

**JURISDICTIONAL ANALYSIS UNDER THE
UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT**

Initial Order:	Controlling Concept: Home State Priority
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1. Does Oregon <i>have</i> jurisdiction? (109.741)	A, B, C, or D must be true
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A. Is Oregon the **Home State**?

- State in which child lives and has lived for at least six consecutive months immediately before the filing (not hearing). (*Temporary absence does not toll time; for child less than 6 months old, "home state" is state in which child has lived since birth*). or
- State in which child has lived for at least six consecutive months, a part of which occurred within the last six months, and though child is absent from Oregon at time of filing, a parent or PERSON ACTING AS A PARENT continues to live in Oregon.

If Oregon is not the Home State and a Home State which has not declined jurisdiction exists, Oregon does not have jurisdiction unless it is temporary emergency jurisdiction.

B. Does Oregon have **Significant Connections** to the child and at least one parent or PERSON ACTING AS A PARENT, **with substantial evidence** here regarding the child's care, protection, training, and personal relationships located here

AND:

- **No Home State exists; or**
- **The Home State has declined to assert jurisdiction in favor of Oregon?** (*see "Inconvenient Forum" factors in ORS 109.761 and "Unjustifiable Conduct" factors in ORS 109.764*).

C. Has the Home State and all Significant Connections States **declined jurisdiction in favor of Oregon**, based on inconvenient forum grounds (ORS 109.761) or unjustifiable conduct grounds (ORS 109.764)?

D. Is there **NO other state** with Home State or Significant Connections" jurisdiction or who had that status and declined in favor of Oregon?

☆ **BUT CONSIDER: Does Oregon have basis for Temporary Emergency Jurisdiction (see page 3)?**

? Is ICWA applicable? If so, UCCJEA is not applicable where inconsistent with ICWA

2. If Oregon has jurisdiction, should Oregon exercise jurisdiction?
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(See "Inconvenient Forum" factors in ORS 109.761 – discretionary declination)
(See "Unjustifiable Conduct" factors in ORS 109.764 – could be mandatory declination)

The 2nd order is a "modification" even if the 1st order is no longer in effect

2. Does Oregon have jurisdiction to modify the order?

A. Is Oregon the Issuing State?

(1) **If yes**, then OREGON has continuing exclusive jurisdiction (CEJ) unless: (109.744)

(a) Oregon finds that (1) Oregon lacks a significant connection with the child, AND with the child and one parent, AND with the child and a PERSON ACTING AS A PARENT, or (2) substantial evidence regarding the child's care, protection, training, and personal relationships is no longer available in Oregon; or

(b) Oregon or another state determines that child, parents, and any PERSON ACTING AS A PARENT no longer reside in Oregon.

(2) **If no**, then the ISSUING STATE has continuing exclusive jurisdiction unless: (109.747)

(a) The Court of the Issuing State determines that it no longer has continuing exclusive jurisdiction because not the child, nor the child and parent, nor a PERSON ACTING AS A PARENT has a significant connection with that state or that substantial evidence regarding child's care, protection, training, and personal relationships is no longer available there; or

(b) The Court of the Issuing State determines that Oregon would be a more convenient forum. (See 109.761 for inconvenient forum factors.); **or**

(c) Oregon or the Issuing State determines that the child, the child's parents, and any PERSON ACTING AS A PARENT do not presently reside in the Issuing State.

B. **If Oregon doesn't have CEJ and the Issuing State doesn't have CEJ, can Oregon modify the order?**

➔ **Does Oregon have jurisdiction to make an *Initial* Order as the "Home State" or "Significant Connection" state (see page 1)?**

(a) If yes, can modify

(b) If no, no jurisdiction to modify *except* under temporary emergency jurisdiction (page 3)



BUT CONSIDER: Does Oregon have basis for Temporary Emergency Jurisdiction (see page 3)?

? Is ICWA applicable? If so, UCCJEA is not applicable where inconsistent with ICWA

2. If Oregon has jurisdiction to modify, should Oregon exercise that jurisdiction?

(See "Inconvenient Forum" factors in ORS 109.761 – discretionary declination)

(See "Unjustifiable Conduct" factors in ORS 109.764 – could be mandatory declination)

1. Even if Oregon does not have Jurisdiction to make an Initial order or a Modification order, can it nevertheless make a *Temporary Emergency Order* to protect the child?

