



JUVENILE DEPENDENCY OVERVIEW

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STATEWIDE JUVENILE DEPENDENCY HELP

- Forms
- Bench book
- Training
- Legislation
- Technical assistance
- Records requests
- Data analysis
- Model courts



LINKS TO JCIP ONLINE RESOURCES

- Dependency Benchbook:
<https://www.courts.oregon.gov/programs/jcip/Pages/JuvDepBenchbook.aspx>
- ORICWA Benchbook:
<https://www.courts.oregon.gov/programs/jcip/Documents/ORICWA%20Benchbook%20011222.pdf>
- Model Forms:
<https://www.courts.oregon.gov/programs/jcip/ModelCourtForms/Pages/default.aspx>
- Continuing Legal Education:
<https://www.courts.oregon.gov/programs/jcip/EducationMaterials/Pages/default.aspx>

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JUVENILE DEPENDENCY BASICS

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WHAT IS A DEPENDENCY CASE

- Common factual scenarios
- How a dependency case is initiated



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CHILD ABUSE REPORTING, INVESTIGATION AND REMOVAL

- Duty of officials to report child abuse. ORS 419B.010
- Law enforcement and child welfare duty to investigate. ORS 419B.020
- Options short of formal court involvement.
- Protective custody. ORS 419B.150
 - Legal standard. *Kirkpatrick v. Washoe*, 843 F3d 784 (9th Cir. 2016).; *Nathan v. DHS*, 288 Or App 554(2017).
- If the child is placed in shelter care, a shelter hearing is required within 24 hours (excluding weekends and holidays). ORS 419B.183

PROTECTIVE CUSTODY ORDERS: ORS 419B.150

Removal without judicial approval

- Reasonable cause to believe that:
 - imminent threat of severe harm to the child;
 - Child poses an imminent threat of severe harm to self or others;
 - Imminent threat that parent or guardian will cause the child to leave the reach of the juvenile court;
- If ICWA, only to prevent imminent **physical** harm or damage to child.

Removal with a judge protective custody order

- Judge may order protective custody if it is necessary and the least restrictive means available to:
 - Protect the child from abuse;
 - Prevent the child from inflicting harm on self or others;
 - Ensure the child remains within the reach of the juvenile court;
- If ICWA, only to prevent imminent **physical** harm or damage to child.

JUVENILE COURT JURISDICTION

- Exclusive original jurisdiction in any case involving a person under age 18, and who meets one of the following criteria (ORS 419B.100):
 - Beyond the control of the parents, guardian.
 - Whose behavior endangers the welfare of the person or others.
 - **Whose condition or circumstances are such as to endanger the welfare of the person or of others.**
 - Who is dependent on a child-caring agency that needs the services of the court for planning for the best interest of the child.
 - Who has run away.
 - Who has filed a petition for emancipation.

JUVENILE COURT JURISDICTION (CONT)

- Whose parents or custodians have:
 - Abandoned the child;
 - Failed to provide care or education to the child;
 - Subjected the child to cruelty, depravity or **unexplained physical injury**, or
 - Failed to provide the child with the care, guidance and protection necessary for the physical, mental or emotional well-being of the child.

BASIC JUVENILE LAW CONCEPTS

○ **Legal Parties.** ORS 419B.875

- Child
- Parents/guardians
- Stanley father (until paternity confirmed)
- State
- Juvenile department
- CASA (discussed in next slides)
- DHS/Child Caring Agency (if temporary custody)
- Tribe (if the child is an Indian child per ICWA)
- Intervenor (for dependency case, not if it goes to termination)

BASIC JUVENILE LAW CONCEPTS (CONT)

○ Other participants:

- Persons granted rights of limited participation
 - Not a party – has only rights granted by court in the order.
 - May appear with retained counsel.
- Foster parent, preadoptive parent or relative providing care for the child or ward
 - DHS is required to provide notice of proceedings
 - Has the right to be heard.
- Grandparents
 - DHS must make diligent efforts to identify and obtain contact information if child is in DHS custody.
 - DHS shall provide grandparents notice of the hearing (unless grandparent got notice at last hearing).
 - Have the right to be heard.
 - May request visitation. ORS 419B.876.

BASIC JUVENILE LAW CONCEPTS (CONT)

○ **Court Appointed Counsel.**

- Court may appoint counsel to represent the child, parent or guardian when without sufficient financial means. ORS 419B.185.
- Early appointment of counsel improves outcomes for children.

