Juvenile Law: Down the Rabbit Hole

Cosponsored by the Juvenile Law Section

Friday, February 10, 2017
8:30 a.m.–4:45 p.m.

6.75 General CLE credits
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Juvenile Law: Down the Rabbit Hole
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SCHEDULE

7:45  Registration

8:30  We’re All Mad Here
   ✦ Professionalism
   ✦ Relationships in contested cases
   Shari Gregory, Oregon Attorney Assistance Program, Portland
   Keith Rogers, Multnomah Defenders, Inc., Portland
   Bryan Welch, Oregon Attorney Assistance Program, Portland

10:00 Break and Section Awards

10:15 It Seems a Shame, to Play Them Such a Trick
   ✦ Sex offender registration
   ✦ Related hearings
   Andrew Abblitt, Benton County Juvenile Probation Officer, Corvallis
   Kristen Farnworth, Benton County District Attorney’s Office, Corvallis
   Greta Lilly, Southern Oregon Public Defenders, Inc., Medford

11:00 Why Is a Raven Like a Writing Desk?
   ✦ Division of Child Support (DCS) processes
   ✦ Department of Human Services (DHS) practices in using DCS
   ✦ Pagan and Stanley putative fathers
   Carmen Brady-Wright, Oregon Department of Justice, Portland
   Michael Ritchey, Oregon Department of Justice, Portland

Noon Lunch and Section Awards

1:00 Sometimes I’ve Believed as Many as Six Impossible Things Before Breakfast
   ✦ Obtaining records: drug, alcohol, mental health, hospital, and child abuse assessment centers
   ✦ Methods for issuing subpoenas for treatment records for receipt at the time of the hearing or prior to the hearing via inspection and copying
   Bruce Armstrong, Marion County Legal Counsel, Salem
   Meghan Bishop, Attorney at Law, Beaverton
   Lisa Ludwig, Ludwig Runstein LLC, Portland

2:00 Break and Section Awards

2:15 That Depends on Where You Want to End Up
   ✦ Interstate Compact for the Placement of Children (ICPC)
   ✦ Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)
   ✦ Hague Convention
   The Honorable Maureen McKnight, Multnomah County Circuit Court, Portland
   Jordan Foy Bates, Youth, Rights & Justice, Portland
   Vera James, Oregon Department of Human Services, Salem
   Rahela Khanum Rehman, Oregon Department of Justice, Portland

3:45 Curiouser and Curiouser!
   ✦ Appellate update
   The Honorable Darleen Ortega, Oregon Court of Appeals, Salem

4:45 Adjourn
FACULTY

Andrew Abblitt, Benton County Juvenile Probation Officer, Corvallis. Mr. Abblitt is a Juvenile Services Supervisor with the Benton County Juvenile Department. He manages the “Intensive Supervision” caseload in addition to cases under Juvenile Department supervision involving youth exhibiting sexual offending behaviors.

Bruce Armstrong, Marion County Legal Counsel, Salem. Mr. Armstrong is a senior assistant legal counsel for Marion County. He advises the Board of Commissioners, Sheriff’s Office, Jail, Parole and Probation, Health, and Juvenile departments, and others.

Jordan Foy Bates, Youth, Rights & Justice, Portland. Ms. Bates has been a staff attorney at Youth, Rights and Justice for six years. Prior to that, she worked in family law at St. Andrew Legal Clinic. In her current position, Ms. Bates represents children and parents in the juvenile dependency and delinquency systems in Multnomah County. She also files petitions on behalf of detained and unaccompanied minors in juvenile court to help them achieve Special Immigrant Juvenile Status.

Meghan Bishop, Attorney at Law, Beaverton. Ms. Bishop’s practice includes juvenile law, adoptions, criminal defense, and family law. She is a member of the Oregon Criminal Defense Lawyers Association Juvenile Law Section and the Oregon State Bar Juvenile Law and Family Law section executive committees, and she is director of the Washington County Bar Association. Ms. Bishop is the creator and administrator of juviwiki.com. She is admitted to practice in Oregon and before the Grand Ronde Tribal Court.

Carmen Brady-Wright, Oregon Department of Justice, Portland. Ms. Brady-Wright is an assistant attorney in charge in the Oregon Department of Justice Child Advocacy Section. She supervises attorneys in the Portland office and provides assistance to and consultation with those attorneys regarding legal issues that arise in the representation of the Oregon Department of Human Services Child Welfare in juvenile dependency cases and litigation. She also provides legal assistance and advice to DHS/CW, particularly around issues of adoption, paternity, and confidentiality. Ms. Brady-Wright is a member of the Oregon Law Commission Juvenile Records Work Group and Adoption Work Group.

Kristen Farnworth, Benton County District Attorney’s Office, Corvallis. Ms. Farnworth is a Senior Deputy District Attorney specializing in the prosecution of child abuse, as well as delinquency and dependency proceedings. She previously served as an Assistant Attorney General in the Oregon Department of Justice Child Advocacy Section, where she represented the Department of Human Services–Child Welfare in complex litigation including termination of parental rights proceedings and Special Immigrant Juvenile Status matters. Ms. Farnworth has been a member of the Oregon State Bar Juvenile Law Section Executive Committee for several years.

Shari Gregory, Oregon Attorney Assistance Program, Portland. Ms. Gregory is the assistant director and an attorney counselor at the Oregon Attorney Assistance Program. In addition to her JD, she holds a Master’s in Social Work and is also a Licensed Clinical Social Worker. She is experienced in career and life transition counseling, relationship counseling, mental health counseling, crisis intervention, stress management, organizational challenges, and alcohol/drug and addiction counseling. She worked as a criminal defense attorney prior to joining the OAAP.
Vera James, Oregon Department of Human Services, Salem. Ms. James is the ICPC Deputy Compact Administrator for Oregon and manages the ICPC Program in the DHS Central Office. Prior to that, she was the Lead ICPC Coordinator, and earlier in her career she was a DHS Child Welfare caseworker in Multnomah and Clackamas counties. Ms. James is a member of the Association of Administrators of the Interstate Compact on the Placement of Children Executive Committee and cochairs the association’s Training Committee. She holds master’s degrees in both social work and public health.

Greta Lilly, Southern Oregon Public Defenders, Inc., Medford. Ms. Lilly has practiced juvenile dependency and delinquency law in Jackson County since 2010. Her prior legal experience includes three years of criminal defense and one year of public policy work.

Lisa Ludwig, Ludwig Runstein LLC, Portland. Ms. Ludwig is a criminal defense attorney who has handled all types of criminal cases through trial, including traffic, drugs, property crimes, assaults, sexual assaults, robbery, and homicide. She worked for several years as a public defender before going into private practice. Ms. Ludwig is a frequent presenter at conferences for attorneys and contributes to training manuals.

The Honorable Maureen McKnight, Multnomah County Circuit Court, Portland. Judge McKnight handles a variety of family law and juvenile law cases. She is also the lead judge for the Domestic Violence Court and shares primary responsibility with several other judges for the criminal misdemeanor and restraining order cases that involve domestic violence charges. Both before and after taking the bench, Judge McKnight has focused on systemic family law issues affecting low-income Oregonians, including access to justice issues, operation of the state’s child support program, and the response of Oregon’s communities to domestic violence. Judge McKnight is a member of the Judicial Department’s Statewide Family Law Advisory Committee. She has been a member both as an attorney and as judge of numerous workgroups addressing family law reforms and is a frequent CLE speaker. Judge McKnight is the recipient of awards for advocating improvement in Oregon’s Child Support Program (2002), for Public Service to the Oregon State Bar (2000), and for Promoting Women in the Legal Profession and the Community (Oregon Women Lawyers 2000 Justice Betty Roberts Award).

The Honorable Darleen Ortega, Oregon Court of Appeals, Salem. Judge Ortega has served on the Oregon Court of Appeals since 2003 and is the first woman of color and the only Latina to serve as an appellate judge in Oregon. Before becoming a judge, she practiced law for 14 years, focusing her practice on all types of civil litigation at the trial and appellate levels. She is cochair of the Oregon Women Lawyers Intersectionality Network. Judge Ortega serves as a resource to Lewis & Clark and University of Oregon Law Schools on issues of equity, diversity, and inclusion. Judge Ortega is a frequent speaker on topics related to equity, diversity and inclusion, privilege, and equipping women and people of color to succeed in the law.

Rahela Khanum Rehman, Oregon Department of Justice, Portland. Ms. Rehman works in the Civil Enforcement Division Child Advocacy Section, where she advises and represents the Department of Human Services, Child Welfare, in dependency and termination matters. She is one of several assistant attorneys-in-charge who supervise and provide support for assistant attorney generals who handle juvenile dependency and termination of parental rights cases across the state. Ms. Rehman previously worked with Multnomah Defenders, Inc., handling criminal, dependency, and termination matters, and with the Multnomah County District Attorney’s Office as a deputy district attorney with a termination of parental rights case load.
FACULTY (Continued)

Michael Ritchey, Oregon Department of Justice, Portland. Mr. Ritchey is an assistant attorney general for the Oregon Department of Justice and works full-time as general counsel for the Oregon Child Support Program. Prior to joining the Department of Justice, he maintained a mediation practice and also mediated cases for the Oregon Court of Appeals, and before that he was in private practice and served as managing partner of his firm.

Keith Rogers, Multnomah Defenders, Inc., Portland. Mr. Rogers has been the Executive Director of Multnomah Defenders, Inc., in Portland since 2008. He has practiced law in Oregon for over 40 years in public criminal defense, in private general practice, and as a circuit court judge.

Bryan Welch, Oregon Attorney Assistance Program, Portland. Mr. Welch is a Certified Alcohol and Drug Counselor. Prior to joining the OAAP staff, he was in the private practice of law, primarily in family law and family mediation. In addition to his work at the OAAP, Mr. Welch’s experience includes providing drug and alcohol counseling services for a court-mandated DUII treatment program and for a local nonprofit helping people impacted by homelessness, poverty, and addiction. He has previously served as a volunteer member of the State Lawyer Assistance Committee. Mr. Welch has been in recovery since 2001 and has been actively involved in the recovery community, including the OAAP, since that time.
Chapter 1
We’re All Mad Here

SHARI GREGORY
Oregon Attorney Assistance Program
Portland, Oregon

BRYAN WELCH
Oregon Attorney Assistance Program
Portland, Oregon

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Fighting The Good Fight Means Effectively Managing Stress And Anger And Other Strong Emotions

Highly contested cases are difficult. Parties, lawyers and judges involved in such cases are very likely experiencing strong emotions as a result of the particular case. Appropriate responses to them can help lawyers focus, motivate and be a more effective advocate.

A. Stress Can Cause People To “Flip Their Lid.”

- “Fight, Flight Or Freeze” can automatically occur during a high conflict case which can prevent us from using our most evolved selves!

- If our stress response is activated by our own stress and fear or by an angry or aggressive opponent, we are more likely lose our tact and talent. Once our lid is flipped, we lose ability to make rational arguments, negotiate or compromise. The more someone tries to argue or reason with us the more stressed, angry etc we can become, thus keeping our lid off and keeping our rational selves hidden away. Learning to manage will help us be more successful.

B. Managing Your Own Emotions (Activating Your Parasympathetic Nervous System)

In The Moment, When You Are Feeling “Activated” You Can…

- Inhale as deeply as you can several times. Breathe out more slowly than you breathe in.
- Deliberately “soften.” Relax your face, jaws, neck, shoulders.
- Stand up and stretch, if you are sitting down.
- Yawn.
  - Relax your gaze.
  - Smile.
  - Pause, ie take a sip of water.

In Order To Prepare To Be Better Able To Manage Your Stress, You Can…

- Exercise regularly
- Get good sleep
- Eat well, avoiding sugar and caffeine
- Develop and utilize a good support network
- Find time in your day for things you enjoy (music, talking to friends, etc.)
- Meditate

(See Attached Handout For More Stress Management Techniques).
C. “Turning Down” The Other Person’s Stress/Anger Response: You can work better with highly charged opposing counsel/judges or clients using:

- **Reflective (Active) Listening**

- **Often, simply helping the other person feel heard and understood is enough to calm them.** Remember to:
  
  Paraphrase, Validate and Empathize

- **Avoiding Escalation**

  **Watch Your Tone, Volume, Posture, Words**

  - Use “I” statements.
  - **Say No By Saying Yes.** Instead of leading with what you can’t do, talk about what you can do – what options are available.
  - **Say No By Siding With Them.**
  - **Recognize The Person’s Feelings.** Sometimes, you simply have to let the person know that the solution they hope for is unavailable. Recognize that this is difficult, and acknowledge how they see the situation.
  - Speak more softly than they do
  - Avoid bigger, taller, closer, direct facing.

**Dealing With High Conflict People**

Some people are “high-conflict people.” Bill Eddy, JD, LCSW, has created the “BIFF” model for framing conversations with “high-conflict people,” or “HCPs.”

**Characteristics of High Conflict People you know are easy to imagine. Let’s do a short analysis of their hard to deal with techniques**-

- **All or Nothing Thinking** (“I am right and you are wrong,” “I am good and you are bad,” etc.).
- **Unmanaged Emotions.** Their emotions are exaggerated and disproportionate to the situation. They are likely to see the situation as an extreme crisis. They can present as angry and aggressive, or quiet, scared and victimized.
- **Extreme Behavior.** Yelling, throwing things, lying, crying, pleading, threatening (“I’m going to have you fired.”)
Chapter 1—We’re All Mad Here

“Fighting The Good Fight” - Oregon Attorney Assistance Program

- **Blaming Others.** They tend to focus blame on people close to them, or people in authority (you are a person in authority), or “the system.”

- **Lack of Self-Awareness.** They have not learned that their behavior creates or worsens conflict situations. They truly believe other people cause the way they act (“She made me angry,” or “He made me do it”).

- **Lack of Ability To Change.** They get highly defensive and stay stuck there. They fail to see their part in causing a problem, or finding a solution.

“BIFF”-ing with them can help you stay focused and effective (“BIFF” Stands for **Brief, Informative, Friendly, and Firm**)

**BRIEF**
- Keep it short. Maybe 2 – 5 sentences.
- By being brief, you are limiting the amount of negative information that might trigger defensiveness.

**INFORMATIVE**
- Focus on facts and information.
- Be neutral. Avoid judgment, disrespect, opinions.
- By focusing on information, you are directing the conversation away from the HCPs emotional brain (“right brain.”)

**FRIENDLY**
- Being friendly is less threatening and less likely to trigger a threat response.
- Being friendly AND informative helps shift away from right brain.

**FIRM**
- By letting them know you are friendly and done with the conversation, you can help them end their aggressive behavior. You are bringing the conversation to a close.

**Goals of a “BIFF” Response**
- You are attempting to help an HCP shift from their unmanageable emotions to their more logical, reasonable brain.
- Not engaging the HCPs defensiveness.
- Keeping the conversation centered on facts, not opinions or emotions.
- Keeping the conversation focused on solutions.
- Setting clear boundaries.
- Not getting “hooked.” (HCPs will try to get you emotionally “hooked” by blaming, belittling, ridiculing, making personal attacks.)
Things To Avoid In a BIFF Response

- **Advice**
  - Advice, even if meant as “constructive feedback,” especially if related to their behavior, simply triggers defensiveness.
  - Telling an HCP what they should do places you in a superior (and therefore “threatening”) position in their mind.

- **Admonishments**
  - “You should know better” or “You shouldn’t have done that” or “This is your fault.”

- **Apologies**
  - Apologies tend to trigger an HCPs “all or nothing” thinking. If you say “I’m sorry this happened” they may hear “It’s all my fault” and simply reinforce their belief that they have no part in the solution.
**Stress Management Tools**

1. **Breathing** – There are many different ways to do this. The most important part is to breathe slowly and deeply. It is the fastest and best way to communicate with the nonverbal part of your brain.  
   - APPS: Breathe2Relax

2. **Meditation** – It rewards your brain and changes your brain’s wiring in positive ways that to tend toward contentment.  
   - [http://www.nmr.mgh.harvard.edu/~britta/SUN_July11_Baime.pdf](http://www.nmr.mgh.harvard.edu/~britta/SUN_July11_Baime.pdf)  
   - [http://palousemindfulness.com/selfguidedMBSR.html](http://palousemindfulness.com/selfguidedMBSR.html)  
   - [https://www.youtube.com/watch?v=iZiJDHUsR0](https://www.youtube.com/watch?v=iZiJDHUsR0)  
   - APPS – Insight Meditation Timer, Buddhify, Headspace, Zazn

3. **Avoid isolation; connect with family and friends** – Social connectedness is vitally important. It helps to reduce the effects of stress on brain and body; Good hormones (e.g., oxytocin) are released.  

4. **Exercise** – It’s good for your body: it helps reduce stress, combats anxiety and depression, improves cognitive functioning, improves memory, and enhances mood. Good hormones (endorphins) are released – aka “the runner’s high.” *Spark: Revolutionary New Science of Exercise and the Brain*, John Ratey (2013)  

5. **Take a fun class** – Learn something new, exercise the creative side of your brain; have a scheduled time for your class, prepay for it; E.g., Guitar Lessons, Dog Agility Class, Knitting Class, Tai Chi, Toastmasters, Poetry Writing. Something that is new, different, and that you look forward to - especially with a friend! No homework!  

6. **Volunteer** – It lowers stress, contributes to a sense of well-being, and improves physical health as well!  

7. **Power song** – Taking breaks is really important for your brain. You can use listening to a song as a meditation or to pump you up! (Choose “We Will Rock You” not “Who Let the Dogs Out.”) Join a choir. It does awesome things for you!  

8. **Humor break** – Breaks are vitally important and if you can combine that with some laughter, you have provided your body and your brain with some much needed feel-good time. Laughing stimulates many organs, activates your stress response, and then relaxes your body systems. Laughing also strengthens your immune system.
Chapter 1—We’re All Mad Here

<table>
<thead>
<tr>
<th>9.</th>
<th>Spirituality, religion, and connecting with nature - Spirituality, organized religion, or just communing with nature can help to foster a sense of meaning and purpose (and offer perspective when you are wrapped up in the minutiae of torts, trademarks, or taxation). Being in nature or at least looking out a window at some nature is great for your brain. Light increases serotonin – one of our neurochemicals that helps mood and fights depression. Benefits of being outside: increased attention, focus, and memory; lowered stress, and reduced brain fatigue.</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.</td>
<td>Pets – if you have pets, try to maximize your interactions with them; this increases our feel-good hormones, lowers stress levels, and lowers blood pressure. If you don’t have pets, you can volunteer to walk dogs at the Humane Society or go visit someplace with a fish tank!</td>
</tr>
<tr>
<td>11.</td>
<td>Commitment &amp; accountability – We are more likely to do pretty much everything if we have another person we feel accountable to. So, get a gym buddy, a walking or running partner, a meditation buddy, a movie break buddy. You get the point! APPS- <a href="https://www.stickk.com/">https://www.stickk.com/</a></td>
</tr>
<tr>
<td>12.</td>
<td>Read- Reading for pleasure can help relax you and reduce stress.</td>
</tr>
<tr>
<td>13.</td>
<td>Intimacy – Healthy intimate relationships can be a huge source of support in high stress times; physical contact with other people (even something as simple as a hug or a pat) releases oxytocin in our brains (that’s good) and reduces stress and anxiety (that’s also good).</td>
</tr>
<tr>
<td>14.</td>
<td>Gratitude – It’s good for our well-being to make a practice of appreciation. It is also a state of being that increases our social connections.</td>
</tr>
<tr>
<td>15.</td>
<td>Savoring practice – Our brain has a negativity bias. Bad experiences stick in our memories while positive experiences flow through like water through a sieve. You can shift your brain toward positivity by savoring a positive moment for just 10-30 seconds. This attention to the positive cements those moments in our memories just like the negative moments.</td>
</tr>
</tbody>
</table>
### 16. Diet – Quick Tips:

1. Hunger hurts Concentration → eat breakfast (oatmeal is a natural brain food);
2. Good Foods = Alertness → spinach, broccoli, and beans are great alertness foods;
3. Good Glucose = Good Memory → complex carbs (e.g., green veggies, whole grains, beans, lentils, peas and potatoes) provide steady source of glucose, avoiding sugar spikes. Comfort foods (chips, candy bars, pastries) work ok in the moment, but can cause blood-sugar fluctuations that can increase stress and mood swings.


### 17. Sleep – Sleep deprivation and elevated stress hormones tend to be related. Healthy Tips:

- Stick to a sleep schedule;
- Develop a relaxing pre-bedtime ritual;
- Exercise daily;
- Avoid alcohol/drugs, tobacco, caffeine, and heavy meals before bedtime;
- Have a bedroom that is cool, quiet, and dark.

   - [http://sleepfoundation.org/](http://sleepfoundation.org/)

### 18. Self-Awareness – Our daily lives are filled with innumerable things, people, obligations, and responsibilities competing for our attention. Add to this the demands of practicing law, (or studies and preparation for a Bar Exam) and you quickly realize that our self and our thoughts, feelings, and emotions are often totally ignored. Practicing self-awareness simply means stopping and taking time to inwardly reflect on ourselves and what is going on within us in the present moment. For example, are we angry, tired, anxious, fearful, or sad, etc.? When we practice self-awareness, in a compassionate, non-self-blaming way, we are more likely to avoid unwanted stress-induced behaviors and reactions, more likely to regulate our emotions in a healthy way, and more likely to develop an understanding of ourselves and our thoughts, feelings, and emotions.


### 19. Listen to your body – Do a self-care body scan: check in with yourself. Are you experiencing any aches, pains, or other discomfort? If so, your body may be telling you something like: get some exercise, eat something, cut down on the caffeine, take a time out, or call a friend? Listen to your body!

| 20. | **Structure and schedules** – Develop regular daily habits and routines for activities that are repetitive (e.g., going to bed, getting up in morning; work times, meal times, social times, self-care times, zoning out times, etc.). Perhaps even keep a simple log, journal, or calendar to record your success in maintaining your schedule and routine; for some, a visual track record of accomplishments tends to reinforce success. Having a regular daily schedule reduces the need to make minor or routine decisions and choices. This practice: (1) eliminates needless decision-making, preserving the brain’s energy for higher level tasks (like practicing law); (2) creates a sense of control and empowerment; (3) encourages planning one’s day; (4) encourages the creation of healthy self-care habits, like exercising and visiting with family and friends. [http://www.rebeccaanhalt.com/schedule-more-and-stress-less/](http://www.rebeccaanhalt.com/schedule-more-and-stress-less/) |
| 21. | **To-Do Lists can be two-edged swords** – For some to-do lists are helpful and stress-relieving, for others they are stress-producing. The longer the list, the less likely you are to get things done. If you make a to-do list, keep it simple and relatively short (eliminate low-priority items), and don’t jump from one task to another – try to complete one item at a time. If you really like lists, consider including a “done list” at the end of the day to celebrate your accomplishments. All lists of things to do should include one or more healthy self-care activities. [http://www.jillkonrath.com/sales-blog/quickly-reduce-your-to-do-list](http://www.jillkonrath.com/sales-blog/quickly-reduce-your-to-do-list) |
| 22. | **Avoid relationship drama** – If you have personal relationships that are occasionally volatile, respectfully inform the other person that all your energies right now must be focused on your self-care and you will not engage in any relationship drama – and stick to this rule. This is called maintaining healthy boundaries! [http://www.huffingtonpost.com/jennifer-twardowski/6-steps-to-setting-boundaries-in-relationships_b_6142248.html](http://www.huffingtonpost.com/jennifer-twardowski/6-steps-to-setting-boundaries-in-relationships_b_6142248.html) |
| 24. | **Do something you love** – If there is an activity that you enjoy doing right now, make sure you do not lose that as part of your proactive self-care strategy. [http://www.sparkpeople.com/resource/wellness_articles.asp?id=1657](http://www.sparkpeople.com/resource/wellness_articles.asp?id=1657) [http://greatergood.berkeley.edu/article/item/a_better_way_to_pursue_happiness](http://greatergood.berkeley.edu/article/item/a_better_way_to_pursue_happiness) |
| 25. | **Reach out for help: OAAP** – If you have questions, concerns, or simply need to talk with someone, call or contact OAAP @ [www.oaap.org](http://www.oaap.org); 503-226-1057. |
WORKSHEETS FROM DBT SKILLS TRAINING HANDOUTS AND WORKSHEETS, SECOND EDITION


Distress Tolerance Handout 4: STOP Skill


Interpersonal Effectiveness Handout 5: Guidelines for Objectives Effectiveness: Getting What You Want (DEAR MAN)


Interpersonal Effectiveness Handout 6: Expanding the V in GIVE: Levels of Validation

Juvenile Law: Down the Rabbit Hole
OSB CLE, 2017

“It seems a shame, to play them such a trick...”

Sex offender registration and related hearings

The “Looking Glass” reference may serve to remind us to reflect.

Introduction

Andy Abblitt, Juvenile Services Supervisor

Benton County Juvenile Department - 16 years

Juvenile Court Counselor

Intensive supervision caseload

Experienced, not an expert
The work

419A.012 Duties of director or counselor. The director of a juvenile department or one of the counselors shall:

(1) Make or cause to be made an investigation of every child, ward, youth or youth offender brought before the court and report fully thereon to the court.

(2) Be present in court to represent the interests of the child, ward, youth or youth offender when the case is heard.

(3) Furnish such information and assistance as the court requires.

(4) Take charge of any child, ward, youth or youth offender before and after the hearing as may be directed by the court.

419C.001 Purposes of juvenile justice system in delinquency cases:

(1) The Legislative Assembly declares that in delinquency cases, the purposes of the Oregon juvenile justice system from apprehension forward are to protect the public and reduce juvenile delinquency and to provide fair and impartial procedures for the initiation, adjudication and disposition of allegations of delinquent conduct. The system is founded on the principles of personal responsibility, accountability and reformation within the context of public safety and restitution to the victims and to the community. The system shall provide a continuum of services that emphasize prevention of further criminal activity by the use of early and certain sanctions, reformation and rehabilitation programs and swift and decisive intervention in delinquent behavior.

OVERVIEW

► What, who, when, where, why… and how

► Timeline of the process

► Supervision (the “how”)

► Registration hearing (prior to termination)

► Beyond probation
WHAT

78th OREGON LEGISLATIVE ASSEMBLY--2016 Regular Session
Enrolled House Bill 4074

SECTION 2. ORS 163A.030 is amended to read:

(1)(c) The court shall notify the person of the person’s right to a hearing under this section upon finding the person within the jurisdiction of the juvenile court under ORS 419C.005.

(2)(a) The county or state agency responsible for supervising the person shall notify the person and the juvenile court when the agency determines that termination of jurisdiction [will] is likely to occur within six months.

(3) Upon receipt of the notice described in subsection (2) of this section, the court shall: (a) Appoint an attorney for the person as described in subsection (4) of this section;

(b) Set an initial hearing date; and (c) Notify the parties and the juvenile department or the Psychiatric Security Review Board, if the department or board is supervising or has jurisdiction over the person, of the hearing at least 60 days before the hearing date.

WHAT

78th OREGON LEGISLATIVE ASSEMBLY--2016 Regular Session
Enrolled House Bill 4074

SECTION 2. ORS 163A.030

(7) At the hearing described in subsection (1) of this section: (b) The person who is the subject of the hearing has the burden of proving by clear and convincing evidence that the person is rehabilitated and does not pose a threat to the safety of the public. If the court finds that the person has not met the burden of proof, the court shall enter an order requiring the person to report as a sex offender under ORS 163A.025.
WHY

“The system is founded on the principles of personal responsibility, accountability and reformation within the context of public safety and restitution to the victims and to the community. The system shall provide a continuum of services that emphasize prevention of further criminal activity…”

WHO

SECTION 2. ORS 163A.030 is amended to read:

- (4)(a) A person who is the subject of a hearing under this section has the right to be represented by a suitable attorney possessing skills and experience commensurate with the nature and complexity of the case, to consult with the attorney prior to the hearing and, if financially eligible, to have a suitable attorney appointed at state expense.

- (7) At the hearing described in subsection (1) of this section: (a) The district attorney, the victim, the person and the juvenile [court counselor] department or a representative of the Oregon Youth Authority shall have an opportunity to be heard.

- (b) The person who is the subject of the hearing has the burden of proving by clear and convincing evidence that the person is rehabilitated and does not pose a threat to the safety of the public. If the court finds that the person has not met the burden of proof, the court shall enter an order requiring the person to report as a sex offender under ORS 163A.025
WHEN

Citation/Custody

Conditional release

Preliminary/Negotiations

Jurisdiction

Disposition

Probation supervision & treatment

Registration Hearing

Jurisdiction termination

WHERE

» Community

» Residential program

» Youth correction facility

» COURT – final review
HOW

PROBATION DEFINED

▸ “A testing or trial, as of a person’s character, ability to meet requirements, etc.”
  
