



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

25TH ANNIVERSARY
THROUGH THE EYES OF A CHILD CONFERENCE
AUGUST 7TH & 8TH 2022



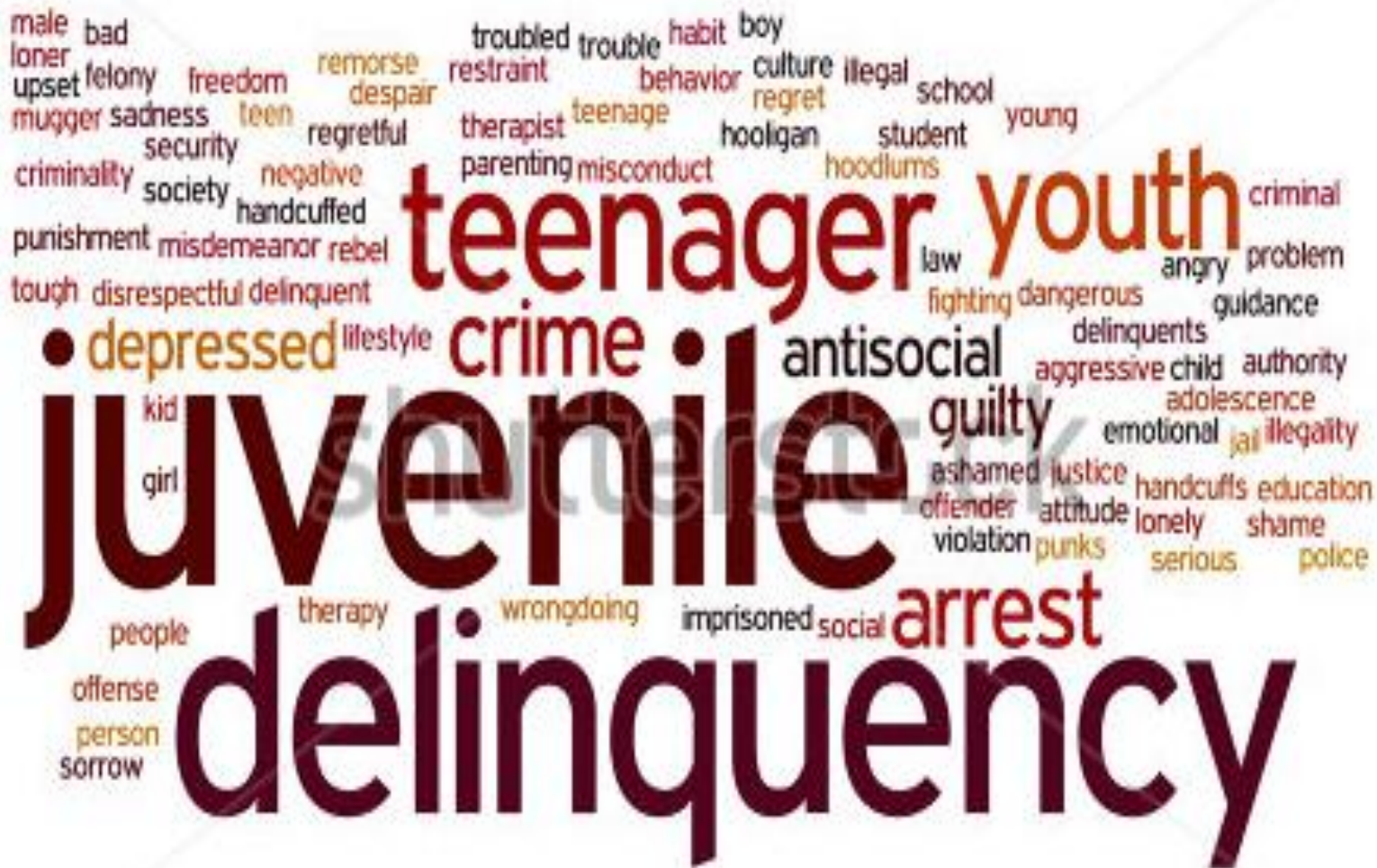


Delinquency 101

Hon. Lindsay Partridge
Hon. Megan Jaquot

25TH ANNIVERSARY
THROUGH THE EYES OF A CHILD CONFERENCE
AUGUST 7TH & 8TH 2022





TOPICS

- I. The Basics
- II. Pre-Petition
- III. Petition Filed
- IV. Waiver Cases
- V. Adjudication
- VI. Disposition
- VII. Confidential Records
- VIII. Miscellaneous

I. THE BASICS



A HISTORICAL PERSPECTIVE

- In the beginning...
- Oregon Youth Authority (OYA) and Department of Human Services (DHS) were one agency.
- Juvenile Department was an arm of the court.
 - References in code to “court” meant “juvenile department.”
- Courts had control of much of the money – including foster care funds.

THE JUVENILE CODE (ORS 419)

- Juvenile Code consists of three main sections:
 - ❖ ORS 419A – General Provisions
 - ❖ ORS 419B – Dependency
 - ❖ ORS 419C - Delinquency

- Other Important Statutes
 - ❖ ORS 420 – Youth Correction Facilities
 - ❖ ORS 420A – Oregon Youth Authority
 - ❖ ORS 137 - Mandatory Min. Criminal Sentences

JUVENILE JUSTICE INTERVENTION

- In most cases intervention begins with a police or school report sent to county juvenile department
- Serious allegation = more likely youth held in detention
- Usually, youth are out of custody and juvenile probation officer meets with youth and family
- Juvenile probation officer may offer some informal response or may consult with district attorney about filing a petition
- **Goal is to intervene in youth's life to protect community and modify behavior to put youth on road to success**

ADOLESCENT BRAINS

- Studies show from about 13-25 a **pruning** and strengthening process occurs in brain development
- Those cells and neural connections that get used the least get pruned away and die off
- Those cells and neural connections that get used the most get stronger
- Drug and alcohol impede healthy brain development
- Trauma and stress release the chemical **cortisol** and prolonged exposure to cortisol can cause long-term damage to the developing brain

ADOLESCENT BRAINS (CONTINUED)