- A. Is the CHILD PRESENT IN OREGON, and
 - (1) Has the child been abandoned or (2) is there an emergency requiring the protection of the child because the child, or a sibling, or a parent is subjected to or threatened with mistreatment or abuse? (*Commentary clarifies latter standard is narrower than "neglect"*)
 - 1. If no, no temporary emergency jurisdiction.
 - 2. If yes, then continue:

- B. Is there a PREVIOUS OR PENDING CHILD CUSTODY DETERMINATION FROM ANOTHER STATE?
 - (1) If not, then:
 - (a) The Temporary Emergency Order (TEJ) remains in effect until an order is obtained from a state with Home State or Significant Connections jurisdiction.

 - (b) AND if the Temporary Order provides, the Temporary Order can become a permanent order if (and the order states this prospective finality):
 - (1) Oregon becomes the child's Home State and
 - (2) No other proceeding has been filed in a state with Home State or Significant Connections jurisdiction.

 - (2) If yes, (a previous enforceable child custody determination exists or one is pending), then:
 - (a) The Temporary Emergency Order must state a specific time period within which an order may be sought from the State with continuing exclusive jurisdiction or Home State or Significant Connections jurisdiction.

 - (b) The Temporary Order from Oregon will remain in effect until that other state issues an order w/in the defined period or the order expires.

- C. Requirements for MANDATORY JUDICIAL COMMUNICATION may exist:
 - (1) If there is a previous order or pending matter in another state, and Oregon is asserting temporary emergency jurisdiction, Oregon MUST immediately communicate with the other state.

 - (2) If Oregon is exercising jurisdiction on *any* basis and learns that another state has a pending Temporary Emergency Jurisdiction order or has issued a Temporary Emergency Jurisdiction order, Oregon MUST communicate with that state to resolve the emergency, protect the parties and the child, and determine the duration of the temporary order.

? *Is ICWA applicable? If so, UCCJEA is not applicable where inconsistent with ICWA*

2. If Oregon has jurisdiction to make or modify an order because of an emergency, should Oregon exercise that jurisdiction?

(See "Inconvenient Forum" factors in ORS 109.761 – discretionary declination)

(See "Unjustifiable Conduct" factors in ORS 109.764 – discretionary declination because child is at risk)

Program Agenda Through the Eyes of a Child Monday August 12, 2019

**11:00 am
Interstate Compact on the Placement of Children (ICPC) (Anatomy)
Vera James, DHS**

**These documents
have been posted on
the JCIP website:**

- ◆ PowerPoint



**Program Agenda Through the Eyes of a Child
Monday August 12, 2019**

**1:15 pm
Hague Service Convention (Anatomy)**
Jordan Bates, Youth, Rights and Justice
Catherine Terwilliger, Department of Justice

**These documents
have been posted on
the JCIP website:**

- ◆ Hague Convention on Service Abroad
- ◆ Hague Letter
- ◆ Hague Convention on Service of Process in Juvenile Court
- ◆ Hague Service Outline

Lined area for notes or additional information.





Juvenile Court Improvement Program
Oregon Judicial Department

JCIP Model Courts

WHAT IS A JCIP MODEL COURT?

JCIP Model Courts are loosely based on the National Council of Juvenile and Family Court Judges Child Victims Act Model Courts Project begun in 1992. The goal of both projects is to improve outcomes for children and families involved in child welfare cases.

A JCIP Model Court identifies needed reforms and develops a plan for responding to child abuse and processing dependency cases. The plan requires collaboration between the court and community stakeholders and is based on a shared understanding of the mission of the Juvenile Court.

JCIP Model Courts are laboratories for discovering new ways to eliminate barriers to permanency. Some experiments will work, some won't. Strategies for court and system improvement are evaluated and revised on an ongoing basis.

WHAT IS A JCIP MODEL COURT TEAM?

