

A PRACTICAL GUIDE TO JUVENILE COURT DEPENDENCY HEARINGS

Hon. Paula Brownhill, Clatsop County Circuit Court
Hon. Dan Murphy, Senior Judge

The JCIP Basic Toolkit

- JCIP Model Court Forms
- JCIP Hearing by Hearing Benchcard
- JCIP Hearing by Hearing E Modules
- JCIP Juvenile Dependency Benchbook
- JCIP Model Court Components: Permanency Outcomes



Dependency Jurisdiction

The juvenile court is a court of record and exercises jurisdiction as a court of general and equitable jurisdiction and not as a court of limited or inferior jurisdiction. **ORS 419B.090**

The juvenile court has exclusive original jurisdiction in any case involving a child whose behavior, condition, and/or circumstances are described in ORS 419B.100(1).

UMPIRE OR INQUIRING MAGISTRATE?

A child found to be within the court's jurisdiction is a "ward" of the court.

UMPIRE OR INQUIRING MAGISTRATE?

A juvenile court judge is responsible for:

- (1) ensuring that the case proceeds in compliance with statutory timelines;
- (2) continually assessing the adequacy of the case plan;
- (3) making the findings required by statute for each hearing; and
- (4) ensuring that the court's judgments are legally sufficient.

UMPIRE OR INQUIRING MAGISTRATE?



In the discharge of these responsibilities, a juvenile court judge is not entitled to rely on the diligence of counsel, the CASA or DHS.

The Judge's Role is Different

- The judge's role is unique.
- The judge leads from the bench – and off the bench.
- The judge ensures that the case moves along without delay.

The Judge's Role is Different

- The judge encourages parents while also holding them accountable.
- The judge talks directly to parents and children with respect and civility.
- The judge holds DHS to the standards set out in law, OARs, and DHS policies.
- The judge holds lawyers to the Oregon State Bar standards.

Indian Child Welfare Act

A child who is a member of an Indian tribe, or is eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe, is an “*Indian child*.” 25 USC § 1903(4)

When an “*Indian child*” is the subject of a dependency petition, special jurisdictional and other requirements apply, pursuant to the Indian Child Welfare Act (ICWA). 25 USC § 1901 *et seq*

Indian Child Welfare Act

□ US Code

<http://uscode.house.gov/view.xhtml?path=/prelim@title25/chapter21&edition=prelim>

□ Federal Regulations

<https://www.ecfr.gov/cgi-bin/text-idx?SID=f9d5403791ac0704a524cabb1c4934d7&mc=true&node=sp25.1.23.i&rgn=div6>

□ NCJFCJ ICWA Benchbook

<https://www.ncjfcj.org/ICWABenchbook>

Dependency Hearings

Shelter – can the child be safe in the home pending adjudication?

Jurisdiction – is the child within the court's jurisdiction?

Disposition – what assistance do the parent(s) and child require?

Review – how are the child and the parent(s) progressing, should the case plan be modified, and should wardship continue? Reasonable/Active Efforts.

Permanency – when and where will the child be in a safe, permanent home, is DHS in compliance with the plan? Reasonable/Active Efforts.

Termination-of-Parental-Rights – are the statutory grounds for termination satisfied, and is termination of parental rights in the child's best interest?

Findings in Orders & Judgments

THE COURT'S ORDERS & JUDGMENTS IN ALL DEPENDENCY PROCEEDINGS MUST BE BASED ON THE EVIDENTIARY RECORD

Evidence and any other information relied on by the court in these proceedings is not part of the record and cannot be a basis for the court's findings, UNLESS it is presented in sworn testimony, admitted as an exhibit, the parties stipulate to it, or the court takes judicial notice of it. *See State ex rel Juv. Dept. v. Lewis*, 193 Or App 264, 89 P3d 1219 (2004). *See also State ex rel Juv. Dept. v. K. L.*, 223 Or App 35, 38 n2, 194 P3d 845 (2008).

