

# Shelter Hearings: An Overview

Oregon Mini-Child Abuse and Neglect Institute  
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“To the world you may be one person; but to one person you may be the world.” Dr. Seuss

We just took that world away.

# Shelter Hearings

- Primary inquiry: Can the child be made safe in the home until the petition can be resolved?



# Statutory Authority

- Hearing required within 24 hours, excluding weekends and holidays. ORS 419B.183
- Evidentiary hearing required. Primary findings and determinations are provided in ORS 419B.185.



# Pre-Hearing

- Read the Protective Custody Report and Petition
- Have your staff make preliminary attorney appointments and ensure that the attorneys have the PCR and Petition
- Make a preliminary ICWA determination
- Pre-fill the model shelter order if you have time

# Check the Environment

- Is the courtroom prepared for a trauma-informed hearing?
- Examples – If DV is an allegation between the parents and both parents will be present, does the seating arrangement provide emotional and physical safety? Is the same available for a child who might be present?
- Are necessary accommodations available (interpreter, listening devices for the hearing impaired, etc.)?

# Engagement Strategies

- Introduce the people at counsel table
- Explain the purpose and goals of the hearing
- Give parents an opportunity to speak (not just through a lawyer)
- Identify the next steps for the parents
- Ask if parents understand the next steps
- Address the parents by name rather than by “mother” and “father”
- Speak directly to the parents
- Explain the handbook and encourage parents to review it later

# Protective Custody of a Child Pursuant to ORS 419B.150 (Before HB 2849)

**Protective Custody by DHS  
Authorized:**

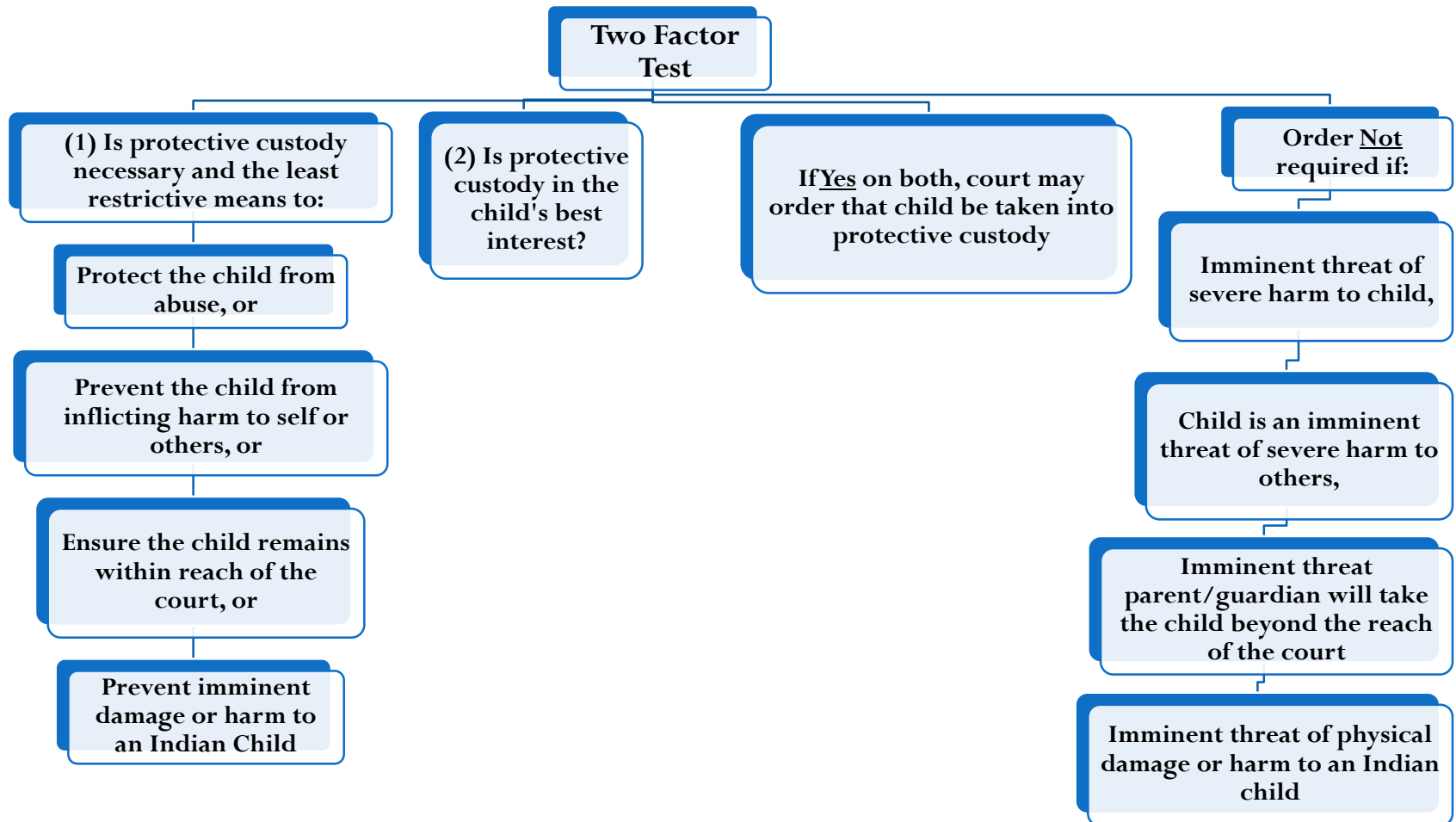
**"When the Child's  
surroundings reasonably  
appear to be such as to  
jeopardize the child's  
welfare."**