- US Supreme Court has acknowledged that different legal treatment of juveniles is required, in part, due to the continuing brain development in juveniles as compared to adults.
- *Roper v. Simmons*, 543 U.S. 551 (2005)(no juvenile death penalty)
- *Graham v. Florida*, 560 U.S. 48 (2010) (no life without parole for juveniles convicted of non-homicide offense)
- *Miller v. Alabama*, 567 U.S. 460 (2012) (no life without parole for juveniles convicted of homicide offenses)
- *Montgomery v. Louisiana*, 577 U.S. ____ (2016) (*Miller* must be applied retroactively)

BASIC TERMS

(REMEMBER A DELINQUENCY CASE IS NOT A CRIMINAL CASE)

- Use **“petition”**
 - Don’t use “information” or “indictment”
- Use **“youth”**
 - Don’t use “defendant”
- Use **“admission”, “adjudicated”, and “under juvenile court jurisdiction”**
 - Don’t use like “plea”, “guilty” or “convicted”
- Use **“preliminary hearing”, “adjudicatory hearing” and “disposition”**
 - Don’t use “arraignment”, “trial” or “sentencing”
- Use **“detention” or “youth correctional facility”**
 - Don’t use “jail” or “prison”

II. PRE-PETITION ISSUES



CUSTODY (ORS 419C.080)

- A police officer can take a youth into “custody” for any offense for which the youth could be arrested without a warrant if the youth were an adult.
- Custody is not arrest (ORS 419C.091).

ARREST WARRANTS (ORS 419C.320)

- Arrest Warrants can ONLY be issued if:
 - Probable cause exists to believe the youth:
 - ❖ Committed an offense that would be a crime if committed by an adult;
 - ❖ Violated a conditional release; or
 - ❖ Violated a condition of probation.
 - **AND** one of the following circumstances exist:
 - ❖ Youth failed to appear on summons;
 - ❖ Youth can not be located to be served; or
 - ❖ Service on the youth would be ineffectual.

ALTERNATIVES TO JUVENILE COURT INTERVENTION

- Diversion (ORS 419C.225)
- Family Support Teams/County Support Programs
- Victim Offender Reconciliation Programs (VORP)
- Youth/Peer Courts (ORS 419C.226)
- Refer to community organization
- Department of Human Services (DHS) programs
- Do nothing

ALTERNATIVES TO COURT (CONTINUED)

- **Formal Accountability Agreement** (ORS 419C.230)
 - ❖ Often called “FAA.” Voluntary agreement between juvenile dept. and Youth. No petition is filed as part of the agreement. (ORS 419C.233)
 - ❖ Certain offenses are disqualified including second felony referral
 - ❖ Agreement may require counseling, community service, education, treatment or training; restitution, mental health services.
 - ❖ Limited to one year, must be in writing and is revocable by either party.
 - ❖ Can not be used as evidence in a future proceeding.
 - ❖ Juvenile counselor must inform Youth of right to counsel prior to entering into agreement. Court can appoint counsel. (ORS 419C.245)

ALTERNATIVES TO COURT (CONTINUED)

- Even if a delinquency petition is filed, the juvenile court can still make the option of a formal accountability agreement available.
 - ❖ How? – The juvenile court can dismiss the petition with the understanding that the Youth will enter into an FAA.
 - ❖ Why? – perhaps to circumvent the Youth having to address a formal petition

III. PETITION FILED



PETITION (ORS 419C.250)

- The petition is filed by the AG, DA or Juvenile Department (only when authorized by the DA).
- Under Odyssey each new delinquency petition alleging delinquent behavior receives a new case number issued on a statewide basis.
- Court has broad discretion to amend, set aside or dismiss the petition. Can be done pre- or post-adjudication. (ORS 419C.261)(*State v. L.M.W.*, 275 Or App 731 (2015))

AMENDING THE PETITION

- Amending petition per *State v. M.A.S.*, 302 Or App 687 (2020).
- ORS 419C.261 “The court * * * may at anytime direct that the petition be amended “***, [i]f it is a sex crime, the Court shall make written findings stating the reason for directing the amendment.”
- COA did not address issue of failing to make written findings b/c Youth did not preserve issue at time of adjudicatory hearing
- Youth also raised due process violation of amending right before the hearing, but Youth had made it clear he wanted to proceed to hearing.
- Bottom line – you probably can amend but may have to grant a continuance.

VENUE (ORS 419C.013)

- Where youth resides,
- Where the act occurred, or
- Where youth is already within the jurisdiction of the court
- Ok to resolve petition in one county and complete disposition in another county (ORS 419C.059)
- Policy of juvenile directors to transfer to county of residence (ORS 419C.050)
- Judges often confer by email on transfer matters



SUMMONS (ORS 419C.300)

- Summons required to be served on the legal parent or guardian and youth 12 or over.
- Summons must be issued within 60 days of filing the petition.
- Often juvenile department arranges for youth and parents to appear voluntarily for preliminary hearing. However, summons must be served at that time.
- Legal parent or guardian must appear personally at the first appearance and then only as ordered by the court. As a practical matter, one parent or guardian is sufficient.
- A “legal parent” is one who has established paternity or is the birth mother or adoptive parent (custody is irrelevant).

PARTIES (ORS 419C.285)

- State –
 - ❖ District attorney or
 - ❖ Juvenile department – county agency
- Youth
- Additional parties **if** jurisdiction taken by court:
 - ❖ Parent of Youth
 - ❖ Oregon Youth Authority – state agency
 - ❖ Department of Human Services – state welfare agency and often involved with “cross-over cases”
 - ❖ Court Appointed Special Advocate (CASA)
 - ❖ Intervenor under ORS 109.119
- Alleged victim is not a party but state must give notice of proceedings and alleged victim has right to be heard

PRELIMINARY HEARING

- Juvenile equivalent to, but not identical to, adult arraignment.
- Court must hold PH within **36 hours** of youth being placed in detention, not counting Saturdays, Sundays and judicial holidays. Because of the requirement to place in least restrictive option pre- adjudication, should be ASAP.(ORS 419C.136 and ORS 419C.139)
- Advice of rights to youth.
- Appointment of attorney for the youth or written waiver of right to counsel. Waivers are disfavored. ORS 419C.200(2)(a). There are model forms to help. [Oregon Judicial Department : JCIP Dependency Model Court Forms : Model Court Forms : State of Oregon](https://www.courts.oregon.gov/programs/jcip/ModelCourtForms/Pages/default.aspx)
<https://www.courts.oregon.gov/programs/jcip/ModelCourtForms/Pages/default.aspx>
- Parents receive notice of obligations and rights. Clerk can print out parent notice from above site.
- Often the main issue is whether to release the Youth. ORS 419C.145 (detention), ORS 419C.170-179 (shelter)

COURT APPOINTED ATTORNEY (ORS 419C.200)

- Court **shall** provide **suitable** counsel, whenever requested (statute complicated, this is the net effect).
 - Court can no longer assess fees to determine eligibility or require application establishing indigence.
- Youth's attorney has access to inspect and copy any records regarding the youth. (ORS 419C.200 (2))
- Court can no longer require parent/youth to repay cost of court appointed counsel.