Oregon Evidence Code

ADMISSIBLE EVIDENCE AND THE RECORD

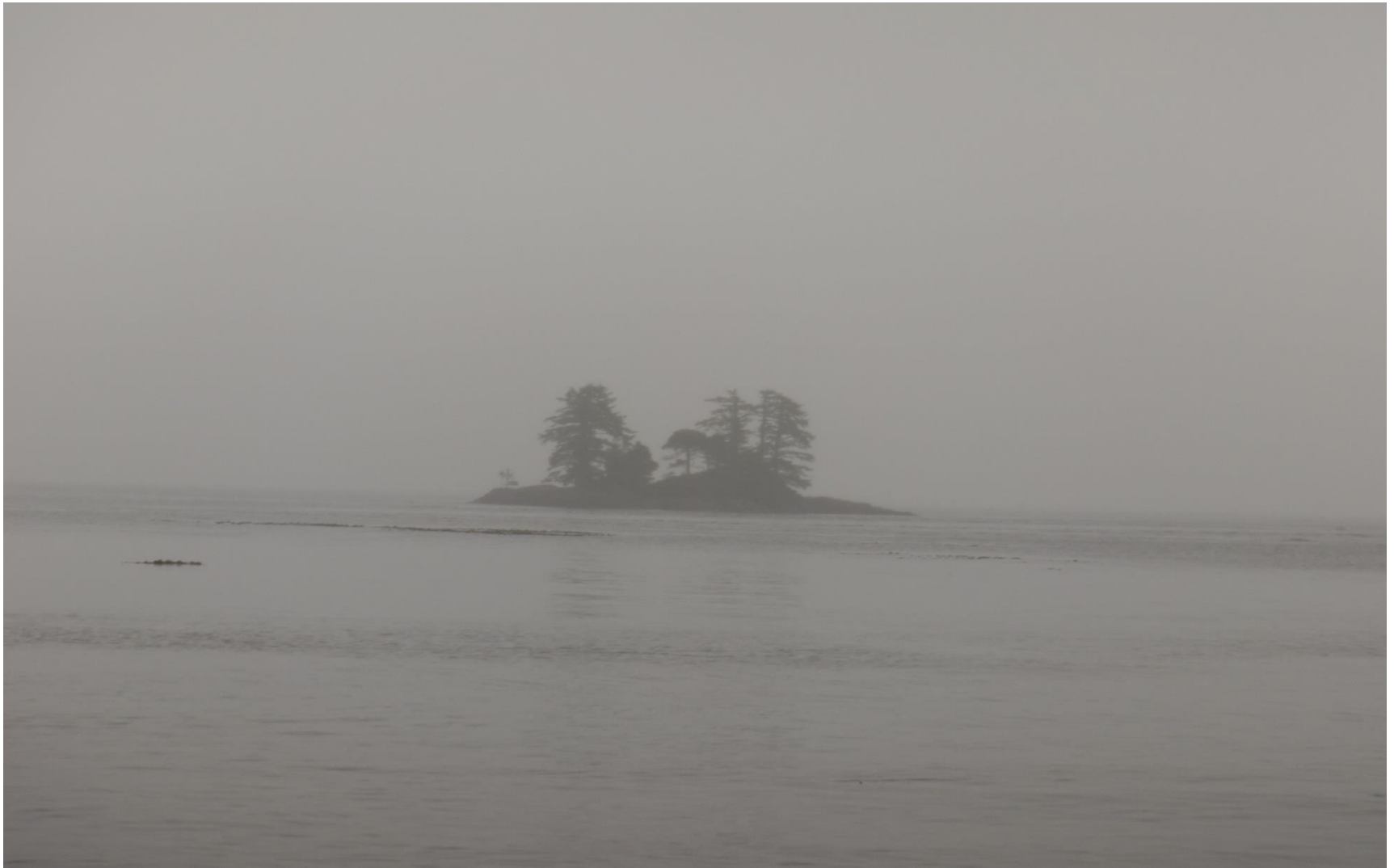
The provisions of the Oregon Evidence Code apply, except that in **SHELTER, REVIEW and PERMANENCY hearings**: testimony, reports or other material relating to the ward's mental, physical and social history and prognosis may be received by the court without regard to their competency or relevancy under the rules of evidence. **ORS 419B.325(2)**.

All evidence/information considered by the court must be made part of the evidentiary record, or it cannot be a basis for the court's dispositional findings and orders.

