

# REVIEW HEARINGS

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

# Circumstances and Timing

- Court may hold a review hearing upon:
  - Receiving a report required by ORS 419B.440
  - Reports must be filed at least every six months. ORS 419B.443(1).
- Court shall hold a hearing when:
  - Adoption delay. When the parents rights have been terminated and DHS has not physically placed the child or initiated adoption proceedings. ORS 419B.449(1)(a); *see also* ORS 419B.470(4)(court required to hold permanency hearing at same interval).
  - Request. Within 30 days when requested by the child, parent, or DHS. ORS 419B.449(1)(b)
  - Child at home. Upon receiving report when child placed for six months in physical custody of parent and in legal custody of DHS. ORS 419B.449(1)(c); ORS 419B.449(1)(d).
  - Removal from current caretaker. Within 10 days of report. ORS 419B.449(1)(e)

# Which Model Form?

## Review Judgment

Use this form for review hearings that are required, or authorized, by ORS 419B.449. It provides the findings required by ORS 419B.449(3).

## Non ORS 419B.449

For “limited” review hearings – *i.e.*, those held that do not require ORS 419B.449(3) findings.

# Purpose of the Review Hearing

- Primary issues:
  - Conditions underlying jurisdiction still exist?
  - Child's placement and well being?
  - Progress developing concurrent plan?
  - Reasonable /active efforts?
  - Parental progress?
  - Visitation?



# Reports

- Content of DHS reports dictated by ORS 419B.443.
  - The Oregon Judicial Department and DHS have jointly developed and agreed to a uniform court report for review and permanency hearings.
    - <https://apps.state.or.us/Forms/Served/ce1302.pdf>
- Review findings and recommendations report from the CRB prior to the hearing if available.
- Review report from CASA if one has been appointed.

# Citizen Review Board

- When child in substitute care, the CRB conducts a review every six months unless a full judicial review has been conducted. ORS 419A.106



# CRB Members

- Community members with varied expertise
- Pay special attention to well being indicators
- Hold DHS accountable
- Typically dedicate more time to review of materials and for the parties to be heard



# Volunteer Recruitment

- Volunteers are screened through the CRB Field Manager.
- A potential volunteer must be approved by the local Presiding Judge and Chief Justice.
- Statutory preference (but not limitation to):
  - Groups with special knowledge or interest in foster care or child welfare, such as:
    - Adoptive parents
    - Members of the professions of law, medicine, psychology, social work, law enforcement, corrections and education.
  - Must be domiciled or employed in county of appointment



How can judges use the CRB to strengthen the review system?



# Coordinate Review Strategies

- Consider:
  - The CRB reviews for compliance with court orders
  - What should the court be doing with the CRB Findings and Recommendations?
- What systemic problems do you have in your jurisdiction?



# Notice and Right to Be Heard

- Who is here? Was notice provided?
  - Child
  - Parents
  - Grandparents and other relatives
  - Foster parents
  - CASA
  - Tribe
  - Attorneys
  - Intervenor

# Trauma Informed Courtroom

- National Council of Juvenile and Family Court Judges Resources:
  - <http://www.ncjfcj.org/our-work/trauma-informed-system-care>
- Trauma Informed Oregon:
  - <https://traumainformedoregon.org/>



# Does the court still have jurisdiction?

- Jurisdiction is at issue in every review hearing.
  - If the court continues the child in substitute care, court must find:
    - Why continued care is necessary, and
    - The expected timetable for return or other permanent placement  
ORS 419B.449(3)(a)(A)
- Court inquiry: Why can't this child go home today?
  - What are the conditions of return?
  - What is left for the parent to do?

# Motions to Dismiss

- If a motion to dismiss is filed:
  - Court must determine:
    - Whether the jurisdictional bases pose a current threat of serious loss or injury to the ward, and if so,
    - Whether the threat is likely to be realized.
  - Burden of proof:
    - If plan is *reunification*, DHS has burden
    - Once *plan has changed*, there is a presumption the child cannot safely return home. DHS may invoke this presumption and require the parent to prove the jurisdictional bases no longer endanger the child. *Dept of Human Services v. T.L.*, [279 Or App 673 \(2016\)](#)
  - Rules of evidence apply. No relaxed evidentiary standard in this part of hearing.