PRE-ADJUDICATION DETENTION (ORS 419C.145)

- Court **must release** to parent or responsible adult, own recognizance, or shelter placement **UNLESS**:
 - ❖ Probable cause to believe:
 - Youth is a runner (fugitive or FTA) or unsafe to self and others;
 - Youth committed a felony or person misdemeanor;
 - Youth violated conditions of release or probation;
 - Youth was in possession of weapons;
 - Detention necessary for reasonable protection of victim; **AND**
 - ❖ One of the following exist:
 - “No less restrictive means” will reasonably assure youth’s attendance at adjudication; or
 - Youth’s behavior endangers physical welfare of self or others.

PRE-ADJUDICATION DETENTION (CONTINUED)

- Court **CAN NOT** release if:
 - Probable cause exists to believe the youth committed a violent felony; AND
 - Clear and convincing evidence youth poses a danger of serious physical injury to, or sexual victimization of, the victim or members of the public while on release.
- Much more likely to be an issue with waiver cases.

LIMITS ON PRE-ADJUDICATION DETENTION*

- **Under 12** requires a court order first. (ORS 419C.133)
- **5 hour** hold at a police station. (ORS 419C.130(1)(a))
- **36 hour** hold to develop release plan or when weapons at school/public place involved. (ORS 419C.136 and ORS 419C.139)
- Court must review placement every **10 judicial days** and consider facts relevant to the likelihood of the youth's appearance or compliance with the law and other conditions of release. (ORS 419C.153)
- * Rules are different for waiver cases as discussed below.

RELEASE FACTORS

- ✧ Relationships with family or responsible adults in the community;
- ✧ Previous record of referrals and recent demonstrable conduct;
- ✧ Past and present residence;
- ✧ Education status and school attendance record;
- ✧ Past and present employment;
- ✧ Previous record regarding appearance in court;
- ✧ The nature of the charges and any mitigating or aggravating factors;
- ✧ Youth's mental health;
- ✧ The reasonable protection of the victim;
- ✧ Any other facts relevant to the likelihood of the youth's appearance or compliance with the law and other conditions of release.
- ✧ **TIP: OFTEN PARENTS DON'T WANT YOUTH RELEASED**

LIMITS ON PRE-ADJUDICATION DETENTION (CONTINUED)

- Youth may be held for a maximum of **28 calendar days** unless good cause is found for continued detention. (ORS 419C.150)
- May extend for no more than an additional 28 days. Maximum **56 calendar days** total.
- May extend beyond 56 days with the express consent of the Youth. Best practice is written waiver and done on the record.
- These rules no longer apply to waiver cases.

<https://olis.leg.state.or.us/liz/2021R1/Downloads/MeasureDocument/HB2940>, ORS 419C.153.

PHYSICAL RESTRAINTS IN COURT

- As of January 1, 2018, presumption that Youth in custody are not restrained when in court (ORS 419A.240)
- Person advocating for restraints must demonstrate why restraints are needed
- Court needs to hold a mini-hearing prior to Youth appearing in Court in restraints
- Type of restraint could include handcuffs, leg irons, and belly chains
- <http://www.courts.oregon.gov/programs/jcip/ModelCourtForms/Pages/default.aspx>
- **TIP: A calm voice and silence from the bench often does wonders for reducing challenging behaviors**

PARENTAL NOTICE (ORS 419C.020)

- Each parent or guardian must receive verbal (from the court) **and** written “notice” of obligations and rights at their first appearance
- Financial obligations limited to restitution as of 9/25/2021. SB817(2021) regular session. Bill pending to modify juvenile restitution, too.
- Right to appeal and time to file the appeal
- Notation in the record of the date notice provided
- **NOTE:** Parents are **NOT** parties to the case until disposition (ORS 419C.285)

FITNESS TO PROCEED (ORS 419C.378)

- Juvenile fitness to proceed statute took effect in 2014 and process is still evolving
- Applies if as a result of a mental disease or defect any of the following apply:
 - Youth is unable to understand the nature of the proceedings
 - Youth is unable to assist and cooperate with counsel
 - Youth is unable to participate in Youth's defense.
- Court cannot find Youth unfit to proceed solely due to age, lack of memory, or intoxication
- Any party can raise the issue, including the court

FITNESS TO PROCEED (ORS 419C.378)

- Once raised the court must determine if:
 - ❖ there is reason to doubt the Youth's fitness to proceed; and,
 - ❖ there is probable cause to believe petition allegations are true
- Proceedings **stayed** for Youth to obtain evaluation by an approved evaluator – detention timelines do not apply
- Clear legislative policy that Youth's custody status should not be more restrictive simply because an evaluation is ordered
- If Youth found unfit to proceed, then Oregon Health Authority must provide **restorative** services.
- Every form you will need can be found here: [Oregon Judicial Department : JCIP Dependency Model Court Forms : Model Court Forms : State of Oregon](#)

ADMISSIONS (ORS 419C.400)

- Taking of Admissions varies greatly around the state
- Some things to consider:
 - ❖ Waiver of counsel – Youth 16 or older may represent self after written waiver of attorney. Obviously, this practice is NOT recommended. (ORS 419C.200(2)(a)(A))
 - ❖ Written admission preferred (but not done everywhere);
 - ❖ Discuss basic rights with Youth;
 - ❖ Review allegation(s) being admitted;
 - ❖ Establish factual basis (by youth or state with agreement by the youth);
 - ❖ Receive admission (oral acknowledgement if written).