**By Court  
Order**

**Runaway**



# Protective Custody of a Child Pursuant to ORS 419B.150 (as amended by HB 2849)



# Understanding the Change

- *Prior to January 1, 2020*
  - *ORS 419B.150 allowed the removal of a child without a court order when “the child’s condition or surroundings reasonably appear to be such as to jeopardize the child’s welfare.”*
  - *This standard is insufficient under both federal and state case law. The 4<sup>th</sup> and 14<sup>th</sup> Amendments to the US Constitution directs that placement of a child into protective custody requires a showing of both **exigency** and **severe harm**.*
- *After January 1, 2020*
  - *HB 2849, removed the old language and substituted a standard prohibiting removal without a court order unless “**there is reasonable cause to believe that there is an imminent threat of severe harm to the child.**”*

# Set the Stage

- Explain the purpose of the hearing
  - Decide whether child can stay at home
  - Ensure parents know their rights and meet their lawyers
  - Another hearing within 60 days will determine whether there is a safety risk to the child that would justify continued court involvement.
- Explain the general order of events for the hearing and when parties will have the right to be heard.

# Notice of hearing and opportunity to be heard

- Foster parents. ORS 419B.875(6)
- Grandparents. ORS 419B.875(7)
- Parent, guardian or “other person responsible for the child”.  
ORS 419B.160(3)(notice)
  - Stanley putative father treated as a parent until court confirms his paternity. ORS 419B.875(3)
  - “Parent” has opportunity to be heard. ORS 419B.185(1)



# Required Court Notice to Parents/Guardians

- Court must inform parent/guardian orally and in writing:
- Rights and obligations:
  - Obligation to pay:
    - Support for child in DHS care
    - For court-appointed counsel
  - Child support rights assigned to DHS
  - Right to appeal (10 days from referee; 30 days from circuit court judge)
- Model form available based on ORS 419B.117



# Additional Parties and Interested Persons

- Child
- State
- Tribe
- DHS if agency has temporary custody
- Juvenile Department
- CASA



# Preliminary Matters

- Formally appoint attorneys for parents and child. ORS 419B.195; 419B.205.
- Identify materials or information the court intends to rely on; after considering objections, cause the material to be marked and admitted, or take judicial notice. Create judicial notice list and attach list and exhibits to order. ORS 419A.253.
- Identify stipulations
- Swear all witnesses

# Rules of Evidence

- *Which rules apply to the shelter hearing?*
  - Relevance and privilege
  - Other rules of evidence do not apply. ORS 419B.185(1)(g).
- If evidence offered is relevant to the determinations in ORS 419B.185, it is admissible unless it is privileged.





# Uniform Child Custody Jurisdiction and Enforcement Act

- Juvenile court jurisdiction is subject to the UCCJEA. ORS 419B.803.
- The petition must contain the UCCJEA allegations. ORS 419B.809(4),(8)
  - Court may stay the proceeding until the information is furnished. ORS 109.767(2).
- Use ORS 109.741 to determine if Oregon has jurisdiction:
  - Home state, or
  - No home state, but Oregon is the more appropriate forum, or
  - No home state and no other state more appropriate forum, and substantial evidence is available in Oregon
- Temporary emergency jurisdiction. ORS 109.751

# ICWA Inquiry

- *Is the child an Indian child?*
  - Unmarried person under age 18, *and*
  - A member of a federally recognized Indian tribe; *or*
  - Eligible for membership in a federally recognized Indian tribe and the biological child of a member of a federally recognized Indian tribe.
- *Ask all parties present* whether they have information about this issue.
- *Reason to believe.*
  - If you have reason to believe the child is an Indian child, you must order DHS to notify the child's tribe of the proceeding and the right to intervene and order that the case be treated as an ICWA case until the court determines it does not apply. ORS 419B.878

# Indian Child

- If ICWA applies:
  - Has the required 10-day notice been provided to the tribe?
  - Should the case stay in state court or go to tribal court?
  - Is an expert available to testify?
  - If not, is the standard for emergency jurisdiction met?
  - Were active efforts made to prevent the removal?

# Primary Inquiry

- **Can the child go home today?** Why or why not?
- A parent child or ward shall be provided the opportunity to present evidence that the child can be returned home without further danger of suffering physical injury or emotional harm, endangering or harming others, or not remaining within the reach of the court process prior to adjudication. ORS 419B.185 (1).