○ **Counsel for DHS: DOJ**

○ **Attorney Standards of Representation**

- Defense:
https://www.osbar.org/_docs/resources/juveniletaskforce/JTFR3.pdf
- DOJ:
https://www.osbar.org/_docs/resources/juveniletaskforce/JTFR1.pdf

COURT APPOINTED SPECIAL ADVOCATES

- Appointed by the court to serve on individual cases. ORS 419B.112
- Duties:
 - Investigate all relevant information about the case;
 - Advocate for the child, ensuring all relevant facts are brought before the court;
 - “Facilitate and negotiate” to ensure the court, DHS, and the child’s attorney fulfill their obligations to the child in a timely fashion; and
 - Monitor court orders to ensure compliance and report to the court about the child’s situation opinion about what possible decisions are in the best interests of the child.

COURT APPOINTED SPECIAL ADVOCATES (CONT)

- Once appointed, CASA is a legal party, and may:
 - File pleadings;
 - Request hearings;
 - Subpoena, examine and cross-examine witnesses;
 - Be represented by counsel.
 - Inspect medical and educational records about the child
- The CASA has the right to:
 - Notice of the proceeding;
 - Copies of the petitioners, answers, motions and other papers;
 - Appeal.

CHILDREN IN COURT

○ Foster Children's Bill of Rights

- Children have the right to complain about their care without fear of retaliation. ORS 418.201
 - Foster Care Ombuds, Darin Mancuso
 - Hotline: 1.855.840.6036 (9a.m. to 5 p.m./voice mail after hours)
- Children have the right to notice and transportation to hearings and CRB reviews.
 - If matters to be decided are appropriate, taking into account age and development.
- See materials for getting child input if they won't be present

INDIAN CHILD WELFARE ACT (ICWA)

- History
- Application – “Indian child”
- Notice requirements
- Tribe may intervene
- Expert testimony required
- Standard of proof is higher
- Active efforts to reunify
- ORICWA codifies ICWA in state law, and in some places provides greater rights to parents than ICWA (establishing paternity is an example). See ORS 419B.600-665.



JUVENILE DEPENDENCY HEARINGS

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RULES OF PROCEDURE

- The juvenile code has its own rules of procedure and the ORCP do not apply. ORS 419B.800
 - Covers pleadings, service, summons, notice, responses, dismissal, discovery, parties, manner of appearance, modifying or setting aside judgment.
- The juvenile court may regulate pleading, practice and procedure in any manner not inconsistent with ORS 419B.800 to ORS 419B.929.

DEPENDENCY AND TERMINATION HEARINGS – TIMELINES

- Shelter:
 - 24 hours after removal. ORS 419B.183
- Pretrial conference. ORS 419B.815(2); 419B.816
- Jurisdiction and Disposition:
 - Within 60 days of petition. ORS 419B.305
 - By admission or trial.
- Review:
 - Every six months by court or CRB. ORS 419B.449
- Permanency:
 - Every 12 months. ORS 419B.470
- Termination:
 - Six months from service of summons. ORS 419B.521

HEARINGS – FINDINGS

- The Court's orders and judgments in all these proceedings must be based on the evidentiary record.
- Evidence can only be basis for finding if it is:
 - Sworn testimony
 - Admitted as an exhibit
 - Stipulated to by the parties, or
 - The Court takes judicial notice of it.
 - Items in the case record, including judgments from previous hearings in the same case, are not automatically in the record for appeal.

See *State ex rel Juv. Dept. v. Lewis*, 193 Or App 264 (2004); *State ex rel Juv. Dept. v. K.L.*, 223 Or App 35 (2008)

RULES OF EVIDENCE

- ROE apply to juvenile dependency, except to:
 - Shelter hearings. However, privilege still applies, and evidence must be relevant to findings court is required to make. ORS 419B.185(1)(g)
 - Proceedings to determine proper disposition of a child in accordance with ORS 419B.325(2). ORS 40.015(4)(i). 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 competency or relevancy. ORS 419B.325
 - Permanency hearings are dispositional, however, a motion to dismiss considered at the permanency hearing is not. *Dept. of Human Services v. J.B.V.*, [262 Or App 745 \(2014\)](#).

SHELTER HEARING

- UCCJEA, Service, and preliminary ICWA status
- A parent, child or ward shall be provided 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. ORS 419B.185(1)

Primary inquiry: Can this child go home today? If not, why not?

JURISDICTIONAL HEARING (CONT)

- Timely resolution of the petition.
 - Parties are required to comply with discovery provisions (ORS 419B.881) within 30 days of filing the petition.
 - Courts typically schedule a pre-trial conference to allow for admissions or to proceed in the absence of a parent who fails to appear.
 - Absent a finding of good cause, the court must hold a hearing on the petition and enter a dispositional order within 60 days after the filing of the petition.