A PRACTICAL GUIDE TO JUVENILE COURT DEPENDENCY HEARINGS

THE HEARINGS

Shelter Hearing: **JF2** and **JF2i**



Shelter Hearing Statutes

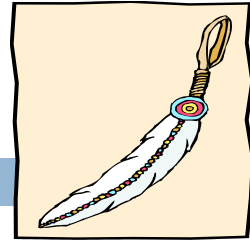
- ORS 419B.183 Need for shelter hearing
- ORS 419B.185 Outline of shelter hearing
- ORS 419B.100 Basis for subject matter jurisdiction over the child (“SMJ”)
- ORS 109.767(2) SMJ is subject to UCCJEA

Shelter: ICWA Findings and Order

- ❑ Must find that ICWA does not apply, or
- ❑ No reason to believe ICWA applies.
- ❑ When in doubt, make ICWA findings and use JF 2-1



Shelter Hearing ICWA: Out of Home



ICWA Case: Clear and convincing evidence, including **qualified expert witness testimony**, has established that continued custody of the child by the parent(s) or Indian custodian(s) is likely to result in **serious emotional or physical damage/injury** to the child. Additional findings: _____.

25 USC §1912(e); ORS 419B.340(7).

Shelter Hearing: Mandatory Consolidation with Family Law Cases

- Juvenile Court hears all actions. Actions are not merged in procedure or substance. Parties to one case are not parties to another. 419B.806 (4) & (5)
- The judge determines, in the best interest of the child, which case should proceed, with statutory presumption in favor of the juvenile case. 419B.806(4)

Shelter Hearing: Appoint Counsel

Parent(s) and child must have an opportunity to present evidence to the court 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.

ORS 419B.185(1)

Shelter Hearing: 4 Key Questions

- 1. Can the child go home today?**
- 2. Is the proposed placement in child's best interest, and the least disruptive and most family like setting?**
- 3. Has DHS made efforts to prevent or eliminate the need for removal?**
- 4. What is the visitation plan and why?**

Educational Stability

- DHS is required to maintain the child in the same school (“school of origin”) and provide transportation to allow the child to stay in the same school. **ORS 339.133**
- If the court finds it’s not in the child’s best interest to stay in the same school, the child shall immediately be enrolled in a new school, even if the child is unable to produce records normally required for enrollment.
- The new (enrolling) school will immediately contact the school of origin to obtain academic and other records.

Shelter Hearing Findings

- Reasonable efforts / Active efforts in ICWA cases
- Best interests for out of home placement
- Diligent Efforts:
 - ▣ Identify relative placements; place with relative
 - ▣ Place with siblings
 - ▣ Identify, locate, notice to grandparents

Shelter Hearing

IF DHS HAS NOT
MADE THE REQUIRED
EFFORTS, WHAT DO
YOU DO?

Jurisdictional Hearing: JF3 and JF4B



Jurisdictional Hearing

PURPOSE

To adjudicate, or otherwise resolve, the petition alleging that the child is within the jurisdiction of the juvenile court under ORS 419B.100.

In other words: (a) to determine the “legal sufficiency” of the allegations; and (b) to determine whether the allegations have been proven.

Jurisdictional Hearing

In a non-ICWA case, unless admitted, the facts alleging jurisdiction must be established by a **preponderance** of competent evidence. **ORS 419B.310(3)**

In an ICWA case, the facts alleging jurisdiction must be established by **clear and convincing** evidence, which includes qualified expert testimony, and must show that *the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.*

25 USC § 1912(e)

Jurisdictional Hearing

THE JUDGMENT – Findings and Orders

- (1) Is the child within the juvenile court's jurisdiction?
- (2) Which allegations in the petition have been proven/admitted, and which allegations are dismissed?
- (3) If the child is found to be within the court's jurisdiction, the court must make the child a "ward" of the court and enter an appropriate order directing the disposition to be made in the case. **ORS 419B.328 and 419B.325(1)**

Jurisdictional Hearing

CURRENT RISK OF HARM

The state must show:

- ❖ *A current threat of serious loss or injury to the child*
- ❖ *A nexus between the risk-causing conduct and the harm to the child, and*
- ❖ *The risk is present at the time of the hearing.*

Jurisdictional Hearing:

CURRENT RISK OF HARM

Dept. of Human Services v. C.J.T., 258 Or App 57 (2013)

Juvenile court jurisdiction is appropriate under ORS 419B.100(1)(c) when a child's condition or circumstances endanger the welfare of the child. To "endanger" the welfare of a child means to expose the child to conditions or circumstances that present a current threat of serious loss or injury. In this case, the record lacked legally sufficient evidence to establish a nexus between mother's marijuana use and a current threat of harm, when there was no evidence presented that mother used marijuana for the three months prior to the date of jurisdiction.

