not in the child’s best interest to continue attending the school of origin. ORS 339.133(4) If this occurs, the child is to be immediately enrolled in a new school, which becomes the child’s new school of origin. ORS 339.133(4)(a)

7. Setting Next Court Review Dates

A. Second shelter hearing.

Continue or extend the shelter hearing if issues can not be resolved for lack of information, if parties have not been notified, or if you order an emergency placement under ICWA.

B. Status conference.

The court may schedule a time for parents to admit or deny allegations within 30 days after the petition is filed. ORS 419B.869. Note that any allegations that are not admitted or denied are considered denied. ORS 419B.869(1). Parties must also provide discovery within 30 days. ORS 419B.305(2); 419B.881(2)(a)(A).

C. Jurisdictional hearing.

The hearing must be held no later than 60 days after the petition was filed. ORS 419B.305(1). The court may set out the hearing beyond the 60 days for good cause (written order with factual findings required), although this is not recommended. ORS 419B.305(3). The court can not order the parents into services until jurisdiction has been established, although parents may voluntarily participate. If a continuance is granted, the court must give the case the highest priority on the docket after the continuance has expired. ORS 419B.305(4).