



# Kids are Different: Centering Child & Youth Perspectives in Juvenile Cases

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**25<sup>TH</sup> ANNIVERSARY**  
**THROUGH THE EYES OF A CHILD CONFERENCE**  
**AUGUST 7<sup>TH</sup> & 8<sup>TH</sup> 2022**





# Concurrent Planning (*Most Permanent?*)

Hon. Dawn M. McIntosh  
Hon. James D. Williams  
Hon. Bethany P. Flint

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419B.343(2)(b)



## Recommendations of committing court

Except in cases when the plan is something other than to reunify the family, the department shall include in the case plan: **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.

# Permanency Findings

At a permanency hearing the court may:

- (e) Review the efforts made by the department to develop the concurrent permanent plan...
- (f) Order the department to develop or expand the case plan or concurrent permanent plan and provide a case progress report...

Determine the Permanency Plan - 42 USC 675(5)(c)

419B.476(4)(e)  
and (f)

# Identified Plans

## Designated at Disposition and Addressed at Permanency

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- Adoption - (1)
- Guardianship – Permanent 366 v Durable 365 Designation?? - (38)
- Placement with Fit and Willing Relative - (32)
- Another Planned Permanent Living Arrangement (APPLA) - (6)
  - for a child who has reached the age of 16 or young adult
  - APPLA is the least preferred permanency plan of the five permanency plans
- “Permanent foster care” – (66)



# Priority/Preference Hierarchy?

Title IVE of SSA  
section 475(5)(b) as  
amended by ASFA (1997); –  
**FREQUENTLY CITED AS THE  
ORDER OF PREFERENCE  
FOR PERMANENCY FOR A  
CHILD.**

Other Cites noted are Title  
IVE of SSA section 475 (5)(c)  
[42 USC 675] as amended  
by ASFA (1997); 45 CFR  
1356.21(h)

- Most just list the order of these plans, in the same order.
- The court's determination of the permanency plan for the ward that includes whether and, if applicable, when:
  - A. The ward will be returned to the parent;
  - B. The ward will be placed for adoption, and a petition for termination of parental rights will be filed;
  - C. The ward will be referred for establishment of legal guardianship;
  - D. The ward will be placed with a fit and willing relative; or
  - E. If the ward is 16 years of age or older, the ward will be placed in another planned permanent living arrangement.

# Priority/Preference Hierarchy?

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Child Welfare Manual, Chapter 6, Section 15 states:

Placement with a **fit and willing relative** is a permanency option for a child or young adult **only when there are compelling reasons not to pursue more preferred permanency plans.**

**The more preferred plans are:**

- I. Reunification
- II. Adoption
- III. Guardianship

Placement with a fit and willing relative:

- Does **not** achieve legal permanency
- The child **remains a ward** of the court and in the care and custody of ODHS
- Requires **biannual reviews** through the CRB and court

# Priority/Preference Hierarchy, cont.

Child Welfare Manual Continued....

While considering this plan, you must determine which relatives are able and willing to have a lasting, supportive relationship with the youth extending into the future and well beyond a foster care placement. The intent is to secure a lasting, forever commitment from a relative caregiver that will endure into adulthood and remain a permanent connection and support throughout the child or young adult's life.

## Tip

Compelling reason means: a convincing and persuasive reason why it would **not be in the best interest** of the child or young adult to be reunified with a parent, placed for adoption or placed with a legal guardian. A compelling reason must be supported with very strong, case-specific facts and evidence including justification for the reasons and decisions why each more preferred permanency option is not reasonable, appropriate or possible.

## Tip

Even adoption or guardianship with a nonrelative is a preferable permanency plan than placement with a fit and willing relative. Children deserve legal permanency if at all possible. While still an acceptable permanency plan, placement with a fit and willing relative keeps the child in the foster care system, which is never more desirable than achieving legal permanency

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# JCIP Permanency Benchbook

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## 6.C. Concurrent planning

When the child is in substitute care and the plan is **reunification**, ODHS is required to develop a **concurrent plan in case the parent is not able** to adjust his or her conditions or circumstances to make it safe for the child to return home within a reasonable time. ORS 419B.343 (2)(b). The concurrent plan should be set forth in the ODHS case plan. The possible concurrent plans in order of preference are as follows:

- Adoption
- Guardianship
- Placement with a Fit and Willing Relative
- Another Planned Permanent Living Arrangement (APPLA, children age 16 and older)

**Practice tip:** If the concurrent plan is not adoption, ODHS should provide a reason why a lesser plan is more appropriate for the child.