  (Webster’s, Second College Edition – Simon & Schuster)

▸ “…proving by clear and convincing evidence that the person is rehabilitated and does not pose a threat to the safety of the public.”

HOW

ASSESS (consider the timing)

Identify risk and need factors

Plan for interventions, supervision and support

TOOLS:

▸ JCP (juvenile crime prevention)
▸ OYA-RNA (risk needs assessment) (and OTA)
▸ ERASOR (estimated risk of adolescent sex offense recidivism)
▸ J-SOAP-II (juvenile sex offender assessment protocol)
▸ JSORRAT (juvenile sex offense recidivism risk assessment tool)
▸ AASI-2 (Abel assessment for sexual interest-2)
HOW (pre-disposition)

- Identify the appropriate type and level of treatment
  - Community
    - Residential program
    - Youth correction facility

- Keep the goal in mind: “clear and convincing”

HOW (pre-disposition)

Examine range of services & consider the best fit based upon the youth’s risk factors and needs
**HOW (disposition)**

- Collaborative conversations
- Clear communication
- Professional relationships

**HOW (supervision)**

419C.001 “…provide a continuum of services that emphasize prevention of further criminal activity by the use of early and certain sanctions, reformation and rehabilitation programs and swift and decisive intervention in delinquent behavior.”

Services may include…

Sanctions may include…
HOW (supervision)

Be prepared for adjustments

Transitions are a part of treatment

What about probation violations?

HOW

Community engagement

Increased pro-social connection

Decreased problematic thinking and behavior

By addressing problematic behaviors, assessing the youth’s risks and needs & engaging appropriate interventions and supports the goal should remain in view.
ADDITIONAL CONSIDERATIONS

Even the “best plans”…
(some lessons learned)

And other hearings - 419A.262(9)
Expunction proceedings
Chapter 2B

Relief from Registration for Juvenile Offenders—Presentation Slides

Kristen Farnworth
Benton County District Attorney’s Office
Corvallis, Oregon
“It Seems a Shame, to Play Them Such a Trick”

The Walrus and the Carpenter—Lewis Carroll

Walt Disney’s Alice in Wonderland
Relief From Registration for Juvenile Offenders

Who are already required to report

163A.140* Make sure to check the adjudication date against the statute to make sure it applies. See also HB 2333 (2007) and HB 4074 (2016)

10 Offenses that usually qualify for relief from registration*

1. Rape III
2. Sodomy III
3. Sexual Misconduct
4. Sexual Abuse III
5. Contributing to the Sexual Delinquency of a Minor
6. Attempted Contributing to the Sexual Delinquency of a Minor
7. Attempted Sodomy III
8. Attempted Rape III
9. Attempted Sexual Misconduct
10. Attempted Sexual Abuse III

*Those who are subject to a “lifetime” registration requirement will not qualify
And...

- Victim was at least 14
  14, 15, 16, 17

And...

- Less than 5 years between them
And... 

- Victim’s lack of consent was based only upon AGE.

And...

- With the exception of the crime or offense being considered, there were no other adjudications or convictions for a sex crime (sex crime as defined by ORS 163A.005(5) which includes additional crimes if the court designated in the judgment that those particular offenses were sex crimes)
- The crime or offense the individual is seeking to be relieved of registration from has the same victim.
And...

- The court enters an order relieving the person of the requirement to report under (2) or (3).

How does one get that court order? * Again being aware of the “conviction” date.
Things to keep in mind

- For acts that could be charged as sex crimes listed in 137.707 and the person is 15, 16, or 17 years of age at the time the offense is committed, the person and State can stipulate that they may not petition for relief under this section as part of an agreement that the person be subject to juvenile court jurisdiction. See ORS 163A.130(11).

Remember—the statute books do not reflect the current law.
Chapter 2C
The End of Automatic Registration

GRETA LILLY
Southern Oregon Public Defenders, Inc.
Medford, Oregon

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Chapter 2C—The End of Automatic Registration

The Battle for HB 4074

“The time has come,” lawmakers said,
“To talk of things that vex: of brains – and youth –
And science stuff – of deviance and sex –
Why teens should have to register –
When minds develop next.”
Chapter 2C—The End of Automatic Registration

The Enlightenment

Kids Are Different

The Enlightenment

*Juveniles who commit sex offenses do not share the characteristics, recidivism rates, and treatment potential of adults who commit sex offenses.*

Chapter 2C—The End of Automatic Registration

The Victory

The Hearings

“It seems a shame,” the Lawyers said,
“To play them such a trick,
After we've brought them out so far,
And made them trot so quick!”
Chapter 2C—The End of Automatic Registration

The Hearings: Jackson County

In 2016, seven hearings were requested under the new law for youth being terminated from probation.

Four waived their right to a hearing and were required to register.

Three went to a hearing.

One was not ordered to register.

Trick or Treat?

[image]
Don’t Be Tricked

“No More Automatic Registration!”

...Now it’s Manual

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The Good News

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The Good News

THIS IS WHAT WE HAVE TRAINED FOR!

How to Make Change Stick

• Prepare
• Persuade
Chapter 2C—The End of Automatic Registration

Prepare: Gear Up

- Get all the **discovery**
- Get your **client** ready
- Get an **expert**
- Get a **memorandum** to the Court

“Before anything else, getting ready is the secret to success.”
- Henry Ford

Hypothetical #1

You are sixteen years old. You live at home with two parents. You are a licensed driver. You want to borrow the car. You ask Dad to borrow the car. He gives you the keys.

**Q:** **Do you ask Mom for the car keys?**
Hypothetical #2

You are a defense attorney with a delinquency client who has completed sex offender treatment and is nearing the end of probation.

The Legislature has decided that juveniles who have committed sex offenses should not necessarily have to register and new laws are in effect.

Q: Do you try to convince the Court that juveniles who have committed sex offenses should not necessarily have to register?

A: It depends. (You knew that was coming.)

Shift the Assumption

Registration Territory

[image]

[image]
But Meet Your Burden

The youth has the burden of proving by **clear and convincing evidence** that s/he is **Rehabilitated** & **Not a Threat**

Considerations: Injury

In determining whether the youth has met the burden, the court *may* consider, but is not limited to considering:

– The extent and impact of any **physical or emotional injury** to the victim;
Considerations: Act

– The nature of the act;
– Whether the person used or threatened to use force in committing the act;
– Whether the act was premeditated;

Considerations: Victim

– Whether the person took advantage of a position of authority or trust in committing the act;
– The age of any victim at the time of the act, and
  • the age difference;
– The number of victims;
– The vulnerability of the victim;
– Statements, documents and recommendations by or on behalf of the victim or the parents of the victim;
Considerations: Antisocial Behavior

– Other acts committed by the person that would be *crimes* if committed by an adult and criminal activities engaged in by the person *before and after the adjudication*;

– The person’s use of *drugs or alcohol* *before and after the adjudication*;

– The person’s history of public or private *indecency*;

Considerations: Prosocial Behavior

– The person’s willingness to accept personal *responsibility* for:
  • the act and
  • the consequences of the act;

– The person’s ability and efforts to pay the victim’s expenses for counseling and other trauma-related expenses or other *efforts to mitigate* the effects of the act;

– The person’s *academic and employment* history;

– The person’s *compliance* with and success in completing the terms of supervision;
Considerations:
Treatment, Part I

– The results of **psychological examinations** of the person;
– Whether the person has participated in and satisfactorily completed a **sex offender treatment** program or any other intervention, and if so the juvenile court may also consider:
  * The **availability, duration and extent** of the treatment activities;

Considerations:
Treatment, Part II

– **Reports and recommendations** from the providers of the treatment;
– The person’s **compliance** with court, board or supervision requirements regarding treatment; and
– The **quality and thoroughness** of the treatment program;
Quick Detour: Improving Treatment, Part I

- **Take an individualized approach** that targets the most relevant causes of a youth’s problem behavior
- **Increase parental involvement** and focus on parent child management or behavioral skills training
- **Reduce duration of treatment** and eliminate coercive elements (polygraph, PPG)

Illinois Juvenile Justice Commission, “Improving Illinois’ Response to Sexual Offenses Committed by Youth” (March 2014)

Quick Detour: Improving Treatment, Part II

- Deliver treatment in **settings** most likely to:
  - Promote appropriate prosocial experiences with peers
  - Increase generalization of positive treatment effects
  - Decrease exposure to delinquent youth

Illinois Juvenile Justice Commission, “Improving Illinois’ Response to Sexual Offenses Committed by Youth” (March 2014)
Quick Detour: Improving Treatment, Part III

Practical tip to help your client:
- If your client is stuck with a less-than-ideal treatment group, encourage him/her to **supplement the group with individual counseling**

Considerations: Efficacy of Registration

- The **protection** afforded the public by records of sex offender registration;
Chapter 2C—The End of Automatic Registration

Efficacy of Registration = 0

Extensive research shows that registering juveniles has

No effect on recidivism
(sexual or violent)


Efficacy of Registration = 0

The vast majority of youth adjudicated for sex crimes do not re-offend.

A meta-analysis study of over 11,000 youth found a recidivism rate of 2.75%. Oregon’s recidivism rate for this population is the same, 2.75%.

Efficacy of Registration = 0

In 2007, research showed that “restrictive public policies that target juvenile sex offenders are unlikely to substantially benefit community safety.”


In 2016, research showed that **laws requiring juveniles to register as sex offenders are ineffective.**

*Letourneau, supra*

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Efficacy of Registration < 0

**Suitable and stable housing** is critical to reducing recidivism and increasing community safety.


Registration creates risk of harm for youths’ mental health, safety, **living stability** and schooling. *(Letourneau)*
Chapter 2C—The End of Automatic Registration

Efficacy of Registration < 0

Collateral consequences include increased victimization by adult sexual predators.

Registered youth are twice as likely to be sexually assaulted as nonregistered youth. (Id.)

So, registration of juveniles is increasing sex crime.

Considerations: Other

• And any other relevant factors.
Chapter 2C—The End of Automatic Registration

What Happened to the Time?

If the legislature had intended time to be a factor, wouldn’t it have included it?

Treatment is included as a consideration.
Time is not.

There is no empirical evidence to support an argument that, for example, a year should pass after the completion of treatment.
That argument is also contrary to the law (hrg 6 months < term.)

What Is the Question?

Is your client:

Rehabilitated & Not a Threat
What Is the Question?

**BEFORE**

Not Rehabilitated & A Threat

What Is the Question?

**AFTER**

Rehabilitated & Not a Threat
Who Answers the Question?

The answer should be based on **expert opinion**.

If the youth has **not completed treatment** and/or your expert believes s/he is at **high risk to reoffend**, the answer will be “No.”

Who Answers the Question?

The court *may* consider the factors above, but ideally the question is answered by a **psychologist who has the expertise to answer that question** – not a judge.
Who Answers the Question?

The State can bring in their own psychologist.

This issue is too complicated and too emotional – and there is too much recent research – not to rely on experts in the field.

Where Are We?

Research shows juvenile sex offender registration is a failed policy. Even for high-risk youth.

The Legislature gave the Court authority to require registration if the youth is not rehabilitated or is a threat to the public.

The Court is ordering registration based on its own opinion of threat.
Huddle With The Other Team

Find out where the District Attorney’s office and the Probation Department / Oregon Youth Authority stand before the hearing and try to persuade them to support your position, but…

Watch Your Math

No objection (District Atty.)
+
No objection (Probation/Parole)
≠
Approval (Court)
Persuade: Use the Three “D”s

- **Discover** what the court wants and needs to hear
- **Design** and structure a persuasive argument
- **Deliver** your argument with passion, compassion, and purpose.

Westside Toastmasters (California), “Chapter 15 – Your Persuasion Checklist”

The Court’s Acceptance Level

Determine what kind of audience you have based on the Court’s:

- **Knowledge**
- **Interest**
- **Background**
- **Support**
- **Beliefs**

Westside Toastmasters (California), “Chapter 15 – Your Persuasion Checklist”
Beliefs About Juvenile Sex Offense

“Curiosity Often Leads to Trouble”

Beliefs About Treatment

“Cure”

“Remission: Possible”
Beliefs About Registration

- The Scarlet Letter book cover
- "Just Label It! We Have the Right to Know" logo from www.justlabelit.org

Audience Type

- Hostile?
- Uninformed?
- Indifferent?
- Supportive?
Chapter 2C—The End of Automatic Registration

The Hostile Court

If the Court disagrees with you, use these techniques:

• Find **common beliefs and values**
• **Don’t start by attacking** its position
• Increase your credibility with **studies from experts** or data that will support your claim
• Express your goal of a **win-win outcome**
• Show that you’ve done your **homework**
• **Respect** its feelings, values and integrity
• Use **logical reasoning** as clearly and carefully as possible

Westside Toastmasters (California), “Chapter 15 – Your Persuasion Checklist”

The Indifferent Court

If the Court understands your position but doesn’t care about the outcome:

• Show the **benefits** of your proposal
• Show the **downside** of registration
• Use a **story**
• Get it to feel **connected**
• **Avoid complex** arguments
• Use **concrete** examples
• Identify **why** it should care

Westside Toastmasters (California), “Chapter 15 – Your Persuasion Checklist”
“Safety isn’t expensive, it’s priceless.
—Jerry Smith—"
The Uninformed Court

If the Court lacks the information it needs to be convinced:

- Encourage **questions**
- Keep the facts **simple**
- Use **examples** and simple statistics
- Quote respected **experts**
- Make your message **interesting** to keep its attention

Westside Toastmasters (California), “Chapter 15 – Your Persuasion Checklist”

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The Supportive Court

If the Court agrees with you:

- **Inspire** it
- **Inoculate** it to opposing arguments
- Get it to **take action** and support your cause
- Let it know **what needs to do**
- Use **testimonials** to increase its commitment

Westside Toastmasters (California), “Chapter 15 – Your Persuasion Checklist”
Blend Persuasion Techniques

The judge presiding over your case will likely be a blend of all four types, so mix techniques accordingly.

Westside Toastmasters (California), “Chapter 15 – Your Persuasion Checklist”

Scheduling Tip: No Walk-Ins

Protect your client’s privacy by scheduling the hearing at a special-set time.
Identify Obstacles to Change

- Lack of Motivation
- Lack of Knowledge
- Fear

Steer Change

- Inform
- Motivate
- Manage Fear

Westside Toastmasters (California), “Chapter 15 – Your Persuasion Checklist”
Motivate

What does the Court need and want to do?
- Follow the **law**
- Protect the **public**
- Protect **individuals**
- Make decisions that are **fair** and **just**

Motivate

Show the Court how it is:
- **Following the law**
- Making a fair and just decision
- **Protecting the public**
- Protecting your client’s rights
Juveniles who commit sex crimes can be:

- **Traumatized** children reacting to their own abuse
- Otherwise normal adolescents acting **experimentally** but irresponsibly
- **Immature and impulsive** youth
- Adolescents engaging in **normative** but illegal consenting sex
- Youth **imitating** what they see in the media or what is normal in his/her family
- Youth **misinterpreting** what they believed was mutual interest
- Seriously **mentally ill** youth
- Youth responding to **peer pressure**
- Youth **under the influence** of drugs or alcohol
- Youth swept away by **sexual arousal** of the moment

*Letourneau, supra*
Danger Zone: The Victim Card

Use Authority

Have your psychologist tell the court what to do.
Couldn’t Hurt, Might Help

“Today Is Your Day to Let Go of Things That No Longer Serve You.”

Inform

• Submit a detailed memorandum with exhibits for the court to review in advance.

• Use testimony of expert psychologist, client, family, treatment provider(s) and probation/parole officer(s).
Inform

Hearing Memorandum
• Current psychosexual evaluation with expert’s opinion about whether client is:
  (1) rehabilitated; and
  (2) not a threat
  Have your expert address any bad facts.
• Application of the factors to your client
• Letters from counselors
• Report cards or transcripts
• Employment records
• Reports and studies to educate the judge

Treatment Works
• Research shows treatment effectiveness for teens who have sexually offended and children with severe sexual behavior problems.
• Evidence-based treatment elements include:
  – Active engagement of parents
  – Behavioral parent training
  – Rules and boundaries re sexual behavior
  – Focus on youth & family strengths & needs
  – Duration of about 6-12 months
Chapter 2C—The End of Automatic Registration

Treatment Addresses the Family System

"System Failure"

Kids Need Supervision & Guidance
Utility of SOAP and ERASORs

JSOAP-II, ERASOR & JSORRAT-II do NOT score risk of reoffense.*

- Nearly all youth identified as “low” or “moderate” risk do not reoffend.
- Many or most youth identified as “high risk” don’t reoffend.

* They are useful tools to identify higher clinical needs.

Utility of SOAP and ERASORs

Distinguish between historical/static risk factors (e.g. age of victim) and dynamic risk factors (e.g. prosocial behavior).

Did your client ameliorate the factors within his/her control?
Inside ERASORs

<table>
<thead>
<tr>
<th>Present – Possibly/Partially Present – Not Present – Unknown – Other</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sexual Interests, Attitudes and Behaviors</strong></td>
</tr>
<tr>
<td><strong>Historical Sexual Assaults</strong></td>
</tr>
<tr>
<td><strong>Psychosocial Functioning</strong></td>
</tr>
<tr>
<td><strong>Family/Environmental Functioning</strong></td>
</tr>
<tr>
<td><strong>Treatment</strong></td>
</tr>
<tr>
<td><strong>Other Factor</strong></td>
</tr>
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Inside ERASORs

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<tr>
<td><strong>Sexual Interests, Attitudes and Behaviors</strong></td>
</tr>
<tr>
<td>– Deviant sexual interests (younger children, violence, or both)</td>
</tr>
<tr>
<td>– Obsessive sexual interests/Preoccupation with sexual thoughts</td>
</tr>
<tr>
<td>– Attitudes supportive of sexual offending</td>
</tr>
<tr>
<td>– Unwillingness to alter deviant sexual interests/attitudes</td>
</tr>
</tbody>
</table>
Inside ERASORs

Present – Possibly/Partially Present – Not Present – Unknown – Other

• Historical Sexual Assaults
  – Ever sexually assaulted 2 or more victims
  – Ever sexually assaulted same victim 2 or more times
  – Prior adult sanctions for sexual assault(s)
  – Threats of, or use of, excessive violence/weapons during sexual offense
  – Ever sexually assaulted a child
  – Ever sexually assaulted a stranger
  – Indiscriminate choice of victims
  – Ever sexually assaulted a male victim (Coded for male adolescents only)
  – Diverse sexual assault behaviors

Inside ERASORs

Present – Possibly/Partially Present – Not Present – Unknown – Other

• Psychosocial Functioning
  – Antisocial interpersonal orientation
  – Lack of intimate peer relationships / social isolation
  – Negative peer associations and influences
  – Interpersonal aggression
  – Recent escalation in anger or negative affect
  – Poor self-regulation of affect and behavior (impulsivity)
Inside ERASORs

Present – Possibly/Partially Present – Not Present – Unknown – Other

- **Family/Environmental Functioning**
  - High-stress family environment
  - Problematic parent-child relationships / Parental rejection
  - Parent(s) not supporting sexual offense-specific assessment/treatment
  - Environment supporting opportunities to reoffend sexually

Inside ERASORs

Present – Possibly/Partially Present – Not Present – Unknown – Other

- **Treatment**
  - No development or practice of realistic prevention plans,strategies
  - Incomplete sexual offense-specific treatment

- **Other Factor**
  - Other factor description
  - Other factor answer

- **Risk Level**
  
  e.g. 20 out of 25 total, only static historical risk factors present

  $\Rightarrow$ Low Risk
Chapter 2C—The End of Automatic Registration

Manage Fear

Disrespectful Perspective

Respectful Perspective

Acknowledge Fear of Reoffense

[images]
Help the Court’s Perspective

The judge is not a lifeguard who sees a gray dorsal fin in the surf (risk factor) and needs to sound an alarm to alert swimmers.

Help the Court’s Perspective

The judge is more like a marine biologist whose boat can be surrounded by sharks – or dolphins.

Don’t jump to conclusions at the sight of something scary looking.
Chapter 2C—The End of Automatic Registration

Top Secret Defense Strategy

Protective Registration Factors

Risk-of-Reoffense Analysis

Critique of the Registry’s Efficacy

Do Not Mix!
Result

“The Element of Indifference to Sexual Abuse”

Make the Court Slow Down

Ask the court to make specific findings that support its decision – and its reasons for disregarding expert(s) if applicable.
If At First You Don’t Succeed

File a **Motion to Modify Existing Order** under ORS 419C.610(1)

The court has the power and discretion to modify or set aside orders of the court. *See also State v. C.E.B, 254 Or.App. 353 (2012).*

---

If At First You Don’t Succeed

- **Appeal** – argue that the Court abused its discretion
- Alert client to **petition for relief** opportunity two years after completing probation
Tick Tick Tick…

- For former clients adjudicated for a felony sex crime before August 12, 2015, remained under supervision on or after August 12, 2015, but were terminated from jurisdiction prior to April 4, 2016…

- The court must receive a **written request for a hearing prior to July 1, 2018**, or the person may not request a hearing under this section.

Memo to Juvenile Defense Attorneys
Re: Implementing Juv. S. O. Registry Law Changes
From: Julie H. McFarlane, Supervising Attorney

Don’t Be Mad

Registration
Bad

Kid
Good
Chapter 2C—The End of Automatic Registration

Be Prepared

“. . . It's no use going back to yesterday, because I was a different person then.” —Alice from Alice’s Adventures in Wonderland by Lewis Carroll
The views and opinions expressed by Greta Lilly in the presentation are solely her own and do not necessarily reflect the views or opinions of Southern Oregon Public Defender, Inc., or its Executive Director Douglas M. Engle, who incidentally is the Best Boss Ever. Neither Southern Oregon Public Defender, Inc., nor the Executive Director make any representation of the accuracy of any such views and opinions. The presentation was paid for by Greta Lilly’s husband, Paul Moser, who did all of the household chores, puppy care, and cooking during the production of this presentation.

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(541) 494-2345
To: Juvenile Defense Attorneys

From: Julie H. McFarlane, Supervising Attorney

Re: Implementing Juvenile Sex Offender Registry Law Changes

HB 4074 became effective on April 4, 2016 when the bill was signed by the Governor. Attorneys who have current or former juvenile clients adjudicated delinquent on felony sex offenses need to be aware of the changes made by HB 4074. Law and procedure for clients for whom jurisdiction was terminated prior to August 12, 2015 remains unchanged and those juveniles must apply for relief from sex offender registration pursuant to ORS 163A.130.1 Provisions of HB 4074 address three groups of juveniles adjudicated of felony sex offenses:

A. Clients adjudicated on or after August 12, 2015, or
B. Clients adjudicated before August 12, 2015 but remained under juvenile court jurisdiction2 after April 4, 2016, or
C. Clients adjudicated before August 12, 2015, were under the jurisdiction on August 12, 2015, but jurisdiction in their cases was dismissed prior to April 4, 2015.3

There will likely^ be a hearing in which the juvenile court will determine whether to impose or continue or discontinue sex offender registration.

This is how HB 4074 treats these three distinct groups of youth offenders:

• For Groups A and B clients, the agency supervising the youth must notify the client and the juvenile court when it is likely that jurisdiction should end within 6 months.
• Groups A and B clients will have counsel continued, appointed or reappointed if they are financially eligible to represent them on the issue of registration. A client can confer with counsel and waive the hearing if they wish, in which case they will be required to report as a sex offender. If a client fails to appear at a hearing on the issue of registration, the court may order him/her to report as a sex offender.
• For Groups A and B clients, the juvenile court will set an initial hearing date and notify the parties.

---

1 Note: statutes related to sex offender registration have been renumbered and are now found in Chapter 163A.
2 The youth could remain under the jurisdiction of the juvenile court and be on probation, committed to Oregon Youth Authority (OYA) and at a Youth Correctional Facility, at a non-correctional placement or on parole, or committed to the Juvenile Psychiatric Security Review Board (JPSRB).
3 IMPORTANT: This group of youth are only entitled to a hearing until July 1, 2018, when this provision sunsets. Section 10 of HB 4074.
4 A client may waive this hearing with the help of counsel, but it will be in the interests of most clients to have this hearing so that, even if the motion is denied, the client will know the areas s/he needs to address to come back in the future to again seek relief. Eligible clients have the right to counsel at public expense for hearings under ORS 163A.130; however, there is no provision in the juvenile relief statute, ORS 163A.135, for appointment of counsel or means to obtain funding for the indigent client for relevant services like psychosexual evaluation, subpoena of expert witnesses, etc.
• County or state agencies that were responsible for supervising Group C clients must, within 90 days of April 4, 2016 provide notice to the client at their last known address and to the client’s most recent attorney of record, if available, of the right to request a hearing on the issue of registration. The agency must also notify the juvenile court.

• The Group C client must request a hearing on the issue of continued registration. Once a hearing is requested, the juvenile court must appoint an attorney for the client, if s/he is indigent, set an initial hearing within six months of the client’s request, and notify the parties of the hearing date. This provision of law is repealed on July 1, 2018, after which point Group C clients will lose their eligibility for court-appointed counsel and file a motion to avoid sex offender registration under ORS 163A.130.

Summary of Procedure for Group A and Group B Clients

• The agency supervising a youth (i.e., the county juvenile department, Oregon Youth Authority or Psychiatric Security Review Board) is required to notify the person (youth) and the juvenile court when the agency determines that jurisdiction is likely to terminate within six months.

• Upon receipt of the notice, the court shall appoint an attorney for the youth if s/he is financially eligible; shall set an initial hearing date and shall notify the parties.

• The court has flexibility in appointing an attorney for eligible youth, including continuing the appointment at the time of disposition, setting a date to re-appoint the attorney, or appointing the attorney in response to a request by the youth. (An attorney may want to request that the appointment be continued at disposition in order to obtain treatment and other records regarding the youth’s progress under ORS 419C.200, or to request review hearings.

• The youth may waive the right to the hearing. If the hearing is waived, the court must enter an order requiring the youth to register. If the youth fails to appear at the hearing, the court may enter the order requiring the youth to register.

Summary of Procedure for Group C Clients

Group C clients have been adjudicated to be within the jurisdiction of the juvenile court for a felony sex crime prior to August 12, 2015, remained under supervision on or after August 12, 2015, but were terminated from jurisdiction prior to April 4, 2016. These Group C clients are also entitled to a hearing to determine whether they should continue to register. Procedures for this group track with procedures for Groups A and B, with some exceptions which include:

• The county or state agency that was responsible for supervising the youth must, within 90 days send written notice to the youth’s last known address, the youth’s most recent attorney of record and the juvenile court. The notice must inform the youth that in order to have a hearing, the youth must file a written request with the juvenile court;

• Upon receiving the written request from the youth, the juvenile court must appoint an attorney for the youth for the limited purpose of assisting the youth to decide whether to file, and if so, filing the request for a hearing;

• After receiving the written request for a hearing, the juvenile court must appoint counsel for the youth if s/he is eligible, and set an initial hearing date within six months.
• If the court has not received a written request for a hearing prior to July 1, 2018, the person may not request a hearing under this section.

**Summary of Procedure for Groups A, B and C Clients**

• The agency supervising the youth is required to file specific records in the possession of the agency or board 45 days prior to the hearing, including evaluation and treatment records, polygraph preparation and examination records, and/or the JPSRB exhibit file.

• Materials submitted for the hearing must be made available to the parties to the hearing in accordance with ORS 419A.255.

• The youth has the burden of proving by clear and convincing evidence that s/he is rehabilitated and does not pose a threat to the safety of the public.

• At the hearing the youth, DDA, the victim, the Juvenile Department and OYA must be given an opportunity to be heard.

• In determining whether the youth has met the burden, the court may consider, but is not limited to considering:

  (a) The extent and impact of any physical or emotional injury to the victim;

  (b) The nature of the act that subjected the person to the duty of reporting as a sex offender;

  (c) Whether the person used or threatened to use force in committing the act;

  (d) Whether the act was premeditated;

  (e) Whether the person took advantage of a position of authority or trust in committing the act;

  (f) The age of any victim at the time of the act, the age difference between any victim and the person and the number of victims;

  (g) The vulnerability of the victim;

  (h) Other acts committed by the person that would be crimes if committed by an adult and criminal activities engaged in by the person before and after the adjudication;

  (i) Statements, documents and recommendations by or on behalf of the victim or the parents of the victim;

  (j) The person’s willingness to accept personal responsibility for the act and personal accountability for the consequences of the act;

  (k) The person’s ability and efforts to pay the victim’s expenses for counseling and other trauma-related expenses or other efforts to mitigate the effects of the act;
(L) Whether the person has participated in and satisfactorily completed a sex offender treatment program or any other intervention, and if so the juvenile court may also consider:

(A) The availability, duration and extent of the treatment activities;

(B) Reports and recommendations from the providers of the treatment;

(C) The person’s compliance with court, board or supervision requirements regarding treatment; and

(D) The quality and thoroughness of the treatment program;

(m) The person’s academic and employment history;

(n) The person’s use of drugs or alcohol before and after the adjudication;

(o) The person’s history of public or private indecency;

(p) The person’s compliance with and success in completing the terms of supervision;

(q) The results of psychological examinations of the person;

(r) The protection afforded the public by [the continued existence of the] records of sex offender registration; and

(s) Any other relevant factors

- At a hearing on the issue of sex offender registration, the juvenile court may receive testimony, reports and other evidence, without regard to OEC 100 to 412 and OEC 601 to 1008.