ADMISSIONS (CONTINUED)

- Deferred Disposition/Conditional Postponement.
 - ❖ Court can take an admission and continue/postpone disposition to a future date
 - ❖ No jurisdictional order is entered until disposition
 - ❖ If the petition is dismissed at disposition, then a jurisdictional order is never entered

- Parental consent to admission is not required:
 - ❖ Parent is not a party until disposition. (ORS 419C.285)

ADMISSION FORM EXAMPLES

- Thank you to Jefferson and Multnomah Counties for providing good examples of forms. Please see the appendix to the slideshow.

IV. WAIVER CASES



PRE-1995 – THE REMAND PROCESS

- All offenses alleged against a “child” started in juvenile court – even Aggravated Murder charges
- The case would remain a juvenile case unless the juvenile court judge “remanded” the child to adult court (circuit court.)
- One result: several high profile cases in which a child killed someone remained in juvenile court.
- By leaving the case in juvenile court one significant result was the State had to release the child by age 25 from custody – regardless of the offense.
- In 1995 BM 11 dramatically changed the remand process for 15, 16 and 17 year-old “youths” if accused of serious felonies.

BALLOT MEASURE 11 -1995 (AUTOMATIC WAIVER)

- The voters eliminated the remand process for serious felonies in the 1994 election through BM 11
- 1995 legislative session passed SB 1 which created the Oregon Youth Authority (OYA), in part, to respond to changes required by BM 11
- BM 11 required automatic remand/waiver to adult court all 15, 16 and 17 year-olds accused of the most serious felonies (ORS 137.700)
- BM 11 also established mandatory minimum/no good time sentences for convictions of the most serious felonies.

NON-BM 11 WAIVER HEARINGS (1995 TO 2019)

- Juvenile court could still waive juveniles **15 and older** to circuit court after a hearing if:
 - Accused of an offense listed in ORS 419C.349(1)(b);
 - Court makes a written finding that Youth at time of offense was of sufficient sophistication and maturity to appreciate the nature and quality of the conduct involved; and,
 - Court makes a written finding that retaining jurisdiction will not serve the best interests of the youth and of society.
- Juveniles **under 15** can only be waived for offenses of Agg. Murder/Murder, Rape 1, Sodomy I or Unlawful Sexual Penetration with a Foreign Object I (ORS 419C.352)

BALLOT MEASURE 11 - POST 2019

(DISCRETIONARY WAIVER)

- 2019 legislative session passed SB 1008.
 - ❖ Probably biggest change in juvenile delinquency law in the last 25 years
- Major Revision of BM 11 - eliminates the automatic remand/waiver requirement
- What does it mean for a juvenile court judge?
 - Your Job Just Got Incredibly More Difficult
 - All the serious person offenses where the accused is 15, 16 or 17 yoa now will **begin** in juvenile court and **stay** in juvenile court **unless** you determine it is appropriate for the case to go to adult court.

WAIVER RULES

- SB 1008 took effect January 1, 2020
 - ❖ ORS 419C.349 sets out the process and criteria
 - ❖ Only applies to sentences imposed after January 1, 2020
 - ❖ No retroactive application to sentences imposed prior to January 1, 2020 – even if sent back after appeal or post-conviction
 - ❖ However, many pre-January 1, 2020 cases have resulted in commutation or clemency by the Governor

ORS 419C.349 WAIVER REQUIREMENTS (CONTINUED)

- Youth has the right to counsel
- State has the right to a psychological examination
- Named Victim Notification
 - ❖ DOJ in consultation with DA victim assistance programs and community-based victim service providers must develop model policies for notice that are trauma informed and culturally specific.
 - ❖ Named Victim has right to notice, to accompaniment, to provide information and to referral to community-based services that are, where available, culturally specific pursuant to the developed protocol

ADDITIONAL CHANGES AS OF JUNE 11, 2021

- 2021 HB 2939 A took effect June 11, 2021 and does the following:
 - ❖ Amends ORS 419C.013 to declare that the venue of a waiver hearing lies in the county where the alleged act was committed, unless the court determines the case may not be waived or the state stipulates that it will not request waiver.
 - ❖ Amends ORS 420.011 to raise the age limit from 19 to 20 for admitting youth offenders to an OYA youth correction facility. However, the age limit remains at 19 for youth offenders if they have been previously adjudicated for a non-Ballot Measure 11 offense but have not been previously placed in a youth correctional facility as a result of the adjudication.
 - ❖ Applies to acts committed before, on, or after June 11, 2021 that are subject of dispositional orders entered on or after the effective date of the act that recommend placement in a youth correction facility.

MORE CHANGES EFFECTIVE JANUARY 1, 2022

- 2021 HB 2940A amends ORS 419C.153 and requires the court to hold a review hearing in waiver cases every 30 days.
 - ❖ The court must review the progress of the case, and
 - ❖ Consider whether sufficient cause exists to require the youth to remain in detention. The victim is entitled to notice of the review hearing.
 - The court can only address release if the youth notifies the state at least five days before the date of the review hearing that the Youth intends to request release.
- The review hearing may not be waived, but the youth may waive their personal appearance at the hearing.

EVEN MORE CHANGES EFFECTIVE JANUARY 1, 2022

- 2021 HB 2940A amends ORS 419C.150 to create a different detention hearing process in waiver cases
 - ❖ The court can extend the youth's detention beyond 28 days if expressly agreed to by the youth and the court holds the detention review hearings required by ORS 419C.153 and determines the youth's detention should continue.
 - ❖ If the court denies waiver or denies a motion for waiver hearing, the court can extend youth's detention for no more than 28 days after the order is entered, so long as the court holds the detention review hearings required by ORS 419C.153 and determines that the youth's detention should continue

ORS 419C.349 PROVISIONS

- Depositions, upon motion to the court, are allowed
- Formerly referred to as “remand” cases, but today we use term “waiver” cases.
- Prior caselaw on “remand” cases may provide guidance
- Court must make findings by preponderance of the evidence that retaining jurisdiction in juvenile court is not justified because retaining jurisdiction will not serve the best interests of the **youth AND society**

WAIVER CRITERIA (ORS 419C.349(2))