Determine what efforts ODHS has made to develop the **concurrent plan**

(including ODHS's efforts to identify appropriate in and out-of-state permanent placement options and identification and selection of a suitable adoptive placement **if the concurrent plan is adoption**).

# JCIP Permanency Benchbook, cont.

## C.I. Findings.

The court may make a finding concerning whether efforts to develop the concurrent plan are sufficient. ORS 419B.476 (4)(e).

## C.II. Concurrent planning steps.

- Absent parent search;
- All legal and Stanley fathers have been filed on;
- Letters sent to putative fathers;
- Pending petition allegations resolved;
- Action agreements/letters of expectation provided to parents;
- ASFA timelines explained to parents;
- Assessments completed on child;
- Diligent relative search and engagement of relatives;
- ICPC requests made on out of state relatives;
- Siblings visit plan established if living apart;
- Collection of birth and medical records;
  - ICWA inquiry resolved;
  - Suitability of current caretaker or relatives reviewed at staffing.

# Adoptions and Safe Families Act of 1997 (ASFA)

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ASFA was passed in 1997 and amended the Adoption Assistance and Child Welfare Act of 1980 to **address concerns that children and youth were languishing in foster care with multiple placements without permanency.**

The bill clarified required judicial reasonable efforts findings, including when the state was not required to provide reunification services. It imposed timelines for judicial hearings and findings. It also provided incentives and additional funding to support adoptions as a permanency option.

## ASFA Comments from PBS Frontline® publication

The Adoption and Safe Families Act of 1997 (ASFA), which *The Washington Post* in January 1998 called "**the most significant change in federal child-protection policy in almost two decades**," ushered in a series of changes to the foster care system, many of which are still hotly contested today. The law states that the system's "paramount concern" is for children's health and safety, which some critics say endorses a tilt away from family preservation and reunification efforts. Some of the law's provisions:

1. Agencies and courts may forgo the "reasonable efforts" mandate previously in force -- where states were required to make "reasonable efforts" to prevent the removal of children from their homes and to reunite those who had been removed -- if a parent has abandoned their child, committed murder or voluntary manslaughter, been convicted of a felony assault, or previously had their parental rights terminated.
2. States must file a termination of parental rights (TPR) petition if a child has been in foster care for 15 of the most recent 22 months. Courts can exempt cases from this requirement if the child is in a relative's home, if "reasonable efforts" at reunification were not made, or if there is a compelling reason that TPR wouldn't be in the best interests of the child.
3. As an incentive to move more children out of foster care, states are eligible to receive up to \$4,000 in federal funds for each foster child adopted beyond a baseline number, and \$6,000 for each additional special needs child who is adopted.



ASFA Comments  
from PBS Frontline®  
publication, cont.

## Additional Reading



This PBS article includes links to two book excerpts by experts with widely divergent views on ASFA, its provisions, and its effects.

**Dorothy Roberts**, a professor of law at Northwestern University and author of *Shattered Bonds: The Color of Child Welfare*, argues that ASFA is a wrong-headed assault on family preservation that goes far beyond its goal of ensuring children's safety and establishes "a preference for adoption as the means of reducing the exploding foster care population."

**Elizabeth Bartholet**, on the other hand, argues that ASFA has many loopholes and that, in fact, it does not go far enough to ensure children's safety. A professor at Harvard's law school and the author of *Nobody's Children: Abuse and Neglect, Foster Drift, and the Adoption Alternative*, Bartholet writes that "ASFA may have left too much room for those in the child welfare system who are committed to family preservation to resist and evade [the law's] apparent purpose."