A JCIP Model Court recognizes that juvenile court, child welfare and community stakeholder systems are inter-related, and that effective change will affect all systems. The judge makes a commitment to convene a JCIP Model Court Team, a multidisciplinary group of stakeholders with decision making authority, to engage in a locally directed, state supported process that strives to improve permanency outcomes for children and families involved in dependency proceedings

The group meets regularly, keeps minutes, identifies changes they can make to improve court and systemic performance and outcomes for children and families, and evaluates their progress using data. Participants enter the process knowing that changes will affect the way each agency interacts with the rest of the juvenile court community.

WHAT IS THE ADVANTAGE TO HAVING SUCH A TEAM?

A JCIP Model Court Team is a means for a court community to approach problems that exist in its practices, procedures and protocols. Legislatively mandated performance measures, new Program Improvement Plans (PIPs), new legislation from the state and federal levels, as well as problems identified locally require coordinated local action as few of these can be addressed by a single sector of the community; most of these require an inclusive and multi-disciplinary response.

Using a Local Team as the institution to collaboratively work on such situations ensures that everyone is at the table in crafting such responses. It also enables JCIP to support these efforts from the state level, with technical expertise, educational opportunities, coordination and limited funds.

WHAT HAVE JCIP MODEL COURTS ACCOMPLISHED? JCIP MODEL COURTS HAVE:

- Developed definitions and protocols regarding discovery,
- Developed processes to ensure attorneys are present at shelter hearings
- Collaborated with their local DHS branch to develop a protocol for searching for absent parents,
- Increased focus on extended family and diligent efforts to place with relatives,
- Developed settlement conference procedures and timelines,
- Followed statutory timelines for jurisdiction and permanency hearings for all dependency cases,
- Granted set overs only after documenting good cause and have commonly understood criteria for what constitutes good cause,
- Set next court dates while parties are present in court,
- Ensured that, wherever possible, the same judge hears all phases of a dependency proceeding,
- Developed protocols for age appropriate consultation with children and children appearing in court,
- Developed protocols for identifying cases that are appropriate for early staffing with the AG for termination of parental rights,
- Decreased the timelines for proceedings and resolution of termination of parental rights,
- Decreased the time to permanency through timely finalization of adoptions, and
- Worked to develop a highly trained juvenile defense bar that actively represents parents and children at all stages of dependency and termination proceedings.

FOR MORE INFORMATION PLEASE CONTACT:

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Judicial Findings and Title IV-e

1. *"Contrary to the welfare/best interest of the child finding"* must be made in the first court order/judgment about the removal or the child is **not eligible for IV-E payments for the entire foster care episode**. In most cases this will be a finding made on a Shelter Order/Judgement. But in cases where children are removed from in-home custody or come back into care during a trial reunification that has exceeded 180 days; the finding may also be made during an already scheduled hearing on the Review or Permanency Order/Judgement.
2. Judicial finding regarding whether *"reasonable efforts were made, or were not required, to prevent the removal"* must be made no later than 60 days from the date the child is removed from the home if the finding is not made the child is **not eligible for title IV-E payments for the entire foster care episode**.
3. Judicial finding at Permanency Hearings of *"reasonable efforts to finalize a permanency plan"* (reunification, adoption, guardianship, placement with a fit and willing relative, or APPLA) within 12/14 months and at least once every twelve months while the child is in foster care. If the finding is not made, or the agency receives a no finding, the child becomes **ineligible for IV-E at the end of the month in which the judicial finding was required/made and remains ineligible until the beginning of the month that DHS receives a yes finding**.

For example - if a judge made a no reasonable efforts to reunify finding on April 18, 2019, the child became ineligible for IV-e on May 1, 2019. The court conducted another hearing on May 29, 2019 and made a finding that DHS did make reasonable efforts to reunify, the child became eligible for all of May... essentially the agency is able to claim the child for the entire time - and is not financially penalized for the negative finding.

4. Negative reasonable efforts findings at review hearings and CRB reviews do not have a financial impact on the individual case. However, the reasonable efforts findings that are required to be made at least every six months, could have a financial impact if during a IV-e audit or CFSR (Child and Family Services Review) information is found that the findings are not made timely, the agency may be subjected to financial penalties and improvement plans.
5. Although a child may become ineligible for IV-e funding because the court made a negative finding or did not make the required finding within in the required timeline, DHS still provides the necessary services which are paid from state funds. The child does not lose funding.