Jurisdictional Hearing

TIMELY RESOLUTION OF THE PETITION

ORS 419B.305(1) requires that, absent a finding of good cause, the court must hold a hearing on the petition and enter a dispositional order no later than 60 days after the filing of the petition.

ORS 419B.305(2) requires that all parties comply with the discovery provisions of ORS 419B.881 within 30 days of the filing of the petition.

Dispositional Hearing: **JF4** and **JF4B**



Dispositional Hearing

PURPOSE

In the jurisdictional hearing, the court's task is to decide whether the legal standard has been met to allow for the court's *parens patriae* protection. At disposition, the court is to determine the nature and extent of that protection.

Dispositional Hearing

MATTERS TO BE ADDRESSED

- (1) The child's needs, placement and legal custody
- (2) What DHS will be required to do
- (3) What the parent(s)/guardian(s) will be required to do
- (4) What the concurrent plan will be
- (5) Visitation with parents, siblings, and others

Dispositional Hearing

The DHS case plan must be rationally related to the bases for jurisdiction and include:

(1) a reunification plan with appropriate services to allow the parent the opportunity to adjust the parent's circumstances, or conditions to make it possible for the ward to safely return home **within a reasonable time**; AND

(2) a concurrent permanent plan to be implemented if the parent is unable or unwilling to adjust the parent's circumstances, conduct or conditions in such a way as to make it possible for the ward to safely return home **within a reasonable time**.

ORS 419B.343

Dispositional Hearing

Reasonable time means 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(20)

The **reasonable-time** inquiry is child-specific. It calls for testimony in psychological and developmental terms regarding the particular child's requirements. *State ex rel SOSCF v. Stillman*, 333 Or 135, 146, 35 P3d 490 (2001).

Dispositional Hearing

DHS also must:

Identify in writing and communicate to the parent the ***conditions for return***, which means the ***specific behaviors, conditions, or circumstances*** that must exist within a child's home before a child can be safely returned and remain in the home with an in-home safety plan.

Child Well Being: More Than Just Placement and Safety

Has DHS prepared a *written case plan* that complies with the requirements of ORS 419B.343?

- ▣ Health records/medical problems/medications
- ▣ Transition to independent living for >14 years old
- ▣ Education records
 - Same school/After school activities
 - Educational surrogate

Child Well Being: More Than Just Placement and Safety

Zero to Three

- Attachment and bonding: “goodness of fit” with caregiver.
- Appropriate child care

Abernethy, P. & Hall, M.A. (2009). Improving Outcomes for Infants and Toddlers in the Child Welfare System. *Zero to Three*, 29 (6), 28-33.

Dispositional Hearing

VISITATION

Dispositional Hearing

VISITATION

The court may make an order regarding visitation by the ward's parents or siblings. DHS is responsible for developing and implementing a visitation plan consistent with the court's order. **ORS 419B.337(3)**

The DHS visitation plan is subject to “reasonable efforts” review by the court.

Dispositional Hearing

The child, a parent or legal guardian, and each sibling have the right to visit each other while the child is in substitute care and a right to visit as often as reasonably necessary to develop and enhance their attachment to each other.

OAR 413-070-0830(1)

When DHS resources alone cannot meet the family contact and visitation needs of the child, the caseworker must solicit help from family and community resources.

OAR 413-070-0830(3)

Dispositional Hearing

VISITATION PLAN: DHS says once a week, supervised at the DHS office.

COURT INQUIRIES:

- (1) Why once a week?**
- (2) Why supervised?**
- (3) Why at the DHS office?**

Dispositional Hearing

If the court commits the child to DHS for placement in substitute care, the court must:

(1) Determine whether the agency has made **diligent efforts** to place child with a relative/persons with a caregiver relationship and to place siblings in substitute care together. **ORS 419B.192**

(2) Determine whether DHS has made **reasonable efforts**, or, if ICWA applies, **active efforts** to prevent/eliminate the need for the child's removal from home and make it possible for the child to safely return home with a brief description of the agency's preventive and reunification efforts. If ICWA applies, determine whether the placement complies with ICWA preferences.

