JUVENILE LAW

2007 Revision

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The case citations in this book were Shepardized through September 2007. The ORS citations were checked through the 2007 legislative session. All URLs cited were accurate as of September 1, 2007.

Printing History:
First edition ....................... 1970
Second edition ..................... 1984
Supplement ....................... 1988
Third edition ..................... 1995
Supplement ....................... 1996
Supplement ....................... 2000
Fourth edition ..................... 2007

NOTE: This edition completely replaces the 1995 edition of and 2000 supplement to Juvenile Law.

This handbook may be cited as:
JUVENILE LAW (Oregon CLE 2007)

Library of Congress Card Catalog No. 94-069071

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Printed in the United States of America
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EDITORS’ PREFACE

The Juvenile Law handbook was first published in 1970. The third edition was released in 1995, and that edition was supplemented in 1996 and 2000. Since that time, there have been significant changes in the practice of juvenile law, including in the areas of paternity determinations by the juvenile court, the use and disclosure of juvenile court records, procedures in dependency cases, the use of mental disease or defect as an affirmative defense constituting insanity in proceedings under ORS chapter 419C, and placing a young person under the jurisdiction of the Psychiatric Security Review Board. As always, practitioners need to keep informed of developments in the legislature and in case law.

This fourth edition updates the case law and statutory references, and also continues the format of the earlier editions with some modifications. General issues relevant to both delinquency and dependency cases and special issues not part of the Juvenile Code are discussed in Chapters 1–11. The remainder of the book is divided into two general areas: dependency and status cases (Chapters 12–22) and delinquency cases (Chapters 23–29). Practice tips and comments will assist the reader in making the best use of the text.

The authors who contributed to this edition are lawyers, judges, and juvenile court personnel from throughout the state. Each author donated many hours of time and brought years of expertise to this project. We thank them for their generosity and their willingness to share their knowledge and skill. We also thank the OSB CLE Publications staff for their excellent work in coordinating, editing, augmenting, and publishing this book. Without them, this book could never have been accomplished.

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October 2007
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*The author acknowledges Lori Fellows and Amy Holmes Hehn, Multnomah County District Attorney’s Office, who wrote the prior editions of chapters heavily relied on by this author.
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I. THE SYSTEMS
A. (§2.1) Judicial System—Juvenile Court

   The juvenile court is generally a department of the circuit court of the county, administered by a circuit court judge. In some counties with very small populations, juvenile court jurisdiction remains in the county court. ORS 3.260, 5.020. These counties include Gilliam, Morrow, Sherman, and Wheeler counties. OREGON BLUE BOOK 102 (2007–2008). The juvenile court judge may appoint referees to hear juvenile matters. ORS 419A.150. A referee must be appointed if the county does not have a resident juvenile judge. ORS 419A.150.

   NOTE: Some larger counties use both judges and referees, although smaller counties often use one or the other.
B. Juvenile Justice System

1. (§2.2) Juvenile Department

A county juvenile department consists of counselors or a director or both. The governing body of the county appoints the counselors and director, in consultation with the juvenile court. ORS 419A.010. The duties of the juvenile department are defined in ORS 419A.012, which mandates that the counselors make an investigation of every child brought before the juvenile court, report on that investigation to the court, represent the best interests of the child, and “[f]urnish such information and assistance as the court requires.” ORS 419A.012(3).

COMMENT: Practice varies widely throughout the state; some counties delegate some or all of these functions to DHS and other counties retain most or all of them. With the dramatic increase in dependency cases in the last 10 years, and shrinking budgets, few counties have kept up with the need for adequate numbers of juvenile court counselors to staff these cases. Although in some counties the juvenile court counselor may play an active role in the case, in most counties the juvenile court counselor provides little more than administrative support for the court in the case.

In the past, a juvenile department has had broad discretionary powers in deciding which cases to charge, divert, or handle on an informal basis. In 1993, the legislature changed the statutes, giving the district attorney’s office as well as the attorney general the authority to directly issue cases. ORS 419C.250.

NOTE: Given this change in the law, counties differ on who has the responsibility to issue cases, the district attorney’s office or the juvenile department. Juvenile court counselors are responsible for both unadjudicated and adjudicated youths. In addition to conducting investigations and assisting the court, the counselors also function as the equivalent of probation officers, monitoring all aspects of a youth offender’s probation.

QUERY: Who really represents “the state” in juvenile dependency cases? What if the district attorney, DHS, and the juvenile department disagree? Can “the state” have multiple or conflicting positions on a case?

2. (§2.3) District Attorney’s Office

The involvement of the district attorney’s office in juvenile cases varies from county to county and has evolved over time. ORS 8.685(1)
§2.4 / Juvenile Court—Systems and Parties

directs the district attorney’s office to appear “upon request of the juvenile court” to assist the court. Historically, the district attorney’s office played a supporting role in juvenile court, appearing when requested to prosecute contested cases.

In 1991, the legislature amended ORS 8.685 to grant the district attorney’s office the right to appear on behalf of the state in any matter before the juvenile court. ORS 8.685(3). In 1993, the legislature authorized the district attorney’s office to file a petition alleging that a youth is within the jurisdiction of the court by means of committing a delinquent act. ORS 419C.250. These legislative changes increased the role that the district attorney’s office can play in juvenile court by allowing it to file delinquency petitions.

COMMENT: In some counties, the district attorney’s office appears only when requested by the juvenile court, and does not issue cases. In other counties, the district attorney takes a more active role by issuing certain cases (most commonly felonies) and appearing at most adjudication hearings.

Outside of the delinquency context, the district attorney is, in some counties, responsible for adjudicating both dependency and termination-of-parental-rights petitions. In those counties, the district attorney’s office plays a significant role in dependency cases. When pursuing a termination-of-parental-rights petition, the district attorney’s office necessarily represents DHS in that proceeding and therefore has a lawyer-client relationship with the agency.

3. (§2.4) Oregon Youth Authority

Created in 1995, the Oregon Youth Authority (OYA) is the state juvenile corrections agency. OYA exercises legal and physical custody over youth offenders who commit offenses between the ages of 12 and 18 and have been committed to OYA by county juvenile courts. Youth offenders may remain in OYA’s legal and physical custody up to age 25. See ORS 420A.010(5).

OYA incarcerates certain youths committed to its legal custody by placing those youth offenders in youth correction facilities. ORS 420A.005(5)–(6). OYA also provides supervision and treatment opportunities—outside youth correction facilities—to other youth offenders committed to its legal custody in all 36 Oregon counties. ORS 420A.010.