

# Jurisdictional and Dispositional Hearings

Oregon Mini Child Abuse and Neglect Institute  
January 28-29, 2020



# Timely Resolution of the Petition

Discovery. Required within 30 days of the petition.

ORS 419B.305(2); ORS 419B.881

Disposition. Absent a finding of good cause, court must hold a hearing on the petition and enter a dispositional order **no later than 60 days** after the filing of the petition. ORS 419B.305(1).



# Which Model Form?

- JF3: Jurisdiction Judgment
- JF4: Disposition Judgment
- JF4B: Jurisdiction and Disposition Judgment



# Missing a Parent?

- The court can assert jurisdiction without a parent if:
  - after diligent efforts, the parent cannot be identified to be served ORS 419B.914; or
  - the parent does not appear after service ORS 419B.815(7).
- DHS must file an affidavit stating whether the parent is in the military service or stating DHS is unable to determine.
- No order of support may be issued unless the person is served as provided in ORS 419B.812 to 419B.839.



# Required Notice Prior to Default

- If person appears in the manner provided in ORS 419B.815(2)(b) or (c) and contests the petition, the court by written order or by oral order on the record, shall:
  - Inform the person of the time, place and purpose of the next hearing;
  - Require the person to appear personally at the next hearing;
  - Inform the person that the person's attorney may not appear in place of the person (unless the person is the child);
  - Inform the person that if the court has granted an exception in advance under ORS 419B.918, the person may appear in the manner permitted by the court, and

# Required Notice Prior to Default

- Inform the person that, if the person fails to appear, the court may establish jurisdiction without further notice and may take other action including making the child a ward and removing him or her from the parent. ORS 419B.816



# Question

- *What happens if the court fails to provide the notice and the parent doesn't appear at a subsequent hearing?*



# Service: Recent Cases

- Due Process does not require DHS to use service method outlined in ORS 419B. 823 in order for service to be valid if, under facts, notice reasonably calculated to apprise parties of action and afford opportunity to be heard. *Dept. of Human Services v. K.L.*, [272 Or App 216 \(2015\)](#)
- Hague Service Convention requires service through Mexican Central Authority but party who appeared and requested relief waived right to contest defect in service because Oregon law requires claim of lack of personal jurisdiction to be raised at earliest possible occasion. *Dept. of Human Services v. M.C.-C.*, [275 Or App 121 \(2015\)](#)



# Grandparents and Foster Parents: Notice and Opportunity to be Heard

- What is the status of the diligent search for grandparents?
  - What has DHS done to find?
  - Did DHS notify?
  - Are they present and do they want to be heard?
- Did DHS notify the foster parent(s)?
  - Are they present and do they want to be heard?



# Non-appearing Parent

- *If the parent does not appear but the attorney appears, is that sufficient to avoid a default?*
- *If the parent tries to call in, but hasn't received permission from the court, can s/he be defaulted?*

# Indian Child Welfare Act (ICWA)

- What was the ICWA status at the Shelter hearing?
- Is there any new information giving the court reason to believe the child is Indian?
  - *Dept. of Human Services v. S.R.H.*, [278 Or App 427 \(2016\)](#) (DHS knowledge constructively imputed to juvenile court)
- If ICWA applies:
  - Have the tribe and parents received the required 10 day ICWA notice? *See* 25 C.F.R. 23.111 for notice requirements.
  - Has expert testimony been provided?
  - Is state court still the appropriate forum?
  - Have active efforts been made since removal?
  - Is the child placed in accordance with placement preferences?

# Does the Court have Jurisdiction?

- UCCJEA issues resolved?
- ORS 419B.100
  - Are the allegations legally sufficient?
  - Have the contested allegations been proved:
    - by a preponderance of competent evidence in a non-ICWA case?
    - by clear and convincing evidence in an ICWA case?