JURISDICTIONAL HEARING (CONT)

- “Conditions and circumstances” jurisdiction. ORS 419B.100(1)(c)
 - State must show:
 - A *current* threat of serious loss or injury to the child.
 - A *nexus* between the allegedly risk-causing conduct and the harm to the child.
 - The risk is present *at the time of the hearing*.



WHAT HAVE YOU SEEN?

Sex Offenders

Domestic Violence

One Parent Dangerous, the Other doesn't Protect

Drug Abuse

Unexplained injury cases

Neglect

DISPOSITIONAL HEARING

- What assistance do the parent(s) and child need to address the bases for jurisdiction?
ORS 419B.331 to 419B.352.
- Matters to be resolved:
 - The child's needs, placement and legal custody
 - What the parents will be required to do
 - If the child is committed to DHS, what the agency will be required to do and what the concurrent plan will be
 - Visitation with the parent(s), sibling(s) and others.

DISPOSITIONAL HEARING (CONT)

○ Reunification.

- Except in extreme circumstances set forth in ORS 419B.502 (sex abuse, starvation, torture, serious injury or death of another child, previous terminations, etc.), the state is to make reasonable efforts offer appropriate reunification services to the parents and child to allow them the opportunity to adjust their circumstances, conduct or conditions to make it possible for the child to safely return home in a reasonable time. ORS 419B.090(5)

DISPOSITIONAL HEARING (CONT)

○ **DHS Case Plan. 42 U.S.C. 675**

- Federal law requires DHS to develop case plan within 60 days of child's entry into foster care and update it every 6 months. It should describe:
 - Appropriateness of the child's placement
 - Services to child and parent to facilitate return home
 - Health (records, problems, immunizations, medications)
 - Education (grade level, school record)
 - Mental health and developmental issues
 - Transition services (14 and up)
 - Steps taken to finalize the placement
 - Educational stability
- Additional requirements in DHS policy:
 - http://www.dhs.state.or.us/policy/childwelfare/manual_1/division_40.pdf

DISPOSITIONAL HEARING (CONT)

○ **DHS Court Report**

- ORS 419B.443 requires DHS to file a report with the court as soon as the child is placed and at least every six months thereafter. The court may request an earlier report. The report shall include:
 - A description of the problems that brought the child into care.
 - A description of the type/effectiveness of care and treatment for the child.
 - Visits with family, contacts with caseworker.
 - A description of reunification efforts.
 - The child's opportunities to participate in activities.
 - Timetable for child's return home or other permanent placement.
 - An explanation of why foster care is still necessary.
 - A list of the child's placements since entering care.
 - Additional treatment and other records may be attached.

ORDERING SERVICES FOR PARENTS

- This topic has been a source of a lot of litigation over the past year. It is still in flux, with *DHS v. F.J.M.*, 312 Or App 301 (2021), under advisement in the Supreme Court since early January. For now, to order a parent to do services, there must be an evidentiary hearing (trial counts), and:
 - 1) the service must be rationally related to the findings that brought the child within the court's jurisdiction;
 - 2) if not a direct service, an evaluation must be a predicate component of treatment or training;

ORDERING SERVICES, (CONTINUED)

- 3) there must be a need for the treatment or training to correct the circumstances that brought the child into care or prepare the parents for the child's return; and,
- 4) the parent's participation must be in the child's best interest.

Dept. of Human Svcs. v. W.C.T., 314 Or App 743 (2021).

The Oregon Supreme Court granted a petition for review in this on the issue of what test applies to order a psychological evaluation in *Dept of Hum. Svcs. V. F.J.M.*, 312 Or App 301 (2021) on August 2, 2021 (S068704), on the question of whether ORS 419B.337(2) authorizes a court to order a parent to submit to a psychological evaluation and whether a psychological evaluation qualifies as treatment or training under ORS 419B.387.

REVIEW HEARING

○ Questions:

- Should jurisdiction and wardship continue?
- Has the parent made sufficient progress to permit the child's safe return home?
- Is the case plan still appropriate?
- What are the specific services in which the parent is to engage during the next few months and what specific progress must the parent make?
- Is the child receiving appropriate care?
 - School, medical, mental health, placement, visitation
 - Children age 14 and older: progressing adequately toward graduation?
 - Another Planned Permanent Living Arrangement (APPLA) youth: adequate opportunities for extracurricular activities?