- Non-exclusive factors for court to consider
 - ✧ Amenability of Youth to treatment and rehab given what is available to juvenile court v. criminal court
 - ✧ Protection of community given the seriousness of the offense alleged and youth ability to rehab in juvenile court
 - ✧ Aggressive, violent, or premeditated manner of the offense
 - ✧ History of youth
 - Physical, emotion and mental health of Youth
 - Prior treatment efforts and out-of-home placements
 - ✧ Prior record
 - ✧ Gravity of loss, damage or injury caused by Youth
 - ✧ Merit of the prosecution's case
 - ✧ Need to dispose of cases in one trial if there are co-offenders

OTHER TYPES OF WAIVER CASES (ORS 419C.340)

(CONTINUED)

- Juvenile court may order **ALL** cases (“blanket waiver”) involving any of the following offenses be waived to circuit or municipal court :
 - Motor vehicle offenses (violations and crimes)
 - Boating offenses
 - Gaming offenses
 - Property misdemeanors (theft, criminal trespass, vandalism)
 - Violations (Tobacco offenses and MIP alcohol)
 - Municipal court cannot incarcerate for prop. offenses
 - Must notify juvenile court and juvenile court can direct that case be sent to juvenile court

V. ADJUDICATION HEARING



ADJUDICATION HEARING

(SIMILAR TO CRIMINAL CASE – ONE BIG EXCEPTION)

- Same evidentiary rules as adult court
- Criminal Procedure Laws (ORS 419C.270):
 - ❖ ORS 133.673 and 133.693 (motions to suppress)
 - ❖ ORS 135.455 (giving notices of defenses)
 - ❖ ORS 135.805 (pretrial discovery)
- Facts alleged in the petition must be proven beyond a reasonable doubt (even on violations, ORS 419C.270)
- Can take witness testimony by telephone or video (ORS 45.400(3A))
- **No Jury** – judge is fact finder

ADJUDICATION HEARING (CONTINUED)

- Youth has burden of proving affirmative defenses by preponderance of the evidence.
- If youth fails to appear after summons the court may adjudicate and proceed to disposition without a hearing on the following offenses:
 - ❖ MIP
 - ❖ Delivery of Marijuana without consideration less than 5 grams
 - ❖ Possession of less than one ounce of Marijuana

SUPPRESSION OF YOUTH'S STATEMENTS

- Common for Youth's counsel to move to suppress Youth's statements
- Different because age and maturity of youth v. adult
- As in adult cases, Court must consider:
 - ❖ Voluntariness of statements
 - ❖ Compliance with *Miranda*
 - ❖ Oregon Constitution Art. I, Section 12
- Can an 11 year old with borderline IQ give an admissible confession? *In re Deford*, 177 Or App 555 (2001)
- Can you grant a motion to suppress and then be the trial judge?

SUPPRESSION OF EVIDENCE

- Caselaw from adult cases based on Oregon Constitution (Art. 1, Section 9) and Federal Constitution (Fourth and Fourteenth Amendments) apply in juvenile cases
- Can a parent give valid consent to justify a warrantless search of Youth?
 - ❖ Parent cannot waive rights for youth. *State v. H.K.D.S.*, 305 Or App 86 (2020)
 - ❖ DNA sample obtained from Youth w/o warrant and w/o Youth's consent. Parent did consent. Full court determined that parental consent is not an exception to the warrant requirement under Art. I, Section S. 9.

VI. DISPOSITION



NEW CASELAW REGARDING POST-ADJUDICATION DETENTION

- *In the Matter of J.R.*, 318 Or App 21 (2022). ORS 419C.145 allows for pre-adjudication detention, but does not allow for continued detention if disposition is done at a future date. Applies to adjudication on a new petition or probation violation show cause motion.
- Sometimes a juvenile court will adjudicate a petition/show cause motion and continue the case for disposition to secure an appropriate placement. If the Youth was in detention the juvenile court would continue the Youth in detention under the terms of ORS 419C.145.
- This case (issued March 2, 2022) makes it clear you can't adjudicate the petition/show cause and hold the Youth pursuant to ORS 419C.145.

POST-ADJUDICATION DETENTION - OPTIONS

- Release the Youth from detention on conditional release until disposition
- Immediately commit Youth to OYA
- Proceed immediately to disposition and impose up to 8 days in detention (no credit for time served)
- Youth waiver of challenge to continued disposition???
- Amend the statute

MAXIMUM CUSTODY TIMES

- Limitation on detention time (ORS 419C.453)
 - ❖ Not to exceed **8 days** post-adjudication. Court can't delegate decision to impose detention to juvenile department. *State v. D.R.M.*, 292 Or App 887 (2018); *State v. B.H.C.*, 288 Or App 120 (2017)
 - ❖ Maximum **30 days** if there exists a program plan in conformance with standards approved by the Youth Development Council.
- Limitation on commitment to OYA/DHS (ORS 419C.501):
 - ❖ C misdemeanor – 30 days
 - ❖ B misdemeanor – 6 months
 - ❖ A misdemeanor – 1 year
 - ❖ C felony – 5 years
 - ❖ B felony – 10 years (probably not really)
 - ❖ A felony – 20 years (not really)
 - ❖ Life for murder or aggravated murder (not really)
- Court must make **written** findings as to why it is in the best interests of the youth offender to be committed. (ORS 478C.478(1))

DISPOSITION (ORS 419C.440)

(CONSEQUENCES OTHER THAN CUSTODY)

- Probation - not to exceed 5 yrs or age 23 (ORS 419C.504)
- Rehabilitation services (mental health, anger, D/A, etc.)
- Community Service and Restitution:
 - ❖ Juv. Dept./OYA must provide opportunity to complete/pay
- Commitment to OYA/DHS (written findings required)
- Blood/buccal sample required for certain felonies
 - Sex crimes and Burg II with sex crime, Burg I, Assault I, consp. for certain felonies, murder (ORS 419C.473)
- HIV testing (ORS 419C.475)
- Services – dilemma of Juvenile Dept (local) v. OYA (state)
- OYA medical/mental health treatment plan (ORS 419C.489)

FINES AND COSTS

- 2021 SB 422 eliminated all juvenile fines and fees effective September 26, 2021.
- All unpaid fees and fines will be discharged on January 1, 2022.
- Eliminates expenses fees for both youth and parents – including costs and expenses for youth after attaining the age of 18.
- Courts retain their authority to assess disciplinary fines or restitution.
- Requires the appointment of counsel in juvenile delinquency matters at the state's expense, regardless of the financial eligibility of the youth or their parent.
- Eliminates the requirement of parents or guardians to pay reasonable expenses for the support of a youth while in custody of a state financed or supported residence, or any expenses arising as a result of the youth being within the jurisdiction of the court.
- Neither a youth or his parents may be ordered to pay administrative costs associated with youth's involvement with the court, probation, detention or Oregon Youth Authority services.
- The youth or the youth's parent cannot be required to pay any fee, cost or surcharge as a requirement of a formal accountability agreement or as a condition of probation.