## OAR Rule 413-070-0512 - Development and Review of the Permanency Plan and Concurrent Permanent Plan

- (1) When developing the permanency plan and concurrent permanent plan, the caseworker must complete all of the following actions:
  - (a) Develop a permanency plan and a concurrent permanent plan for each child or young adult in the Department's custody within 60 days of the placement of the child or young adult into substitute care.
  - (b) Review the plan every 90 days, pursuant to OAR 413-040-0005 (Purpose) to 413-040-0032 (Requirements for Closing the In-Home Ongoing Safety Plan and Closing the Case).
  - (c) Involve a team of individuals knowledgeable about the needs of the child or young adult in the development and ongoing assessment of the most appropriate permanency plan and concurrent permanent plan for the child or young adult. The team must include all of the following:  
*(see [https://oregon.public.law/rules/oar\\_413-070-0512](https://oregon.public.law/rules/oar_413-070-0512) and continued on next slide)*

OARs  
(select)



## OAR Rule 413-070-0512 - Development and Review of the Permanency Plan and Concurrent Permanent Plan, cont.

**(1)(c)** continued from previous slide, **The team must include all of the following:**

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- (A)** The parents, unless a supervisor approves not including a specified parent because the contact may compromise the safety of a child or young adult or another individual; parental rights have been terminated; or the parent has signed a release and surrender agreement.
- (B)** The attorney of the parents, unless parental rights have been terminated or the parents have signed a release and surrender agreement.
- (C)** The child who has attained 14 years of age or young adult and, at the option of the child or young adult, up to two members of the case planning team who are chosen by the child or young adult as described in OAR 413-040-0010 (Requirements for the Case Plan)(3)(c).
- (D)** The CASA.
- (E)** The attorney of the child or young adult.
- (F)** A representative of the child's tribe, if the caseworker knows or there is reason to know the child is an Indian child pursuant to OAR 413-115-0060 (Active Efforts).
- (G)** A member of the RCWAC, if the child is a refugee child.
- (H)** The team may include any of the following:
  - (i)** The child at any age, whenever developmentally appropriate.
  - (ii)** The substitute caregiver of the child or young adult.
  - (iii)** The substitute caregiver's certifier.
  - (iv)** The relatives of the child or young adult.
  - (v)** Persons with a caregiver relationship.
  - (vi)** Other individuals with involvement in the life of the child or young adult.
  - (vii)** Individuals with expertise in permanency.

# OARs

## Rule 413-070-0500

The purpose of OAR 413-070-0500 (Purpose) to 413-070-0519 (Decision and Notice) is to describe **the Department's responsibility to seek legal permanency** for a child or young adult in the legal custody of the Department and **the use of a permanency committee**.

## Rule 413-070-0655

The purpose of OAR 413-070-0651 to 413-070-0670 (Approval and Implementation of a Guardianship Permanency Plan) is to describe the **responsibilities of the Department to determine the appropriate use of guardianship**, as established by the court under ORS chapter 419B, as a permanency plan for a child in the care or custody of the Department.

## Rule 413-070-0990

The purpose of OAR 413-070-0990 (Purpose) to 413-070-1060 (Termination of Placement with a Fit and Willing Relative Permanency Plan) is to describe the **responsibilities of the Department to determine the appropriate use of placement with a fit and willing relative** as a permanency plan for a child or young adult in the care or custody of the Department.

## Rule 413-070-0520

The purpose of OAR 413-070-0520 (Purpose) to 413-070-0565 (Termination of APPLA) is to describe the **responsibilities of the Department in case planning and the appropriate use of APPLA** as a permanency plan for a child or young adult.



A **permanency committee** must be scheduled when **any** of the following applies:

- (1) A **caseworker recommends a change in permanency plan to guardianship, fit and willing relative, or APPLA**. This rule does not apply to a permanency plan of guardianship under OAR 413-070-0668 (Consideration of a Relative as the Legal Guardian when the Relative is not the current Substitute Caregiver) unless the Department determines that it must make a recommendation to change the permanency plan for a child to guardianship prior to a resource having been identified pursuant to OAR 413-070-0518 (Approving a Permanency Plan Prior to a Resource Being Identified)(1)(b).
- (2) A **caseworker is considering a separation of siblings in adoption** under OAR 413-110-0132 (Consideration of Sibling Separation).
- (3) A **caseworker requests a permanency committee review** the relationship between a *general applicant* and a *child* whose *permanency plan* is *adoption* under OAR 413-120-0750 (Recruitment Efforts).