# The Critical Question: How is the child doing?



- Child well being findings:
  - Diligent efforts regarding placement with relatives/siblings
  - Number of placements, schools attended, contacts with caseworker, visits with parents and siblings
  - Education
  - APPLA plan: Extracurricular activities/reasonable and prudent parent standard
  - Reasonable and active efforts findings
  - DHS case plan and progress
  - Placement findings

# Child Well Being Considerations

- Is the number of schools attended, placements, visits, and case worker contacts in the best interests of the child?

Let's take a closer look.....



# Child Well Being

- ***Is the child present? If not, why not?***
  - How does the child look?
    - Weight
    - Clothes
    - Demeanor
    - Body language
  - What does the child report?
    - Consider meeting in chambers. ORS 419B.310



# Education



- Maintenance in school of origin
  - Is the child still being maintained/transported to the school of origin?
  - If not, has the court made a finding that it is not in the child's best interest to attend the school of origin?
- On track?
  - Is the child (14 and up) on track for graduation?
  - Is the child struggling? If so, what assistance is being provided to ensure the child's success?

# Placements

- Has DHS made diligent efforts to place the child with relatives and siblings?
- How many placements has the child had?
- What is being done to ensure placement stability?
- Is the placement in the child's best interest?



# Family Time

- Visits with parents and siblings.
  - Is the visitation schedule being regularly evaluated and increased as appropriate?
  - Have other opportunities for contact been developed?
  - Is the child placed with his/her sibling? If not, do they have regular visits?

# Child Safety

- Is the caseworker having monthly contact with the child, and does s/he visit the foster home every other month?
  - What did the caseworker observe in the home at the last visit?
    - Was there food in the refrigerator?
    - How does the child's bedroom look?

# Health and Mental Health

- Has the child been to a physician, dentist and mental health counselor for assessments?
  - Were there any concerns or recommendations?
  - Has DHS followed up?
  - Did the CRB make any recommendations relating to the child's health?



# Concurrent Planning

- What is the concurrent plan?
- What has DHS done to develop the plan?
- Are those efforts sufficient?
- Has DHS identified permanent placement options? Suitable adoptive placement?

ORS 419B.449(5)



# Make a Checklist

- What does your court review for?
  - Father's questionnaire filled out with each child's mother;
  - Absent parent search initiated, if necessary;
  - 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 (1270) form filled out by both parents;
  - Suitability of current caretaker or relatives reviewed at staffing

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# Reasonable/Active Efforts Findings

- Reunification:
  - Has DHS provided reasonable efforts to make it possible for the child to safely return home?
  - Reasonable efforts NOT required when:
    - Child not in substitute care.
    - Aggravated circumstances (non ICWA cases only)
- Reasonable efforts to finalize the permanent plan.
  - Has DHS made reasonable efforts to complete the steps necessary to finalize the permanent plan?
- Active efforts.
  - If ICWA applies and the parent is still working toward reunification, the standard is active efforts. Once the plan changes away from reunification, only reasonable efforts are required.

# Reasonable/Active Efforts to Reunify

- Initial Considerations:
  - Fact dependent:
    - Reasonableness depends on circumstances of each case.
  - Efforts must be made for each parent.
  - Time considerations:
    - Efforts are judged over the life of the case, with an emphasis on the period before the hearing sufficient to afford a good opportunity to assess parental progress.



# Case Law: Fair Opportunity

- Reunification efforts are reasonable only if DHS has given a parent a fair opportunity to demonstrate the ability to adjust his or her behavior and act as a minimally adequate parent.
- DHS is not excused from making reasonable efforts because a parent is incarcerated.



# Case Law: Parent's Conduct

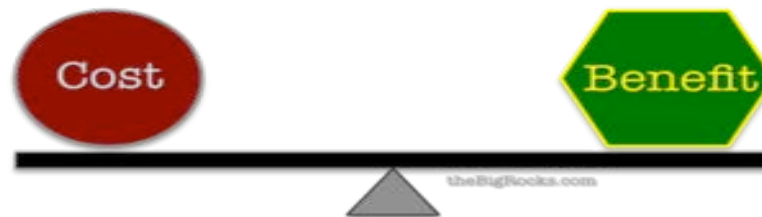
- When assessing DHS efforts, the juvenile court may consider the length and circumstances of a parent's incarceration and *evidence specifically tied to the parent's willingness and ability to participate in services.*
- A parent's resistance to DHS efforts does not categorically excuse DHS from making meaningful efforts toward that parent.
  - Examples involving incarcerated parents:
    - *Dept. of Human Services v. S.M.H.*, [283 Or App 295 \(2017\)](#)
    - *Dept. of Human Services v. C.L.H.*, [283 Or App 313 \(2017\)](#)

# Case Law: Specific Programming

- *Dept. of Human Services v. C.L.H.*, [283 Or App 313 \(2017\)](#)
  - DHS did not:
    - Contact father or prison counselor for six months
    - Assess the adequacy of the programs in prison
    - Provide visits
    - Facilitate training for father related to his child's special needs
  - The fact that providing the services at issue would not affect the length of father's incarceration or ultimately assure that the child could be safely placed in father's care was immaterial to the cost-benefit analysis.