Attached are four sets of sample pleadings, which may be helpful. For Group A and Group B clients, who are still under the jurisdiction of the Juvenile Court, you could use either:

1. the Motion for Order Setting Hearing on the Issue of Reporting as Sex Offender; or
2. the Motion for Orders Modifying Term of Probation, Terminating Juvenile Court Jurisdiction and Setting Hearing on the Issue of Reporting as Sex Offender.

For Group C clients you could use:
3. Request to Set Hearing on Issue of Reporting as Sex Offender.
4. For any hearing on the issue of sex offender registration, you could use the Hearing Memorandum.

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5 As always, attorneys should analyze statutes, conduct their own research and modify sample pleadings to conform to practice in their county.
IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF
Juvenile Department

In the Matter of    ) Case No. 
) DA No. 
) Petition No. 
) REQUEST TO SET HEARING  
) ON ISSUE OF REPORTING  
) AS SEX OFFENDER

A Youth.

Comes now the youth, by and through his attorney, and requests that a hearing be set pursuant to ORS 163A.030(3) on the issue of whether the youth should be required to continue reporting as a sex offender.

ORS 163A.030 was amended by the 2016 Oregon Legislature in Enrolled HB 4074. Section 12 of Enrolled HB 4074 provides that Enrolled HB 4074 takes effect on passage. Enrolled HB 4074 was passed by the House on February 16, 2016 and passed by the Senate on February 29, 2016. Governor Kate Brown signed Enrolled HB 4074 into law on April 4, 2016. ORS 163A.030 provides in relevant part: SECTION 3. (1) A person found to be within the jurisdiction of the juvenile court under ORS 419C.005, or found by the juvenile court to be responsible except for insanity under ORS 419C.411, for having committed an act that, if committed by an adult, would constitute a felony sex crime, who was adjudicated before August 12, 2015, and was still under the jurisdiction of the juvenile court on August 12, 2015, and who ceased to be under the jurisdiction of the juvenile court before the effective date of this 2016 Act, is entitled to a hearing on the issue of reporting as a sex offender as described in this section. (2)(a) A county or state agency that was responsible for supervising or that had jurisdiction over a person described in subsection (1) of this section while the person was under juvenile court or Psychiatric Security Review Board jurisdiction shall, within 90 days of the effective date of this 2016 Act: (A) Send written notice of the right to a hearing to the last-known address of the person and to the person’s most recent attorney of record, if available. The notice shall inform the person that, in order to have a hearing, the person must file a written request for the hearing with the juvenile court. The notice must also inform the person that the person shall report as required under ORS 163A.025 beginning 120 days after the effective date of this 2016 Act. (B) Send written notice to the juvenile court identifying the person. (b) Upon receiving the notice described in paragraph (a) of this subsection, the court shall appoint an attorney for the person for the limited purpose of assisting the person to decide whether to file, and to file, a request for a hearing under this section. (3) Upon receiving a written request from a person for a hearing under this section, and after confirming the person’s eligibility for the hearing, the court shall: (a) Appoint an attorney for -- 2 MOTIONS FOR ORDERS MODIFYING TERM OF PROBATION, TERMINATION OF JUVENILE COURT JURISDICTION AND SETTING HEARING ON ISSUE OF REPORTING AS SEX OFFENDER
It is further requested that Attorneys at Law be appointed to represent the youth for this hearing.

On this Court granted consent for the Oregon Youth Authority to make and issue a final order discharging from the Youth Correctional Facility, terminating the commitment to the Oregon Youth Authority and terminating this Court's wardship.

DATED this ___ day of April, 2016.

Respectfully submitted,

[Signature] OSB#
Attorney for

the person in accordance with ORS 163A.030 (4); (b) Set an initial hearing date within six months after receiving the request; and (c) Notify the parties and the juvenile department or the Psychiatric Security Review Board, if the department or board supervised or had jurisdiction over the person, of the hearing date

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Page 2C—The End of Automatic Registration

Juvenile Law: Down the Rabbit Hole
IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF
Juvenile Department

In the Matter of    ) Case No. 2010-80022-1
) DA No. [REDACTED]
) Petition No. [REDACTED]
) MOTION FOR ORDER    .
) SETTING HEARING ON ISSUE OF
) REPORTING AS SEX OFFENDER

A Youth.

Comes now the youth, by and through his attorney, [REDACTED], and moves this Court for an order setting a hearing pursuant to ORS 163A.030(1)¹ on the issue of whether the youth should be required to continue reporting as a sex offender.

Nicholas Hunter was terminated from parole under the supervision of the Oregon Youth Authority on [REDACTED].

Pursuant to ORS 163A.030. (1)(a), as amended by HB 4074 (2016)² this Court must hold a hearing on the issue of whether the youth will be required to continue reporting as a sex offender.

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¹ ORS 163A.030 (1) was amended by the 2016 Oregon Legislature in Enrolled HB 4074. Section 12 of Enrolled HB 4074 provides that Enrolled HB 4074 takes effect on passage. Enrolled HB 4074 was passed by the House on February 16, 2016 and passed by the Senate on February 29, 2016. Governor Kate Brown signed Enrolled HB 4074 into law on April 4, 2016.

² ORS 163A.030 (1)(a) provides: (1)(a) Except as provided in subsection (6) of this section, the juvenile court shall hold a hearing on the issue of reporting as a sex offender by a person who has been found to be within the jurisdiction of the juvenile court under ORS 419C.005, or found by the juvenile court to be responsible except for --- 2. MOTIONS FOR ORDERS MODIFYING TERM OF PROBATION, TERMINATION OF JUVENILE COURT JURISDICTION AND SETTING HEARING ON ISSUE OF REPORTING AS SEX OFFENDER.
This motion is made in good faith, not for the purposes of delay, and is supported by the attached affidavit of attorney. The youth relies on such authority and argument as may be developed at a hearing on this matter.

DATED this ___ day of April, 2016.

Respectfully submitted,

___________________________
Mary Kane, OSB#
Attorney for Nicholas Hunter
IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF [BLACKED OUT]
           Juvenile Department

In the Matter of  ) Case No. [BLACKED OUT]
    ) DA No. [BLACKED OUT]
    ) Petition No. [BLACKED OUT]
    ) MOTION FOR ORDERS MODIFYING
    ) TERM OF PROBATION, TERMINATING
    ) JUVENILE COURT JURISDICTION AND
    ) SETTING HEARING ON ISSUE OF
    ) REPORTING AS SEX OFFENDER

A Youth.

Comes now the youth, by and through his attorney, [BLACKED OUT], and moves this Court for orders modifying the term of the youth’s probation, terminating the juvenile court’s jurisdiction over the youth, and setting a hearing pursuant to ORS 163A.030(1)¹ on the issue of continued reporting as a sex offender.

[BLACKED OUT] has been on probation for more than four years of his five year probation.

He has completed all of the requirements of his probation, and further probation is not necessary.

Without probation, continuing the Court’s jurisdiction in this matter is also unnecessary.

¹ ORS 163A.030 (1) was amended by the 2016 Oregon Legislature in Enrolled HB 4074. Section 12 of Enrolled HB 4074 provides that Enrolled HB 4074 takes effect on passage. Enrolled HB 4074 was passed by the House on February 16, 2016 and passed by the Senate on February 29, 2016. Governor Kate Brown signed Enrolled HB 4074 into law on [DATE].
Pursuant to ORS 163A.030. (1)(a), as amended by HB 4074 (2016)\(^2\) this Court must hold a hearing on the issue of whether the youth will be required to continue reporting as a sex offender.

This motion is made in good faith, not for the purposes of delay, and is supported by the attached affidavit of attorney and the memorandum and attachments submitted herewith. The youth relies on the authorities in the memorandum and on such authority and argument as may be developed at a hearing on this matter.

DATED this ___ day of March, 2016.

Respectfully submitted,

Attorney for [Redacted]

\(^2\) ORS 163A.030 (1) was amended by the 2016 Oregon Legislature in Enrolled HB 4074. Section 12 of Enrolled HB 4074 provides that Enrolled HB 4074 takes effect on passage. Enrolled HB 4074 was passed by the House on February 16, 2016 and passed by the Senate on February 29, 2016. Governor Kate Brown signed Enrolled HB 4074 into law on ________________.
IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF __________
Juvenile Department

IN THE MATTER OF                             )  Case No.
)  Petition No.
)  HEARING MEMORANDUM
  A YOUTH.                                   )
)  

1. Introduction

___________ is before the court on a motion, pursuant to ORS 163A.030\(^1\) and ORS 419C.610, to modify the length of probation, to terminate jurisdiction and to determine whether the youth must register or continue to register as a sex offender.

2. Facts

___________ successfully completed probation in June 2015. He satisfied all of the conditions imposed by the court including successful completion of sex offender treatment in August 2013 as well as successfully completing an aftercare program and engaging in family counseling through ____________.

\(^{1}\) ORS 163A.030 was amended by the 2016 Oregon Legislature in Enrolled HB 4074. Section 12 of Enrolled HB 4074 provides that Enrolled HB 4074 takes effect on passage. Enrolled HB 4074 was passed by the House on February 16, 2016 and passed by the Senate on February 29, 2016. Governor Kate Brown signed Enrolled HB 4074 into law on April 4, 2016.

1 – HEARING MEMORANDUM
__________ attends _________ High School and is scheduled to graduate in January 2016. At _________ he has been active in extracurricular activities such as the art club and volunteering at the _____________ and the ___________. He intends to continue on to college as he aspires to be an accountant.

__________ was also involved in the Juvenile Court’s Culinary Arts program. He successfully completed their program and has now taken the skills he learned there to his new position at ________ where he’s been working since September of this year.

__________ has had no new law petitions since this original petition from 2011.

After considering the circumstances of the youth, he court should modify the term of probation, terminating probation and juvenile court jurisdiction immediately. The court should further find that ________ is rehabilitated and does not pose a threat to the safety of the public, and order that ______________ is not required to register/continue to register as a sex offender.

3. COURT’S AUTHORITY TO MODIFY THE TERM OF PROBATION AND TERMINATE JURISDICTION

The court has the power and discretion to modify or set aside orders of the court. ORS 419C.610(1). State v. C.E.B., 254 Or.App. 353, 295 P.3d 118 (2012). When the court modifies or sets aside an order of jurisdiction based on a petition alleging that a youth offender has committed an act that would constitute a sex crime if committed by an adult, the court must make written findings stating that reasons for modifying or setting aside the order. ORS 419C.610(2).
3. TREATMENT AND REHABILITATION

___________ entered into Youth Progress for placement and sex offender treatment on _____________.

In ___________, ____________ participated in a psychosexual evaluation conducted by Dr. Orin Bolstad. Dr. Bolstad reviewed multiple records, including police reports outlining the incident. After interviewing him and administering a battery of tests, including the ERASOR, the Millon Adolescent Clinical Inventory, and the Jesness, Dr. Bolstad determined that ____________ presented with a low risk of reoffending sexually.

In ___________, ____________ began sex offender treatment through Youth Progress Association (YPA). Although he struggled initially, he quickly turned things around. In his Completion of Treatment Summary from _____________, Dr. Gary Davis wrote _______________. At the conclusion of his treatment program, Dr. Davis administered the J-Soap II which estimated that ____________ was at a low risk to recidivate in a sexual way.

4. JUVENILE OFFENDERS ARE UNLIKELY TO REOFFEND AND REGISTRATION OF YOUTH DOES NOT INCREASE PUBLIC SAFETY

Increasingly, the plight of the juvenile offender has become the focus of research and critique. This emerging body of literature reveals that juvenile sex offenders do not mirror the characteristics, recidivism rates, and treatment potential of their adult counterparts. Robert E. Shepherd, Advocating for the Juvenile Sex Offender, Part 1, 21 Crim.Just. 53 (2006). This literature also indicates sex offender registration can create a stigmatized and alienated youth that directly thwarts rehabilitation efforts. Lisa C. Trivits and N. Dickon Reppucci, Application of Megan’s Law to Juveniles, American Psychologist, 690-704 (September 2002). Finally, analysis
of statistics since the passage of sex offender registration laws throughout the country show that requiring juveniles to register as sex offenders is ineffective in preventing future sex crime and costly for states as they seek to comply with registration and monitoring requirements.

Justice Policy Institute, Registering Harm: How Sex Offense Registries Fail Youth and Communities, www.justicepolicy.org, (Nov. 21, 2008).

Dr. Elizabeth LeTourneau earned a PhD. in clinical psychology from Northern Illinois University. She is an associate professor at the Medical University of South Carolina. Dr. LeTourneau specializes in interventions for youth who engage in risky behaviors, including sexual behavior problems. She conducts research on the effects of criminal justice policies, like sex offender registration. On September 18, 2013, Dr. LeTourneau testified before the Oregon House and Senate Judiciary Committees, upon their invitation. She stated:

“There are now more than 30 published studies evaluating the recidivism rates of youth who have sexually offended. The findings are remarkably consistent across studies, across time, and across populations: sexual recidivism rates are low. In our research utilizing data on more than 1,200 male juvenile offenders adjudicated for sex crimes in South Carolina, the rate of new convictions for new sex crimes was just 2.5%. Recidivism risk varies for individual youth but it is also highly relevant to note that risk changes and risk is “front loaded.” That is, when rare sexual recidivism events do occur, it is nearly always within the first few years following the original adjudication. Moreover, even youth initially evaluated at “high risk” are unlikely to reoffend, particularly if they remain free of offending within this relatively brief period of time following initial adjudication.”
In addition, Dr. LeTourneau testified that registration of juveniles fails, in any way, to improve community safety. Dr. LeTourneau’s full testimony is available at: https://olis.leg.state.or.us/liz/2013I1/Committees/SJUD/2013-09-19-14-00/MeetingMaterials.

There is no reason to believe that ____________ falls outside the norm of juvenile offenders who are highly unlikely to reoffend. This is ____________’s only adjudication in the two and one half years since the petition was filed.

5. BARRIERS TO PRO-SOCIAL LIVING WHILE REGISTERED

The failure to separate youthful offenders from adult offenders has a potential for harmful long-term consequences for Juveniles. Timothy Wind, The Quandary of Megan’s Law: When the Child Sex Offender is a Child, 37 John Marshall L.Rev. 73, 116-117 (2003). Both the public nature of sex offender registration and the societal connotations attached to the labeled “sex offender” create a public and permanent mark on juveniles that can last a lifetime.

A comprehensive compilation of many years of scientific research as well as individual case studies of the plight of people who were placed on sex offender registries as juveniles was published in 2013 by Human Rights Watch. Raised on the Registry; http://www.hrw.org/reports/2013/05/01/raised-registry-0; See Executive Summary attached to this Memorandum. This report acknowledges the considerable harm that juvenile offenders can cause, but nevertheless concludes that registration requirements for juveniles operate, in effect, as continued punishment of the offender. Id. At 5. Further, the report finds that placing juvenile sex offenders on public registries delivers neither measurable protection to the community nor measurable benefit to victims. Id at 9. The report recommended that, until
evidence-based research shows that sex offender registration schemes for juveniles have real benefits for public safety, persons who were adjudicated delinquent of sex offenses as children should not be subject to registration, community notification, or residency restrictions. *Id.* at 10.

Leading a healthy pro-social life can be difficult for someone who is required to register. Registered youth (adults) are legally barred from any publically subsidized housing and face tremendous difficulties obtaining other housing. Anyone subject to a lifetime registration requirement under a state sex offender registration statute is ineligible for federally assisted housing. 42 U.S.C. 13663. Oregon law states that a landlord may consider criminal convictions and charging histories if the conviction or pending charge is for a sex crime (among other crimes). ORS 90.303\(^2\). Registrants face tremendous difficulties obtaining employment, which means they are at high risk for poverty and homelessness.

### 6. CONCLUSION

For the foregoing reasons, the Court should exercise its discretion to terminate probation and this Court’s jurisdiction. The Court should also order that ____________ is not required to register as a sex offender (is relieved of further registration as a sex offender).

Above and beyond the adverse and harsh collateral consequences that will befall him as a result of ongoing sex offender registration, there is no demonstrable evidence that forcing him to continue to register will increase community safety.

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\(^2\) No appellate case law exists interpreting this 2014 law. It is somewhat unclear whether it applies to juvenile adjudications. While it addresses convictions, it also uses the phrase “charging histories.” Frequently, members of the public do not understand the distinction between convictions and adjudications.
__________’s successful completion of sex offender treatment and rehabilitation, his pro-social activities both at school and in the community, and his lack of recidivism demonstrate that it is in the furtherance of justice to grant the youth’s motions.

Respectfully submitted,

_____________________
Mary Kane, OSB # 982665
Attorney for ____________
AFFIDAVIT OF
Elizabeth J. Letourneau, Ph.D.
Associate Professor, Department of Mental Health
Director, Moore Center for the Prevention of Child Sexual Abuse
Johns Hopkins Bloomberg School of Public Health

I, Elizabeth J. Letourneau, verify that the statements made in this Affidavit are true and correct. I understand that false statements herein are made subject to the penalties of perjury.

My name is Dr. Elizabeth J. Letourneau and I am a leading researcher and national expert on sex offender policy and intervention particularly as applied to juvenile offenders. My research efforts include five federally funded and two privately funded research projects specifically designed to examine the effects of sex offender registration and related policies.

As detailed below, strong and empirically rigorous evidence indicates:

(A) Sexual recidivism rates for youth who sexually offend are low.

(B) Sexual recidivism risk for youth who sexually offend is similar to that of other delinquent youth.

(C) Registration of juveniles fails, in any way, to improve community safety.

(D) Registration is associated with unintended and harmful consequences on the adjudication of youth.

A. Sexual Recidivism Rates for Youth who Sexually Offend are Low

There are now more than 100 published studies evaluating the recidivism rates of youth who have sexually offended. The findings are remarkably consistent across studies, across time, and across populations: the average 5-year recidivism rate is less than 3% (Ref # 1). In our research utilizing data on more than 1,200 male juvenile offenders adjudicated for sex crimes in South Carolina, the rate of new convictions for new sex crimes across an average 9-year follow-up period was just 2.5% (Ref # 2). Recidivism risk varies for individual youth but it is also highly relevant to note that risk changes and risk is “front loaded”. That is, when rare sexual recidivism events do occur, it is nearly always within the first few years following the original adjudication. Moreover, even youth initially evaluated as “high risk” are unlikely to reoffend, particularly if they remain free of offending within this relatively brief period of time following initial adjudication.

B. Sexual Recidivism Risk is Similar for Youth who Sexually Offend and Other Delinquent Youth

In our research we compared the sexual recidivism rates of youth who sexually offended with youth who committed nonsexual violent offenses and youth who committed robbery
offenses. The sexual recidivism rates of these three groups did not differ in a meaningful or statistically significant manner (Ref #2). Other researchers have reported similar findings. For example, one study indicated that the risk of sexual recidivism was statistically equal for youth treated in a residential facility for either sexual or nonsexual delinquent offenses (Ref #3). Thus, distinguishing between youth likely to sexually reoffend or not involves more than simply knowing that a youth has a history of such offending.

C. Registration Policies Fail to Improve Community Safety

There are two principal ways in which registration policies might improve community safety. First, these policies should be associated with reduced sexual recidivism rates. Second, these policies could be associated with deterrence of first-time sex crimes. Neither is true.

C1. Registration Fails to Reduce Juvenile Sexual or Violent Recidivism Rates

Using data from South Carolina, my colleagues and I have completed several evaluations of registration policy effects on juveniles. As detailed in two publications, registration failed to influence sexual and nonsexual violent recidivism rates in both studies.

i. In the first study (Ref #4) registered and nonregistered male youth were matched on year of index sex offense, age at index sex offense, race, prior person offenses, prior nonperson offenses, and type of index sex offense (111 matched pairs). Recidivism was assessed across an average 4-year follow-up. The sexual offense reconviction rate was less than 1% (just two events for 222 youth). The nonsexual violent offense reconviction rates also did not differ between registered and nonregistered juveniles.

ii. In the second study (Ref #2) recidivism rates of all male youth with sex crime adjudications ($N = 1,275$) were examined across an average 9-year follow-up period. Survival analyses examined the influence of factors that might have influenced recidivism rates, including registration status (registered or not). Results indicated that registration had no influence on nonsexual violent recidivism. Results also indicated that registration increased the risk of youth being charged but not convicted of new sex offenses and being charged but not convicted new nonviolent offenses. Not only does registration fail to reduce recidivism, it appears to be associated with increased risk of new charges that do not result in new convictions—possibly indicating a surveillance or “scarlet letter” effect of registration.

iii. Other investigators examining registration effects on juvenile recidivism rates also failed to find any support for these policies. Other researchers have demonstrated that federal standards for juvenile sex offender registration fail to distinguish between youth who will reoffend or not (Refs 5 & 6) as do state-specific standards for establishing juvenile registration requirements in New Jersey, Texas, and Wisconsin (Refs 6 & 7). The basis for these federal and state policy failures might lie, in part, with the low sexual recidivism rate of youth adjudicated for sex offenses and policy failures to correctly distinguish between youth risk levels.

More specifically, Dr. Caldwell and his colleagues have completed several studies examining different aspects of juvenile sex offending. Recently, they examined whether registration tier designations as defined in the Sex Offender Registration and Notification Act within the Adam Walsh Act correctly distinguished between lower and higher risk youth. Each Tier designation is based on a youth’s adjudication
offense and past adjudications (if any). Tiers I-III are associated with increasingly longer registration duration and should correspond with increasingly higher recidivism risk, such that youth assigned to Tier I should reoffend at a lower rate than youth assigned to Tier II or Tier III (see Ref # 6). Analyses examined recidivism across an average 72-month follow-up period for 91 juvenile sex offenders and 174 juvenile nonsexual violent offenders. Results indicated **no significant differences in the sexual recidivism rates of youth in Tiers I-III.** Thus, basing tier designations on youth offense and offense history is an ineffective method for identifying the small minority of higher risk youth. Moreover, **youth classified in the highest (Tier III) designation had the lowest nonsexual violent recidivism rate.** As noted previously, the sexual recidivism rates were the same for the juvenile sex offenders and the juvenile nonsex offenders, suggesting that distinctions between these two groups of youth are misplaced.

**C2. Registration Fails to Deter First-Time Juvenile Sex Crimes**

We have completed the only studies, to date, evaluating the effects of registration on the prevention or deterrence of initial sex crimes (Refs # 8 & 9). Examining more than 3,000 juvenile sex offense cases from 1991 through 2004, trend analyses modeled the effects of South Carolina’s initial registration law (which did not include online registration) and subsequent revision (that permitted online registration of registered youth). If either the original or amended policy deterred first-time offenders, then rates of first-time sex crimes should have declined following enactment of South Carolina’s SORN policies. We have recently replicated these analyses using National Incident Based Reporting System (NIBRS) data from four states. **Results from both studies indicated no significant deterrent effect for the registration policies on first-time sex crimes. Thus, registration was not associated with deterrence of first-time juvenile sex crimes.**

**D. Registration is Associated with Unintended and Harmful Consequences on Youth Adjudication**

**D1. Registration Increases Juveniles’ Risk of Sustaining New Nonviolent Charges**

We have found that South Carolina’s registration policy is associated with increased risk of new charges but not new convictions, particularly for nonviolent offenses (Ref # 2). Specifically, registered youth were significantly more likely than nonregistered youth to be charged with relatively minor, misdemeanor offenses (e.g., public order offenses). While it is possible that the burdens related to registration actually increase youth misbehavior, we believe it is more likely that these findings reflect a surveillance effect. That is, youth who are required to register with law enforcement agencies and who are known as “registered sex offenders” are likely to be viewed (inaccurately) as more dangerous than youth with the same history of sex offending but without the registration label. This perception may cause law enforcement agents to arrest registered youth for behaviors that do not trigger the arrest of nonregistered youth and that ultimately do not result in new convictions. **Requiring youth to register multiple times per year with law enforcement has significant negative consequences for youth and is not merely inconvenient.** The process of identifying oneself as a registered sex offender multiple times per year, and of being arrested and possibly charged for new offenses due in part to this label seems likely to cause registered youth to
view themselves as “delinquent” even when they are law-abiding. Ample evidence indicates that youth who view themselves as delinquent or outside the mainstream are less likely to change patterns of offending. Policies that promote youths’ concepts of themselves as lifetime sex offenders will likely interrupt the development of a positive self-identity (Refs # 10 & 11).

D2. Registration Increases Juveniles’ Risk of Suicide Attempt and Being Approached by an Adult for Sex

In an recently concluded study that includes 256 children 12-17 in treatment for sexual offending behavior, we find dramatic differences between those youth who have been subjected to any form of sex offender registration requirement (approximately 30% of the sample) and those who have not (Ref # 12). Specifically, 6.8% of registered youth have attempted suicide in the past 30 days as compared to 1.8% of the nonregistered youth. In addition to having nearly 4 times the odds of attempting suicide recently, registered youth had 2 times the odds of having been sexually abused/assaulted in the past year and 2 times the odds of having been approached by an adult for sex in the past year.

In closing, juveniles who have sexually offended should not be subjected to registration. Long-term registration based on a youth’s adjudication offense fails to identify high-risk youth, fails to reduce sexual or violent recidivism, fails to deter first-time juvenile sex crimes, and influences judicial case processing in ways that might actually impair community safety. Moreover, youth who are labeled for life as sex offenders are at increased risk for some of the worst possible outcomes, including suicide and sexual predation by adult offenders and will face innumerable barriers to successful prosocial development, without improving community safety.

References


DATED this 20 day of July, 2016.

_____________________________________________________

Signature

Elizabeth J. Letourneau
AUTHORIZATION FOR RELEASE
OF INFORMATION

Notice: Service providers can help you better if they are able to work with other agencies. By signing this form, you are giving permission to the Oregon Youth Authority to share/receive information about you.

Please read carefully.
Your Name: ____________________________ Date of Birth: ____________________________
JJIS Number (if known): ____________________
Placed at: ____________________________

☐ Facility name: ____________________________ ☐ Other Placement (list): ____________________________
Date you left custody (if applicable): ____________________________

PURPOSE: The information released will be used to evaluate my situation and to plan for and coordinate services for me, or for other purposes as specified.

I authorize: ____________________________ and ____________________________

Phone: _______ Fax: _______

Phone: _______ Fax: _______

Date: _______

I authorize: ____________________________

Phone: _______ Fax: _______

Phone: _______ Fax: _______

And/Or □ All parties for the purpose of a “Second Look” hearing

☐ Statewide Multidisciplinary Assistance Committee Staffing

Check the box and initial after each type of record for which you are authorizing release:

☐ Family History Records
☐ Employment/Work Records
☐ Medical/Psychiatric Records
☐ Information/records as specified:

☐ Educational Reports*
☐ Alcohol/Drug Treatment*
☐ Mental Health Services*

*Educational reports include both behavioral and progress reports. Alcohol/drug treatment, mental health services, and medical/psychiatric records include all aspects of diagnosis, treatment and prognosis.

This permission is good for six (6) months from the date of your signature.

I can cancel this at any time. I understand the cancellation will not affect any information that was released before the cancellation. I approve the release of this information. I understand that information about my case is confidential and protected by state and federal law. I understand what this agreement means. I am signing on my own and have not been pressured to do so.

(Signature) ____________________________ (Date) ____________________________

(Witness Name) ____________________________ (Witness Signature) ____________________________ (Date) ____________________________

To those receiving information under this authorization: This information disclosed to you is protected by State and federal law. You are not authorized to release it to any agency or person not listed on this form without specific written consent of the person to whom it pertains unless authorized by other laws. (SEE REVERSE)
**Instructions**

1. **COMPLETION OF FORM.** Please fill out all applicable lines and boxes. Pay special attention to the sections indicating what type of information and to whom you are authorizing release. If you have questions about the release, be sure to speak with your worker or treatment manager.

2. **MAIL REQUESTS.** If this form is being used to request information by mail, be specific about what you need. If you have a series of questions, use a cover letter. The clearer your request is, the more likely you are to receive a prompt and accurate response. Do not ask for information you do not need.