ORS 419B.340 and 25 USC § 1915

Dispositional Hearing: Other Options

- The Court further finds that it is in the child's best interest and for the child's welfare to be placed:
 - ▣ in the legal custody of DHS for placement in substitute care, and, **THEREFORE, the Court commits the child to the legal custody of DHS for care, placement and supervision.**
 - ▣ in substitute care/out-of-home care, pursuant to ORS 419B.331 or ORS 419B.334.

and **THEREFORE, the Court orders that**

_____. **JF 4B**

Dispositional Hearing

THE JUDGMENT – Future Dates

At the conclusion of the dispositional hearing, the court must enter a judgment that includes all of the required findings and orders.

The judgment also should set future court dates.

- CRB Review – CRB required to review 6 months from out-of-home placement. CRB will set date for that review.
- Review Hearing
- Permanency Hearing

Review Hearing



Review Hearing

PURPOSE

- To determine whether the court should continue jurisdiction and wardship or order modifications in the care, placement and supervision of the child
- To assess the parents' progress and that of DHS in implementing the case plan and determine whether additional efforts or services are required
- To assess the child's circumstances and well-being, including the need, if any, for continued substitute care
- To review efforts to develop the concurrent plan

Review Hearing

REQUIRED FINDINGS – PARENT PROGRESS

When the case plan is reunification, the court must determine:

(1) Whether the parent has made sufficient progress toward meeting the expectations of the case plan and is in compliance with the case plan and whether the child can be safely returned home.

(2) What are the specific services in which the parent is to participate during the next period of review and what progress must the parent make?

Review Hearing

REQUIRED FINDINGS – CHILD IN SUBSTITUTE CARE

(1) Has DHS made **diligent efforts** to place the child with a “relative”? Identify, locate, qualify for placement

(2) Has DHS made **reasonable efforts**, or, if ICWA applies, **active efforts** to prevent/eliminate the need for the child’s removal from home and to make it possible for the child to safely return home? The findings must include a brief description of the agency’s preventive and reunification efforts, and, if ICWA applies, a determination whether the placement complies with ICWA preferences.

ORS 419B.449, 419B.340 and 25 USC § 1915

Review Hearing

REQUIRED FINDINGS – CHILD TO REMAIN IN SUBSTITUTE CARE

- ❖ Why is continued care necessary and what is the timetable for the child's return home or other permanent placement?
- ❖ Has DHS made diligent efforts required by ORS 419B.192?
- ❖ The number of schools, placements, visits, and caseworker contacts the child has had and whether the frequency of each of these is in the best interests of the child, and, if the child is 14 or older, whether the child is progressing adequately toward high school graduation.
- ❖ APPLA cases: “Reasonable and prudent parent” standard

Review Hearing

DHS REPORTS TO THE COURT

ORS 419B.443 Time and content of reports. (1) An agency described in ORS 419B.440 shall file the reports required by ORS 419B.440 (2) at the end of the initial six-month period and no less frequently than each six months thereafter. The agency shall file reports more frequently if the court so orders.

Review Hearing

THE JUDGMENT – Findings and Orders

At the conclusion of the review hearing, the court must enter a judgment that includes all of the required findings and orders.

Review Hearing



Model Judgment Form JF6

Permanency Hearing



Permanency Hearing

PURPOSE

- To reach a decision concerning a permanent plan for a child and to approve a permanent plan, which may be reunification, adoption, guardianship, placement with a fit and willing relative, or another planned permanent living arrangement (“APPLA”).
- To review the progress of the family and DHS and review the case plan for necessary modifications.
- To ensure compliance with deadlines within which final permanency decisions should be made.

Motion to Dismiss

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).

Permanency Hearing

THE INITIAL PERMANENCY HEARING

When a child or ward is in substitute care, the court shall conduct a permanency hearing no later than 12 months after the ward was found within the jurisdiction of the court under ORS 419B.100 or 14 months after the child or ward was placed in substitute care, whichever is the earlier. **ORS 419B.470(2)**

NOTE: Reasonable-time considerations may require a permanency hearing sooner than the 12-month, or 14-month, mark in a particular case.

