

BEST FOOT FORWARD: KEY CONSIDERATIONS AT SHELTER HEARINGS

The Hon. Amy Holmes Hehn
The Hon. Manuel Perez



What is a Shelter Hearing?

- **TIMING:** Within 24 hours of placement of child in substitute care (excluding holidays and weekends). ORS 419B.183.
- Can be first hearing in case or occur in a pending case when child placed at home is removed from parent.
- Can occur before actual removal to get court's OK for removal.

Primary Purpose

- To determine whether a child who has been (or who may be) taken into protective custody can be maintained safely in the home pending adjudication of the Petition. ORS 419B.185(1).
- Various inquiries and findings required (more below).
- Hearing can accomplish a number of purposes (more below).

Pre-hearing Steps and Processes

- ODHS must make reasonable efforts to prevent removal (more below).
- AAG staffing before removal?
- Pilot: YRJ, pre-petition legal representation (Jennifer Stoller, Jennifer.S@youthrightsjustice.org).
- Protective custody orders. 419B.150.
- Diligent efforts to locate relatives & siblings. ORS 419B.160(3); 418.192(1) & (2).

Scheduling and Notice

- ODHS notifies the Court of the need for a shelter hearing.
- Best practice: Set at the same time each day, with enough lead time to allow for preparation.
- How much time to schedule?
- Case-specific start times or group set?

Scheduling and Notice Cont.

- Notice given to attorneys picking up cases, including DOJ, and DA's Office if DA hasn't waived appearance.
- Contact info for parent/child clients provided.
- ODHS provides notice of the hearing to parents and others.
- Who is entitled to notice and an opportunity to be heard?

Legal Parties and Other Participants - ORS 419B.875

PARTIES

- Child
- Parents/guardians
- “Stanley” father (bio + involved)
- State (DOJ? DA’s Office?)
- Juvenile Department (level of participation varies)
- CASA
- ODHS/Child Caring Agency (once court awards temporary custody)
- Tribe (intervention is no longer required under ORS 419B.875)
- Other intervenor if granted party status

Legal Parties and Other Participants - ORS 419B.875

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.
- Resource parent, pre-adoptive 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 because present at last hearing).
 - Have the right to be heard.
 - May request visitation. ORS 419B.876.

Day-of Processes and Procedures

- Petition filed. Anyone can file, but usually AAG. ORS 419B.809.
- Attorney conflict checks done (Clerk's Office, in Multnomah County).
- Case opened in Odyssey (or info added if already open).
- Related cases of all types identified and connected in Odyssey.
- ODHS shelter hearing report submitted. See ORS 419B.185(2) for required contents. Entered in Odyssey so accessible to Court and parties (Multnomah Co.).

Day-of Processes and Procedures, Cont.

- Pretrial Conference (“PTC”)/Judicial Settlement Conference (“SLC”) date set by Clerk’s Office, notice of date sent to attorneys/DOJ/DA (and CASA if appointed in an open case).
- Summons issued with next court date included. See ORS 419B.812, 815 for form and contents.
- Parent mentors arrive (Mult. Co.).
- Mult. Co.: Clerk’s Office prepares an information packet, including a “What to Expect” sheet & an application for court-appointed counsel, gives to mentors to provide to parents.

Day-of Processes and Procedures, Cont.

- Pre-hearing family decision meeting held?
- Attorneys meet with clients if possible (can be a challenge).
- Juvenile Services Division (JSD) staff serves parents with petition and summons for PTC/SLC date, files proof of service with the Clerk's Office (Mult. Co.).
- Clerk's Office starts a shelter hearing order for the judicial officer (some judicial officers prepare their own), + orders appointing counsel. Order prep practices vary. See JCIP model shelter hearing form.

Day-of Processes and Procedures, Cont.

- Judicial officer hearing preparation: How and when?
- Timing of hearing dictates when prep is possible.
- Judicial officer pre-hearing review of ODHS shelter hearing report? Or wait until it's offered as an exhibit? Practices vary.
- Is an evidentiary hearing, but the rules of evidence do not apply. Evidence need only be "relevant." ORS 419B.185(1)(g).

Accommodations, “Lens”

- Accommodations are made (language, disabilities, safety concerns - such as DV- etc.).
- Family and all interested parties enter the courtroom.
- Judicial officer brings a trauma-informed, procedurally fair “lens.” Impacts of trauma are real.
- Judicial officer welcomes participants warmly and kindly.

Cultural Considerations and Bias

- Remember to be alert for and consider the impacts of BIAS – yours and that of other system actors.
- Check your initial impressions. Ask yourself questions. “Take the time.”
- Keep an open heart and an open mind.
- Be mindful of cultural differences, parent fears, concerns and expectations.
- Note recent federal guidance on special considerations for LGBTQ children and parents (bench card available).
- Allow parents, family, children and others to be heard. Listen with compassion and respect.

The Shelter Hearing, Cont.