# What Will it Take to Make the Child Safe in the Home?

- If returning the child home to a parent without restriction is not an option:
  - In-home with a safety plan?
  - In-home with safety service providers?
  - Placement in treatment with a parent?



# Out of Home Placement: Title IV-E Funding

- Under Title IV-E of the Social Security Act, when a child is removed from the home, the court must make two findings at the beginning of the case to make the child eligible for federal funding:
  - Reasonable Efforts (within 60 days)
  - Best Interests (first order authorizing removal)
- If the court doesn't make one of these findings, there will not be federal money available to fund foster care, assisted guardianship, or adoption assistance for this child during the removal episode.

# Out of Home Placement

- **Best interests finding.** The court must include a written finding in every order of removal that describes why it is in the best interests of the child that the child be removed from the home or continued in care. ORS 419B.185(1)(d); 42 U.S.C. §672(a)(1)-(2)
  - *See also* 45 C.F.R. §1356.21(c) (continuation would be contrary to the welfare, or placement would be in the child's best interest).
  - Not a “probable cause” finding.
- **Least restrictive setting.** Placement must be in least restrictive most family like setting.

# Reasonable/Active Efforts

- Did DHS make reasonable / active efforts to prevent or eliminate the need of removal from the home. ORS 419B.185(1)(a).
  - What services were offered?
  - If no services were provided, but they would not have eliminated the need for protective custody, the court shall consider DHS to have made reasonable/active efforts. ORS 419B.185(1)(a)
  - Was there an emergency that justified immediate removal? ORS 419B.340(3)
- Court's findings should include description of efforts made.



# Early Contact between Parent and Child (Parenting Time)

- Ensure first visit/contact occurs within 48 hours of removal
  - Reduces trauma
  - Early, frequent, quality parenting time correlated with decreased time in foster care
  - DHS policy requires first visit within a week and encourages caseworkers to schedule first visit within 48 hours when possible
  - Ask about the first visit at the shelter and order one if appropriate
  - At every hearing, ask: *why is supervision necessary?*

# Placement with Relatives and Siblings

- *Diligent efforts to place with relatives.*
  - Did DHS make diligent efforts to place the child with relatives or persons with a caregiver relationship with the child? ORS 419B.185(1)(e); ORS 419B.192(1)
- *Placement with siblings.*
  - Did DHS make diligent efforts to place the child with siblings who are also in need of substitute care? ORS 419B.185(1)(e); ORS 419B.192(2)
    - Court may find placement with sibling not in child's best interests.



# Child's Well Being Needs

- Who is the primary attachment figure for this child and what is DHS going to do to nurture this relationship?
- Does the child have any special medical or other needs?
- Are there any other concerns that the parent or child has about the transition?



# Educational Stability

- DHS is required to maintain the child in the same school (“school of origin”) and provide any needed transportation to allow the child to stay in the same school. ORS 339.133
  - The court may find it’s not in the child’s best interest to stay in the same school, the child shall immediately be enrolled in a new school, even if the child is unable to produce records normally required for enrollment.
  - The new (enrolling) school will immediately contact the school of origin to obtain relevant academic and other records.



# Services for Parents

- Inquire whether the parents are willing to engage in services pre-adjudication
  - If so, what services would best help them overcome the barriers to safe parenting?
  - The court can't order services pre-disposition, but may return child home with conditions.
- Consider authorizing return of the child to a parent before another court hearing if an appropriate safety plan is in place and all parties agree

# Restraining Order



- If petition alleges child has been physically or sexually abused, court may issue restraining order if:
  - There is probable cause to believe the abuse occurred and the person to be restrained committed the abuse; and
  - The order is in the best interests of the child. ORS 419B.845(1)(a)
- Order restricts contact between parent and victim, and may require alleged perpetrator to move from the home where the child resides.
- Optional Restraining Order form is available on JCIP Intranet

# Consolidation is Mandatory

- Juvenile case involving legal or physical custody + domestic relations, filiation or guardianship involving child = consolidation in juvenile court. ORS 419B.806(2).
- Consolidation prevents conflicting orders regarding a child and confusion about the standing of parties, the participation of court-appointed counsel, and which procedural and substantive laws apply.
- Consolidation of cases puts all the cases “on the bench” of the same judge to prevent confusion and problems that might arise when two cases involving custody or care of the same child are pending simultaneously.

# Final Steps

- Set dates (second shelter hearing if necessary and appropriate, discovery date, settlement, trial).
  - Jurisdiction/disposition must be resolved within 60 days. ORS 419B.305
- Detail in the shelter order expectations for DHS and others (continue investigation of possible relative placement, locate and get notice to grandparents, further investigate ICWA, find and serve dads, have the child evaluated, make service referrals for parents, etc.)
- Provide copy of order to parties