3. **FAX REQUESTS.** While a facsimile copy of this form will allow us to begin to gather the information is requested, we can not send the information until we receive an original, signed form.

4. **REDISCLOSURE.** Information received under this authorization should not be redisclosed to any party not identified on this form without specific written consent. Criminal penalties may apply to illegal disclosure. Federal regulations (42 CFR Part 2) prohibit information recipients from making any further disclosures of Alcohol and Drug information and state statute ORS 433.045 and administrative rule OAR 333-12-270 prohibit further disclosure of HIV/AIDS information, and statutes ORS 659.700-659.720 prohibit further disclosure of genetics information without the specific written consent of the person to whom it pertains, or as otherwise permitted by such regulations. A general authorization for the release of medical or other information is not sufficient for this purpose.

5. **DURATION.** The authorization is valid for six (6) months unless otherwise specified.

6. **FAMILY RECORDS.** This release covers information about the person signing the form. It does not cover information about other family members or information held in child dependency files of the State Office for Services to Children and Families (SCF). Requestors may contact a local SCF office to obtain that agency’s Authorization for Release Form.

7. **HIV/AIDS.** A general release is not sufficient. Identification of a specific individual, agency or facility, including 3rd party payers, and a specific purpose for the release and a specific time period are necessary.

8. **GENETICS.** A general release is not sufficient for genetic test results but is sufficient for general historical information. OAR 333-024-0550 requires use of a specific genetic release form for disclosure or redisclosure. Provision of the specified form to the individual is required.

9. **MINORS.** Minors may consent to medical treatment at age 15. Minors at age 14 may consent to mental health, emotional, or chemical dependency treatment. Minors may sign their own permission for release of information forms needed for such treatment.

**OYA STAFF**

A. This is a VOLUNTARY form. Youth should be given accurate information on how refusal to allow the release of information may adversely affect coordination of services.

B. **REVOCATION.** If the person later cancels this authorization, write “Revoked” and the method (e.g., mail, fax, phone, in person) and date of revocation boldly across the form. Date and initial it, and keep in file. Federal regulations prohibit OYA from requiring a written revocation.

C. **PHOTOCOPYING.** Keep the original, signed release in the client’s facility medical file if requested information is from his/her health care record. Original authorizations for the release of other information should be kept in the client’s legal file. If photocopies of releases are used, the person photocopying the release must sign each copy next to the client’s signature certifying it as a true copy. An agency or office should reject photocopied authorizations which lack the original signature of the person making the copy.
IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR JEFFERSON COUNTY
JUVENILE DEPARTMENT

In the Matter of )
RAHAB BELLA TATE ) Petition No. 13JU000000
A Youth. ) HEARING MEMORANDUM

I. Question Presented

Rahab Tate is before the Court on a motion to establish whether Rahab should register as a sex offender pursuant to ORS 163A.030. The Oregon legislature amended this statute after careful consideration of extensive research. The research shows that automatic sex offender registration for juveniles is a failed policy.

Pursuant to ORS 163A.030(3)(b), as amended in 2016, Rahab has the burden to prove by clear and convincing evidence that she is rehabilitated and does not pose a threat to the safety of the public. Only if that burden of proof were not met would the Court issue an order requiring her to report as a sex offender under ORS 163.025 (Reporting by sex offender adjudicated in juvenile court).

II. Short Answer

After the Court has reviewed the documents filed by Rahab and the State, and after the Court has heard testimony at the scheduled hearing, the Court should find that Rahab is rehabilitated and that she does not pose a threat to the safety of the public.
III. Statement of Facts

On November 18, 2013, Rahab admitted to committing Sexual Abuse in the First Degree. The abuse involved oral and manual sex and the incidents occurred intermittently over a seven-month period, beginning when Rahab was 13 years old and the victim was 8 years old. On December 6, 2013, Rahab started probation. On December 10, 2013, she began sex offense specific treatment in an outpatient setting.

Two years later, on December 15, 2015, Rahab was assessed as low risk to reoffend by her certified clinical sex offender therapist, Gene Therapy, MA, LMFT, LPC.1 (See Exhibit A.)

On January 5, 2016, Rahab successfully completed sex offense specific treatment.2 This determination that Rahab had successfully completed treatment was carefully made by a multidisciplinary team. The team’s decision to successfully complete Rahab was guided by rigorous requirements outlined by the Sex Offender Treatment Board:

The multidisciplinary team must carefully consider victim and community safety before making a determination of completion of treatment.

Successful completion of sex offense specific treatment requires the following:
• Accomplishment of the goals identified in the treatment plan.
• Demonstrated application in the juvenile’s daily functioning of the principles and tools learned in sex offense specific treatment.
• Consistent compliance with treatment conditions.
• Consistent compliance with supervision terms and conditions.
• Completed written aftercare and safety plan addressing remaining risks and deficits, and that has been reviewed and agreed upon by all professionals involved in the treatment and supervision of the client, the family and the community support system.

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1 These assessments offer no “zero risk” result; the scale is low to high.
2 Increased time in treatment does not correlate with an increased risk of re-offense, as addressed by Dr. Nefario in his report. (See Exhibit B, Page 11).
The treatment completion decision must follow the evaluation, assessment and treatment plan. In making this determination, all professionals involved in the treatment and supervision of the client must:

- Consider all sources of collateral information in making transition, discharge or termination decisions.
- Assess and document evidence that the treatment plan goals have been met; the actual changes that have been accomplished regarding the juvenile’s potential to re-offend; and which risk factors remain, particularly those affecting the emotional and physical safety of the victim(s) and potential victims.
- Repeat, when indicated, those assessments showing changes in the juvenile’s level of risk and functioning.
- Seek input from others who are aware of the juvenile’s progress and current level of functioning.
- Develop a treatment summary with aftercare plan recommendations.


On February 27, 2016, Rahab successfully completed probation. She satisfied all of the conditions imposed by the Court.

On September 14, 2016, Rahab was again assessed as low risk to reoffend, this time by licensed psychologist, Joseph Albert Nefario, Ph.D. (See Exhibit B.) This evaluation was requested by Rahab’s attorney to provide the Court with a current risk assessment for the pending hearing.³

IV. Discussion

A. Rahab Is Rehabilitated

“Rehabilitate” is defined by Merriam-Webster as “to restore to a former state” or “to bring to a condition of health.” The first question for the Court is whether Rahab has been

restored to her former state, a condition of good health.

Rahab’s treatment has helped her achieve mental and behavioral well-being. Before she chose to offend [Victim], Rahab’s normal sexual development was negatively impacted by an unhealthy peer and subsequent exposure to pornography. Now, approximately three years since her mental and behavioral health was compromised, she is healthy again.

Completion of treatment is not de facto rehabilitation, but “it should be noted that the Association for the Treatment of Sexual Abusers has shown through a meta-analysis of research studies on Juvenile Sexual Offenders, that ‘youth who successfully complete a sex offense specific treatment program tend to have a lower recidivism rate for repeat sexual crimes, than those who do not enroll in and successfully complete treatment.’” Completion Letter by Gene Therapy, MA, LPC, LMFT dated January 5, 2016 (Exhibit A).

On December 10, 2014, Rahab began sex offender treatment with Mr. Therapy. Within the first few months of treatment, Rahab made a significant shift in her thinking and impulse control. She recognized the need for complete and timely honesty and transparency. She experienced a change in priorities. Instead of clinging to immediate gratification and giving in to the desire to minimize or hide shameful behavior, Rahab desired to be a better person and she realized that she had the ability to achieve that goal. In addition, Rahab found olfactory aversion therapy to be helpful in ridding her mind of old trace patterns from her previous use of pornography.

During her two years in treatment, Rahab worked on a variety of personal and interpersonal skills. By the end of her treatment in January 2016, Rahab showed:

- Honest and responsible behavior,
- Full ownership of her past offenses,
- The ability to identify and reframe cognitive distortions and negative core beliefs,
• Empathy,
• Impulse control,
• Appropriate boundaries, and
• Assertiveness skills, among others.

(Exhibit A.)

B. Rahab Does Not Pose a Threat to the Safety of the Public

Two risk assessments by two independent experts came to the same conclusion:

Rahab does not pose a threat to the safety of the public. The first assessment was conducted by Gene Therapy, who was Rahab’s treatment provider for 25 months. The second, nine months after that evaluation and within one month of our pending hearing, was conducted by a licensed psychologist with over a decade of experience in this field, Dr. Nefario. Dr. Nefario reviewed extensive records, conducted interviews, and administered tests. Testing methodology included the ERASOR Version 2.0, the Wechsler Individual Achievement Test – Second Edition, the Wechsler Abbreviated Scale of Intelligence – Second Edition, the Millon Adolescent Clinical Inventory, the Jesness Inventory – Revised, and the Child Behavior Checklist.

Although testing methodologies are useful tools for a practitioner, they are not sufficient alone. The ERASOR, for example, is designed to measure clinical need, not risk of re-offense. “Until a [more accurate risk assessment] measure has been established, evaluators will need to rely on their professional judgment when they consider which measures to use and how to interpret the results for a particular case.” (“The Accuracy of Recidivism Risk Assessments for Sexual Offenders: A Meta-Analysis of 118 Prediction Studies,” Hanson and Morton, Psychological Assessment, Vol. 21, No. 1, 1–21 (2009).)
The risk assessments conducted in Rahab’s case draw attention to the fact that she eliminated all of the dynamic risk factors – that is, all of the risk factors that are subject to change. The historical risk factors, such as age of the victim, can never be changed. As Mr. Therapy noted, “Everything Rahab could change, she did change.” (Exhibit A, Page 2.)

Dr. Nefario concluded that Rahab presented with a low risk of reoffending sexually:

Rahab is presently viewed as a low range risk of sexual re-offense. While there is no way to exclude the possibility of a future sexual offense, Rahab has remained free of offending since discovery of her misconduct with [Victim]. This not only demonstrates her ability to refrain from such acting out, it also represents a period of time where significant social and emotional development, including perspective taking and increased self-control, has occurred.

These elements represent protective factors as do single victim status, parental support, church involvement, academic success, sound network of prosocial peers, and stable employment.

Another particularly relevant protective factor is her successful completion of sex offender treatment. She provided a sound description of relevant content, and more specifically how those factors apply to her. These protective factors are counter to the few actual risk factors that characterize her case, examples of which include young age and sexual assault of a child.

(Exhibit B, Page 12)

There is no reason to believe that Rahab falls outside the norm of juvenile offenders who are highly unlikely to reoffend. This is Rahab’s only adjudication in the three years since the petition was filed.

C. Considerations for the Court

ORS 163.030(4) outlines the factors that the Court may use to determine whether a youth has proven by clear and convincing evidence that s/he is rehabilitated and does not pose a threat to the safety of the public.
In this case, the Court has the benefit of two expert’s risk assessments, conducted over a period of nine months. One expert, Gene Therapy, was Rahab’s primary counselor for two years. Mr. Therapy had achieved significant familiarity with Rahab and her particular issues.

The most scientifically-based course of action would be for the Court to rely on these experts’ analyses. However, should the Court wish to make further inquiry, the legal factors are applied to Rahab’s case below, for the Court’s analysis. The formula to apply is not a simple “If-Then” proposition (e.g. “If injury to victim, then youth is not rehabilitated/is a threat.”) The legislature suggested the factors below to help courts answer the questions: “Is the youth rehabilitated?” and “Does the youth pose a threat to the safety of the public?”

The first three categories below – related to the injury, the act, and the victim – are all historical considerations. These factors cannot be ameliorated, even in the case of a rehabilitated youth such as Rahab.

1. Injury
   - The extent and impact of any physical or emotional injury to the victim: The victim’s mother reports lasting emotional injury (See #3).

2. Act
   - The nature of the act: Rehab caused [Victim] to engage in oral and manual sex acts in Rahab’s parents’ outdoor hot tub.
   - Whether the person used or threatened to use force in committing the act: [Victim] struggled for breath at times after Rahab held his head underwater.

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Page 7 – Hearing Memorandum
• *Whether the act was premeditated:* The acts occurred repeatedly when [Victim] visited Rahab’s family home, but they appear to be predominantly opportunistic, since Rahab did not know when [Victim] would visit her home.

3. **Victim**

• *Whether the person took advantage of a position of authority or trust in committing the act:* Rahab had limited influence as a trusted older neighbor.

• *The age of any victim at the time of the act, the age difference between any victim and the person and number of victims:* [Victim] was eight years old initially. Rahab is 7 years older than [Victim]. Single victim status is one historical risk factor that is clearly in Rahab’s favor.

• *The vulnerability of the victim:* [Victim] was very young and he was eager to please Rahab.

• *Statements, documents and recommendations by or on behalf of the victim or the parents of the victim:* [Victim]’s mother informed the Probation Department that her son “remains traumatized by the abuse and has been in and out of counseling. [She is] steadfastly against Rahab obtaining relief from registration.” (OYA Sex Offense Registration Hearing Report dated April 22, 2016, Page 2.)
4. Antisocial behavior

- Other acts committed by the person that would be crimes if committed by an adult and criminal activities engaged in by the person before and after the adjudication: Rahab has not committed any other acts that would be crimes if committed by an adult. She has not engaged in criminal activities since her adjudication in 2014.

- The person’s use of drugs or alcohol before and after the adjudication: Rahab does not have a history of drug or alcohol abuse.

- The person’s history of public or private indecency: Rahab has no history of public or private indecency.

5. Prosocial behavior

- The person’s willingness to accept personal responsibility for the act and personal responsibility for the consequences of the act: Rahab accepted personal responsibility for her actions and their impact on the victim. (See Exhibit A.)

- The person’s ability and efforts to pay the victim’s expenses for counseling and other trauma-related expenses or other efforts to mitigate the effects of the act: Rahab completed a clarification letter but she was unable to present it to the victim because the victim was not ready to receive it.

- The person’s academic and employment history: Rahab graduated West High School in June 2015. She has a 3.295 G.P.A. (See Exhibit C.) During her high school years, she has been active in
extracurricular activities such as the orchestra (lettering in music) and she has volunteered at her church as a camera operator and party leader. In addition to her academics, music and church activities, Rahab has maintained part-time employment at Izzy’s Pizza. Her work duties include customer service and cashier work. (See Exhibit D, recent timesheets). She plans to participate in a tailoring apprenticeship through her family’s business and to attend Bible college.

• **The person’s compliance with and success in completing the terms of supervision:** “Rahab attended sex offender specific treatment with Gene Therapy for 25 months. She successfully completed all treatment modules, which includes thinking errors, Pathways, and her sexual history packet. She was assessed by Mr. Therapy as being a low risk to re-offend at the time of the completion of the report (January 5, 2016).” (OYA Sex Offense Registration Hearing Report dated April 22, 2016, Page 2.)

6. **Treatment**

• **The results of psychological examinations of the person:** In December 2014 and September 2015, two experts independently concluded that Rahab presented a low risk of re-offense. Each evaluator determined that Rahab has no current risk factors; the
only measurable risk factors are the static historical risk factors. 4 (See Exhibit A, Page 4-5; See also Exhibit B, Page 12.) Even when those historical risk factors are included in the analysis, Rahab still scores as having a low risk to reoffend. (Id.) 5

• Whether the person has participated in and satisfactorily completed a sex offender treatment program or any other intervention, and if so the juvenile court may also consider:

(1) The availability, duration and extent of the treatment activities: Rahab’s sex offense specific treatment included 25 months of work. Treatment modules included thinking errors, Pathways, and a sexual history packet. (See OYA Report.)

(2) Reports and recommendations from the providers of the treatment: Gene Therapy, Rahab’s treatment provider, provided the attached favorable report (Exhibit A).

(3) The person’s compliance with court, board or supervision requirements regarding treatment: Rahab had one issue within the first two months of treatment wherein she violated the masturbation protocol and failed to volunteer the information during a group session. She disclosed the violation prior to a polygraph examination. She passed six additional polygraphs over the course of treatment and was a model

4 Both experts employed the Estimate of Risk Adolescent Sexual Offense Recidivism (ERASOR) among other methodologies.

5 Again, the scale is low to high risk; there is no “zero risk” result as an option.
student. She led the group discussion on occasion at Mr. Therapy’s request. Mr. Therapy noted in his Completion Letter, “I have enjoyed working with Rahab, and wish her well.” (Exhibit A, Page 3.)

Dr. Nefario concluded that Rahab presented with a low risk of reoffending sexually: “[Rahab] is a young woman of low risk who appears to have met all legal and treatment requirements, and further would be expected to fare better with socially responsible living in adulthood free of a sex offender requirement.” (Exhibit B, Page 12.)

(4) The quality and thoroughness of the treatment program: Mr. Therapy’s treatment program is certified by the Oregon Sex Offender Treatment Board. It is the only such outpatient program offered in Jefferson County.

7. Efficacy of Registration

- The protection afforded the public by records of sex offender registration: Research conducted over the past decade has demonstrated that sex offender registration of juveniles has zero efficacy. In fact, registration of juveniles works against the goal of public health and safety. (See Exhibit E, Affidavit of Elizabeth LeTourneau, Ph.D.)

Juvenile sex offenders do not share the characteristics, recidivism rates, or treatment potential of their adult counterparts. Robert E.

Since at least 2010, a guiding principle of safe and effective intervention and management approaches for juvenile sex offenders and youth with sexually abusive behaviors has included recognizing “that juveniles who sexually abuse are different from adults who commit sex offenses.” Practice Standards and Guidelines for the Evaluation, Treatment and Management of Juvenile Sex Offenders – January 2010 Edition, State of Oregon Sex Offender Treatment Board, Page 3. Current research has brought to light just how different they are and how ineffective and damaging juvenile registration policies have been. (See Exhibit E.)

8. **Any other relevant factors.** Three years have passed since Rahab exhibited poor mental and behavioral health by choosing to harm [Victim].

In addition, protective factors reinforce Rahab’s work in treatment. These protective factors are: her social and emotional development, such as perspective taking and increased self-control; single victim status; parental support; church involvement; academic success; sound network of prosocial peers; and stable employment. (See Exhibit B, Page 12.)
After considering the circumstances of this youth, the Court should find that Rahab is rehabilitated and that she does not pose a threat to the safety of the public. Furthermore, the Court should order that Rahab is not required to register as a sex offender.

D. **Requiring Rahab to Register Would Be Contrary to the Law’s Intent**

Requiring Rahab to register as a sex offender would not comport with the legislative intent of the registration statutes. ORS 181.814(1) defines the purpose of sex offender registration (which was designed for adult sex offenders): “The purpose of ORS 181.800 to 181.845 is to assist law enforcement agencies in preventing future sex offenses.” Without a nexus between registration for youth offenders and prevention of future sex offenses, ORS 181.800-181.845 (and thereby ORS 163A.030) should not apply.

The current legislation abolishes automatic registration for juvenile sex offenders and requires a hearing to address registration. Oregon lawmakers have taken a conservative approach to this issue. The scientific community throughout the United States has reached majority consensus that registration of persons who committed sex offenses in their youth is a failed policy, even for “high-risk” youth. (See Exhibit E.) However, Oregon lawmakers seem reluctant to meet science where it stands. Instead, the legislature has enacted a compromise of sorts. That is, if a person with a history of juvenile sex offense(s) is considered rehabilitated and not a risk (i.e. “low risk” by scientific terms), that person should not register.

If the Court were to take an even more conservative approach and it ordered registration in a case where the person was rehabilitated and did not pose a threat to the safety of the public, the Court would be disregarding the legislature’s intent. Furthermore, if
that were to happen, the Court would not be following the law, it would be disregarding a
decade of scientific research, and it would not be serving the best interests of the public.

V. Conclusion

For the foregoing reasons, the Court should not issue an order requiring Rahab to
register as a sex offender. By the end of the hearing, Rahab will prove to the Court by clear
and convincing evidence that she is rehabilitated and does not pose a threat to the safety of
the public.

Proof that Rahab is rehabilitated includes the glowing report from her treatment
provider, Gene Therapy, and the favorable risk assessments conducted in December 2013
and September 2014. Those risk assessments also prove that Rahab does not pose a threat to
the safety of the public.

Protective factors currently in place enhance public safety. Those protective factors
include Rahab’s successful completion of sex offender treatment, social and emotional
development, parental support, community involvement, academic success, network of
prosocial peers and stable employment.

Whether the Court: (1) relies on the corroborating expert opinions which conclude
that Rahab is rehabilitated and not a threat; or (2) correctly applies the considerations
outlined in the statute, Rahab should not be ordered to register as a sex offender.

Dated this 20th day of September, 2016.

SOUTHERN OREGON PUBLIC DEFENDER, INC.

Greta Lilly, OSB# 064087
Attorney for Youth
Chapter 3

Why Is a Raven Like a Writing Desk?
Establishment and Disestablishment
of Paternity and Child Support

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Why Is a Raven Like a Writing Desk?

Establishment and Dis-Establishment of Paternity and Child Support

- Michael Ritchey, AAG, Civil Recovery Section, Oregon Department of Justice
- Carmen Brady-Wright, AAIC, Child Advocacy Section, Oregon Department of Justice

Why is paternity important?

- Gives a child a legal father and a sense of belonging to a family including grandparents, siblings and other relatives
- Establishes parental rights and responsibilities
- Inheritance rights
- May qualify the child for veterans or social security benefits paid on behalf of father
General Considerations

- Legal father means paternity has been legally established
- Biological father is the man who has been determined by testing to be the biological father. May or may not be legal father.
- If paternity has been established for one man, it must be legally disestablished before it can be established for a different man.

Putative Fathers

Putative means alleged biological fathers who have not established paternity – self-alleged or alleged by mother


- Alleged biological fathers who have assumed or attempted to assume responsibilities of parenthood.
- Parental responsibilities can include living with child, financially supporting child, establishing psychological, parental relationship with child. See ORS 419B.875(1)(a)(C).
- Must be biological father to be a Stanley putative father.
- Same legal standing and rights as legal fathers. See ORS 419B.875(3) and (4)
Putative Fathers Cont’d


- Alleged biological fathers who have not assumed or attempted to assume parental responsibilities
- Putative father has the primary responsibility to protect his rights (ORS 109.096(8))
- Pagan putative father has no legal standing in dependency case

Putative Fathers Cont’d

“Other” putative fathers – more information is needed to determine legal status

- Had or attempted to have some contact with child and/or provided or attempted to provide some gifts, necessities, support but actions did not rise to level of treatment as a “Stanley” putative father
- Conflicting information about level of involvement with child
- Child placed in foster care at or near birth so no real opportunity to take on parenting role but has expressed interest in doing so
Working with Putative Fathers

- Goal to resolve paternity issues early on in the dependency case
- “Randy Jones” letter sent by DHS to “pagan” or “other” putative father to provide opportunity to protect his rights and involve himself in planning for the child

Methods of establishing paternity

- Presumed paternity  ORS 109.070(1)(a) & (b)
- Voluntary Acknowledgment of paternity  ORS 109.070(1)(e)
- Filiation proceeding  ORS 109.124 et seq.
- By consenting to assisted reproduction for wife  ORS 109.243
- Adoption  ORS 109.304 et seq.
- Administrative order  ORS 416.415
- By other provision of law  ORS 109.070(g)
Communication Between DHS and DCS

- DHS, Office of Child Welfare Program, Federal Policy, Planning and Reporting, Child Support Team
- DCS, State Recovery Central Unit

DHS Referrals to DCS for Paternity Establishment and/or Support

- Referral of IV-E eligible children, where appropriate, to DCS for child support to be assigned to the state (42 USC 671(a)(17) and OAR 413-100-0800 et seq)

- Referral to DCS for assignment of support rights if current active child support case for one parent to pay the other (OAR 413-100-0800(2))

- Without an existing support order, DHS will refer to DCS to establish a support order absent specified exceptions (OAR 413-100-0800(3))
Administrative Process

• Federal law requires states to have expedited processes for establishing paternity and child support. *42 USC 654, 42 USC 666*

• Child support rights belonging to any applicant for public assistance or for support of child in state custody or care are assigned to the state by operation of law. *See ORS 412.024, 418.032, 419B.406 & 419C.597*

Administrative Process

• Child Support Program (CSP) establishes paternity as provided in ORS 416.400 to 416.465.

• CSP cases originate in two ways: a mandatory referral because child is recipient of public assistance or an application for services from someone who is not receiving assistance.

• Start by checking OVERS (vital stats website) to determine if father on birth record
• If no dad on birth record, mom completes paternity affidavit. Sometimes DHS will work with mom to complete the application. If that doesn’t happen, DCS mails it out.

• Failure to return the paternity affidavit or otherwise cooperate with the CSP can cause the assistance grant to be sanctioned.

• Once an alleged father is identified, CSP issues Notice and Finding of Financial Responsibility and proposed order establishing paternity. Can also include support.

• The pleadings tell the parties the alleged father will be established as father unless one or both object and request testing within 30 days. Objection form is included.

• Pleadings also include an administrative order for paternity testing. The order tells the parties to call the CSP if they want to schedule tests.

• If support is also alleged, can object to support only. Results in administrative hearing.

• If no objection, order entered by default.
• If objection to paternity is received, tests are scheduled and parties are notified.
• If requesting party fails to appear for testing, tests are generally rescheduled once. If requesting party fails to appear a second time default order entered.
• If non-requesting party fails to appear for testing, the tests are rescheduled once. If non-requesting party fails to appear a second time, CSP moves for a judicial order for tests and personally serves the party. If they fail to appear for that test, CSP pursues contempt.

• If test results are positive, parties notified that paternity order will be entered in 30 days unless a party objects and submits proof of prepayment to accredited lab for a second set of tests.
• If party does not want a second set of tests and continues to object or objects to the second set of test results, matter certified to court under ORS 416.430.
• Parties almost never object once testing has been done.
Self Alleged Father (SAF)

• Federal law requires child support programs to provide services to a self alleged father.
• However, agency need not attempt to establish paternity in any case involving forcible rape, incest or if legal proceedings for adoption are pending, if in the opinion of the CSP director it would not be in the child’s best interest.

• If an application is received from a SAF, CSP sends a letter to mom that tells her to complete and return an enclosed questionnaire if she does not want paternity established because:
  – Child was conceived through rape or incest
  – A legal proceeding for adoption is pending
  – Mom claims good cause due to risk of harm to her or child from proceeding a legal action
• CSP director reviews the questionnaire and decides whether the program will proceed.
• If not proceeding, SAF is notified and case closed.
• If proceeding to provide services to a SAF, issue a proposed order establishing paternity.
• Serve mom by personal service; mail copy to SAF.
• If no objection, finalize order.
• If there is an objection, schedule paternity tests.
• If tests positive, finalize order.
• If tests negative, file motion for judgment of non-paternity.

• If requesting party fails to appear, reschedule test one time. If he/she fails to appear a second time, may or may not enter order by default.
• If requesting party appears and non-requesting party does not, reschedule test for non-requesting party. If fail to appear a second time, move for judicial order for tests.
• If party fails to comply with judicial order, initiate contempt.
Mandatory paternity testing

In some situations the CSP will require genetic testing even if not requested by a party:
- Multiple alleged fathers
- Presumed father/marital presumption

Multiple alleged fathers

- If mom identifies more than one man as the potential father of the child, a positive genetic test is required before entry of an order.
- One exception is if mom is able to identify one of the men as the most likely father.
- CSP selects one alleged father and issues a proposed order and schedules tests. CSP will either enter an order establishing paternity or move for judgment of non-paternity depending on the test results.
• Keep testing until someone tests positive
• However, when there is only one alleged father left, no testing is required and if not requested, an order will be entered by default.

Presumed Paternity

• If mother is married at time child is born, her husband is presumed to be the father.
• The presumption may not be challenged by anyone except mother and husband as long as they are married and cohabitating unless one or both give permission.
• If the CSP needs to establish a support order and there is a presumed father, proposed order issued for the presumed father to pay support.
That is true whether or not husband is on birth record.

In that situation, the pleadings do not mention paternity, but if either party objects based on paternity, tests are ordered.

A man other than presumed father identified as alleged father of child

- It is fairly common for mom to identify a man other than presumed father as the father of the child.
- The CSP also receives a fair number of applications for services from a self alleged father in cases where there is a presumed father.
• If presumed father is on the birth record, no action is taken with respect to paternity. If a support order is needed, it will be initiated against the presumed father.
• If presumed father is not on birth record, he is sent a letter that informs him mom is claiming someone else is the father or that another man is claiming to be the father and that if he objects to the CSP establishing paternity for the other man he should object.

Presumed father does not object
• Proposed order establishing other man is issued and parties are ordered to submit to paternity tests. If tests are positive, the state moves to rebut the presumption of paternity and for an order disestablishing the presumed father
• Once husband disestablished, order establishing other man is finalized. May include support
Presumed father objects

• If presumed father objects to establishing another man, the state issues a proposed support order against the presumed father.