RESTITUTION

➤ Restitution – Timing Matters as State must request restitution and identify victim at the time of adjudication.

- ❖ Adjudication defined as “determination of jurisdiction over a youth based on a finding of delinquency.” ORS 419C.450; *State v. M.A.S.*, 302 Or App 687 (2020); *State v. L.G.S.-S.*, 307 Or App 208 (2020).
- ❖ Court accepts Youth’s admission to the petition and Youth stipulates to restitution on all counts but state does not have restitution figures and not even sure there would be restitution.
- ❖ Disposition held two weeks later. At that time state requests restitution but still did not have a specific amount (in works w/insurance co.). Court orders disposition and sets a date for a restitution hearing. The Court entered a jurisdiction and disposition judgment.
- ❖ Later the juvenile court holds restitution hearing, awards restitution and enters a supplemental judgment in favor of insurance company.

➤ Per *M.A.S.* and *L.G.S.-S.*, once the Court finds the Youth within the jurisdiction of the court, then the Court cannot later award restitution. State must present evidence of restitution BEFORE the court has concluded the adjudicatory hearing.

- ❖ However, the court does not have to impose the restitution at that time as a supplemental judgment can be submitted within 90 days. (ORS 419C.450(1)(a)(B))

JUVENILE SEX OFFENSES

- Delinquency petition:
 - ❖ Many variations around state
 - Some counties don't file petitions
 - Some file petitions but don't take formal admissions
 - Some take formal admissions but defer formal disposition
 - Some take formal admissions and do immediate disposition but allow for vacating admissions at end of probation
- Victim issues (seal court records and recordings)
- Predatory v. opportunistic cases – psycho-sexual evaluations

SEX OFFENDER SPECIFIC ISSUES

- “There are presently no empirically validated, actuarial instruments that can be used to accurately estimate the risk of adolescent sexual re-offending.”
- ERASOR (Estimate of Risk of Adolescent Sexual Offense Recidivism) does identified high-risk factors
- JSOP (Juvenile Sex Offender Programs)
- Polygraph (full disclosure v. maintenance)
- Plethysmograph
- Community treatment v. Residential treatment

SEX OFFENDER REGISTRATION

- Issue: Should the state require juvenile sex offenders to register like adult sex offenders?
- Attempt to strike a balance between the need for community safety versus placing a life-long scarlet letter on someone due to juvenile behavior
- For about a 20-year period the legislature modified the requirements almost every session
- Good recitation of juvenile registration history in the case of *State v. Hinkle*, 287 Or App 786 (2017)

CURRENT REGISTRATION RULES (ORS 163A.025 ET. SEQ.)

- Court defers registration decision until six months prior to termination of jurisdiction
- Provides a juvenile an opportunity to demonstrate that registration is not necessary
- Key provisions:
 - Court holds hearing within 6-month period prior to termination of jurisdiction
 - Youth entitled to court appointed counsel
 - Youth has burden to show should not register
 - State must ensure victim given notice of hearing
 - Court determines if Youth must register and must make WRITTEN findings
- Excellent resource
- www.courts.oregon.gov/OJD/docs/OSCA/JFCPD/Juvenile/HB-4074-summary.pdf

The Brain on Drugs



DRUG COURTS

- Primarily funded by grants
- Drug court coordinator position (OJD, juvenile department, community)
- Standard criteria (generally person felony exclusion).
- Intense judicial supervision
- Team approach (probation officer, treatment provider, DA, defense attorney, wellbeing services, others)
- Incentives and sanctions
- Termination of jurisdiction and immediate expunction of record upon graduation from the program
- Best practices not as well-defined as adult drug ct.

OREGON YOUTH AUTHORITY/DHS PLACEMENT

- Court may specify the **type** of care, supervision or services to be provided;
 - ❖ **BUT...** the **actual planning and provision** of the care, supervision, security or services is the responsibility of the youth authority or the department
- Court has continuing authority to review the placement even after commitment. (ORS 419C.492)
- Court shall use uniform commitment blanks.
- Type of OYA Closed custody beds
 - ❖ Discretionary Bed Allocation (DBA)
 - ❖ Public Safety Reserve (PSR)
 - ❖ Department of Corrections (DOC)

PARENTAL OBLIGATION

- **If** parent or guardian was **summoned** prior to adjudication or at least 10 days prior to disposition, **then** court may order the parent or guardian to:
 - Assist the court in any reasonable manner in providing appropriate **education or counseling for the youth** ;
 - **Pay** for all or part of the **mental health assessment** or screening ordered; (if insurance available)
 - Enter into a contract with the juvenile department for supervision of the youth (**Parental Supervision Agreement**);

PARENTAL OBLIGATION (CONTINUED)

- **In all cases** (regardless of summons) the juvenile department and the parent or guardian shall develop a plan for supervision.
- Court can **not** revoke youth's probation for parent or guardian's violation of a court order or contract with the juvenile department.

PARENTAL OBLIGATION (CONTINUED)

- Court may order parent or guardian to participate in:
 - Parent education or counseling;
 - Drug or alcohol treatment:
 - Hearing required;
 - Appointment of counsel for parent or guardian.