# One Parent Admits One Parent Contests

- A juvenile court cannot assert jurisdiction over a child based on admissions of one parent when the other parent has been served and summoned, appears, and contests the allegations. *Dept. of Human Services v. W.A.C.*, [263 Or App 382 \(2014\)](#).
- The court should take an admission on the record of the parent willing to admit. Use JCIP Admission to Petition form.
- Place the Admissions form in the file and order that parent to appear for disposition at the date when non-admitting parent will appear to resolve the petition.
- Court can make findings about one parent prior to another but all conditions and circumstances must still be current at time of jurisdictional hearing. *Dept. of Human Services v. A.F.*, [268 Or App 340 \(2014\)](#)

# Conditions and Circumstances Jurisdiction

- ORS 419B.100(1)(c) Legal standard:
  - *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.*

**Example: Dept. of Human Services v. C.L.R., 295 Or App 749 (2019)**

Juvenile court jurisdictional judgment reversed when mother was seeking treatment and there was nothing in the record to support a finding that it was reasonably likely mother would experience another mental breakdown in the future. There was also no evidence that mother would stop taking her medications or engage in a pattern of behavior that would lead to a similar incident.

# Dispositional Findings and Orders

- PLACEMENT
- LEGAL CUSTODY
- SERVICES
- CONCURRENT PLAN
- VISITATION



# Disposition

- Court must order disposition. At the termination of the hearing(s) the court shall enter an order directing the disposition to be made of the case. ORS 419B.325(1).
- Timing. Recommended best practice is to decide disposition at the same time as the jurisdictional hearing.
  - ORS 419B.305 requires that absent a finding of “good cause” the court must hold a hearing on the petition and enter a dispositional order “no later than 60 days” after the filing of the petition



# Legal Custody

- What would be in the best interests and welfare of the child?
  - **Commitment to custody DHS**. ORS 419B.337
    - Most cases will fall under this provision.
    - DHS is not a party unless it has legal custody. ORS 419B.875(1)(a)(G)
  - **Protective supervision**. ORS 419B.331
    - Remain in legal custody of parent or other person whom the child was living, or legal custody of a relative or person maintaining a foster home approved by the court or child care or youth center.
    - Court may place restrictions.
  - **Placement out of state**. ORS 419B.334
    - If interstate compact or agreement with another state, may place in protective supervision in another state.

# Placement

- Out of home?
  - Is removal in the child's best interest and welfare? ORS 419B.337(1)(a)
  - If ICWA applies, is continued custody of the Indian child by the parent or Indian custodian likely to result in serious emotional or physical injury to the Indian child? ORS 419B.340(7) Have the placement preferences been complied with?
- In home?
  - Under what conditions?
- If DHS has been awarded legal custody, the court may not direct the specific placement. ORS 419B.349



# Diligent efforts to place child with relatives, caregivers and siblings

- At disposition, must make findings regarding DHS diligent efforts to place the child with a relative or a person with a caregiver relationship, and to place siblings in care together. ORS 419B.337(1)(c); 419B.192.
  - Relative – blood, adoption, marriage, self-identified – OAR 412-070-0000
  - Caregiver – ORS 419B.116
- What if not in child's best interest?
  - Court may find placement with a relative , or a sibling, is not in the child's best interest. ORS 419B.192(2) & (4)
- ICWA placement preferences trump ORS 419B.192 considerations. ORS 419B.192(5)



# Reasonable or Active Efforts Findings

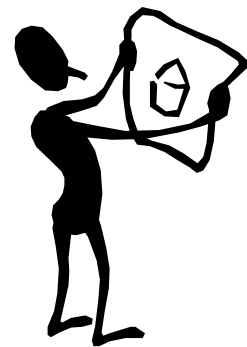
- When Not Required
  - If child hasn't been removed from the home
  - DHS can be relieved of making reasonable efforts under ORS 419B.340(5) & (6). If ICWA applies, DHS must still make active efforts.
- Otherwise Required
  - Best practice to attach detailed statement as an exhibit. ORS 419A.253 procedures apply.
  - If first contact with child happened during an emergency, court can consider DHS to have made reasonable or active efforts. ORS 419B.340(3) (court has 60 days to make initial RE finding necessary for federal funding)

# Concurrent plan

- Concurrent plan options:
  - Adoption
  - Permanent guardianship under ORS 419B.365
  - Guardianship under ORS 419B.366
  - Placement with a fit and willing relative
  - A planned permanent living arrangement (APPLA) if child is at least 16
- If not adoption, why not?