• Like all support orders, if there is an objection to support, it is referred to Office of Administrative Hearings (OAH) for an administrative hearing.

• Although the pleadings do not mention paternity, if an objection is raised based on paternity, testing will be ordered.

• Depending on the test results, a motion is filed to either disestablish or affirm paternity.

• Once paternity of presumed father is disestablished, proceed to establish the other man
Deceased Alleged Father

• The state initiates a petition for a declaratory judgment establishing paternity.
• Served on the deceased person’s next of kin.
  – Spouse if no non-joint children
  – Children if no spouse
  – Spouse and non-joint children if both
  – Parents, then siblings if no spouse or children
• Ask court to appoint GAL for minors.

• Petition served by personal service.
• If objection filed in court, try to find a relative we can test and ask court to order testing.
• If testing not possible, try to find corroborating evidence from friend, roommates, coworkers, etc.
• Following a hearing enter an order as determined by the court.
• If no objection move for default and entry of order establishing paternity.
Reopening Paternity (ORS 416.443)

- No later than one year after an administrative order establishing paternity has been entered or a voluntary acknowledgement of paternity has been filed, a party can apply to the CSP to reopen the issue of paternity and require genetic testing, provided genetic testing has not already been done.

- On receipt of timely application, the CSP orders the parties to submit to testing.
- If test is positive, move for order affirming paternity. If test is negative move for order of non-paternity.
- If a party fails to appear for the test, the issue of paternity may be resolved against that party. That generally means that if the non-requesting party fails to appear, paternity will be set aside. If the requesting party fails to appear, paternity will be affirmed.
Paternity Establishment –
DHS or DCS?

Considerations:
• Can mother and alleged father sign VAP?
• Is the case pre- or post-jurisdiction? 
  ORS 109.125(1)(b)
• What does juvenile court order say?
• Is formal service required?
• Are parents' whereabouts known? Absent parent search needed?

Paternity Dis-Establishment

• What is the permanency plan?
• Is there a biological father to be established? 
  DHS as "paternity police"
• Has DHS been granted custody of the child? 
  Dis-establish presumed legal father (ORS 109.326) 
  Set aside VAP (ORS 109.070(5)(a)(C)) 
  Set aside paternity judgment (ORS 109.072(2)(a)(B))
DHS Referral for Paternity Testing

• When DHS intends to proceed with paternity testing and resolution of paternity through the dependency case, caseworker first prepares DHS Form 5600
• Upon supervisor approval, the form is sent to the CW Child Support Team
• Copy of the form is provided to LabCorp to schedule paternity testing
• Form is also provided to SRCU as notice of pending paternity action

Referral Cont’d

• LabCorp will schedule paternity testing and once completed, the final report is sent to the caseworker
• A court order for paternity testing is needed if the parent is incarcerated
• DOJ files appropriate pleadings in juvenile court based on paternity test results
Juvenile Court Paternity Action

- Motion for order to show cause for judgment of non-paternity as to presumed legal father (ORS 109.326)
- Petition to set aside VAP (ORS 109.070(5))
- Petition to set aside paternity judgment (ORS 109.072)
- Filiation petition (ORS 109.125)

Juvenile Court Action Cont’d

Considerations in working to resolve paternity issues expeditiously:

- If presumed father is party to the case and meets criteria of ORS 109.326(10), motion without formal service may be filed
- If mother, biological father and, if applicable, legal father are parties to the case, formal service of filiation petition may not be needed
Communication to Vital Statistics After Entry of Judgments Affecting Support

- DOJ forms include provision authorizing copy of judgment to be provided to DCS - TPR judgments, judgments regarding paternity

- DHS provides judgments to DCS who then provide to Vital Statistics -- change coming where communication with Vital Stats will be done by DHS

Communication Cont’d

TPR judgment/relinquishment

- DHS must notify DCS of TPR or relinquishment (OAR 413-100-0800(8))

- Child support terminated effective entry date of TPR judgment or date parent signed relinquishment

- Juvenile court may also provide to DCS dates of entry of TPR judgment or judgment dismissing wardship post-adoption (based on parents' relinquishments), as well as names and dates of birth of birth parents and children, directly to DCS (ORS 419A.255(10))
• QUESTIONS?
**OAR 413-100-0800 ET SEQ., CHILD SUPPORT REFERRALS**

**DEPARTMENT OF HUMAN SERVICES, CHILD WELFARE PROGRAMS**

**DIVISION 100**

**SUBSTITUTE CARE—FUNDING ELIGIBILITY**

**Title IV-E Foster Care, Adoption Assistance, and Guardianship Assistance Eligibility**

### 413-100-0800 Child Support Referrals

1. The parents of a child in a paid substitute care placement may be required to make monthly child support payments to the state until one of the following occurs:
   - a. The child is reunified with the parent.
   - b. The child turns 18 or as long as the child is attending school as defined in ORS 107.108.
   - c. Parental rights have been terminated or relinquished.

2. If there is an active child support case in which one parent is paying the other, the Department will refer the case to the Division of Child Support (DCS) to assign support payments to the Department.

3. If there is not an existing child support order, the Department will refer the case to the DCS to establish a child support order unless one of the following applies:
   - a. The Post Adoption Program determined not to initiate a referral to DCS.
   - b. The parent is deceased.
   - c. The parent is receiving Supplemental Security Income (SSI) benefits.
   - d. The parent is a Social Security Disability or Retirement beneficiary.
   - e. The parent is under the age of 18.
   - f. The parent has a developmental disability and is incapable of supporting the child or themselves.
   - g. The parent has significant mental health issues that prevent gainful employment.
   - h. The parent is homeless and incapable of supporting the child or themselves.
   - i. The parent is receiving Temporary Assistance for Needy Families (TANF) benefits.
   - j. The parent is or will be incarcerated for more than six months.
   - k. The parent is compliant with the reunification plan and the Department caseworker believes enforcement of a support order would negatively impact the plan.
   - l. The parent is actively participating in a treatment program.
   - m. There is a prior finding of “good cause” as defined under OAR 461-120-0350, and after re-evaluation remains in effect.
   - n. If reunification is no longer the plan and the plan changes to relinquishment or termination of parental rights.
   - o. The parents would be unable to comply with the permanency plan of reunification due to the financial hardship caused by paying child support.
   - p. The child is expected to be in paid substitute care for only a short period of time.
   - q. The noncustodial parent is a potential resource.
(r) Other appropriate circumstances determined by the Department.

(4) If a child enters paid substitute care following adoption in Oregon or another state or country and is receiving an adoption assistance payment:
   (a) The Department must review the payment and may discuss renegotiation with the parent; and
   (b) The Post Adoptions Program Manager or designee has authority to determine whether the Department would initiate a referral for child support. The following factors must be considered:
      (A) Reason the child entered care;
      (B) Amount of adoption assistance payment;
      (C) Parent involvement in the permanency plan; and
      (D) Any other considerations involving the best interests of the child.

(5) A determination to not refer a parent to DCS does not prohibit the Department from making a referral in a subsequent episode of Department custody.

(6) A determination to not refer a parent to DCS does not prohibit the Department from re-evaluating intermittently during the same episode of care.

(7) The Department must inform a parent that the parent may be required to pay child support.

(8) The Department must notify DCS when:
   (a) The child or young adult exits paid substitute care; or
   (b) Parental rights have been terminated or relinquished.

Stat. Auth.: ORS 412.024, 418.005
Stats. Implemented: ORS 109.010, 109.015, 180.320, 412.024, 418.005, 418.032
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 45-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 4-2016, f. & cert. ef. 4-1-16

413-100-0810 Child Support Arrears Owed to Department

(1) Child support arrears resulting from nonpayment during an episode of Department custody will be assigned and payments disbursed as prescribed by law.

(2) Any child support arrears owed to the Department after termination of assignment to the Department will be collected by DCS and payments disbursed to the Department until the debt for past paid substitute care is fulfilled, or until the legal time frame for collection of the debt expires whichever is earlier. The legal time frame for collection of the debt expires 35 years from the judgment date.

(3) With approval of the Child Permanency Program Manager or designee or the Federal Compliance Program Manager or designee, DCS may grant:
   (a) A file credit, wherein the child support arrears are not actively pursued, but will remain on file, and the agency reserves the right to collect the arrears at a later date; or
   (b) A satisfaction on the arrears, wherein the child support arrears are forgiven through the court and the agency may not attempt to collect from the parent.

Stat. Auth.: ORS 412.024, 418.005
Stats. Implemented: ORS 109.010, 109.015, 180.320, 412.024, 418.005, 418.032
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 45-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 4-2016, f. & cert. ef. 4-1-16
413-100-0820 Handling DCS Case Information

(1) The Department may obtain an absent parent’s place of residence and demographic information from a child support case to be used for the administration of Department programs. This information may be entered in the Department’s electronic information system when verified. However, child support case screens may not be printed or reproduced.

(2) The Department may make application through the Federal Parent Locate Service for the purpose of establishing paternity and enforcement when an absent parent’s whereabouts are not readily available through an existing paternity establishment or child support case.

Stat. Auth.: ORS 418.005
Stats. Implemented: PL93.647, ORS 25.010 - 120 & 180.320 - 370, 419B
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 45-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 4-2016, f. & cert. ef. 4-1-16

413-100-0830 Paternity and Parentage Establishment

The Department will refer substitute care cases to DCS for establishment of parentage under any of the following circumstances:

(1) Only one parent is listed on the child’s birth record; or

(2) The Department has not begun the parentage establishment process through genetic testing.

Stat. Auth.: ORS 418.005
Stats. Implemented: PL93.647, ORS 25.010 - 120 & 180.320 - 370
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 45-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 4-2016, f. & cert. ef. 4-1-16
# Child Welfare Parentage Testing Request

| OR-KIDS Case ID: | __________________________ |
| Mother: | __________________________ | SS number: - - |
| City: | __________________________ | State: | ZIP code: | |
| Participant ID: | ________ | DOB: | / | / | Incarcerated: {Select one} |
| Child: | __________________________ | SS number: - - |
| City: | __________________________ | State: | ZIP code: | |
| Participant ID: | ________ | DOB: | / | / | Gender: {Select one} |
| Alleged father: | __________________________ | SS number: | / | / |
| City: | __________________________ | State: | ZIP code: | |
| Participant ID: | ________ | DOB: | / | / | Incarcerated: {Select one} |
| Alleged father: | __________________________ | SS number: - - |
| City: | __________________________ | State: | ZIP code: | |
| Participant ID: | ________ | DOB: | / | / | Incarcerated: {Select one} |

DHS contact: 
Caseworker phone number: 
Fax number: - - 
Caseworker email address: 
Branch name: 
Branch address: 

DHS comments: 

For incarcerated parents or child, please provide: 
SID #: __________________________
Name of facility: 
Counselor name: 
Phone number: - - 
Fax number: - - 

☐ Copy of order for paternity testing attached. 
(Must be included with this form when requesting parentage testing for incarcerated individuals.)

Email ALL CF 5600’s to: (*See link for additional instructions below)
Email: CW.ChildSupportTeam@state.or.us

Authorization for parentage testing
Request for funds approved by: __________________________ | / | / | Date
Supervisor signature not needed when electronically approved.

See link to instructions.

Link to instructions
Chapter 4A

Sometimes I’ve Believed as Many as Six Impossible Things Before Breakfast: Subpoenas and Medical Records—Presentation Slides

Bruce Armstrong
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Sometimes I’ve Believed as Many as Six Impossible Things Before Breakfast

Subpoenas and Medical Records
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Disclaimer

› “Who are YOU?” said the Caterpillar.
› Alice replied, rather shyly, “I–I hardly know, sir, just at present– at least I know who I WAS when I got up this morning, but I think I must have been changed several times since then.”

› Who am I?
› I am not here to give you legal advice.
Background: We all want to avoid the rabbit holes
Subpoenas and Medical Records

- Medical records
- Mental health records
- Alcohol and drug treatment records
- Authorizations
- Juvenile records
- Criminal subpoenas

HIPAA, HIPAA, HIPAA

- Not the universe
  - Applies to “Covered Entities”
  - Which are health plans, health care clearinghouses and health care provider transmitting electronic information
  - Frequently, HIPAA is not the most restrictive law
  - If multiple laws apply, then the most restrictive provision carries the day
Disclosures

- May be allowed by law
  - Child abuse report
  - Serious and imminent threat to health or safety
  - ORCP 55H
  - Continuity of care or for billing purposes
- May be authorized by individual or guardian
  - Get authorizations filled out appropriately
- By court order
  - But must follow appropriate legal process

Medical Records – Oregon law on protected health information

- **ORS 192.553 et seq.**: an individual has the right to have protected health information safeguarded from unlawful use or disclosure.

- **ORS 192.566**: Oregon Authorization form is set out here. Includes initialing requirement for certain records.
Medical Records

Oregon Public Records Law

ORS 192.496(1) and 192.502(2): limit disclosure of physical, mental health or psychiatric care records unless the party seeking records shows by **clear and convincing evidence** that the disclosure would be **in the public interest** and would **not constitute an unreasonable invasion of privacy**.

Mental Health Records

ORS 179.505(2): Except as provided herein and unless otherwise permitted by law or court order, the “written accounts” (individually identifiable health information) of individuals served by any health care services provider may not be disclosed.

“Health care services provider” includes a Oregon Health Authority contractor, community mental health program, or developmental disabilities program (and related private contractors)
Mental health records

- **ORS 179.505(9)(b):** An individual or their representative may be denied a copy of the individual’s own record, “[i]f the disclosure of psychiatric or psychological information contained in the written account would constitute an immediate and grave detriment to the treatment of the individual” if medically contraindicated by the physician or health professional and noted in the file.

Mental Health: **ORS 179.505(11)**

- A written account referred to in subsection (2) of this section **may not be used to initiate or substantiate any criminal, civil, administrative, legislative or other proceedings conducted by federal, state or local authorities against the individual** or to conduct any investigations of the individual. If the individual, as a party to an action, suit or other judicial proceeding, voluntarily produces evidence regarding an issue to which a written account referred to in subsection (2) of this section would be relevant, the contents of that written account may be disclosed for use in the proceeding.
Mental Health – psychotherapy notes

ORS 179.505(17): Generally states that, regardless of other exceptions, an authorization must be obtained before a health care provider may disclose psychotherapy notes.

Authorizations for psychotherapy notes may not be combined with an authorization for any other individually identifiable health information. ORS 179.505(17)(c).

Psychotherapy notes – notes of analysis of conversation during session by mental health professional and that are kept separate from the rest of client’s record.

Alcohol and Drug Treatment

› Public Health Services Act, 42 USC §290dd–2, 42 CFR §2.

› **Strict Limitations on disclosure** and re-disclosure.

› Specific procedure to obtain court authorization for disclosure.
Alcohol and Drug Treatment
42 CFR § 2.64

- Application must use a fictitious name ("Jane Doe");
- Patient must get notice and an opportunity to respond;
- Argument and review of evidence must be held in chambers;
- The court must find that other ways of obtaining the information are not available or would not be effective, and the public interest and need for disclosure outweigh the injury to the patient's physician-patient relationship; and
- Court orders authorizing disclosure of substance abuse records include limitations on the content, recipients, and use of disclosed information.

Authorizations

- DHS 2099
  - [Link](https://apps.state.or.us/Forms/Served/de2099.pdf)
  - Fill it out right!
  - ID the right program!
Juvenile Records

- ORS 419A.255(2):
  - (2)(a) Reports and other material relating to the child, ward, youth or youth offender’s history and prognosis in the record of the case or the supplemental confidential file are privileged and, except at the request of the child, ward, youth or youth offender, shall be withheld from public inspection except that inspection is permitted as set forth in subsection (1)(b) of this section and paragraph (b) of this subsection.

Juvenile records – Not to be used for criminal or civil liability

- (3) “... no information appearing in the record of the case or in the supplemental confidential file may be disclosed to any person not described in subsections (1)(b) and (2)(b) of this section, respectively, without the consent of the court,... and no such information may be used in evidence in any proceeding to establish criminal or civil liability against the child, ward, youth or youth offender, whether such proceeding occurs after the child, ward, youth or youth offender has reached 18 years of age or otherwise, except for...”:
  - (a) a presentence investigation in a criminal court.
  - (b) In connection with a proceeding in another juvenile court concerning the child, ward, youth or youth offender or an appeal.
Criminal Subpoenas for records

ORS 136.580(2):

Upon the motion of the state or the defendant, the court may direct that the books, papers or documents described in the subpoena be produced before the court prior to the trial or prior to the time the [records] are to be offered into evidence and may, upon production, permit the [records] to be inspected and copied by the state or the defendant.

**ORS 136.580(2) – Production not Discovery**

*State v. Cartwright, 336 Or 408 (2004).*
- Statute does not allow discovery
- Early “production” may be allowed by a court but a pre-requisite is that the material has already been subpoenaed as evidence for trial.
- Court has discretion to allow early production.

*State v. Wixom, 275 Or App 824 (2015).*
- Court may conduct *in camera* inspection if good cause articulated that info is material and favorable to defendant. ORS 135.873
- Not insignificant burden
Questions?

Follow up?

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› 503–588–5520
Chapter 4B

Sometimes I’ve Believed as Many as Six Impossible Things Before Breakfast: Subpoenas and Medical Records

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Sometimes I’ve Believed as Many as Six Impossible Things Before Breakfast

Subpoenas and Medical Record

MEGHAN BISHOP, ATTORNEY AT LAW

OBTAINING RECORDS - DEPENDENCY

- ORCP’S DO NOT APPLY 419B.800(1) (don’t use ORCP 55 H)
- So how can we obtain records?
  - Release of Information
  - 419B.881 Obligations
  - ORS 107.154 – Rights of Noncustodial Parents
  - Motion, Subpoena and Protective Order for In Camera Review
Release of Information

- The easiest way to obtain records is have your client and any third party sign a release of information.
- If you are requesting mental health, drug records or any other specially covered records, you need to make sure your release is HIPAA compliant.
- The DHS release – Form DE2099 – is HIPAA compliant, so best to use that (you do not have to reinvent the wheel)
- Practice Tip – have your client sign a ROI the first time you meet him or her so you have it in your file

491B.881 Disclosure Obligations

- (1) In all proceedings brought under [the dependency code] each party, including the state, shall disclose to each other party ... the following information and material within the possession or under the control of the party:
  - (a) The names and addresses of all persons the party intends to call as witnesses at any stage of the hearing, together with any relevant written or recorded statements or memoranda of any oral statements of such persons;
  - (b) Any written or recorded statements or memoranda of any oral statements made either by the parent or by the child to any other party or agent for any other party;
  - (c) Any reports or statements of experts who will be called as witnesses, including the results of any physical or mental examinations and of comparisons or experiments that the party intends to offer in evidence at the hearing; and
  - (d) Any books, papers, documents or photographs that the party intends to offer in evidence at the hearing, or that were obtained from or belong to any other party.
491B.881 Disclosure Obligations Cont.

(2)
(a) Disclosure under subsection (1) of this section must be made as soon as practicable following the filing of a petition and no later than:
   (A) Thirty days after a petition alleging jurisdiction has been filed.
   (B) Three days before any review hearing, except for information received or discovered less than three days prior to the hearing.
   (C) Ten days before a permanency hearing or a termination trial, except for information received or discovered less than 10 days prior to the hearing or trial.
(b) The court may supervise the exercise of discovery to the extent necessary to insure that it proceeds properly and expeditiously.

491B.881 Disclosure Obligations Cont.

(3)
(a) When a ward has been placed in the legal custody of the Department of Human Services for care, placement and supervision under ORS 419B.337, the department shall disclose to all parties the case plan developed under ORS 419B.343, modifications to the case plan and any written material or information about services provided to the ward, or to the ward’s parent or parents, under the case plan.
(b) Disclosure under this subsection must be made within 10 days of:
   (A) Completion or modification of the case plan; and
   (B) Receipt by the department of the written material or information about services provided under the case plan.
491B.881 Disclosure Obligations Cont.

- (4) The obligation to disclose is an ongoing obligation and if a party finds, either before or during the hearing, additional material or information that is subject to disclosure, the information or material shall be promptly disclosed.

- (5) The following material and information need not be disclosed:
  - (a) Attorney work product; and
  - (b) Transcripts, recordings or memoranda of testimony of witnesses before the grand jury, except transcripts or recordings of testimony of a party to the current juvenile court proceeding.

The disclosure rules apply to all parties, not just DHS. So we should be getting emails, notes, etc from CASA and we, as defense attorneys, have an obligation to turn over what we have that does not fall under the work product doctrine or other privileges.

At the beginning of every case, file a statutory demand for discovery or disclosure. This puts everyone on notice of their respective obligations related to disclosure and puts you a step ahead if you need to file a motion to compel.

If you have to file a motion to compel, make sure you can show the court you made a good faith effort to work with the non-disclosing party to resolve the issue.

The statute makes it clear that this is an ongoing obligation. Every DHS office handles discovery obligations differently, but we need to make sure they are following through. Work with your judges, your DDA’s, your AAG and your local office to make sure all parties are aware of the rules.
ORS 107.154 – a little known tool

- Unless otherwise ordered by the court, an order of sole custody to one parent shall not deprive the other parent of the following authority:
  - (1) To inspect and receive school records and to consult with school staff concerning the child’s welfare and education, to the same extent as the custodial parent may inspect and receive such records and consult with such staff;
  - (2) To inspect and receive governmental agency and law enforcement records concerning the child to the same extent as the custodial parent may inspect and receive such records;
  - (3) To consult with any person who may provide care or treatment for the child and to inspect and receive the child’s medical, dental and psychological records, to the same extent as the custodial parent may consult with such person and inspect and receive such records;
  - (4) To authorize emergency medical, dental, psychological, psychiatric or other health care for the child if the custodial parent is, for practical purposes, unavailable; or
  - (5) To apply to be the child’s conservator, guardian ad litem or both.

ORS 107.154 cont.

- How/Why does this apply?
  - When DHS is granted custody, the parent becomes the non-custodial parent and that triggers the rights of a non-custodial parent.
  - In Burke v. Hall, 186 Or App 113, 62 P3d 394 (2003), Sup Ct review denied, the court looked at two statutes, in two different areas of the code, that appeared to be contradictory. The court determined that they were in fact complimentary and should be read in tandem. Further, they noted:
    - “The courts have held that when ‘one statute deals with a subject in general terms and another deals with the same subject in a more minute and definite way,’ the specific statute controls over the general if the two statutes cannot be read together. State v. Guzek, 322 Or 245, 268, 906 P2d 272 (1995); see ORS 174.020(2)”
When we cannot obtain records through any other means, we need to ask the court for help by requesting the court issue a subpoena and protective order for the purposes of in camera review.

This is how we are able to obtain CARES, medical, mental health, drug, and other sensitive records.

This process is HIPAA compliant.

Remember, ORCP’S DO NOT APPLY so check with your county court to see if there are any written or unwritten rules regarding this process as the juvenile code is not a specific statutory process to do this.
IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF YAMHILL

Juvenile Law Department

In re the Matter of:  

TO ALL PARTIES AND COUNSEL OF RECORD:

Meghan S. Bishop, attorney for ______________________, demands your immediate and continuing compliance with ORS 419B.881, which provides in pertinent part:

"(1) In all proceeding brought under ORS 419B.100 or 419.500, each party, including the state, shall disclose to each other party the following information and material within the possession or under the control of the party:

(a) The names and addresses of all persons the party intends to call as witnesses at any stage of the hearing, together with any relevant written or recorded statements or memoranda of any oral statements of such person;

(b) Any written or recorded statements or memoranda of any oral statements made either by the parent or child to any other party or agent for any other party;

(c) Any reports or statements of experts made in connection with the particular case, including the results of any physical or mental examinations and of comparisons or experiments that the party intends to offer in evidence at the hearing; and

In re the Matter of:  

Case No.:  

STATUTORY DEMAND FOR DISCOVERY (ORS 419B.881)

Minor Child/Children.

STATUTORY DEMAND FOR DISCOVERY ORS 419B.881

Meghan S. Bishop
Attorney at Law
4915 SW Griffith Dr, Suite 101
Beaverton, Oregon 97128
Phone: 971-599-3990
(d) Any books, papers, documents or photographs that the party intends to offer in evidence at the hearing, or that were obtained from or belonged to any party…

(3)(a) … The case plan developed under ORS 419B.343, modifications to the case plan and any written material or information about services provided to the ward, or to the ward’s parent or parents, under the case plan.

(5)(b) … Transcripts or recordings of [grand jury] testimony of a party to the current juvenile court proceeding. "

Be advised that ORS 419B.881(2)(a) requires that all materials be discovered as soon as possible or no later than 30 days after a juvenile petition is filed, 3 days before any review hearing, 10 days before a permanency hearing or termination trial, without exception. We will object to the admission of any materials discovered after ______________ pursuant to the remedies articulated in ORS 419B.881(10).

In addition, disclosure under subsection (3)(a) must be made within 10 days of completion or modification of the case plan and receipt by the department of the written material or information about services provided under the case plan.

The obligation to disclose is an ongoing obligation and if a party finds, either before or during the hearing, additional material or information that is subject to disclosure, the information or material shall be promptly disclosed.

DATED this ______ day of ____________, 2014.

/s/ Meghan S. Bishop

Meghan S. Bishop, OSB #082656
Attorney for _____________
CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify on that on the date referenced below, I served the foregoing:

- STATUTORY DEMAND FOR DISCOVERY (ORS 419B.881)

related to case number ___________________ on the persons referenced below a copy of said documents, certified by myself as to be true and correct, in the manner indicated below and addressed as follows:

□ FIRST CLASS MAIL AS ADDRESSED BELOW

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
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</tbody>
</table>

DATED this _____ day of ___________, 2014.

/s/ Meghan S. Bishop

Meghan S. Bishop, OSB #082656
Attorney for _______________
Authorization for Use and Disclosure of Information

This form is available in alternative formats including Braille, large print, computer disk and oral presentation.

<table>
<thead>
<tr>
<th>Legal last name of client/applicant:</th>
<th>First:</th>
<th>MI:</th>
<th>Date of birth:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other names used by client/applicant:</td>
<td>Case ID number:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

By signing this form, I authorize the following record holder to disclose the following specific confidential information about me:

<table>
<thead>
<tr>
<th>Release from one record holder: (individual, school, employer, agency, medical or other provider)</th>
<th>Specific information to be disclosed:</th>
<th>Mutual exchange: Yes/No</th>
</tr>
</thead>
</table>

Section A

If the information contains any of the types of records or information listed below, additional laws relating to use and disclosure may apply. I understand that this information will not be disclosed unless I place my initials in the space next to the information:

HIV/AIDS: 
Mental health: 
Genetic testing: 
Alcohol/drug diagnoses, treatment, referral: 

Section B

Release to: (address required if mailed) 
If releasing to a team, list members. 
Purpose: 
Expiration date or event*: 

*This authorization is valid for one year from the date of signing unless otherwise specified.

I can cancel this authorization at any time. The cancellation will not affect any information that was already disclosed. I understand that state and federal law protects information about my case. I understand what this agreement means and I approve of the disclosures listed. I am signing this authorization of my own free will.

I understand that the information used and disclosed as stated in this authorization may be subject to re-disclosure and no longer protected under federal or state law. I also understand that federal or state law prohibits re-disclosure of HIV/AIDS, mental health and drug/alcohol diagnosis, treatment, vocational rehabilitation records or referral information without specific authorization.

Section C

Full legal signature of individual or authorized personal representative: 
Relationship to client: 
Date: 
Name of staff person (print): 
Initiating agency name/location: 
Date: 

This is a true copy of the original authorization document.

See “Required Information” on page 2 of this form. (not valid without page 2)
Chapter 4B—Subpoenas and Medical Records

Required information for the client

To provide or pay for health services: If the Department of Human Services (DHS) or Oregon Health Authority (OHA) is acting as a provider of your health care services or paying for those services under the Oregon Health Plan or Medicaid Program, you may choose not to sign this form. That choice will not adversely affect your ability to receive health services, unless the health care services are solely for the purpose of providing health information to someone else and the authorization is necessary to make that disclosure. (Examples of this would be assessments, tests or evaluations.) Your choice not to sign may affect payment for your services if this authorization is necessary for reimbursement by private insurers or other non-governmental agencies.

This authorization for use and disclosure of information may also be necessary under the following situations:
- To determine if you are eligible to enroll in some medical programs that pay for your health care
- To determine if you qualify for another DHS or OHA program or service not acting as a health care provider

This is a voluntary form. DHS or OHA cannot condition the provision of treatment, payment or enrollment in publicly funded health care programs on signing this authorization, except as described above. However, you should be given accurate information on how refusal to authorize the release of information may adversely affect eligibility determination or coordination of services. If you decide not to sign, you may be referred to a single service that may be able to help you and your family without an exchange of information.