PROBATION VIOLATIONS (ORS 419C.446 AND ORS 419C.453)

- Significant part of juvenile delinquency docket
- Can't expect perfection – balance accountability v. encouragement. “Praise sandwich” approach
- Youth has right to counsel
- In custody case requires 10 day reviews
- Generally multiple violations before commitment to OYA
 - OYA commitment to “program” versus “facility”
- Most common issues
 - School attendance/behavior issues
 - Drug/alcohol use
 - Failure to contact PO
 - Runaways

PROBATION VIOLATIONS (CONTINUED)

- New conduct as basis for PV - If the court takes jurisdiction on new conduct (i.e. a Youth on probation admits to a new petition), then the court cannot find the Youth in violation of probation for the new conduct. ORS 419A.190; *State v. S.-Q. K.*, 292 Or App 836 (2018); and *State v. M.B.*, 293 Or App 122 (2018).
- But, if Youth admits to behavior related to the new conduct (i.e. failure to report police contact to PO where the police conduct resulted in a new petition), then court can still take jurisdiction on new petition. *In the matter of G.E.S.*, 316 Or App 294 (2021)

VII. CONFIDENTIALITY (ORS 419A.255)



CONFIDENTIALITY (ROC)

- Court is required to keep a **“Record of the Case”**
- Formerly referred to as the “Legal File” and includes:
 - Summons,
 - Petitions,
 - Pleadings,
 - Motions,
 - Orders,
 - Judgments, and
 - Other papers “filed” with the court.

CONFIDENTIALITY (ROC CONTINUED)

➤ The ROC is confidential **EXCEPT**:

- The following persons may **inspect and copy** the ROC file:
 - The child, ward, youth, adjudicated youth (pleadings only)
 - Parent/Guardian, includes GAL for parent (pleadings only)
 - Educational surrogate (pleadings only)
 - Intervener/Tribe (pleadings only)
 - Service provider
 - Court Appointed Special Advocate (CASA)
 - Attorneys for persons listed above
 - DA/AAG
 - Juvenile Dept./OYA
 - DHS
 - Juvenile court judge (or those acting under judge's direction)
 - Anyone else the court allows

JUVENILE HEARINGS ARE NOT CONFIDENTIAL

- **State Ex Rel. Oregonian Pub. Co. v. Deiz**
- **613 P.2d 23 (1980)**
- **289 Or. 277**
- We hold the order of the defendant judge barring plaintiffs from the hearings is invalid as contrary to Art. I, § 10.
- Our holding, however, should not be interpreted as guaranteeing the right of public access to all judicial proceedings.
- We limit our holding to directing the defendant to permit the "press" to attend because that is what the alternative writ orders. However, the public has a right of access co-extensive with the press. On the other hand, the trial court retains the right to control access by members of the press or public who would overcrowd the courtroom, attempt to interfere in the proceedings or otherwise obstruct the proceedings.

CONFIDENTIALITY (ROC CONTINUED)

- You may **orally give out or write down** the following delinquency ROC information for **anyone**:
 - Name and date of birth of youth;
 - Basis of court's jurisdiction;
 - Date, time, and place of any juvenile court proceeding in which the youth is involved;
 - Act alleged in the petition;
 - Legal disposition of the youth;
 - Names and addresses of the youth's parents or guardians;
 - Register (Odyssey).

CONFIDENTIALITY (ROC CONTINUED)

- When a Youth has been taken **into custody (I/C)**, you shall disclose to anyone (unless there is clear need to delay disclosure) the following additional ROC information for **anyone (e.g. media)**:
 - Name, age and whether the Youth is employed or in school;
 - Offense for which Youth is taken I/C;
 - Name and age of adult complaining party and adult victim, unless disclosure of such information is prohibited or restricted;
 - Identity of investigating and arresting agency; and,
 - Time and place Youth taken I/C, whether there was resistance, pursuit or a weapon used in taking Youth I/C.

CONFIDENTIALITY (SCF)

- Juvenile Courts also maintain a “**Supplemental Confidential File**” of SCF.
 - Formerly known as the “Social File”
 - SCF information is privileged and the right to inspect and copy is more limited than ROC information
 - Reports and other materials relating to the child, ward, youth or youth offender’s history and prognosis – i.e. evaluations, counseling records, social history, etc.
 - Once SCF materials are offered as an exhibit, SCF materials become part of the ROC

CONFIDENTIALITY (SCF CONTINUED)

- The following may **inspect and copy** information in the SCF file:
 - Juvenile court judge (or those acting under judge's direction)
 - Educational surrogate
 - School district where Youth resides
 - Service provider
 - Court Appointed Special Advocate (CASA)
 - Attorneys for persons listed above
 - DA/AAG
 - Juvenile Dept./OYA
 - DHS
 - Anyone else the court allows

CONFIDENTIALITY (SCF CONTINUED)

- Special Rules for SCF in Delinquency Cases:
 - School districts and service providers that obtain copies of SCF information are required to destroy the copies at the conclusion of the involvement in the case.
ORS 419A.255(2)(e).
 - Parent/Guardian/Parent GAL can only obtain or inspect SCF if Youth consents or Court allows.
 - A person that obtains SCF material is responsible to maintain the confidentiality of the SCF material.
 - Odyssey allows for records to be designated confidential

HB 4074 (2016)

- Expands access to records to “**any other person or entity**”
- Party seeking records must file petition with the court and serve notice of parties
- Court must inspect *in camera* and may schedule hearing
- Applies to ROC and SCF
- Kudos for Hon. Tracy Prall, Marion County Presiding Judge for development of summary chart to use in evaluating confidential record requests. (Attached MS Word document).

VIII. MISCELLANEOUS ITEMS



JUDICIAL MAGIC WAND — ORS 419C.261 AND ORS 419C.610

- ORS 419C.261 – amend and/or dismiss petition
 - ❖ Court has authority to amend and/or dismiss petition
 - ❖ Done “in furtherance of justice after considering the circumstances of the youth and the interests of the state”
 - ❖ Can be done **before** or **after** adjudicatory hearing
 - ❖ Can be done even if Youth is off probation and an adult
 - ❖ If victim requests notice, court must ensure victim notified
 - ❖ For petitions that allege sex offenses the court must give written explanation to set aside petition
 - ❖ Dismissal of petition does not mean records are expunged

JUDICIAL MAGIC WAND (CONTINUED)

- ORS 419C.610 – set aside and/or modify previous order
 - ❖ Juvenile court judges have ability to modify or set aside previous orders
 - ❖ Often used in conjunction with ORS 419C.261 to set aside previous admission to sex offense and dismiss the original petition
 - ❖ Can use to “fix” other problems during the life of a case – i.e., commitment, terms of probation, modification of offense
 - ❖ Like ORS 419C.261 – any modification or set aside does not equate to an expungement of a juvenile record

SECOND LOOK HEARINGS

- Not a juvenile court proceeding but can impact resolution of waiver cases
- SB 1008 expanded eligibility to anyone who committed an offense as a minor and received a sentence of at least 24 months after January 1, 2020
- A “second look” is the ability of the criminal sentencing court to allow the early release of a defendant from a DOC sentence
- No need for second look in juvenile cases because you can always take a second look . . . Or a third Or a fourth, etc.