- Case is called.
- All participating state and spell their names for the record.
- Was everyone entitled to notice given notice?
- Is everyone present who should be?
- Who else is present (family, friends, service providers, etc.)? In Multnomah County, includes FIT (“Family Involvement Team”) Outreach Workers.

Initial Steps and Inquiry

- Appoint counsel for parents and children. Incarcerated parent? Appoint even if not present.
- Appoint CASA when appropriate. ORS 419B.112; ORS 419B.875.
- Determine if ICWA/ORICWA, or Refugee Child Welfare Act, applies (separate webinar planned on ICWA/ORICWA): Ask each person present whether they know or have reason to know that the child is an Indian child under ICWA/ORICWA.

Initial Steps and Inquiry

- Inquire about UCCJEA facts/jurisdiction. ORS 109.701 – 109.834.
- Inquire about and determine the legal status of father(s).
- Inquire about other open related cases.
- Related family law cases must be consolidated. ORS 491B.806.

Shelter Hearing

- Explain to the parents what the hearing is about, what the issues are, and how the hearing will proceed.
- Primary question: Why can't this child go home today?
- Probable cause to believe the allegations of the petition are true is not a required finding (although often made. More below).

Shelter Hearing

- Inquire if there are contested issues. Sometimes there aren't.
- Provide notice of obligations and rights required by ORS 419B.117.
- Identify what information you will be considering (e.g., judicial notice of all previous findings of fact, conclusions of law and rulings in open case(s), exhibits, e.g., ODHS Shelter Hearing Report, stipulations, and testimony).

Shelter Hearing

- Swear in ODHS Caseworker and any others who will be testifying/providing factual information.
- AAG typically questions worker, w/cross allowed.
- Allow parents and children to present evidence. ORS 419B.185(1).

Shelter Hearing

- Review exhibits offered and received.
- Hear from other interested parties (grandparents and resource parents if present must be given an opportunity to be heard).
- Be the “inquiring magistrate.” Ask your own questions! Views differ.

Shelter Hearing – Required Findings

- The JCIP Model Shelter Order leads you by the hand!
- Has ODHS provided the Court with the documentation required by ORS 419B.185?
- Were all parties entitled to notice notified?
- Did ODHS make a good faith effort under ICWA/ORICWA to determine whether the child is an Indian child?
- At this time, the Court does not have reason to know that ICWA/ORICWA applies. “No individual present . . .”

Shelter Hearing – Required Findings

- Has ODHS made **reasonable efforts** to provide services and/or other supports 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?
- Summarize in writing the reasonable efforts made. Child health and safety are paramount. ORS 419B.185. (A separate webinar is planned on reasonable efforts).
- Court considers ODHS to have made reasonable efforts if no services would have eliminated the need for protective custody (“emergency removal”). 419B.340(1). See also “Aggravated circumstances.” ORS 419B.340(5).
- Can the provision of reasonable services now prevent or eliminate the need to separate the family?

Temporary Legal Custody

- Grant temporary legal custody (“TC”) to ODHS.
- CAN grant TC to someone else, but if you do, ODHS drops out of the case. Example: TC to a relative who can’t be certified.
- Can decline to give TC to ODHS but can’t dismiss the Petition until the State has been given a reasonable opportunity to investigate and present their case. Shelter hearing is not a trial on the allegations of the petition. *State v. Gillman*, 80 Or App 570 (1986).

Return to parent or continue in care?

- Considering the child's health and safety, and whether the provision of reasonable services can prevent or eliminate the need to separate the family, find:
 - The child **can or cannot** be safely returned home without further danger of suffering physical injury or emotional harm, or
 - Endangering or harming others, or
 - Not remaining within the reach of the court process prior to adjudication.
 - If the child can remain w/parent, consider safety-focused orders.

Shelter Hearing – Required Findings

- If the child **cannot** safely return home, why not, and is placement or continuation in substitute care in the child's best interest and necessary for their welfare? Why? Written findings required. ORS 419B.185(1)(d).
- Is the selected placement the least restrictive, most family-like setting that meets the health and safety needs of the child and is it in reasonable proximity to the child's home?

Shelter Hearing – Required Findings

- Has ODHS made diligent efforts to place the child with a relative or person who has a caregiver relationship with the child? ORS 419B.192.
- If the child has sibling(s) in substitute care, has ODHS made diligent efforts to place the child with a sibling? ORS 419B.192.

Placement Preferences

- ODHS to consider family placements/placement with siblings first. ORS 419B.192.

ODHS Considerations:

- Are they willing to cooperate with contact restrictions between the child and others?
- Will they prevent anyone from influencing the child regarding the case allegations?
- Are they willing to support the efforts of ODHS to implement the plan for the child?
- Are they able to meet the child's physical, emotional and educational needs?
- Etc. (non-exclusive list).
- If proposed placement not appropriate, written findings required. 419B.192(4).