Using this form

1. Terms used: Mutual exchange: A “yes” allows information to go back and forth between the record holder and the people or programs listed on the authorization. Team: A number of individuals or agencies working together regularly. The members of the team must be identified on this form.

2. Assistance: Whenever possible, a DHS or OHA staff person should fill out this form with you. Be sure you understand the form before signing. Feel free to ask questions about the form and what it allows. You may substitute a signature with making a mark or by asking an authorized person to sign on your behalf.

3. Guardianship/custody: If the person signing this form is a personal representative, such as a guardian, a copy of the legal documents that verify the representative’s authority to sign the authorization must be attached to this form. Similarly, if an agency has custody and their representative signs, their custody authority must be attached to this form.

4. Cancel: If you later want to cancel this authorization, contact your DHS or OHA staff person. You can remove a team member from the form. You will be asked to put the cancellation request in writing. Exception: Federal regulations do not require that the cancellation be in writing for the Drug and Alcohol Programs. No more information can be disclosed or requested after authorization is cancelled. DHS or OHA can continue to use information obtained prior to cancellation.

5. Minors: If you are a minor, you may authorize the disclosure of mental health or substance abuse information if you are age 14 or older; for the disclosure of any information about sexually transmitted diseases or birth control regardless of your age; for the disclosure of general medical information if you are age 15 or older.

6. Special attention: For information about HIV/AIDS, mental health, genetic testing or alcohol/drug abuse treatment, the authorization must clearly identify the specific information that may be disclosed and the purpose.

Redisclosure: Federal regulations (42 CFR part 2) prohibit making any further disclosure of alcohol and drug information; state law prohibits further disclosure of HIV/AIDS information (ORS 433.045, OAR 333-12-0270); and state law prohibits further disclosure of mental health, substance abuse treatment, vocational rehabilitation and developmental disability treatment information from publicly funded programs (ORS 179.505, ORS 344.600) without specific written authorization.

Note: Oregon’s health services and programs have been transferred from the Department of Human Services (DHS) to the Oregon Health Authority (OHA). DHS will continue to determine eligibility for many of the health programs, as well other programs administered by DHS.

MSC 2099 (11/11)
Page 2 of 2
IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

Juvenile Law Department

In re the Matter of ) CASE NO. 
) MOTION PROTECTIVE ORDER 
) NO OBJECTION 

Minor Child.

, Mother, by and through her attorney, Meghan S. Bishop,
and pursuant to ORCP 55, ORS 40.270, ORS 192.502, ORS 409.225, ORS 419A.255,
ORS 419B.035, ORS 430.399(5), 42 USC § 290dd-2, 45 CFR § 160.202, 45 CRF §
164.203, 45 CFR § 164.512, and OAR 413-010-0035, moves the court for an order
requiring that a copy of the following documents, papers, and videos described in the
subpoenas be served on the:

- Custodian of Records CARES Northwest

DATED this 1st day of November, 2016

/s/ Meghan S. Bishop

Meghan S. Bishop, OSB No. 082656
Attorney for Father
meghan@metrojuvenile.com
CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify on that on the date referenced below, I served the foregoing:

• MOTION FOR PROTECTIVE ORDER
• PROTECTIVE ORDER

related to case number [REDACTED] on the persons referenced below a copy of said documents, certified by myself as to be true and correct, in the manner indicated below and addressed as follows:

X  EFILE AND SERVE
X  EMAIL AS ADDRESSED BELOW

DATED this 1ST day of NOVEMBER, 2016.

/s/ Meghan S. Bishop

Meghan S. Bishop, OSB #082656
Attorney for FATHER
IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

Juvenile Law Department

In re the Matter of

Case No.: [Redacted]

ORDER TO PRODUCE FOR IN CAMERA REVIEW AND PROTECTIVE ORDER

NO OBJECTION

Documents and records pertaining to the child abuse investigation(s) of the following individuals:

1. [Redacted] DOB [Redacted]
2. [Redacted] DOB [Redacted]
3. [Redacted] DOB [Redacted]

Have been subpoenaed for a juvenile dependency matter from the following individuals/entities:

- Custodian of Records CARES Northwest

These records are subject to the provisions of ORCP 55, ORS 40.270, ORS 192.502, ORS 409.225, ORS 419A.255, ORS 419B.035, ORS 430.399(5), 42 USC § 290dd-2, 45 CFR § 160.202, 45 CFR § 164.203, 45 CFR § 164.512, and OAR 413-010-0035. The court takes judicial notice of the especially sensitive content of these records.
IT IS HEREBY ORDERED that one true and correct copy of the records, videos, papers and documents be produced by:

• Custodian of Records CARES Northwest

for in camera review by , and following such review by Judge

all records, papers and documents may be released to attorneys

for the parents and children, DHS, DOJ-CAS AAG and the MULTNOMAH County

District Attorney – Juvenile Department, by , 2016.

SUBJECT TO THE FOLLOWING RESTRICTIONS:

1. “Protected Information” means all information pertaining to the records of individuals.

2. Protected information ordered disclosed may be used in the connection with this case only and the parties are restrained from using protected information, or information obtained from such material, for any purpose other than this case, and are further restrained from disclosing such protected information to any other person than (a) the parties other than the children; (b) the attorneys of record for the parties and persons regularly employed by such attorneys; (c) experts and consultants hired by counsel of record for the parties for the purpose of this case; the Court.

3. When protected information is to be filed or submitted by any of the parties with the clerk or otherwise in the court record whether in a pleading or an exhibit said filings shall be made under seal.

4. Any person to whom disclosure of protected information is made by court order shall be advised of the provisions of this Order, shall be given a copy of this Order and shall
become subject to this Order requiring that all such protected information be held in
confidence and not used for any purpose other than this litigation.

5. Upon termination of this action, including exhaustion of any and all appeals, any
privileged and confidential information ordered disclosed in this matter shall be returned
to the individual/entity. The obligation of nondisclosure of the information contained in
the records ordered disclosed shall continue in full force and effect beyond and
nonwithstanding the termination of this action. However, this paragraph shall not apply
to protected information that by order of the court becomes public record during any
judicial proceeding related to this matter.

6. Violation of this order will be subject to review by this court and this court can issue
further protective order as well as exercise the general powers of this court, including
the power of contempt if necessary to enforce to enforce this order.

DATED
IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH
Juvenile Law Department

In re the Matter Case No.: [Redacted]

SUBPOENA DUCES TECUM
NO OBJECTION

Minor Child.

TO: CUSTODIAN OF RECORDS CARES NORTHWEST

IN THE NAME OF THE STATE OF OREGON:
BY ORDERED SIGNED , 2016:

YOU ARE HEREBY COMMANDED TO SUBMIT THE FOLLOWING DOCUMENTS TO:

Honorable Multnomah County Juvenile Court 1401 NE 68th Ave Portland, OR 97213

by , 2016:

Any/all records, documents and reports including, but not limited to, records of participation in services and records from services providers, treatment records, video and audio recordings of interviews, written evaluations pertaining to the treatment and/or child welfare investigation(s) of any of the following individuals:

DOB [Redacted]
DOB [Redacted]

Page 1

SUBPOENA DUCES TECUM

Meghan S. Bishop
4915 SW Griffith Dr., Suite 101
Beaverton, Oregon 97005
Phone: 971 599-3990
Please contact the undersigned upon receipt of this subpoena.

NON-COMPLIANCE WITH THIS SUBPOENA DUCES TECUM MAY SUBJECT YOU TO CONTEMPT OF COURT.

DATED this 1ST day of NOVEMBER, 2016.

/s/ Meghan S. Bishop

Meghan S. Bishop, OSB #082656
Attorney for FATHER
Chapter 4C
Records Cheat Sheet for Criminal Cases

Lisa Ludwig
Ludwig Runstein LLC
Portland, Oregon
# Records Cheat Sheet for Criminal Cases

<table>
<thead>
<tr>
<th>Type of Record</th>
<th>Authority</th>
<th>How to Get</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police reports – your case</td>
<td>ORS 135.815; ORCP 46</td>
<td>Discovery demand; Motion to Compel</td>
</tr>
<tr>
<td>Police reports – other cases</td>
<td>ORS 136.567; ORS 136.580</td>
<td>Subpoena</td>
</tr>
<tr>
<td>PPB Gang List</td>
<td>6&lt;sup&gt;th&lt;/sup&gt;; 14&lt;sup&gt;th&lt;/sup&gt;, Art 1, §11</td>
<td>Subpoena duces tecum</td>
</tr>
<tr>
<td>Jail calls/visits – your client or someone else</td>
<td>ORS 135.815 (“Any written or recorded statements or memoranda of any oral statements made by the defendant, or made by a codefendant if the trial is to be a joint one.”)</td>
<td>Discovery demand or subpoena duces tecum</td>
</tr>
<tr>
<td>Jail records – Your client medical and mental health</td>
<td>OAR 847-012-0000</td>
<td>Release of Info – HIPAA compliant</td>
</tr>
<tr>
<td>Jail records – non-medical</td>
<td>6&lt;sup&gt;th&lt;/sup&gt;; 14&lt;sup&gt;th&lt;/sup&gt;, Art 1, §11</td>
<td>Written request, pretrial subpoena</td>
</tr>
<tr>
<td>Jail Rules and Procedures</td>
<td>6&lt;sup&gt;th&lt;/sup&gt;; 14&lt;sup&gt;th&lt;/sup&gt;, Art 1, §11</td>
<td>Subpoena duces tecum</td>
</tr>
<tr>
<td>DHS records – Your client</td>
<td>Release of Info</td>
<td></td>
</tr>
<tr>
<td>Juvenile Court files – Your client</td>
<td>Release of Info</td>
<td></td>
</tr>
<tr>
<td>OYA Records – Your client</td>
<td>Release of Info</td>
<td></td>
</tr>
<tr>
<td>DHS records – someone else</td>
<td>Cartwright or trial subpoena</td>
<td></td>
</tr>
<tr>
<td>Juvenile Court files – someone else</td>
<td>Cartwright or trial subpoena</td>
<td></td>
</tr>
<tr>
<td>OYA records – someone else</td>
<td>Cartwright or trial subpoena</td>
<td></td>
</tr>
<tr>
<td>Sealed Court file</td>
<td>Motion to Unseal + Affidavit of Good Cause</td>
<td></td>
</tr>
<tr>
<td>Medical/Mental Health Records – Your client</td>
<td>OAR 847-012-0000</td>
<td>Release of info – HIPAA compliant + $$$$$</td>
</tr>
<tr>
<td>Medical/mental Health Records – Someone else</td>
<td>6&lt;sup&gt;th&lt;/sup&gt;; 14&lt;sup&gt;th&lt;/sup&gt;, Art 1, §11</td>
<td>Trial subpoena duces tecum + order to testify</td>
</tr>
<tr>
<td></td>
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<td>• Do NOT pay the person as an expert.</td>
</tr>
<tr>
<td>Medical/Mental Health Records – Your Client’s Child</td>
<td>ORS 107.154</td>
<td>Release of Info</td>
</tr>
<tr>
<td>Medical/Mental Health Records – Another Child</td>
<td>6&lt;sup&gt;th&lt;/sup&gt;; 14&lt;sup&gt;th&lt;/sup&gt;, Art 1, §11</td>
<td>Trial subpoena duces tecum + order to release or testify</td>
</tr>
<tr>
<td>CARES/Children Center Records</td>
<td>ORS 135.815; ORS 107.154</td>
<td>Discovery demand; written request by parent; subpoena duces tecum</td>
</tr>
</tbody>
</table>
Cites and Resources

U.S. Constitution, Amendment 6: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Constitution, Amendment 14: No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Oregon Constitution, Article 1, Section 11. Rights of Accused in Criminal Prosecution. In all criminal prosecutions, the accused shall have the right to public trial by an impartial jury in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor ***

Factual matters personally observed are discoverable. See e.g. Sansone v. Garvey, et al., 188 Or App 206 (2003).


State v. Warren, 304 Or 428, 31, 746 P2d 111 (1987) (Emphasis added), See also, State v. Daniels, ("Warren stands for the proposition that, if an entity is required to disclose records to the district attorney or to police, the prosecution has control over the records and, accordingly, must disclose to a defendant any of those records that fall within ORS 135.815.")

OAR 847-012-0000: Patient’s Access to Medical Records
(1) Licensees of the Oregon Medical Board must make protected health information in the medical record available to the patient or the patient’s representative upon their request, to inspect and obtain a copy of protected health information about the individual, except as provided by law and this rule. The patient may request all or part of the record. A summary may substitute for the actual record only if the patient agrees to the substitution. Board licensees are encouraged to use the written authorization form provided by ORS 192.566.
(2) For the purpose of this rule, “health information in the medical record” means any oral, written or electronic information in any form or medium that is created or received and relates to:
(a) The past, present, or future physical or mental health of the patient.
(b) The provision of healthcare to the patient.
(c) The past, present, or future payment for the provision of healthcare to the patient.
(3) Upon request, the entire health information record in the possession of the Board licensee will be provided to the patient. This includes records from other healthcare providers. Information which may be withheld includes:
(a) Information which was obtained from someone other than a healthcare provider under a promise of confidentiality and access to the information would likely reveal the source of the information;
(b) Psychotherapy notes;
(c) Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; and
(d) Other reasons specified by federal regulation.

(4) Licensees who have retired, failed to renew their license, relocated their practice out of the area, had their license revoked, or had their license suspended for one year or more must notify each patient seen within the previous two years and the Oregon Medical Board of the change in licensee’s status and how patients may access or obtain their medical records. Notifications must be in writing and sent by regular mail to each patient’s last known address within 45 days of the change in licensee’s status.

(5) Licensees who have been suspended for less than one year must notify the Board within 10 days of the suspension how patients may access or obtain their medical records.

(6) A reasonable cost may be imposed for the costs incurred in complying with the patient’s request for health information. These costs may include:
(a) No more than $30 for copying 10 or fewer pages of written material, and no more than 50 cents per page for pages 11 through 50, and no more than 25 cents for each additional page;
(b) A bonus charge of $5 if the request for records is processed and the records are mailed by first class mail to the requester within seven business days after the date of the request;
(c) Postage costs to mail copies of the requested records;
(d) Actual costs of preparing an explanation or summary of the health information, if such information is requested by the patient; and
(e) Actual costs of reproducing films, x-rays, or other reports maintained in a non-written form.

(7) A patient may not be denied summaries or copies of his/her medical records because of inability to pay.

(8) Requests for medical records must be complied with within a reasonable amount of time not to exceed 30 days from the receipt of the request.

(9) Violation of this rule will result in a $195 fine and may be cause for further disciplinary action by the Board.

Manual DHS uses regarding Subpoenas

http://www.dhs.state.or.us/spd/tools/cm/aps/privacy/subpoena_crt_ord_manual.pdf

DOJ Public Records Law Manual

http://www.doj.state.or.us/public_records/manual/pages/contents.aspx
Chapter 5A

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) for Juvenile Court Practitioners

THE HONORABLE MAUREEN MCKNIGHT
Multnomah County Circuit Court
Portland, Oregon

Contents

Presentation Slides ................................................................. 5B–1
Jurisdictional Analysis Under the Uniform Child Custody Jurisdiction and Enforcement Act . . 5B–23
Pretest: True or False

The federal government requires states to adopt the UCCJEA as a condition of their receipt of federal $ for IV-E (foster care) services.
The UCCJEA applies to:
• all states
• all tribes
• all countries that are signatories to The Hague Convention on the Civil Aspects of International Child Abduction.

As long as the Child is present in Oregon at the time of filing and sworn facts support abandonment or mistreatment as described in the UCCJEA,

Oregon has jurisdiction to decide custody (including under a dependency petition), regardless of the length of the child’s presence here.
Even *ex parte* orders are entitled to interstate enforcement under the UCCJEA.

Parties/attorneys are entitled to be present when judges from sister states are communicating about a case to determine which state is the more appropriate forum.

Oregon appellate courts consistently find periods as short as 6-8 weeks as sufficient to establish “significant connection” jurisdiction.

Once a state has made a custody determination, it loses jurisdiction to modify that judgment in favor of another state where the child has lived for at least 6 months before the new filing.
**Uniform Act**

- Developed by Comm’rs on Uniform Laws
- Codified in 1999 at ORS 109.701 et seq
- Replaces UCCJA, enacted in 1970’s
- Commentary – instructive; on-line
- Case law from other jurisdictions -- contextual
- Applies to all “states,” including:
  - Tribe -- federally recognized or acknowledged by the state
  - Foreign country -- unless application would violate fundamental human rights
    - Meaning STATE court must treat Tribe or Country as a ‘state’ for purposes of jurisdictional analysis

---

**Essential Qs:**

Which state has the **power to make decisions** about the custody of the child?

If *more* than one state has the power to decide, **which state should exercise** its power?
Controls *Subject-Matter Jurisdiction*

Power over the Child Custody CLAIM:
Does the court have the power to adjudicate?

Significance of S-M Jurisdiction:
- **It cannot be created by stipulation.**
- **It is never waived.**
- **It can be challenged at ANY stage, even on appeal.**
- **Court can raise on its own.**
- **Get it right from the outset.**

*Subject-Matter Jurisdiction*

Does the court have the POWER to adjudicate?

**Applies to “child custody proceedings”**

- . . . means a proceeding in which legal custody, physical custody, parenting time or visitation with respect to a child is an issue. “Child custody proceeding” includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence in which the issue may appear.

- “Child custody proceeding” does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under ORS 109.774 to 109.827.
“child custody proceedings”

• Includes temporary orders* as well as permanent
  • *Not ex parte

• Includes initial judgments and modifications

Distinguish “Merits” decision from Enforcement

Is Court DECIDING WHO gets custody or WHAT ACCESS?
(i.e., the “best interests” focus)
Must use UCCJEA Jurisdictional analysis

Is Court ENFORCING an existing order?
EVERY state must enforce.
Not a “best interests” focus.
NOT need UCCJEA jurisdictional analysis
### Hand-outs for UCCJEA Jurisdictional Analysis

**First Q: Which Box are you in??**

<table>
<thead>
<tr>
<th>Is this the <strong>INITIAL</strong> order?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Must have:</strong></td>
</tr>
<tr>
<td>• Home state <em>(controls)</em></td>
</tr>
<tr>
<td>• Significant Connections + Substantial Evidence</td>
</tr>
<tr>
<td>• HS or SC declines jdx or</td>
</tr>
<tr>
<td>• No state is HS or SC</td>
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<td>. . . or</td>
</tr>
<tr>
<td>• Presence + emergency</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Is it a <strong>MODIFICATION</strong>?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Does issuing state still have jdx?</strong> Yes, unless:</td>
</tr>
<tr>
<td>• Every parent + child has moved <em>(Either state can determine this)</em></td>
</tr>
<tr>
<td>• Issuing state no longer has SC + SE? <em>(Only the issuing state can decide this)</em></td>
</tr>
<tr>
<td>• Issuing state has DECLINED jdx</td>
</tr>
<tr>
<td><strong>BUT – if</strong> Presence + emergency, have Temporary Emerg. Jdx</td>
</tr>
</tbody>
</table>

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### What is a “modification”?

A child custody determination that changes, replaces, supersedes, or **is otherwise made after** a previous determination concerning the same child, whether or not made by the court that made the previous determination.
So, if a prior custody order was made but NO LONGER HAS EFFECT (such as an expired FAPA order or a closed dependency),

does that prior order nevertheless place the case in the modification context because the new (dependency) would be “made after” the prior order?

Oregon majority practice before 2014: No, since the prior order no longer had effect.

As of 2014: YES, use modification analysis. Where first order was merely dismissed but not nullified *ab initio*, proper analysis for UCCJEA is “modification” rather than “initial” jurisdiction. *Campbell v Tardio*, 261 Or App 78 (2014).

Temporary Emergency Jurisdiction

Presence in state

+ Abandonment

or

Emergency – need to protect child because child, sib, or parent subjected to or threatened with abuse

Temporary orders only, until State with “initial” or “modification” jurisdiction enters an order;
NO adjudication of the petition;
Unless... exception
Juvenile Court Issues re UCCJEA

Scenario #1
Child born in Texas, moved to Arizona at 6 weeks, then 2 months later moves to Oregon. Here in Oregon 3-4 days

- Does Oregon have a basis for initial jurisdiction?
  - YES – no Home State or Significant Connection State
  - Or TEJ, depending on “emergency”

- Which is better for State?

---

Juvenile Court Issues re UCCJEA

Scenario #2
Child born in Texas, moved to Arizona at 6 weeks where a dependency case is filed, then 2 months later moves to Oregon. Here in Oregon 3-4 days

- Does Oregon have a basis for initial jurisdiction?
  - “Initial Jdx” is not the first Q if Arizona has issued a custody/placement order. An order issued by Arizona, even if under TEJ, means Oregon is in the “modification” analysis
  - Because a custody case is pending, Oregon judge must communicate with the Arizona court
Juvenile Court Issues re UCCJEA

Scenario #3

Divorce in Michigan. Mother now living with child in Oregon for 3 years. Father still in Michigan. Oregon dependency is filed due to DV between Mother and Boyfriend, Mother's alcohol use, and neglect.

- Can Oregon adjudicate the dependency?
- No. In modification context. Michigan has exclusive jurisdiction because it is the Issuing State with a parent still living there (unless Issuing State decides no S.C.)
  - Oregon has only TEJ, if anything, so can enter only temporary orders.
  - Oregon Judge must communicate w/ Mich. Judge

Essential Qs: Which state has the power to make decisions about the custody of the child?

If more than one state has the power to decide, which state should exercise its power?
Declination of Jurisdiction

(1) -- Inconvenience of Forum

- Presence/likelihood of continuing DV
- Length of time child outside state
- Distance between forums
- Relative financial circumstances of parties
- Agreement of parties
- Nature and location of evidence
- Ability of each forum to decide expeditiously and procedures necessary there
- Familiarity of each forum with facts and issues

(2) -- Unjustified Conduct

- Removing, secreting, retaining, or restraining the child
- Applies when jdx exits because of the inappropriate conduct (i.e., agst the invoker)
- Strong commentary recognizing situation of DV victims who flee despite court order: calls for case-by-case inquiry re justification
- Court can fashion order to protect child pending dismissal (require filing elsewhere, place in foster care, etc.)
**Major themes in UCCJEA**

- Discourage interstate forum-shopping
- Channel decision-making to state/forum w/ closet ties to child
- Treat “person acting as a parent” equivalently to parent for *jdx* purposes
- Restrict modification authority – keep with issuing state if it still has ties to child
- Allows for emergency *jdx*, but only temporarily
- Encourage & sometimes require interstate communication between judges
- Require interstate enforcement

---

**“Person Acting as a Parent”**

- Non-parent who:
  A. Has physical custody OR
     Had physical custody for 6 consecutive months w/in 1 yr before commencement (filing) AND
  B. Has been awarded legal custody OR
     Claims a right to legal custody under Oregon law

- Compare:
  - ORS 109.119: “Child-Parent relationship” &
  - ORS 419B.116: “Caregiver relationship”
**Pleading Requirements**

- Initial and often sole basis for court to determine whether it has subject-matter jdx
- Failure to plead? Mo/dismiss is needed but probably can cure pleading defect by evidentiary showing
- Have to include:
  - child’s current location and for last 5 years
  - Caretakers for past 5 years & their current addresses
  - Past participation in custody proceedings
  - Knowledge of other proceedings or claimants

**Pleading Requirements -- more**

- Continuing obligation to provide information
- Significant confidentiality and locate concerns –
  - Nondisclosure allowed on showing of health, safety, liberty risk to party or child
Simultaneous Proceedings

• If at the time of the Oregon filing another state is exercising UCCJEA jdx on any basis, Oregon cannot exercise its jurisdiction UNLESS:
  • Oregon has emergency re child (Temporary Emergency Jurisdiction = TEJ) or
  • Other state stays its case or defers to Oregon as more convenient

• Oregon must communicate with Judge in other state

Interstate Judicial Cooperation

• Oregon can directly order testimony taken in another state for Oregon case

• Oregon can request another state:
  – to hold hearing
  – order person to produce evidence
  – appear with or without child
  – order evaluation

• Documentary evidence transmitted interstate electronically cannot be excluded based on that factor (i.e., no original)
Conference is MANDATORY:

- When Oregon is exercising Temporary Emergency Jurisdiction and learns another state has a PENDING or ALREADY ENTERED enforceable order (& vice versa)
- When Oregon is enforcing another state’s order and a modification is pending elsewhere (& vice versa)

Conference is DISCRETIONARY:

- At any time
- Is easiest way to resolve:
  - Declination of jurisdiction
  - Inconvenient Forum
  - Unjustified Conduct
**Interstate Judicial Communication**

Parties need not be present but must have opportunity to present facts/argument **before** ruling.

Retrievable record must be kept. Electronic OK

---

**Stays**

**Mandatory**
- Oregon learns UCCJEA-compliant case pending elsewhere first
- Oregon determines Oregon is inappropriate forum.
  - Must stay until case is filed in that other state, if none filed there yet

**Discretionary**
- Oregon learns person invoking Oregon jdx has engaged in unjustifiable conduct
- Oregon has a pending modification case and then learns another state has an enforcement case pending
**Reminder:**

Jurisdictional facts are FROZEN
At the time of filing

Contra: convenience factors

---

**Analysis for Determining Jurisdiction**

See attached sheets
Interstate Enforcement

- Must enforce, even w/o registration
- Registration possible. Only defenses to validity:
  - No subject-matter jurisdiction
  - Denial of notice & opportunity to be heard
  - Vacation or modification of order to be registered
- Visitation (parenting time) enforcement process can give compensatory time or make “reasonable” specific
- “Turbo” habeas proceeding – immed. physical custody & costs
- Warrant for no-notice seizure of child if “imminently likely to suffer serious physical harm or be removed from State”
  - Petition heard day after service
- Enhanced enforcement through public prosecutors

Oregon appellate cases involving the UCCJEA in a Dependency context

- **DHS vs. R.M.S., 280 Or App 807 (2016)**
  (dependency trial court erred in using venue analysis instead of UCCJEA subject-matter jdx analysis) 280 Or App 807 (2016)

- **State v L.P.O., 280 Or App 292 (2016)**
  (construing “temporary emergency” jurisdiction to include immediate risk if returned to parent/other jdx)
**Juvenile Court Issues re UCCJEA**

**Scenario #4**

Restraining Order w/Custody still in effect in Washington, followed by Dependency in Oregon

- Modification analysis. Oregon can’t modify unless: (1) no parent or child in Washington or (2) Washington decides that Oregon would be more convenient
- **Except for TEJ orders,** Oregon must **STAY** its proceeding and communicate with State #1

**Juvenile Court Issues re UCCJEA**

**Scenario #5**

Paternity determination in Alabama. Mother and Child now living in Oregon for 7 years. Oregon dependency is filed based on Mother’s mental illness. Father incarcerated in Alabama.

- Can Oregon adjudicate the dependency?
  - Depends on whether the paternity case included a custody determination.
    - If yes. Oregon is in a modification context and can exercise only TEJ.
    - If no, Oregon is home state and can adjudicate.
UCCJEA & ICPC

- UCCJEA implicates jurisdiction. ICPC does not.
  - ICPC compliance is not a prerequisite to the existence or exercise of jurisdiction. ICPC controls procedure when a placement is made. (But ICPC non-compliance could result in a sanction that affects jurisdiction).
- UCCJEA controls *judicial* decision-making re custody and placement.
  - UCCJEA controls *administrative*/*agency* procedures for child placement
- ICPC (a contract between the states) trumps state law (UCCJEA), but state law (UCCJEA) trumps ICPC regulation.

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UCCJEA & ICPC

- The ICPC does not apply to placements with parents UNLESS:

  A Court or DHS-equivalent is placing the child with an out-of-state parent:
  1. for whom the Court/Agency has evidence regarding unfitness
  2. for whom fitness is being assessed, or
  3. when the child will remain a court ward or in DHS custody
Maureen McKnight
Maureen.McKnight@ojd.state.or.us
503/988-3986s
JURISDICTIONAL ANALYSIS UNDER THE
UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

Initial Order:  Controlling Concept: Home State Priority

1. Does Oregon have jurisdiction? (109.741)  A, B, C, or D must be true
   A. Is Oregon the Home State?
      • State in which child lives and has lived for at least six consecutive months
        immediately before the filing (not hearing). (Temporary absence does not toll time;
        for child less than 6 months old, “home state” is state in which child has lived since
        birth). or
      • State in which child has lived for at least six consecutive months, a part of which
        occurred within the last six months, and though child is absent from Oregon at
        time of filing, a parent or PERSON ACTING AS A PARENT continues to live in Oregon.

      If Oregon is not the Home State and a Home State which has not declined jurisdiction
      exists, Oregon does not have jurisdiction unless it is temporary emergency jurisdiction.