Permanency Hearing

THE CURRENT CASE PLAN IS REUNIFICATION

- Reasonable/Active Efforts Determination
 - Continue current plan or change the plan?
 - Implement concurrent plan?
- *Note difference between “change plan” and “implement plan”

Permanency Hearing

CURRENT CASE PLAN IS NOT REUNIFICATION

Determine whether DHS has made **reasonable efforts** to place the child in a timely manner in accordance with the plan, and whether DHS has considered permanent placement options for the child.

Determine whether the current case plan is in the child's best interests and should continue, or should be changed to another permanent plan, including reunification with a parent.

ORS 419B.476(2)(a), (4)(c) and (5)

Permanency Hearing

THE JUDGMENT – Findings and Orders

At the conclusion of the permanency hearing, the court must enter a judgment that includes all of the findings and determinations required by ORS 419B.476(2) and (5), which includes findings in ORS 419B.449(3).

Permanency Hearing



In the last decade, the Court of Appeals has reversed over 20 permanency judgments because they did not include the findings and determinations required by ORS 419B.476(5).

Permanency Hearing

Model Judgment Form JF5

&

The Permanency Hearing “Roadmap”

Termination of Parental Rights (TPR)



Termination of Parental Rights (TPR)

REQUIREMENTS FOR FILING A TPR PETITION

- ❖ The court must hold a permanency hearing and enter a permanency judgment changing the case plan to adoption.
- ❖ Only the state or the child may file a TPR petition.
- ❖ A TPR petition may be filed only for the purpose of freeing the child for adoption.

ORS 419B.498(3) and 419B.500

Termination of Parental Rights (TPR)

INDEPENDENT STATUTORY GROUNDS FOR TERMINATION

ORS 419B.502 (extreme conduct)

ORS 419B.504 (unfitness)

ORS 419B.506 (neglect)

ORS 419B.508 (abandonment)

TPR petitions are most often based on ORS 419B.504 -- *i.e.*, allegations that a parent is ***unfit by reason of conduct or condition seriously detrimental to the child and integration of the child into the home of the parent is improbable within a reasonable time due to conduct or conditions not likely to change.***

Termination of Parental Rights (TPR)

Dept. of Human Services v. T.C.A. , 240 Or App 769 (2011) reversed judgment terminating mother's parental rights

“Under [ORS 419B.504], we must determine not only whether the parent is unfit, but also whether integration of the child into the parent's home is improbable within a reasonable time due to conduct or conditions not likely to change. * * * A reasonable time is ‘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(20). The inquiry into a reasonable time ‘is child-specific. It calls for testimony in psychological and developmental terms regarding the particular child's requirements.’ * * *”

Termination of Parental Rights (TPR)

TERMINATION MUST BE IN THE CHILD'S BEST INTEREST

The court may order termination of a parent's rights to a child only if petitioner proves:

(1) one, or more, of the independent statutory grounds for termination, and

(2) that termination of the parent's rights and the parent-child relationship is in the child's best interests.

ORS 419B.500

Termination of Parental Rights (TPR)

TIMELY RESOLUTION OF THE PETITION

The hearing to adjudicate a TPR petition may not be held any earlier than 10 days after service or final publication of the summons, and, except for good cause shown, must be held not later than six months from the date on which summons for the petition is served. **ORS 419B.521(1) and (2)**

Termination of Parental Rights (TPR)

ADJUDICATION – The Merits

In a non-ICWA case, the facts on the basis of which the rights of the parents are to be terminated, unless admitted, must be established by clear and convincing evidence. **ORS 419B.521(1)**

Termination of Parental Rights (TPR)

ADJUDICATION – The Merits

If an Indian child is involved, termination of parental rights must be supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that continued custody of the child is likely to result in serious emotional or physical harm to the child. **ORS 419B.521(4)**

The beyond-a-reasonable-doubt standard applies to *all the facts that form the basis for termination of parental rights*. ***State ex rel Dept. of Human Services v. K.C.J., 228 Or App 70 (2009)***

FINAL THOUGHTS