OAR  
413-070-0514

Permanency  
Committee

# Concurrent Planning Steps (CRB checklist)

## I. Findings.

- Determine what efforts ODHS has made to develop the concurrent plan (including ODHS's efforts to identify appropriate in and out-of-state permanent placement options and identification and selection of a suitable adoptive placement if the concurrent plan is adoption). The court may make a finding concerning whether efforts to develop the concurrent plan are sufficient. ORS 419B.476 (4)(e).

## II. Concurrent planning steps:

- Absent parent search;
- All legal and Stanley fathers have been filed on;
- Letters sent to putative fathers;
- Pending petition allegations resolved;
- Action agreements/letters of expectation provided to parents;
- ASFA timelines explained to parents;
- Assessments completed on child;
- Diligent relative search and engagement of relatives;
- ICPC requests made on out of state relatives;
- Siblings visit plan established if living apart;
- Collection of birth and medical records;
  - ICWA inquiry resolved;
  - Suitability of current caretaker or relatives reviewed at staffing.

- No argument – grounds for termination existed. Parent did not challenge.
- No presumption that it is in a child's best interest to sever the legal relationship to the biological parent.
- Proponent of adoption has burden to prove by clear and convincing evidence / "highly probable" that severing the legal ties to the unfit parent is in the particular child's best interest.
- Fact specific inquiry into how termination likely will affect the particular child.

## Adoption / "Severance" Disfavored?

ODHS v. L.M.B. (July 2022)

**"Ultimately, to be able to conclude that termination is in a child's best interest, we must be able to determine with confidence that the benefits to the child of ending the child's legal relationship with a parent outweigh the risk of harm posed to the child by severing that legal relationship."**

# Adoption / 'Severance' Disfavored?

ODHS v. J. H., 320 Or App  
658 (2022)

**Court found that there was  
sufficient evidence to  
change plan away from  
reunification; however...**



Court found that there was sufficient evidence to change plan away from reunification; however,

ORS 419B.498(1)(a) requires DHS to file a petition to terminate parental rights and to proceed with adoption when a “child or ward has been in substitute care under the responsibility of the department for 15 months of the most recent 22 months,” unless some exception applies. S. J. M., 364 Or at 51 (quoting ORS 419B.498(1)(a)).

It is the parents’ burden to establish an exception to termination and adoption. Id. at 55. One such exception is that a child is “being cared for by a relative and that placement is intended to be permanent[.]” ORS 419B.498(2)(a).2 The trial court found that child’s placement with her great-grandmother was not intended to be permanent. Father challenges that finding in his third assignment, and mother challenges that finding in her fourth assignment.

**“We agree with parents that the trial court’s finding is not supported by the evidence. It is undisputed that the great-grandmother and child have a relationship akin to that of a parent and child. Although the great-grandmother testified that she hoped that child could someday live with her mother, it is clear that she sees herself as a permanent placement. Her testimony is undisputed that her intention is to care for child permanently. Thus, we conclude that the record requires the finding that child is in a permanent placement with a relative, which constitutes an exception to a change to adoption under ORS 419B.498(2)(a).”**



# How Permanent is Permanent?

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(B) “PERMANENT” MEANS ENDURING AND STABLE.

# GUARDIANSHIPS

GENERAL, AKA “DURABLE”

ORS 419B.366

- (1) A party, or a person granted rights of limited participation for the purpose of filing a guardianship motion, may file a motion to establish a guardianship. The motion must be in writing and state with particularity the factual and legal grounds for the motion.
- (2) Except as otherwise provided in subsection (3) of this section, the facts supporting any finding made or relief granted under this section must be established by a preponderance of evidence.
- (3) If an Indian child is involved, the guardianship must be in compliance with the Indian Child Welfare Act. The facts supporting any finding made to establish a guardianship for an Indian child, including the finding that continued custody by the parents or Indian custodian would result in serious emotional or physical harm to the Indian child, must be established by clear and convincing evidence.
- (4) In a proceeding under this section, the court may receive testimony and reports as provided in ORS 419B.325 (Disposition required).
- (5) If the court has approved a plan of guardianship under ORS 419B.476 (Conduct of hearing), the court may grant the motion for guardianship if the court determines, after a hearing, that:
  - (a) The ward cannot safely return to a parent within a reasonable time;
  - (b) Adoption is not an appropriate plan for the ward;
  - (c) The proposed guardian is suitable to meet the needs of the ward and is willing to accept the duties and authority of a guardian; and
  - (d) Guardianship is in the ward’s best interests. In determining whether guardianship is in the ward’s best interests, the court shall consider the ward’s wishes.
- (6) Unless vacated pursuant to ORS 419B.368 (Review, modification or vacation of guardianship order), a guardianship established under this section continues as long as the ward is subject to the court’s jurisdiction as provided in ORS 419B.328 (Ward of the court). [2003 c.229 §2; 2007 c.333 §2]