   B. Does Oregon have Significant Connections to the child and at least one parent or
      PERSON ACTING AS A PARENT, with substantial evidence regarding the child’s care,
      protection, training, and personal relationships located here
      AND:
      • No Home State exists; or
      • The Home State has declined to assert jurisdiction in favor of Oregon? (see
        “Inconvenient Forum” factors in ORS 109.761 and “Unjustifiable Conduct” factors in
        ORS 109.764).

   C. Has the Home State or Significant Connections State declined jurisdiction in favor of
      Oregon, based on inconvenient forum grounds (ORS 109.761) or unjustifiable conduct
      grounds (ORS 109.764)?

   D. Is there NO other state with Home State or “significant connections” jurisdiction?

   ★ BUT CONSIDER: Does Oregon have basis for Temporary Emergency
      Jurisdiction (see page 3)?

   ? Is ICWA applicable? If so, UCCJEA is not applicable where inconsistent with ICWA

2. If Oregon has jurisdiction, should Oregon exercise jurisdiction?
   (See “Inconvenient Forum” factors in ORS 109.761 – discretionary declination)
   (See “Unjustifiable Conduct” factors in ORS 109.764 – could be mandatory declination)
Modification of Previous Order:  

Controlling Concept:  
Continuing Exclusive Jurisdiction (Decree State ?)

1. Does Oregon have jurisdiction to modify the order?

   A. Is Oregon the Issuing State?
      (1) If yes, then OREGON has continuing exclusive jurisdiction (CEJ) unless:
          (109.744)

          (a) Oregon finds that (1) Oregon lacks a significant connection with the child, AND with the child and one parent, AND with the child and a PERSON ACTING AS A PARENT, or (2) substantial evidence regarding the child’s care, protection, training, and personal relationships is no longer available in Oregon; or

          (b) Oregon or another state determines that child, parents, and any PERSON ACTING AS A PARENT no longer resides in Oregon.

      (2) If no, then the ISSUING STATE has continuing exclusive jurisdiction unless:
          (109.747)

          (a) The Court of the Issuing State determines that it no longer has continuing exclusive jurisdiction because not the child, nor the child and parent nor a PERSON ACTING AS A PARENT has a significant connection with that state or that substantial evidence regarding child’s care, protection, training, and personal relationships is no longer available there; or

          (b) The Court of the Issuing State determines that Oregon would be a more convenient forum. (See 109.761 for inconvenient forum factors.); or

          (c) Oregon or the Issuing State determines that the child, the child’s parents, and any PERSON ACTING AS A PARENT do not presently reside in the Issuing State.

   B. If Oregon doesn’t have CEJ and the Issuing State doesn’t have CEJ, can Oregon modify the order?
      → Does Oregon have jurisdiction to make an Initial Order as the “Home State” or “Significant Connection” state (see page 1)?

          (a) If yes, can modify

          (b) If no, no jurisdiction to modify except under temporary emergency jurisdiction (page 3)

★ BUT CONSIDER:  Does Oregon have basis for Temporary Emergency Jurisdiction (see page 3)?

? Is ICWA applicable? If so, UCCJEA is not applicable where inconsistent with ICWA

2. If Oregon has jurisdiction to modify, should Oregon exercise that jurisdiction?

(See “Inconvenient Forum” factors in ORS 109.761 – discretionary declination)
(See “Unjustifiable Conduct” factors in ORS 109.764 – could be mandatory declination)
Chapter 5A—UCCJEA for Juvenile Court Practitioners

**Temporary Emergency Jurisdiction: (109.751) A Gloss on Initial and Modification Analyses**

1. **Even if Oregon does not have Jurisdiction to make an Initial order or a Modification order, can it nevertheless make an Temporary Emergency Order to protect the child?**

   A. Is the CHILD PRESENT IN OREGON, and
      (1) Has the child been abandoned or (2) is there an emergency requiring the protection of the child because the child, or a sibling, or a parent is subjected to or threatened with mistreatment or abuse? *(Commentary clarifies latter standard is narrower than “neglect”)*
      1. If no, no temporary emergency jurisdiction.
      2. If yes, then continue:

   B. Is there a PREVIOUS OR PENDING CHILD CUSTODY DETERMINATION FROM ANOTHER STATE?
      (1) If not, then:
         (a) The Temporary Emergency Order (TEJ) remains in effect until an order is obtained from a state with Home State or Significant Connections jurisdiction.
         (b) AND if the Temporary Order provides, the Temporary Order can become a permanent order if:
            (1) Oregon becomes the child’s Home State and
            (2) No other proceeding has been filed in a state with Home State or Significant Connections jurisdiction.
      (2) If yes, (a previous enforceable child custody determination exists or one is pending), then:
         (a) The Temporary Emergency Order must state a specific time period within which an order may be sought from the State with continuing exclusive jurisdiction or Home State or Significant Connections jurisdiction.
         (b) The Temporary Order from Oregon will remain in effect until that other state issues an order within the defined period or the order expires.

   C. Requirements for MANDATORY JUDICIAL COMMUNICATION may exist:
      (1) If there is a previous order or pending matter in another state, and Oregon is asserting temporary emergency jurisdiction, Oregon MUST immediately communicate with the other state.
      (2) If Oregon is exercising jurisdiction on any basis and learns that another state has a pending Temporary Emergency Jurisdiction order or has issued a Temporary Emergency Jurisdiction order, Oregon MUST communicate with that state to resolve the emergency, protect the parties and the child, and determine the duration of the temporary order.

   ? *Is ICWA applicable? If so, UCCJEA is not applicable where inconsistent with ICWA*

2. **If Oregon has jurisdiction to make or modify an order because of an emergency, should Oregon exercise that jurisdiction?**

   *(See "Inconvenient Forum" factors in ORS 109.761 – discretionary declination)*
   *(See "Unjustifiable Conduct" factors in ORS 109.764 – discretionary declination because child is at risk)*
Chapter 5B

Interstate Compact on the Placement of Children (ICPC)—Presentation Slides

VERA JAMES
Oregon Department of Human Services
Salem, Oregon
What is the ICPC?

- A binding agreement adopted into statute by all 50 states, the District of Columbia, and the U.S. Virgin Islands
- Not federal law
- Created in the 1950’s to govern placement of children across state lines
- Does not cover international placements
What is the ICPC?

- Ten Articles
  - Text in statute (ORS 417.200-417.26), uniform in all states
  - Antiquated language
- Twelve Regulations
  - Purpose is to carry out the terms of the compact
  - Promulgated jointly by Compact Administrators from party jurisdictions, thus less cumbersome to update but also lacking the authority of law

Why is the ICPC needed?

**Protects the child:**
- Legal and financial protections
- Ensures safety of the placement prior to the move
- Ensures continued monitoring after placement
Why is the ICPC needed?

Benefits to the sending agency:
✓ Ensures the safety of the proposed placement through evaluation and home study
✓ Sets out the responsibilities of the receiving state and sending agency
✓ Retention of jurisdiction
✓ Ensures supervision and reports after placement

Why is the ICPC needed?

Benefits to the receiving state:
✓ Allows the receiving state to ensure that the placement is safe and appropriate
✓ Provides the receiving state with information about children coming into the state
✓ Ensures that the sending agency retains responsibility to provide support.
What if there were no ICPC?

- If there were no compact, children could be sent to another state with no assurance that the child is going to a safe home, no services, no supervision, no obligation to provide support, and no jurisdiction.

- Conversely, children would arrive in Oregon on a regular basis to live in potentially unsuitable, even dangerous homes, with no services, no support, and no supervision. Many would end up in our dependency and/or delinquency system or worse.

Other Possible Impacts if ICPC is not followed

- Delays in permanency
- Damage to relationship with other states when our agreement with them is not honored
- Financial sanctions to the sending state Child Welfare agency
- Loss of license to practice
- ORS 417.990: “Penalty for placement of children in violation of compact. The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of the Interstate Compact on the Placement of Children is a Class A misdemeanor.”
Definitions

- Per Article II:
  - “Sending agency means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.”
  - “Placement means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.”

ICPC Definition of Jurisdiction

- Per Article III:
  - “jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, and disposition of the child... Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law.”

- Per Regulation 2:
  - “under the jurisdiction of a court for abuse, neglect or dependency, as a result of action taken by a child welfare agency: The court has the authority to determine supervision, custody and placement of the child or has delegated said authority to the child welfare agency.”

The child does not have to be a ward for ICPC to apply.
Most cited Articles

- Article III: Conditions for Placement
  - ICPC approval required prior to placement

- Article IV: Penalty for Illegal Placement
  - “violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care, for children.”

Most cited Articles

- Article V: Retention of Jurisdiction
  - The sending agency is required to maintain jurisdiction until the appropriate authority concurs with dismissal- i.e. prior to finalizing adoption, establishing guardianship, or returning custody to a parent with whom the child is placed through ICPC.
**Most cited Articles**

- **Article VIII: Limitations**
  - ICPC does not apply to “The sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state.”

**Most Cited Regulations**

- **Regulation One: Relocation of Family Units**
- **Regulation Two: Public Court Jurisdiction Cases: Placement with Parents, Relatives, Foster/Adoptive Parents**
- **Regulation Seven: Expedited Placement Decision**
- **Regulation Nine: Definition of a Visit**
ICPC Timelines

- ICPC Regulation 7: 20 business days for placement decision
  - Most states can’t meet this deadline due to foster certification requirements.
- Safe and Timely Act: 60 days for a report on the home study
  - The law does not require a placement decision by the deadline, so usually a preliminary report is provided.
- ICPC Regulation 2: 6 months to provide final decision
- Approval expires 6 months from the date the 100A was signed by the receiving state ICPC office

Why does ICPC take so long?

- Varies by state
- Licensing/certification requirements
  - Completion of training
  - Criminal history
- Heavy caseloads
- ICPC cases given lower priority
- Proposed placement resources may be slow in following through
- Request lost or never received by the receiving state.
Strategies to speed up the ICPC process

- Check in with case worker on a regular basis.
- Encourage prospective placement resource to follow through with all required activities in a timely manner.
- The prospective placement resource can contact their state ICPC office to check status along the way. The resource can advocate for the home study request to be processed quickly and for the final placement decision to be transmitted promptly to the sending state.
- The proposed placement resource also can contact their local child welfare office to request status.

Regulation 7 (Priority Placement) Criteria

- Requires a court order with specific verbiage
- Proposed placement is with:
  - Parent
  - Step-parent
  - Grandparent
  - Adult uncle or aunt
  - Adult sibling, or
  - Legal guardian
Regulation 7 (Priority Placement) Criteria (continued)

and the case meets at least one of the following criteria:

- Unexpected dependency due to recent incarceration, incapacitation, or death of a parent or guardian, **or**
- The child is under 4 years of age, **or**
- The court finds that any child in the sibling group to be placed has a substantial relationship with the proposed placement, **or**
- The child is currently in an emergency placement.

**Regulation One– Relocation**

- Applies when a child is residing in a placement already approved in sending state
  - This includes placement with a relative, placement in a foster home, placement in a pre-adoptive home, and placement with a parent when the sending agency maintains custody of the child.
- New home study will be required in the receiving state.
- If placement is denied, the child will be required to return to the sending state.
- Concurrence needed from the receiving state prior to dismissal.
Regulation Two

- Requirements for Referral Packet
- Options for Reconsideration
- Placement categories:
  - Relative
  - Foster Home
  - Prospective Adoptive Home
  - Parent

  - “When the court places the child with a parent from whom the child was not removed, and the court has no evidence that the parent is unfit, does not seek any evidence from the receiving state that the parent is either fit or unfit, and the court relinquishes jurisdiction over the child immediately upon placement with the parent, the receiving state shall have no responsibility for supervision or monitoring for the court having made the placement.”

Regulation 9: Visits vs. Placements

A child traveling out of state is considered to be on a visit when:

- It is for a brief social or cultural experience; and
- The visit has a definite end date; and
- The visit is no longer than 30 days, or begins and ends within a school break; and
- There has been no request for a home study or supervision.

  - (If a home study is in process and a genuine visit is planned, the receiving state should be notified in advance.)

ICPC is not required for visits.
ICPC Information Resources

- [http://www.aphsa.org/content/AAICPC/en/home.html](http://www.aphsa.org/content/AAICPC/en/home.html)
- [http://www.aphsa.org/content/AAICPC/en/ICPCArticle.html](http://www.aphsa.org/content/AAICPC/en/ICPCArticle.html)
- [http://www.aphsa.org/content/AAICPC/en/ICPCRegulations.html](http://www.aphsa.org/content/AAICPC/en/ICPCRegulations.html)
- OAR 413-040-0200 to 413-040-0330
  [http://www.dhs.state.or.us/policy/childwelfare/manual_1/division_40.pdf](http://www.dhs.state.or.us/policy/childwelfare/manual_1/division_40.pdf)
- Oregon ICPC Manager: Vera James, MSW, MPH
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Chapter 5C

The Hague Service Convention: Service of Process in Juvenile Court Proceedings—Presentation Slides

Rahela Khanum Rehman
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The Hague Service Convention:

Service of Process in Juvenile Court Proceedings

(February 10, 2017, Tigard, Oregon)

Rahela K. Rehman, Assistant Attorney in Charge
Oregon Department of Justice, Child Advocacy Section

Scope

- Overview
- Juvenile court proceedings

Application

- Rules of service
- Exceptions
- Effect of non-appearance after service
- Service in Mexico
- Delays in service

February 10, 2017

OSB Juvenile Law Section CLE/ Justice #8002020
Chapter 1—The Hague Service Convention—Presentation Slides

HAGUE: SCOPE

- Created by the Hague Conference on Private International Law, an intergovernmental agency for the purpose of unifying the rules of private international law.
- Consists of 31 Articles that govern service of all judicial or extra-judicial documents in civil or commercial matters between Convention signatories.
- Primary focus is to simplify service of process abroad and to assure that defendants receive timely notice of the proceeding.
- Mexico acceded to the Convention in November 1999, with enforcement in June 2000. Focus on service in Mexico for this presentation.
- When the Convention applies, the service requirements of the Convention are mandatory and failure to comply with the Convention voids the service. Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 US 694 (1988).
Does the Convention apply to Juvenile court proceedings?
- Yes.
- Oregon Appellate court held that parties agreed that the Hague Service Convention applied to juvenile dependency cases and thus service must be made through the Mexican Central Authority. *Dept. of Human Services v. M.C.C.*, 275 Or.App 121 (2015)
- California Appellate court held that juvenile dependency cases are civil in nature, thus subject to the Hague Service Convention. *In re Alyssa F.*, 112 Cal. App. 4th 846, 852 (2003)

Does failure to comply with the Convention void the proceeding?
- It depends.
- The Oregon Appellate court held that, father had waived any defects in service for failure to comply with the Hague Service Convention, when he failed to raise any objections until two years into the case, where the father had notice of the proceedings, appeared in the proceedings personally, via telephone, and through counsel- “a party claiming that a court lacks personal jurisdiction over the party because of a defect in service must raise that issue at the earliest possible occasion.” *DHS v. M.C.C.*, 275 Or.App at 123-24.
- The California Appellate court in *Alyssa F.*, 112 Cal. App. 4th at 854-55, held that despite the fact that the father had indisputably had actual notice of the juvenile dependency proceeding to terminate his parental rights and had generally appeared in the action, this did not cure the defect in service for failure to comply with the Hague Service Convention.
Chapter 1—The Hague Service Convention—Presentation Slides

HAGUE: RULES

- Article 1- Address Unknown- The Hague Service Convention shall not apply where the address of the person to be served with the document is not known.

- Article 2- Central Authority- Each contracting state shall designate a Central Authority which will receive requests for service from other contracting states and act in conformity with the provisions of Articles 3 to 6.

- Article 4- Objections- If the Central Authority considers that the request does not comply with the provisions of the Convention, it shall promptly inform the requesting state and specify the its objection to the request.

- Article 5- Service and Translation- The Central Authority or another “appropriate agency” designated by the Central Authority carries out service in accordance with its nation’s laws or by a method requested by the sending state unless the method is incompatible with its laws. The Central Authority may require the document to be translated in the language of the receiving state.

February 10, 2017

OSB Juvenile Law Section CLE/ Justice #8002020
Hague Service Convention: Rules

- **Article 6 - Certificate of Service** - The Central Authority for the receiving State shall complete a certificate of service. The certificate shall state that the document has been served and shall include the method, place, and date of service and the person to whom the document was delivered. If the document was not served, the certificate shall set out the reasons which prevented service. The certificate shall be forwarded to the applicant (requesting party) directly.

- **Article 7 - Official Languages** - The Model Form requesting service shall be completed in English or French and may be completed in the language of the receiving state.
  - [https://www.hcch.net/en/instruments/conventions/service/model-form](https://www.hcch.net/en/instruments/conventions/service/model-form) (Hague Model form to request service and certificate)

The Hague Conference on Private International Law’s recommendations to improve compliance in Mexico:

1. Contracting states have the right to fill out the Model Form in English or French, although they are encouraged to complete it in Spanish. Forms completed in either English or French, compliant with the Convention, must be received and executed by the Central Authority (CA).

2. Time limits for responses by the addressees are subject to the laws of the requesting state, not the requested state.

3. Pursuant to Article 4 of the Convention, the CA may verify whether a request is compliant with the Convention, but it may not condition compliance on requirements of is own internal law or judicial decisions.
4. Article 4 obliges the CA to promptly inform the applicant if it considers that a request does not comply with the provisions of the Convention, and to specify its objection.

5. The CA is obliged to promptly execute requests that comply with the provisions of the Convention.

6. CAs should adopt the following practices when handling requests:
   a. Determine if a request is compliant with the Convention within 30 days of receipt.
   b. Respond within a reasonable time to enquiries about the status of a request.
   c. When possible, use informal methods of communication, such as, email.
   d. Promptly inform the requesting state if obstacles arise preventing service.
   e. If service is prevented or not possible, ensure that the certificate of service is completed and forwarded as soon as possible.
Hague Service Convention: Exceptions

- **Article 8 - Use of Consular Offices**: Each state shall be free, to use its consular agents abroad to effect service of judicial documents upon persons abroad. Any state may oppose such service within its territory. *(Federal regulations prohibit the use of Consular officers for this purpose unless specifically authorized by the State Department. 22 CFR 92.85) (Mexico objects)*

- **Article 10(a) - Use of postal channels**: Provided the State of destination does not object, the Convention shall not interfere with the freedom to send judicial documents, by postal channels, directly to persons abroad. *(Mexico objects)*

- **Articles 10(b) and 10(c) - Use of Judicial officers**: Provided the State of destination does not object, the Convention shall not interfere with “judicial officers, officials or other competent persons” of the requesting state to work with “judicial officers, officials or other competent persons” of the receiving state to effect service. *(Mexico objects)*
Article 15- Entry of order when person does not appear:

- Proof of service: Convention provides that a court may enter a judgment upon a party’s non-appearance if it receives proof of service in compliance with the Convention.

- No proof of service: Convention provides that a court may enter a judgment without proof of service if all the following are met:
  - Document was transmitted by one of the approved Convention methods;
  - A period of time of not less than 6 months, considered adequate by the judge in the particular case, has elapsed since the date of transmission of the document; and
  - No certificate of any kind has been received even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.
Mexican Consulate and the Mexican Central Authority believe that Convention applies to juvenile dependency proceedings in Oregon.

Must comply with the Convention when serving in Mexico.

In accordance with the Convention, service can only be accomplished through Mexican Central Authority.

Mexico objects to alternate forms of service provided in the Convention- no service by mail or through consular agents.

Mexico has declared that Convention Model forms addressed to the Mexican Central Authority requesting service must be completed in Spanish.
Mexico’s Ministry of Foreign Affairs (SRE) oversees international cases.

The Directorate General of Legal Affairs (DGAJ) is under the SRE.

DGAJ serves as the Mexican Central Authority (MCA) for service of foreign documents pursuant to the Hague.

- **MCA** → **Superior Court** → **First instance court** → **person to be served**.

Upon completion of service the certificate is sent back to the CA through the same channels.

Service of Process in Mexico in all cases (domestic and international) is carried out by the courts - it is a FORMAL process.

- Ministry of Foreign Affairs
  Directorate-General of Legal Affairs
  Plaza Juárez No. 20, Planta Baja
  Edificio Tlatelolco
  Colonia Centro
delegación Cuauhtémoc
  C.P. 06010
  Mexico, Distrito Federal

(Address for Mexican Central Authority: https://www.hcch.net/en/states/authorities/details3/?aid=267)
1. **Complete the “Request for Service Abroad” form (4 pages) with Spanish translation and provide the following information:**
   a. Identity and contact information for the person requesting service;
   b. Address of the receiving authority;
   c. Certificate for the Central Authority to complete;
   d. Notice to the person to be served; and
   e. Summary and description of the documents to be served.

2. **Letter of instruction to the Central Authority with Spanish translation along with:**
   a. 2 certified true copies of the Petition to be served with Spanish translation; and
   b. 2 certified true copies of Summons with Spanish translation.

This process can take 4-6 months before a certificate of service is received from the Central Authority.
Mexico’s Ministry of Foreign Affairs (SRE) oversees international cases.
The Directorate General of Legal Affairs (DGAIJ) is under the SRE.
DGAIJ serves as the Mexican Central Authority (CA) for service of foreign documents pursuant to the Hague.

- CA ➔ Superior Court ➔ First instance court ➔ person to be served.
- Upon completion of service the certificate is sent back to the CA through the same channels.

- Service of Process in Mexico in **All** cases (domestic and international) is carried out by the courts- **it is a FORMAL process.**

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**Common causes of delay with service in Mexico:**
- **Address for parent is incorrect**- missing house number, village, road demarcation, house color, ;
- Name of parent is incorrect;
- **Partial/Incomplete address**;
- Spanish translation is missing or wasn’t done;
- Documentation is missing- summons, petition, request for service.
- Requisite number of copies not provided;
- Request was sent to the Mexican Consulate in Portland and not directly to the Ministry of Foreign Affairs in Mexico;
- Changes in local government;
- Mexico imposing or changing service requirements;
LINKS & RESOURCES

- Website for the Hague Service Convention: 
  https://www.hcch.net/en/instruments/conventions/full-text/?cid=17

- Link to the workshop on the Hague Service Convention held on November 28, 2011 in Mexico City: 
  https://assets.hcch.net/upload/2011workshop_mx.pdf

- Link to agreements by Mexico to the Hague Service Convention: 
  https://www.hcch.net/en/states/authorities/details3/?aid=267

- Website to check status of request for service in Mexico: 
  http://webapps.sre.gob.mx/rogatorias/Consulta.htm?CONTINUAR=Continuar

February 10, 2017
OSB Juvenile Law Section CLE/ Justice #8002020
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Chapter 6
Summaries of Oregon Appellate Court Decisions in Juvenile Court Cases

MEGAN HASSEN
Juvenile Law and Policy Counsel
Juvenile Court Improvement Program
Oregon Judicial Department
Salem, Oregon

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Juvenile Delinquency

► State v. K.A.M, 279 Or App 191 (2016)

Facts:

An officer was conducting a sweep of a house when he encountered youth in a bedroom. The person renting the house gave police permission to walk through the house to look for a person of interest. The officer asked youth his name and if he had anything illegal in his possession. Youth gave the officer his name, admitted he had a meth pipe and handed the officer a pipe that contained methamphetamine residue. The state filed a delinquency petition alleging that the juvenile court had jurisdiction over youth on the ground that he had unlawfully possessed methamphetamine, in violation of ORS 475.894.

Youth filed a pretrial motion to suppress the pipe and his statements under Article I, section 9 (unreasonable search and seizure). He argued the officer stopped him unlawfully, because the officer had no reasonable suspicion that youth was involved in criminal activity. The juvenile court denied the motion, finding that the officer's conduct did not constitute a stop. Youth then entered a conditional guilty plea, reserving the right to appeal the denial of the suppression motion.

Held:

Affirmed.

A person is stopped for purposes of Article I, section 9, if a law enforcement officer intentionally and significantly restricts, interferes with, or otherwise deprives an individual of liberty or freedom of movement, or if a reasonable person would believe the restriction occurred. A show of authority occurs when an officer conveys that the person is not free to terminate the encounter. This is determined under an objective standard - whether a reasonable person would feel free to terminate the encounter.

The court rejected youth's contention that his status as a 17 year old homeless youth bears on whether the officer's conduct constituted a show of authority. In determining whether an officer has stopped a person, the inquiry focuses on the officer's actions and how a reasonable person would have perceived them. In this case, the court held the youth was not stopped. Absent some other show of authority, the court held a person is not seized when an officer asks to see a person's identification and asks whether the person has anything illegal in his or her possession.


Facts:

A petition was filed alleging youth, age 13 years and eight months old, participated in a violent murder and robbery. The state petitioned the juvenile court to waive youth to circuit court so he
could be tried as an adult on multiple charges, including aggravated murder. After a hearing, the court granted the state's petition to waive youth to adult court and issued written findings in support of the required determinations under ORS 419C.349(3) and (4) (These determinations include: (3) the youth at the time of the alleged offense was of sufficient sophistication and maturity to appreciate the nature and quality of the conduct involved; and (4) the juvenile court, after considering certain criteria listed in the statute, determines that retaining jurisdiction will not serve the best interests of the youth and of society and therefore is not justified.) The juvenile court concluded the youth's conduct demonstrated a degree of maturity consistent with youth's biological age at the time of the event, and in several respects, reflected a degree of maturity consistent with an older youth.

Youth appealed, arguing the juvenile court had misunderstood what the "sophistication and maturity" requirement of ORS 419C.349(3) entailed and had incorrectly determined that requirement had been satisfied. Specifically, youth argued the legislature intended to impose a requirement that a youth have a "more adult-like" understanding of the conduct and its consequences than an average 13 year old would possess. The Court of Appeals affirmed the juvenile court's judgment.

Held:

Reversed and remanded.

The Oregon Supreme Court held that ORS 419C.349(3) requires a juvenile court to find that the youth possesses sufficient adult-like intellectual, social and emotional capabilities to have an adult-like understanding of the significance of his or her conduct, including its wrongfulness and its consequences for the youth, victim and others in order for a juvenile court to authorize waiver of a youth who is otherwise eligible for waiver under ORS 419C.349 or ORS 419C.352. The court found the legislature did not intend to impose a requirement that a youth have every one of the capabilities of a typical adult. Instead, the legislature intended that the juvenile court take measure of a youth, and reach an overall determination as to whether the youth's capacities are sufficiently adult-like to justify a conclusion that the youth was capable of appreciating, on an intellectual and emotional level, the significance and consequences of his conduct.

In this case, the juvenile court made findings that the youth understood and acknowledged his own role in the murder and knew it constituted a crime that would carry criminal consequences. The court also relied on a finding that the youth possessed a degree of maturity that was consistent with his biological age at the time of the murder, and in some respects, possessed a degree of maturity consistent with an older youth. The Oregon Supreme Court found these findings were insufficient to show the youth possessed sufficient sophistication and maturity to appreciate the nature and quality of the conduct involved, as the court has interpreted that requirement.


Facts:

Youth was adjudicated and placed on probation after shooting another teen with a BB gun and damaging property. A condition in the judgment set forth a curfew for youth of 4 p.m. to 5 a.m.
At a subsequent probation violation proceeding, a neighbor testified youth was riding his scooter after 4 p.m. in violation of his probation. The court found youth in violation of his probation. Youth appealed, arguing the court erred by not interpreting "curfew" within the context of the juvenile code (ORS 419C.680), or alternatively by subjecting youth to an unconstitutionally vague order. The state argued the order was not appealable because the probation violation did not adversely affect youth, and that youth failed to preserve his claims of error.

**Held:**

**Affirmed.**

A party to a juvenile proceeding whose rights or duties are adversely affected by a juvenile court judgment may file an appeal. ORS 419A.200(1). An appealable judgment includes a final order adversely affecting the rights or duties of a party and made in a proceeding after judgment. ORS 419A.205(1)(d). The court rejected the state's argument that the juvenile court's order did not adversely affect youth because it did not impose any sanction or extend the term of youth's probation. Instead, the court found that having a probation violation on youth's record could adversely affect any future dispositions by the juvenile court, because the court is required to consider the youth offender's juvenile court record and respond to the requirements and conditions imposed by previous juvenile court orders when determining a disposition in a juvenile case. ORS 419C.411(3)(e). Since the order in this case was made in a proceeding after judgment and a determination that the youth was in violation could result in more stringent requirements or liberty restrictions in the future, the court found the disposition was appealable.

The court found youth's arguments regarding the terms of probation were unpreserved.

▶ *State v. B.B.S.*, 276 Or App 602 (2016)

**Facts:**

The juvenile court found youth within the court's jurisdiction for conduct that, if committed by an adult, would constitute the crimes of unauthorized use of a vehicle and possession of a stolen vehicle and denied youth's motion for judgment of acquittal. On appeal, youth argued there was insufficient evidence to support a reasonable inference that he knew the vehicle was stolen.