# Case Law: Cost-Benefit Analysis

- When a parent argues that DHS has failed to make specific efforts, the court must consider the totality of the circumstances:
  - Burdens that the state would shoulder in providing services, versus
  - Benefit that might reasonably be expected to flow from that service.
    - Court should consider extent to which the service was capable of ameliorating the jurisdictional bases and whether it would provide the parent with the opportunity to demonstrate improvement.



# Parental Progress

- What items has the parent completed and what is left to do?
- Can the child safely be returned home?



REVIEW HEARINGS  
TRIGGERED BY REMOVAL  
FROM CURRENT CARETAKER

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# Removal from Current Caretaker

- Report required: (ORS 419B.440(1)(c))
  - DHS ***removes or plans to remove*** a child or ward for purposes of placing in a different substitute care placement if:
    - The child or ward *has resided for 12 cumulative months* or more in the foster home; or
    - The child or ward resides or resided in the foster home pursuant to a *permanent foster care agreement*
- Exceptions: (ORS 419B.440(2))
  - Removal is foster parent related:
    - founded allegation of abuse or neglect;
    - imminent threat to the health or safety of the child or ward pending completion of an investigation of reported abuse or neglect;
    - Removal at foster parent's request.
  - Adoptive placement is final. DHS placed the child with the selected adoptive parent, when the selection has become final after the expiration of administrative or judicial review procedures under ORS chapter 183.

# “Current Caretaker” Defined

- A foster parent who:
  - Is currently caring for a ward in the legal custody of DHS who has a permanency plan, or concurrent plan of adoption; **and**
  - Who has cared for the ward, **or at least one sibling of the ward**, for at least 12 cumulative months **or** for one-half of the ward’s or sibling’s life if younger than two years of age, calculated cumulatively. ORS 419A.004(11)



# Hearing Requirement

- Once the report is received, the court is required to hold a hearing **within 10 days**. ORS 419B.449(1)(e).
  - The 10 day period is calculated using calendar days. The period starts running the day after the report is filed. The last day is included in the period, unless it falls on a Saturday or legal holiday, in which event the period runs until the end of the next day that is not a Saturday or legal holiday. ORS 419B.854(1).



# Court Authority to Review Placement

- Court may review child's placement **or proposed placement.**
  - After finding that placement is **not in child's best interest,** the court may direct DHS to **place or maintain** the child in the care of:
    - The child's parents;
    - In foster care with:
      - a relative
      - ***current caretaker (is or has been)***
      - non-relative, non-current caretaker
      - residential care
      - group care
      - some other specific type of residential placement.

# Court Authority to Direct Placement - Limitations

- Specific placement. Unless otherwise required by law, the court may not direct a specific placement.
  - The actual planning and placement of the child is the responsibility of DHS.
- Adoptive placement. May not direct DHS to place or maintain child where the effect would be to remove child or prevent placement with the selected adoptive placement after administrative and judicial review procedures under ORS Chapter 183 have expired.

# Prospective Adoptive Parents

- DHS rules for adoption home studies and placement reports must require DHS to:
  - Consider each prospective adoptive parent on the basis of that person's ability to meet the **individual needs** of the child for **safety, attachment and well-being; and**
  - Consider a child's relatives and current caretaker as having **equal status** and priority as prospective adoptive parents in the consideration of their respective abilities to meet the child's individual needs for safety, attachment and well-being; ***and***
  - Give a **child's relatives and current caretaker a greater weight** in the consideration of suitability as prospective adoptive parents **as compared to others who are not relatives or current caretakers.**

# Implications

- Review diligent efforts to place with relatives and caregivers.
  - Has DHS asked the following people for information about relatives and persons with an emotionally significant relationship with the child and checked relevant records?
    - Parents
    - Child
    - Family members
    - Teachers and school staff
    - Day care providers
    - Family's spiritual or church leaders
    - Previous child welfare records
    - Other available state databases
    - Internet search engines