REVIEW HEARING AND CRB REVIEW

○ Reasonable efforts to reunify.

- Finding is required at least every six months after the child enters care as long as the plan is reunification.
- May be made by the Court or the CRB.
- The court may determine reasonable efforts are not required. ORS 419B.340(5)(a), (b) and (c)

Judicial Inquiry: *What has DHS done to make it possible for the child to be maintained safely at home? Do the services offered bear a rational relationship to the basis for jurisdiction?*

CITIZEN REVIEW BOARD

- Part of the Judicial Branch: ORS 419A.090
- Purpose
 - Conduct periodic reviews
 - Make legally required findings in ORS 419A.116
 - Make recommendations to the DHS, court, parties
 - Bring community voice to process
- Frequency of reviews.
 - Every six months, unless the court has held a permanency hearing or full judicial review

PERMANENCY HEARING

- Overarching determination:

What is the permanent plan for the child going to be?

Should the current plan be changed to a different plan?

- When is it required?

- No later than 12 months after the ward was found within the court's jurisdiction, or 14 months after entering substitute care, whichever is earlier. ORS 419B.470(2).

- Once every 12 months thereafter, as long as the child is in care. ORS 419B.470(6).

PERMANENCY HEARING (CONT)

○ **Permanency plans.**

- Reunification
- Adoption
- Guardianship
- Placement with a Fit and Willing Relative
- Another Planned Permanent Living Arrangement (Age 16 and older)

PROCEDURAL CONSIDERATIONS

- The party or parties that want to change the plan have the burden to convince the court (in this order) that:
 - 1) the agency has made reasonable efforts to assist the parents with solving the problems that caused the child to be removed so the child can come home;
 - 2) the parent(s) have not made sufficient progress for the child to return home;
 - 3) if the child has been in care 15-22 months, that there is not a compelling reason not to change the plan (like, “the parent is participating in services that will allow the child to return home within a reasonable time.”)

PROCEDURAL CONSIDERATIONS, CONT...

- Court must define “reasonable time” from the child’s perspective with reference to that child’s developmental and attachment needs; and
- In determining whether to change the plan, the court must consider the health and safety of the ward as paramount concerns. ORS 419B.476(2)(a); but,
- It must also ensure that the parents have been provided a reasonable opportunity to ameliorate their problems demonstrate improvement before the plan can change from reunification. *Dept. of Human Svcs. v. C.L.H.*, 283 Or App 313 (2017).

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OTHER TYPES OF HEARINGS

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OTHER HEARINGS

- SIJS (Special Immigrant Juvenile Status) Predicate Order Hearings
- QRTP (Qualified Residential Treatment Program) approval hearings
- School Best Interest Hearings
- Medical Treatments Before Jurisdiction
- Paternity establishment or disestablishment

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TERMINATION OF PARENTAL RIGHTS

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TERMINATION OF PARENTAL RIGHTS

○ Requirements:

- The court must hold a permanency hearing and enter a permanency judgment changing the case plan to adoption;
- Only the state or child may file a TPR petition;
- Statutory grounds must be met and the court must find termination is in the *child's best interest*.

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

TERMINATION OF PARENTAL RIGHTS (CONT)

- Independent Statutory Grounds for Termination
 - Extreme conduct. ORS 419B.502
 - Unfitness. ORS 419B.504
 - Neglect. ORS 419B.506
 - Abandonment. ORS 419B.508
 - Child conceived by rape. ORS 419B.510

Most TPR petitions are based on ORS 419B.504 which requires: (1) the parent is unfit by reason of conduct or condition seriously detrimental to the child, and (2) integration of the child into the parent's home is improbable within a *reasonable time* due to conduct or conditions not likely to change.

TERMINATION OF PARENTAL RIGHTS (CONT)

○ Timing.

- Hearing to adjudicate petition:
 - May not be held earlier than 10 days after service or final publication of the summons; and
 - Must be held within 6 months from the date the summons was served except for good cause shown.

○ Standard of Proof

- Clear and convincing
 - If the case is subject to the ICWA, beyond a reasonable doubt.



CONFIDENTIALITY OF JUVENILE COURT RECORDS

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See materials

RECORDS REQUESTS

- Juvenile court proceedings are open to the public, however, juvenile court records are confidential.
- Can only be disclosed without court permission in limited circumstances in limited exceptions: ORS 419A.255 (3)-(5).
 - Pre-sentence investigation in a criminal case after guilt established;
 - Another juvenile court with a case involving the youth;
 - To determine special education eligibility;
 - If a clear and immediate danger to another person or society, may disclose to authority and person in danger.