# GUARDIANSHIPS

## PERMANENT

### ORS 419B.365

- (1)** At any time following establishment of jurisdiction and wardship under ORS 419B.100 (Jurisdiction), but prior to filing of a petition under ORS 419B.500 (Termination of parental rights generally), or after dismissal of a petition filed under ORS 419B.500 (Termination of parental rights generally) if it fails to result in termination of the parent's rights, a party, or person granted rights of limited participation for the purpose of filing a guardianship petition, may file, and the court may hear, a petition for permanent guardianship. If the Department of Human Services chooses not to participate in a proceeding initiated by an intervenor under ORS 419B.875 (Parties to proceedings), the state is not foreclosed from filing a subsequent action should the intervenor's petition be denied.
- (2)** The grounds for granting a permanent guardianship are the same as those for termination of parental rights.
- (3)** The court shall grant a permanent guardianship if it finds by clear and convincing evidence that:
  - (a)** The grounds cited in the petition are true; and
  - (b)** It is in the best interest of the ward that the parent never have physical custody of the ward but that other parental rights and duties should not be terminated.
- (4)** If an Indian child is involved, the permanent guardianship must be in compliance with the Indian Child Welfare Act. Notwithstanding subsection (3) of this section, the facts supporting any finding made to establish a permanent guardianship for an Indian child, including the finding that continued custody by the parents or Indian custodian would result in serious emotional or physical harm to the Indian child, must be established beyond a reasonable doubt.
- (5)** Unless vacated under ORS 419B.368 (Review, modification or vacation of guardianship order), a guardianship established under this section continues as long as the ward is subject to the court's jurisdiction as provided in ORS 419B.328 (Ward of the court). [1997 c.873 §3; 1999 c.59 §119; 1999 c.859 §23; 2003 c.229 §6; 2003 c.396 §63a; 2007 c.333 §1]

# GUARDIANSHIPS

Just How Permanent  
are they really?

- Continue unless vacated, so long as the child remains a ward/within the jurisdiction of the court.
- May be vacated if it is in the best interests of the child. Parent may not move to vacate a permanent guardianship.
- DHS is no longer an involved party.
- Most cases, appointment of child's attorney and CASA do not continue.
- Guardian is not a party until after legal guardianship is established and does not have access to DHS records. They are usually unrepresented.
- Terminate when the **original** bases for jurisdiction (admitted or proved) cease to exist at **any point in the future** without regard to the safety or best interests of the child. Nothing in the plain language of the statute prohibits a parent from moving to dismiss wardship after a permanent guardianship is established.

A.M. 365 OR 223 (2019), H.L.W. 300 Or App 603 (2019)



# RESOURCES

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1. DHS Child Welfare Manual:  
[http://www.dhs.state.or.us/caf/safety\\_model/procedure\\_manual/Oregon-DHS-Child-Welfare-Procedure-Manual.pdf](http://www.dhs.state.or.us/caf/safety_model/procedure_manual/Oregon-DHS-Child-Welfare-Procedure-Manual.pdf) (Rev. 07/01/2022)
2. JCIP Benchbook:  
<https://www.courts.oregon.gov/programs/jcip/SiteAssets/Lists/JuvDepBenchbook/EditForm/Permanency.pdf>
3. PBS Frontline®  
<https://www.pbs.org/wgbh/pages/frontline/shows/fostercare/inside/asfa.html>
4. NCJFCJ Fed Summary March 2022  
<https://www.ncjfcj.org/>

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# Customary Tribal Adoption





# Discussion/Questions

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Thank you!