Specifying Type of Care, Services

- Court “may specify the particular type of care, supervision or services to be provided to the child . . . but “the actual planning and provision of such. . .is the responsibility of the Department.” ORS 419B.337.
- Means can’t order a particular/specific placement.
- Can and should order ODHS to provide appropriate assessments, supports and services to the child.
- Can’t order parents to participate in services at this stage (sort-of).
- Ask if parents are willing to participate in services voluntarily pre-adjudication.
- Order ODHS to offer appropriate supports and services to parents.

Visits

- “The court may make an order regarding visitation by the ward’s parents or siblings. The Department of Human Services is responsible for developing and implementing a visitation plan consistent with the court’s order.” ORS 419B.337(3) (the commitment statute).
- How specific can and should the Court be? A source of tension with ODHS.

Shelter Hearing – Other Orders

- School of origin – best interest
- Restraining orders, ORS 419B.845.
- (1)(a) When a petition has been filed alleging that 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 or attempting to contact the child and requiring the alleged perpetrator to move from the household in which the child resides. The court may issue a restraining order only if the court finds that:
 - (A) There is probable cause to believe the abuse occurred and that the person to be restrained committed the abuse; and
 - (B) The order is in the best interest of the child.

Setting Further Hearings

- “Second Shelter Hearing” or “follow-up hearing” – when helpful?
 - To give a parent who wasn’t given notice or who couldn’t be present an opportunity to appear.
 - To follow up on and clarify application of ICWA/ORICWA.
 - To clarify legal status of fathers.
 - To consider an in-home plan not possible at the time of the initial shelter hearing.
 - To refine visitation orders or court-ordered safety plans.
 - To consider a quick case resolution/possible stipulated dismissal.
 - Etc.

Setting Further Hearings

- Does the shelter hearing judge retain the case for future hearings (unless case is already open to and retained by a judicial officer)? One judge one family?
- Set a pretrial conference/judicial settlement conference?
- Are other forms of family group conferencing/family decision meetings/FDMs/FEMs planned?
- Set a trial date?
- Date, time, location and manner of appearance goes in the summons and court's shelter order.

Setting Further Hearings, Wrapping Up

- Deadline for resolving the petition is 60 days from shelter hearing unless a good cause finding is made. ORS 419B.305.
- Advise parents of the consequences if they fail to appear for a mandatory hearing on the Petition (Court may proceed in their absence, attorney can't appear for them, etc.).
- Explain your decisions in common sense language.
- Make sure parents are clear on next steps. Urge them to be in close contact with their attorneys.
- Provide a copy of the order to parties and counsel.

SCENARIO TIME!

- Choose a table discussion leader
- Choose a person to report out to the larger group (can be the table leader, or someone else!)
- Read the scenario “In the Matter of J”
- List issues, concerns, considerations and questions raised by the scenario
- Pick a top three issues to report back on for large group discussion. If another table mentions one of your chosen issues, pick another!



Resources

- [Juvenile Dependency Benchbook](#)
- [Shelter Hearing Benchcard](#)
- [Model Court Forms](#)
- [NCJFCJ Portland Second Shelter Process](#)
- [2018 LGBTQ Bench Guide](#)

PDF Resources

HB 2849 (Protective Custody)

HON. AMY HOLMES HEHN
AMY.HOLMESHEHN@OJD.STATE.OR.US

Double Click on PDF

PDF Resources

ACF Administration for Children and Families	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
	1. Log No: ACYF-CB-IM-22-01	2. Issuance Date: 03-02-2022
	3. Originating Office: Children's Bureau	
	4. Key Words: Title IV-E and Title IV-B; LGBTQI+; John H. Chafee Foster Care Program for Successful Transition to Adulthood; Training; Foster Care	

INFORMATION MEMORANDUM

TO: State, Tribal, and Territorial Agencies Administering or Supervising the Administration of Titles IV-E and IV-B of the Social Security Act (the Act); Indian Tribes and Indian Tribal Organizations

SUBJECT: Titles IV-B and IV-E of the Act program requirements that state, county, and tribal child welfare agencies and their federally funded contractors (collectively, title IV-B and IV-E agencies, unless otherwise noted) can use to guide their work when determining how best to serve lesbian, gay, bisexual, transgender, queer or questioning, and intersex (LGBTQI+¹) children and youth, including those with non-conforming gender identity or expression who are involved with the child welfare system.

LEGAL AND RELATED REFERENCES: Titles IV-B and IV-E of the Act

PURPOSE: Research and best child welfare practices clearly demonstrate that every child and youth in foster care should be affirmed and supported, including children and youth who are LGBTQI+ or who have a non-conforming gender identity or expression. Supporting and affirming LGBTQI+ children and youth in foster care is an overarching equity issue for each title IV-B and IV-E agency and for the Children's Bureau, and we encourage each agency to approach serving these children and youth through both a programmatic and an equity lens.

¹Throughout the Information Memorandum, we use the term "LGBTQI+" as inclusive of individuals who have non-conforming gender identity or expression.