SECOND LOOK HEARINGS

- So why does a juvenile court judge need to know about “second look”. Because a major bargaining issue that will occur in juvenile waiver cases is that at times the state will agree not to seek a BM 11 sentence if the youth stipulates to waiver to adult court and pleads to a non-BM 11 offense
- Youth benefits by eliminating risk of waiver on a mandatory minimum charge
- State benefits by obtaining a criminal conviction and a guaranteed period of incarceration

SECOND LOOK HEARINGS

- Prior to SB 1008. Usually applied in cases where a minor was convicted of an adult offense after stipulated waiver to adult court
 - ❖ Most common scenario. 15, 16 or 17 year old charged with BM 11 offense (e.g. Robbery I). Case is resolved short of trial with State agreeing to come out of BM 11 to a non-BM 11 adult conviction (e.g. Attempted Robbery I) if 15, 16 or 17 year old agrees to stipulate to waiver to adult court and DOC sentence.
 - ❖ In that scenario after D serves ½ sentence, sentencing court holds second look hearing and can issue a conditional release that frees D from custody and places defendant on community supervision for the remainder of the term.

SECOND LOOK HEARINGS

- Post SB 1008. Expanded the category of cases that are eligible for second look
 - ❖ Still applies to Pre SB 1008 type waiver cases. (BM 11 attempts, Burg. I)
 - ❖ Now applies to BM 11 cases waived to adult court from juvenile court
- New scenario. 15 year-old faces a juvenile petition filed alleging Assault I. State files for a waiver hearing and juvenile court waives 15 year-old to adult court. 15 year-old is convicted of Assault I and given a mandatory minimum sentence of 90 months. After serving 45 months, Defendant is eligible for a second look hearing

EXPUNCTION

➤ “Expunction” means “the removal and destruction or sealing of a judgment or order related to a contact and all records and references; and sealing DHS/OYA records ORS 419A.260(1)(b).

➤ The legislature entirely reworked the juvenile expunction statutes last year. Here is a link to the explanatory memo sent out by OJD staff counsel: [21eCDF002jm_Memo_re_Legislative_Alert_on_SB_575_-_Juvenile_Expungment.pdf\(sharepoint.com\)](#)

➤ The juvenile and Family Court Programs Division completed new forms to assist courts with the various types of expunction.

[Oregon Judicial Department : JCIP Dependency Model Court Forms :](#)
[Model Court Forms : State of Oregon](#)

Finally, YRJ has created a chart for courts to use when expunging records of contacts that did not result in a petition being filed and a brochure for youth when they are eligible for expunction after a petition has been filed. Please see the appendix for these documents.

REFEREES (ORS 419A.150)

- Do not need to be lawyers, but as a practical matter most are (if not all)
- Used by many courts in various ways and opinions vary regarding their use
- A referee order is effective immediately and becomes final after 10 days unless re-hearing requested
- Parties can ask for a de novo re-hearing to a juvenile court judge and the order can be stayed during re-hearing process
- Re-hearing within 30 days unless good cause, but must be held within 45 days
- Proceedings can be recorded or not, but to appeal to the Court of Appeals must seek rehearing before a judge under ORS 419A.150 (7)

PRO TEMS (ORS 1.635)

- Some Referees sit as Pro Tems
- Must be lawyer and approved by Supreme Court
- Same authority as elected judge
- Decisions appealable directly to Court of Appeals
- Referee Presiding on Waiver Cases?

OTHER RANDOM ISSUES

- “Crossover Youth” – juvenile court judge often is the conduit between juvenile dept. counsel and DHS worker
- Juvenile mental health issues common in juvenile court
- Appeals (ORS 419A.200)
- Juvenile post-conviction equivalent (ORS 419C.615)
- Age 18:
 - Detention versus jail (juvenile department policies)
 - Continued jurisdiction for violations to age 23

ADDITIONAL RANDOM ISSUES (CONTINUED)

- Fingerprints required before or at adjudication
- Termination of jurisdiction
 - ❖ After hearing; or,
 - ❖ Ex-parte with motion and affidavit
- “Reduction Language”
- Common treatment terms: “strengths based”, “EPICS”, and cognitive restructuring classes (CBT/DBT)
- ICWA does not apply in delinquency cases
- Immigration issues (Special Immigrant Juvenile Status can start in delinquency court)

ADDITIONAL RANDOM ISSUES (CONTINUED)

- Interstate Compact On Juveniles
- When an out-of-state child is taken into protective custody in Oregon, or an Oregon child under the protection of the juvenile court is located in another State.
- These cases are complicated. Look up the compact terms that will apply to your hearing. Here is a link to the ICJ benchbook:
- [Bench Book Web.pdf \(juvenilecompact.org\)](#)
- There are standard forms that can be used in every state:
- [Forms | Interstate Commission for Juveniles \(juvenilecompact.org\)](#)
- Nina Belli at Oregon ICJ is a great contact if you have questions: Nina.Belli@oya.state.or.us

LINKS OF INTEREST

- [Click here to watch "An introduction to the Oregon Youth Authority."](#)
- <https://www.youtube.com/watch?v=lju4FH2gDE0>
- <https://www.youtube.com/watch?v=07fJS2CjWJE>
- [REPORT-Don't Look Around-A Window into Inhumane Conditions for Youth at NORCOR-December 5 2017.pdf](#)
- [NJDC Adolescent-Development Bench-Card.pdf](#)
- [NCJFCJ Bench Card Resource Center – NCJFCJ](#)
- [JGPS - Juvenile Justice, Geography, Policy, Practice & Statistics](#)

QUESTIONS:

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