# Case Plans (Services to Parents and Children)



- Case plan:
  - If the permanency plan is reunification, must bear rational relationship to jurisdictional basis.
  - Federal law requires initial case plan at 60 days and revisions every six months.
- Each parent has a case plan and the child has a “child specific case plan”.
  - Parents also receive an “Action Agreement” or a “Letter of Expectation”

# Child Specific Case Plan: More than just Placement and Safety

- Has DHS prepared a *written case plan* that complies with the requirements of [ORS 419B.343](#)?
  - Health/Mental Health: *Child has suffered trauma*
  - Education
    - Same school/After school activities
    - Educational surrogate
  - Transition planning (Age 14 and older)
  - Zero to Three
    - Attachment and bonding: “goodness of fit” with caregiver.
    - Appropriate child care
    - [Abernethy, P. & Hall, M.A. \( 2009\). Improving Outcomes for Infants and Toddlers in the Child Welfare System. Zero to Three, 29 \( 6\), 28-33.](#)



# Child Well Being



- **Initial screenings.** OAR 413-015-0465.
  - Intake nursing assessment, shortly after entering care.
  - Comprehensive health assessment by child's primary healthcare provider within 30 days of entering care.
  - Dental assessment (age 1 and older) within 30 days of entering care.
  - Early Intervention screening (0-2) within 60 days
  - Mental health assessment (3 and older) within 60 days
- **Special medical needs.**
  - DHS is required to prepare a plan for care or treatment within 14 days after assuming custody of the ward if the child is in need of medical care or other special treatment for a physical or mental condition. A copy of this plan should be sent to the court. The court may request regular progress reports. ORS 419B.346
- **Court's authority to direct treatment.** ORS 419B.352



# Why Parenting Time?

- *Frequent and quality* visits with parents and children are associated with better performance on safety, permanency, and other well being outcomes.
  - Children's Bureau, Child and Family Services Reviews, Round 3 Findings, 2015-2016



# Family Time

- The child, parent and each sibling have a right to visit each other while the child is in substitute care *as often as reasonably necessary* to develop and enhance their attachment to each other. OAR 413-070-830(1).
- Supervision. If supervision of visits is necessary to protect the child from harm, manage child safety or provide therapeutic intervention, the plan must state the reason for the supervision. OAR 413-070-0870(1).



**Your Siblings**

# Family Time Considerations

- Does the frequency of the visitation support the child's attachment to parents and siblings?
- Why is supervision required?
- What does the family like to do together?
- Is there a safety service provider that can act as supervisor?
  - Foster parent, relative, family friend, etc.
- What other enhancements are possible?
  - Attendance at school events, doctors visits, church, athletics, counseling, phone calls, etc.



# Resources

- DHS Policy: Visits and Other Types of Child and Family Contact – OAR 413-070-0800 to 413-070-0880
- DHS Child Welfare Manual: Family Visitation and Contact:  
[http://www.dhs.state.or.us/caf/safety\\_model/procedure\\_manual/ch04/ch4-section26.pdf](http://www.dhs.state.or.us/caf/safety_model/procedure_manual/ch04/ch4-section26.pdf)
- American Bar Association, *Family Time / Visitation: The Road to Safe Reunification*:  
[https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/child\\_law\\_practice/vol-36/mar-apr-2017/family-time-visitation--road-to-safe-reunification/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-36/mar-apr-2017/family-time-visitation--road-to-safe-reunification/)
- National Family Preservation Network, *Best Practice for Father-Child Visits in the Child Welfare System*:  
[http://nfpn.org/Portals/0/Documents/father\\_child\\_visits.pdf](http://nfpn.org/Portals/0/Documents/father_child_visits.pdf)



# Conditions of Return

- *What does the parent have to do so the child can come home today?*
  - MAKE SURE CONDITIONS ARE CONCRETE
    - Specific behaviors, conditions or circumstances that must exist within a home prior to child's return with in-home safety plan.
  - MAKE SURE PARENTS UNDERSTAND: Is this simple so as to be understood by all?
  - MAKE SURE CONDITIONS ARE DOCUMENTED IN CASE PLAN with EXPECTED OUTCOMES
  - CHARACTERISTICS OF PLAN: Simplicity, specificity, accountability, reliability and doability.
    - E.G. "X" WEEKS CLEANWITH RANDOM, OBSERVED UA'S



# Court Orders

- Action Agreement/Letter of Expectation
- Appointment of CASA? ORS 419B.112
- Is the visitation plan adequate?
  - Court may make orders regarding visitation. ORS 419B.337(3)
- Has ICWA been determined?
- Next Hearing
  - Review/CRB (within six months of entry)
  - Permanency (within 12 months of jurisdiction or 14 months of entry into care, whichever is first).