RECORDS REQUESTS (CONT)

- Exceptions: ORS 419A.255(6) & (7)
 - Delinquency cases:
 - Name and date of birth of the youth
 - Basis for juvenile court's jurisdiction
 - Date, time and place of any juvenile court proceeding in which the youth or youth offender is involved
 - The act alleged in the petition
 - The portion of the juvenile court order providing for legal disposition of the youth offender
 - The names and addresses of the youth and the youth's parents/guardians
 - The case register

RECORDS REQUESTS (CONT)

- **Two kinds of files (post 1/1/14):**
 - Record of the case (used to be “legal”)
 - Supplemental confidential file (used to be “social”)
- **Access depends on who you are.**
 - Unlimited:
 - Judges, staff, CRB, attorneys/prospective appellate attorneys, service providers, CASA, DA/AG/Juvenile Dept/DHS/OYA
 - Limited:
 - Child, ward, youth, youth offender
 - Parent/Guardian/GAL
 - Intervenors
 - Educational surrogate, Superintendent

RECORDS REQUESTS (CONT)

- Attorneys, DHS, OYA and Juvenile Departments
 - Allowed electronic access to conduct conflict checks and to access related juvenile cases.
- Research and evaluation. ORS 419A.255(14).
 - Allows Chief Justice, Chief Judge or Presiding Judge to permit records access for research.
 - CJO 14-007 sets guidelines.
 - Contact JCIP for assistance.
- Audio and video recordings. ORS 419A.256(4).
 - May release to judge, court staff, CASA, attorneys, DHS, OYA
 - May impose conditions on release
- Oregon State Bar. ORS 419A.255(17)
 - May access ROC for purposes of attorney investigation.

RECORD REQUESTS (CONT)

- Any other person access. ORS 419A.258
 - Statutory process for “any other person allowed by court” to access juvenile records.
 - Motion
 - Notice
 - In camera review
 - Weighing of factors:
 - Privacy interest and particular vulnerabilities of the child, youth or family members,
 - Interests of the other parties or victim,
 - Interests of person filing the motion, and
 - Interests of the public.
 - If inspection or copying allowed, court may limit.
 - Court shall make protective orders governing use.

RECORDS REQUESTS – ADOPTION

- Adoption records for adoptions involving minors.
ORS 109.319
 - Records are kept separately from the general records of the court.
 - Records are sealed both pre and post judgment.
- Adoption Summary and Segregated Information Statement (ASSIS) and exhibits: new filing requirement as of 1/1/14.
 - Receives extra protection from disclosure;
 - “ASSIS like” information also receives extra protection for cases filed prior to 1/1/14.

RECORDS REQUESTS – ADOPTION (CONT)

- Access to records depends on who is asking and when the request is made.
 - Unlimited access (no court order required):
 - Judges, court staff and persons operating under direction of judges;
 - Petitioners and their attorneys of record;
 - DHS
 - Limited access: after entry of judgment and adoptee has reached age 18:
 - Adoptee can access everything but the home study (unless good cause shown)

RECORDS REQUESTS – ADOPTION (CONT)

○ Birth parent access: court order required. ORS 109.319(5)

- What must be shown to qualify for court order depends on whether the birth parent consented to adoption or had rights terminated or surrendered under ORS 418.270.
 - Following materials/info are excluded:
 - ASSIS + exhibits (post 1/1/14 cases)

○ Any other person access.

- Court order required
- Good cause must be shown
- Court may specify items to be withheld/redacted.
 - May release only certain documents
 - Consider heightened protections for ASSIS and exhibits
 - Clearly specify in court order
 - 1/1/14 cases).



EXPUNGEMENTS

SB 575 (2021) DRAMATICALLY CHANGED JUVENILE EXPUNGEMENTS

- If a child had police and juvenile department contact only, or if a petition was filed and jurisdiction was not taken, the juvenile department will automatically file a petition to expunge. If court denies, youth entitled to atty to help with hearing.
- If the child was adjudicated, there is a possibility to expunge under various conditions, except for M11's, criminal mistreatment, compelling prostitution and attempts to do any of those things.

EXPUNGEMENTS, CONTINUED...

- Youth may come to court to request attorney to help file petition.
- No expunging DMV, fish & game violations, boating violations. State keeps physical evidence, buccal or blood samples, and identification information.
- DA must notify victims. If DA objects to petition, they have to prove the youth does not qualify.

See expunction charts in supplemental materials.

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QUESTIONS?

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