



Legislative Update

Through the Eyes of a Child Conference

August 2018

New Federal Law:
Family First Preservation Services Act

February 2018 (enacted)

Court review provisions effective October 1, 2019

Family First Prevention Services Act

- ▶ **Title IV-E funded prevention services (10/1/19)**
 - ▶ Children at imminent risk of entering care but can safely remain at home or in a kinship placement if provided services (includes children in adoption and guardianship)
 - ▶ Time limited to 12 months
 - ▶ No income requirement
 - ▶ Evidence based services (promising, supported and well supported) (guidance to be released 10/1/18)
 - ▶ States must continue current prevention programs



Congregate/Group Care Restrictions (10/1/19)

- ▶ Beginning the third week of a child entering foster care, states will only be eligible for IV-E payments on behalf of a child in the following settings:
 - ▶ Foster family home (six or fewer children)
 - ▶ Child care institution (25 or fewer children)
 - ▶ Qualified Residential Treatment Program
 - ▶ Setting specializing in providing prenatal, post-partum, or parenting supports for youth
 - ▶ Supervised setting for youth ages 18 and older living independently
 - ▶ High quality residential care for sex trafficking victims
 - ▶ Children placed with a parent in a licensed residential family-based substance abuse treatment facility for up to 12 months.



Qualified Residential Treatment Programs Defined

- ▶ Has trauma informed treatment model designed to meet the needs of children with serious emotional or behavioral disorders or disturbances and can implement the treatment identified in the assessment.
- ▶ Has registered/licensed nursing staff available 24/7
- ▶ Facilitates family participation in the child's treatment program and facilitates (and documents) family outreach.
- ▶ Provides discharge planning and supports for at least 6 months post-discharge
- ▶ Licensed and nationally accredited



Assessment (QTRP)

- ▶ Within 30 days of placement, a qualified individual must assess the child's strengths and needs using an age-appropriate, evidence based, validated, functional assessment tool to determine if the child's needs can be met with family members or in a foster family home, or in one of the other approved settings.
- ▶ Must conduct assessment in conjunction with the child's family and permanency team
- ▶ If not completed within 30 days = no federal \$



Court Review of QRTP (10/1/19)

- ▶ **If QRTP deemed appropriate, must document:**
 - ▶ Why child's needs can't be met by family or foster family (shortage of homes not valid reason)
 - ▶ Why a QRTP will provide the most effective and appropriate level of care and in the least restrictive environment
 - ▶ How it is consistent with the short- and long-term goals of the child.
- ▶ **Court review.**
 - ▶ Court must review the assessment and approve or disapprove of the QRTP placement.
- ▶ **Permanency hearings.**
 - ▶ If child remains in QRTP, must submit evidence to court regarding continuing appropriateness of placement, treatment needs and expected timeline, and efforts to prepare for exit.



Training

- ▶ The Court Improvement Program is required to provide training to judges, attorneys and other legal personnel in child welfare about the new changes made to federal policy and reimbursement for children placed in settings that are not foster family homes.



Oregon Legislative Session 2018

Senate Bill 1526 (Termination of Parental Rights)

House Bill 4009 (Reinstatement of Parental Rights)

Senate Bill 1526 (TPR)

- ▶ Amends ORS 419B.504 – Effective 4/3/18
 - ▶ Revises terms and considerations related to parent’s conduct/conditions:
 - ▶ Court no longer required to consider a parent’s “emotional illness”, “mental illness” or “mental retardation”
 - ▶ Court is required to consider a parent’s “mental health condition” if it is of such nature and duration as to render the parent incapable of providing proper care for the child for extended periods of time.
 - ▶ Consideration of disability limited.
 - ▶ Court may not consider a parent’s disability (as defined by ADA) unless the parent’s conduct related to the disability is of such nature and duration as to tender the parent incapable of providing proper care for the child for extended periods of time.



House Bill 4009 (Motion to Reinstate PR)

- ▶ **Creates New Provisions – Effective September 1, 2018**
 - ▶ Who may file?
 - ▶ DHS or ward if (1) ward not adopted (or previously adopted and no legal parent); (2) no adoption proceeding initiated; (3) 18 mos have passed since TPR or 6 mos since appellate judgment affirming TPR judgment, whichever is later; and (4) ward is 12 years old (unless good cause shown).
 - ▶ Parent not a party (but moving party must provide copy of motion to parent and notify court that it was provided)
 - ▶ Court may deny motion without a hearing if it does not state a prima facie case



HB 4009 (cont)

- ▶ **Prima facie case: The court shall grant the motion if:**
 - ▶ The former parent's conduct and conditions that led to the termination of parental rights have been ameliorated and the parent is presently fit;
 - ▶ The former parent wishes to have parental rights reinstated;
 - ▶ The ward consents to the reinstatement of parental rights; and
 - ▶ Reinstatement is in the child's best interests, considering:
 - ▶ The ward's health, safety, permanency, age, maturity and ability to express preferences;
 - ▶ The reasons why the former parent's rights were terminated;
 - ▶ The former parent's stated reasons for wishing to have parental rights reinstated; and
 - ▶ The likely impact on the ward of the former parent's past abuse and neglect.
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HB 4009 (cont)

- ▶ **Notice to former parent of hearing:**
 - ▶ The moving party must provide
- ▶ **If the court grants the motion:**
 - ▶ Enter an order reinstating parents rights that restore all parental rights and duties of the former parent as to the ward;
 - ▶ The child continues as a ward for at least six months; and
 - ▶ The court must hold a permanency hearing within 60 days.



Warrantless Removals

- ▶ Work group to amend ORS 419B.150
 - ▶ Make consistent with constitutional standard set by the Ninth Circuit in *Kirkpatrick v. City of Washoe*, 843 F.3d 784 (9th Cir. 2016):
 - ▶ In order to remove a child without a warrant, the social worker must possess information at the time of the seizure that establishes reasonable cause to believe that the child is in imminent danger of serious bodily injury and the scope of the intrusion is reasonably necessary to avert that specific injury.
 - ▶ Failure to meet the standard above is a violation of the Fourth Amendment (right to be free from unreasonable seizures)



Warrantless Removals

- ▶ How many courts already receive requests for orders authorizing removal under ORS 419B.150?
- ▶ How long do these requests take?
- ▶ Are there ways to streamline these requests and ease the burden on courts, especially for after hours requests?