**Held:**

**Reversed.**

The Court of Appeals held that nothing in the stipulated facts permitted the finder of fact to conclude the vehicle was stolen. The Oregon Supreme Court recently held in *State v. Simonov*, 358 Or 531 (2016) that the state is required to prove that a defendant knew that the use of the vehicle was without the owner's consent in a prosecution for the crime of unauthorized use of a vehicle under ORS 164.135(1)(a). Nothing in the stipulated facts explained how youth obtained the car, whether youth was present at the time, whether the driver told youth anything about the vehicle, or whether the youth would have noticed anything unusual about the vehicle.

**Facts:**

A petition was filed alleging youth had committed one count of sexual abuse in the first degree and one count of attempted sexual abuse in the first degree. Youth filed a motion for conditional postponement, and argued that the court had authority to grant his motion under ORS 419C.261. The state opposed the motion, arguing that Washington County's conditional postponement program is unlawful. After a contested jurisdictional hearing, the court issued an order finding the youth within the jurisdiction of the juvenile court. Youth renewed his motion for conditional postponement at the dispositional hearing. The court denied the motion, finding there was no legal basis for the conditional postponement. Youth appealed.

**Held:**

Reversed.

ORS 419C.261(2)(a) provides: "The court may set aside or dismiss a petition filed under ORS 419C.005 in furtherance of justice after considering the circumstances of the youth and the interests of the state in the adjudication of the petition." In Washington County, a conditional postponement is an agreement between the court and a youth, in which the youth admits to certain facts sufficient for the court to make findings for purposes of establishing jurisdiction. In addition, the youth agrees to participate in treatment and other conditions, which, if completed, result in a dismissal of the case.

Oregon appellate courts have interpreted ORS 419C.261 to grant broad discretion to juvenile courts to dismiss petitions. The court held the legislature's grant of authority to juvenile courts to dismiss petitions "in furtherance of justice after considering the circumstances of the youth and the interests of the state in the adjudication of the petition" is broad enough to encompass the Washington County conditional release program.


**Facts:**

The state filed a delinquency petition alleging youth was within the jurisdiction of the juvenile court for acts that, if committed by an adult, would constitute attempted sodomy in the first degree and attempted sexual abuse in the first degree. Prior to the adjudication hearing, youth filed a motion to amend or dismiss the delinquency petition under ORS 419C.261; Article I, section 16 of the Oregon Constitution; and the Eighth and Fourteenth Amendments of the United States Constitution. Youth requested the petition be dismissed or amended to allege misdemeanor sexual offenses that would not require mandatory sex-offender registration or enhance youth's adult criminal history score.

The juvenile court denied youth's motion, concluding that ORS 419C.261 does not give the court authority to dismiss or direct amendment of the petition pre-adjudication, or for the purpose of granting relief from sex-offender registration requirements.
Held:

Reversed.

ORS 419C.261 provides, in part: "(1) The court...may at any time direct that the petition be amended....When the court directs the amendment of a petition alleging that a youth has committed an act that would constitute a sex crime, as defined in ORS 181.805, if committed by an adult, the court shall make written findings stating the reason for directing the amendment. (2)(a) The court may set aside or dismiss a petition filed under ORS 419C.005 in furtherance of justice after considering the circumstances of the youth and interests of the state in the adjudication of the petition....(c) When the court sets aside or dismisses a petition alleging that a youth has committed an act that would constitute a sex crime, as defined in ORS 181.805, if committed by an adult, the court shall make written findings stating the reason for setting aside or dismissing the petition."

The court held subsection (1) explicitly allows the court to amend the petition before adjudicating it. In addition, subsection (2) allows the court to grant pre- and post-adjudication dismissals. Finally, the juvenile court may amend or dismiss a petition alleging an offense subject to sex-offender registration requirements as long as the court makes written findings stating its reasons for amending or dismissing the petition. The court further explained that the legislature contemplated the juvenile court may dismiss a petition for conduct that would otherwise subject a youth to sex-offender registration requirements, thus effectively granting the youth relief from those requirements.

NOTE: Legislative changes during the 2015 session may impact this analysis. Youth found under the juvenile court's jurisdiction for felony sex crimes on or after August 12, 2105 are no longer subject to automatic sex offender registration requirements. Instead, HB 2320 requires the juvenile court to hold a hearing prior to termination of juvenile court jurisdiction or prior to discharge from PSRB jurisdiction, to determine if youth is rehabilitated and does not pose a safety threat to the public. If the youth meets the burden of proof, no registration is required. Although the potential consequences of adjudication for sex crimes has changed, HB 2320 did not amend the language in ORS 419C.261(2)(c).

▶ State v. C.S., 275 Or App 126 (2015)

Facts:

Youth, age 12, repeatedly told three of his classmates that they were going to die in various ways and that he would kill them. This behavior continued over a period of three weeks during social studies class and in school hallways. A petition was filed, alleging youth had committed acts, that if committed by an adult, would constitute three counts of menacing under ORS 163.190. At trial, JH testified that youth told her she was going to burn to death when she was 18. Then he brought it down to when she was 16, then to 13 and then to three days. He said if she didn't die, he was going to stab her with a pencil until she died. All three classmates testified youth would draw his finger across his throat as he walked past them and would say "die" as he did so.
The juvenile court found the youth within the court's jurisdiction. Youth appealed, arguing the evidence was legally insufficient to show that his words and conduct would have caused fear of "imminent serious physical injury" in an objectively reasonable person.

Held:

Reversed.

In *State ex rel Juv. Dept. v. Dompeling*, the court determined that, as used in ORS 163.190, an imminent injury is one that is "near at hand," "impending," or "menacingly near." In this case, the threats to JH were the only instances that made any reference to time, none of which were "near at hand," "impending," or "menacingly near." However, a threat can be silent as to time frame while nonetheless implying that the harm is moments away. The nature of the threats made in this case did not permit such an inference, because youth's body language, actions, and verbal threats did not imply he was threatening to carry out the violence at that time. Contrasting the facts in this case with other decisions, the court noted the threats were not made in the context of a close relationship, or in response to a specific disagreement or escalating conflict. Also, there was no history of violence or aggression by youth toward any of the three classmates.

The court found the state's evidence was legally insufficient to demonstrate that an objectively reasonable person would have feared a threat of serious injury or death that was "imminent".

**Juvenile Dependency**

**Appealability**


For a full recitation of the facts, please click on the link above to view the opinion. The Court of Appeals found the review judgments were not appealable when the juvenile court continued the child's placement and reasonable efforts finding from the hearing held a month earlier. To be appealable, among other requirements, a judgment must affect the rights or duties of a party. In this case, mother did not cite any new information or changed circumstances since the last hearing, and consequently, the court did not deny any request for affirmative relief that mother raised for the first time or renewed with support of new information.

**Disposition**

 ► *Dept. of Human Services v. R. W.*, 277 Or App 37 (2016)

Facts:

A 15 year old child, N, was removed from her father's home on December 31, 2014 and placed in substitute care. The caseworker met with father on January 2, 2105 to explain the reunification services available, including anger management courses, parenting support and mental health evaluation and treatment services. Father refused services and did not sign the requested releases of information. On April 1, 2015, the juvenile court asserted jurisdiction over
N, and postponed the dispositional hearing until mid-May 2015. Meanwhile, N was receiving counseling services and refused to have contact with father. Two days prior to the dispositional hearing, father contacted DHS to request a referral for anger management and signed a release of information. DHS made the referral to services the same day as the dispositional hearing. Father objected to DHS's claim at the hearing that it had made reasonable efforts. The court expressed concern that DHS had not provided reasonable efforts between the shelter and dispositional hearings. The caseworker responded that DHS needs to have releases of information signed before submitting any referrals.

The court entered the dispositional judgment finding that reasonable efforts had been made since the date of the last court review, indicating that DHS had issued father referrals for the same services identified in the DHS court report (DHS did not dispute these had not been offered prior to the hearing): anger management; mental health services; parent training; counseling; safety planning; and intensive family services.

On appeal, father challenged the court's finding that DHS had made reasonable efforts.

Held:

Reversed.

The court will consider the particular circumstances of a case, including a parent's participation or lack of cooperation, in determining whether DHS's reunification efforts were reasonable. However, the inquiry is primarily directed at DHS's conduct and not the parent's. A parent's failure to sign releases is not one of the circumstances that legally excuses DHS from making reasonable efforts as to that parent.

In this case, DHS did not demonstrate it had made any subsequent attempts to provide, or even to offer, father services after the initial offering on January 2nd. There was no explanation as to why DHS made no additional attempts to obtain a release from father, especially after jurisdiction was asserted. The fact that N was in counseling and did not want visits does not impact the reasonable efforts analysis as to father. The court found DHS's lack of action over a five and a half month period of time between the removal date and the dispositional hearing to be significant.

**ICWA**


Facts:

In 2004, mother had contact with DHS in connection with a child welfare assessment involving her children, and indicated she had an affiliation with the Karuk Indian tribe. DHS subsequently learned from the tribe that mother did not meet the requirements for tribal membership. In 2011, mother's children were removed from the home, DHS renewed its ICWA inquiry, and mother indicated orally she did not know if she was enrolled, and refused to fill out DHS ICWA related forms. The court's order for the shelter hearing indicated DHS had not yet made a full inquiry about ICWA. The court subsequently entered jurisdictional and dispositional judgments, with no
mention of ICWA. A month later (June, 2011) the parents filled out a Verification of ICWA Eligibility form, and indicated no American Indian or Alaskan Native Ancestry. Almost a year later (May, 2012), mother received an enrollment card from the Karuk Tribe, but did not notify DHS. In June, 2012, the court changed the permanency plan from reunification to APPLA, ruling out adoption for both children based on sibling and parent attachment, and the older child's ambivalence about adoption.

In October, 2013, the Karuk Tribe notified DHS that the children qualified as Enrolled Descendent Tribal Members. From that point on, DHS considered the case subject to ICWA. In June, 2014, mother filed motions to dismiss based on purported noncompliance with ICWA. On the same day at a permanency hearing, the court: (1) found ICWA applied to the proceedings; (2) deferred consideration of mother's motions pending more complete development of the record as to when DHS knew or should have known the children were Indian children; and (3) continued the permanency plans of APPLA, over the objections of DHS and the children who argued adoption was appropriate. At the next permanency hearing in August, 2014, the court found the case was not subject to ICWA prior to late 2013, and that a reasonable efforts standard was appropriately applied in prior hearings. The court denied parent's motion to dismiss, and continued the plan of APPLA, finding: the children have been in the foster care placement for 39 months in a stable placement; the tribe prefers a relative placement but had not stated a position regarding adoption; the tribal expert witness was credible and testified the child would likely suffer serious physical or emotional damage if returned to the parent's care; the foster parent was willing to facilitate tribal connections and education for the children. The court declined to change the plan to adoption without input from the tribe.

Parents appealed the trial court's denial of the motion to dismiss; children and DHS challenged the juvenile court's refusal to change the plan to adoption.

**Held:**

**Affirmed.**

ORS 419B.878 requires the court to inquire whether a child is an Indian child subject to ICWA when a court conducts a hearing relating to involuntary child custody. If the court knows of has reason to know the child is an Indian child, the court is to enter an order requiring DHS to notify the tribe of the pending proceeding and of the tribe's right to intervene. The case is to be treated as an ICWA case until such time as the court determines the case is not subject to ICWA. In addition, under the 1979 version of the Bureau of Indian Affairs Guidelines for State Courts (in effect at the time of this proceeding), if a public child-protective agency has discovered information which suggests that a child is an Indian child, *that knowledge is constructively imputed to the juvenile court.* If the case is subject to ICWA, a child, parent or tribe may petition the court to invalidate an action taken in violation of ICWA.

In this case, the juvenile court did not err in denying parents' motions to dismiss, since there was no evidence that DHS knew the children were Indian children under ICWA in May, 2011, when the jurisdictional judgments were entered. The juvenile court's subsequent determination that the children were Indian children under ICWA as of late 2013, did not render ICWA retroactively applicable to the court's earlier decisions, requiring the court to make an active efforts finding.
when changing the permanency plan from reunification to APPLA. Finally, the juvenile court's findings continuing the plan of APPLA pending input from the tribe regarding the plan of adoption was not erroneous under the totality of the circumstances.

Commentary:

The new version of the BIA Guidelines contains similar language imputing agency knowledge of information that the child may be an Indian child to the juvenile court. See subsection B.2(c). As the facts of this case demonstrate, a child's ICWA status may change over the life of the case. Recommended practice in the BIA Guidelines is to inquire about the child's ICWA status at every hearing.

**Inadequate Assistance of Counsel**

▶ **Dept. of Human Services v. T.L.,** 358 Or 679 (2016)

Facts:

This case involved three children who were first placed in foster care in April, 2011 based on parents' drug use, and returned home five months later over the objection of DHS. They re-entered care in early 2013, after both parents relapsed. After jurisdiction was established and the parents failed to appear at a subsequent review hearing, the court scheduled a permanency hearing for August 29, 2013. Father and mother failed to appear at the start of the hearing, as did father's counsel. The court tried unsuccessfully to reach father's attorney, and waited 12 minutes before starting the hearing. After taking evidence and hearing argument, the court decided to change the permanency plans from reunification to APPLA for R, and to guardianship for M and T. Mother and father arrived, and the court informed them of his decision to change the plans. In an unsworn statement, father explained to the court that he thought he was doing everything DHS had requested of him, including participation in detox and behavioral health programs, and that he had submitted clean urinalyses. He did not say anything about the absence of his attorney, nor did he oppose the change in plans. On September 6, 2013, the court entered permanency judgments, which father appealed. He argued that he had received inadequate assistance of counsel, and although he had not raised that issue at the trial level, Geist entitled him to raise it the first time on appeal. The Court of Appeals affirmed, holding that the enactment of ORS 419B.923 (modifying or setting aside order or judgment) required father's claims to be raised first at the trial court level.

On appeal to the Supreme Court, father argued that the rationale of Geist applies equally to the judgments that changed the children's permanent plans from reunification to guardianship and APPLA.

**Held:**

Reversed and remanded.

The court considered whether the holding in Geist - that unpreserved challenges to the adequacy of counsel in termination proceedings could be raised on direct appeal - should be extended to appeals from judgments changing a permanent plan from reunification to guardianship or
APPLA. After considering the factors set out in ORS 419B.205 for appointment of counsel for a parent, the court concluded that the complex nature of the legal and factual issues, and the gravity of the interests at stake, require that counsel be adequate in permanency proceedings when the court changes the permanency plan from reunification to a plan of guardianship or APPLA. In addition, concerns expressed by the court in Geist regarding finality for children in care apply equally to permanency judgments that order a change in plan from reunification to guardianship or APPLA. Based on these considerations, the court found that providing a remedy for unreserved claims of inadequate assistance of counsel on direct appeal is justified.

The court outlined the following procedures for asserting and processing claims for inadequate assistance of counsel:

No preservation required. In cases in which counsel has been appointed, and the court orders a change of plan from return to parent to a permanent plan of guardianship or APPLA, a claim for inadequate assistance of counsel may be raised for the first time on appeal.

To be entitled to relief, a parent has the burden to show: (1) trial counsel was inadequate; and (2) the inadequacy prejudiced the parent's rights to the extent that the merits of the juvenile court's decision are called into serious question. In many instances, it will be necessary to develop a more thorough evidentiary record than exists on direct appeal to determine whether the parent is entitled to relief.

Assertion of claim in juvenile court. ORS 419B.923(7) allows assertion of inadequate assistance of counsel claims in the juvenile court while an appeal is pending. If further development of an evidentiary record would be necessary to determine whether inadequate assistance was provided or whether the party suffered prejudice, a claim may be filed in juvenile court. A moving party is required to serve a copy of the motion filed in the trial court with the appellate court. In addition, the moving party is required to file a copy of the trial court's order or judgment with the appellate court within seven days of the trial court's order or judgment.

When record insufficient on appeal. If a party fails to utilize the procedure in ORS 419B.923(7) to adequately develop the evidentiary record and the Court of Appeals determines the record is insufficient to warrant relief, the Court of Appeals may affirm without prejudice to the parent's ability to renew the claim before the juvenile court, or remand for an evidentiary hearing.

In this case, the court held a more complete evidentiary record was necessary to review father's claim. Neither party had an opportunity to make a record as to why counsel failed to appear, or whether father was prejudiced by counsel's absence. The case was remanded to juvenile court for the purpose of determining whether father is entitled to relief from the permanency judgments under ORS 419B.923. The court directed that trial counsel be appointed to represent father in juvenile court, and directed father to file a copy of the juvenile court's judgment with the Court of Appeals within seven days of the juvenile court's judgment.
Judicial Notice

► Dept of Human Services v. A.A., 276 Or App 223 (2016)

Facts:

Father appealed from a permanency judgment changing the permanency plan for the child from reunification to guardianship. According to father, no party offered evidence during the hearing regarding DHS's efforts at reunification. After the hearing, with no notice to the parties, the court took judicial notice of DHS and CASA reports, and statements made at the hearing by the parties' attorneys.

Held:

Reversed.

The court did not comply with ORS 419A.253 because it failed to take judicial notice of the documents and statements made on the record at the permanency hearing, and failed to give the parties an opportunity to object. The court could not permissibly rely on the information in the reports and the statements in determining whether DHS made active efforts or whether father made sufficient progress.

Commentary: The Court of Appeals discussed the issue of notice and timing in this case, but did not address the appropriateness of taking judicial notice of the reports. One could argue the facts provided in DHS reports may be subject to reasonable dispute, precluding the court from taking judicial notice of them. See ORS 419A.253(1)(b)(A); ORS 40.065. An alternative way for the court to rely on the DHS and CASA reports is to identify the reports on the record, allow the parties an opportunity to object, and then cause the reports to be marked and received as an exhibit. ORS 419A.253(1)(b)(B).

Jurisdiction

► Dept. of Human Services v. S.M.S., 279 Or App 364 (2016)

Facts:

Mother had a history of schizophrenia and related conditions since she was 17 years old, resulting in multiple hospitalizations in several states over a period of 7 years. When she was 24, she traveled to Portland intending to deliver her baby. She was unable to secure a physician to help her and ended up traveling to a hospital in Corvallis. The baby was delivered, and hospital staff began to have concerns about mother's sudden arrival and other behaviors. Mother was moved to the psychiatric unit and the child was placed in DHS care. After her discharge, mother engaged in outpatient mental health treatment. At the jurisdictional hearing, her psychiatrist testified that she kept all of her four appointments and took her medications as prescribed. He also testified if mother were to interrupt her treatment, it was likely her symptoms would return. At the time of the hearing, mother had obtained an apartment and a car, was attending parenting classes, had purchased appropriate baby supplies and had successfully participated in 14 supervised visits of L.
The juvenile court asserted jurisdiction over L, finding a current threat of serious loss or injury. The court reasoned that mother had been stabilized for a very short period of time, and had a demonstrated history of interrupting her treatment followed by lengthy psychiatric hospitalizations. The court also found that mother had no friends or family in Oregon who could monitor her treatment and detect any symptoms, should they return.

Mother appealed, arguing there was insufficient evidence to establish a "current threat" of harm.

Held:

Affirmed.

The court held there was legally sufficient evidence from which the juvenile court could conclude that L was at risk of serious loss or injury at the time of the hearing. Mother had an extensive history of mental illness with a demonstrated pattern of interrupted treatment and decompensation including: (1) multiple and lengthy hospitalizations over the past seven years; (2) delusions, hallucinations, paranoia and disorganized thinking, and (3) alienation of all of her family and friends. Although mother's mental health was being managed at the time of jurisdiction, considering the totality of the circumstances, the evidence permitted an inference that mother was likely to interrupt her treatment once more causing her symptoms to return. Finally, L's age (3 months) and mother's history of a prior involuntary termination supported an inference that mother's condition would pose a threat of harm that likely would be realized without the court's intervention.

> Dept. of Human Services v. T.E.B., 279 Or App 126 (2016)

Facts:

Child was removed from mother's care. At the jurisdictional hearing, father's counsel advised the court that father was prepared to admit to allegation E, that he is unavailable to be a custodial resource and the state is willing to dismiss allegation F, that father has a pattern of criminal behavior and incarceration. Father had previously filed a pro se petition in which he requested the child be placed with grandmother or father's fiancee. Father told the court he did not wish to withdraw his petition, and father's counsel indicated that the court could proceed with father's admission and address the petition later. Father's counsel also suggested that the pro se petition primarily reflected father's concern that a criminal history did not prevent him from being an adequate parent.

The court explained to father he had the right to a trial, at which DHS would have the burden to put on evidence to prove the allegations in the petition and at which father would have the chance to present his own evidence. The court further explained father could waive the trial right and admit to part of the petition. The court then asked:

"[P]aragraph 2E of the petition says, 'The conditions and circumstances of the child are such as to endanger the welfare of the child by reason of the following facts: The child's father is incarcerated and unavailable to be a custodial resource at this time.' Is that true?"

Father responded, "That's true, ma'am."
The court found this to be a knowing and voluntary admission. After some further discussions with the attorney, father asked to add something for the record. He emphasized that his mother and fiancee were available to take care of the child.

Father later moved to withdraw his admission. After reviewing the recording of the admission, the court found father expressed a full understanding of what he was admitting, was clear about what he understood that he was admitting and was not coerced or misled about the nature and consequences of his admission.

Father appealed, and argued his admission wasn't sufficient to establish jurisdiction, given his proposal to place the child in the temporary custody of grandmother.

Held:

Affirmed.

The court distinguished this case from previous cases finding no risk of harm because the child was placed with a grandparent. In this case, father admitted that his circumstances presented a danger to the welfare of his child. Since father also waived his right to require DHS to present evidence and to present his own evidence, there was no evidence in the record to the contrary of father's admission that his incarceration presents a danger to the child.

The court rejected father's argument that the juvenile court erred when it refused to allow father to withdraw his admission. The court held the juvenile court's finding that father made a knowing and voluntary admission was supported by the evidence. The court found father's remarks about not withdrawing his pro se petition, and his emphasis that he was not completely incapable of providing care because grandmother and his fiancee remained custody resources, were not inconsistent with his admission. Finally, the court held the record on appeal was insufficient to determine that father was entitled to relief on his claim for inadequate assistance of counsel.

Dept. of Human Services v. K.A.H., 278 Or App 284 (2016)

Facts:

In March, 2015, A, who was six months old, was taken to the emergency room in Pendleton. Mother reported she had been injured when her six year old sister, who was carrying her, tripped and fell. A was treated and released. Her parents brought her back the following day for concerns about dehydration. She was transferred to Doernbecher Children's Hospital in Portland and examined by Dr. Valvano, the medical director of the hospital's suspected child abuse program. During this and subsequent exams, he found A's injuries were not consistent with the circumstances the parents' described, and were instead characteristic of physical abuse. Based on this assessment, DHS took A into care. A dependency petition was filed, indicating A suffered injuries while in mother's custody that were at variance with the explanation given.

Before the jurisdictional hearing, mother moved to exclude any evidence based on the theory of shaken baby syndrome or abusive head trauma (SBS/AHT). At an evidentiary hearing, Dr. Valvano testified he had previously testified as an expert on SBS/AHT theory, and that it is
generally accepted among child abuse pediatricians and considered a medical diagnosis. The juvenile court denied mother's motion to exclude the evidence.

DHS moved to allow Dr. Valvano to testify at the jurisdictional trial by telephone under ORS 45.400. In support of the motion, DHS argued that traveling would require Dr. Valvano to miss a full day of work, that he was the hospital's only pediatrician specializing in child abuse, and that it would be difficult to obtain replacement coverage. Mother objected, arguing she couldn't conduct an effective cross examination over the telephone, and that under ORS 45.400(3)(b), telephonic testimony should not be allowed because Valvano's testimony would be determinative of the outcome of the case.

The juvenile court granted the motion, however, the record did not include a copy of the court's ruling or the grounds for its decision. Valvano was allowed to testify telephonically at the jurisdictional hearing, and the juvenile court entered a judgment asserting jurisdiction over A based on the unexplained injuries and the credible testimony of Dr. Valvano concerning the head and rib injuries. Mother appealed.

Held:

Reversed and remanded.

The court examined the provisions of ORS 45.400 relevant to this case: the court (except as provided in subsection (4) for jury trials) shall allow telephone testimony for good cause shown (subsection 3), but may not allow the use of telephone testimony if: (a) the ability to evaluate the credibility and demeanor of a witness or party in person is critical to the outcome of the proceeding; (b) the issues to which a witness will testify are outcome determinative; or (f) if failure of a witness or party to appear personally will result in substantial prejudice to a party in the proceeding.

Reviewing the trial court's decision for legal error, the court found that Dr. Valvano's testimony was the only evidence that definitively linked A's injuries to a theory of abuse, and that any significant hindrance in effectively cross-examining him amounted to a substantial prejudice under these circumstances. In addition, his testimony was outcome determinative, and as such, the court held ORS 45.400(3)(b) requires that the parent have the opportunity to cross examine the witness in person.

Dept of Human Services v. K.V., 276 Or App 782 (2016)

Facts:

A was two years old at the time of the jurisdictional hearing. Mother was primary caregiver, and father worked long hours as a restaurant manager. He would often come home intoxicated and would get angry. Eight months prior to the hearing, during an argument while both parents were intoxicated, father threw a heavy wallet at mother's back while she was holding A, knocking the wind out of mother. Father tried to wrestle the car keys away from mother when she threatened to leave, so mother fled to the bathroom with A and called 9-1-1. Father was arrested, charged with Assault IV, and ordered to have no contact with mother. However, father violated the no contact order and was living with mother a month after the incident. Later that month, the
parents agreed to care for S, a seven month old niece. While father was at work and S was in the care of mother, S sustained a severe brain injury that resulted in permanent and severe intellectual disability. Medical personnel determined she suffered from abusive head trauma, which was inconsistent with the explanation that mother had provided that the child fell from a bed. Medical personnel also found unexplained bruising on S.

DHS petitioned for jurisdiction over A due to concern there was a risk of harm as a result of the serious unexplained injury to S. During the seven months before trial, mother and father separated and were living apart. The petition allegations (paraphrased) at trial included: (1) due to unexplained serious injury to S while in the parents care, A is at risk of harm; (2) the father's use of alcohol/controlled substances interferes with his ability to parent, and if left untreated, presents a threat of harm to the child - father has engaged in domestic violence while intoxicated, and (3) father presents a threat of harm to A (physical abuse or mental injury) in that he engaged in domestic violence in the presence of the child.

At trial, DHS and mother presented expert witnesses, and a DHS caseworker testified. The court found: (1) father's past violation of a no contact order demonstrated he was likely to allow A to have contact with mother; (2) father's past domestic violence was directed at both mother and A and was caused by father's alcohol abuse; the court noted that, during the domestic violence incident, mother had protected A from father, and she would not be able to protect her in the future because of her abuse of S; in addition, mother had minimized the level of conflict but A's aggression with a doll (during visitation) demonstrated she had been affected by the domestic violence between mother and father; (3) there was no proof father had undergone a substance abuse assessment and he needed one in order to safely parent; anger management alone was not sufficient to address the threat of harm to A posed by father.

On appeal, parents argued: (1) any risk of harm to A due to the potential that father would harm A was speculative (parents had not had any contact for 7 months); (2) the substance abuse assessment showed that father didn't require treatment and that DHS failed to prove a nexus between father's alcohol use and a current risk of harm to A; and (3) DHS presented no evidence that father engaged in violent behavior beyond one incident and DHS failed to prove a nexus between domestic violence by father and a current risk of harm to A.

Held:

Affirmed.

Under ORS 419B.100(1)(c) jurisdiction is appropriate where a child's condition or circumstances endanger the welfare of the child. A child's welfare is endangered if the child's condition and circumstances give rise to a current threat of serious loss or injury to the child. The key inquiry is whether, under the totality of the circumstances, there is a reasonable likelihood of harm to the welfare of the child. DHS has the burden to prove there is a nexus between the parent's conduct and the harm to the child, and that the risk of harm is present at the time of the hearing.

In this case, there was evidence in the record that father had failed to protect S from mother while S was in parent's care. He took no action to protect S from mother after seeing bruises, which supports the court's finding that there was a risk that father would fail to protect A. There
was also evidence that father did not believe there were any issues with mother's parenting that would have led to the injury to S. Despite the fact that the parents had separated, there was evidence in the record that father's failure to protect S indicated he would fail to protect A, and there was nothing to prove that father was prepared to take action to prevent mother from harming A.

There was also sufficient evidence from which the court could conclude that father's substance abuse and domestic violence in the presence of A would create a current risk of harm to A if she were to be placed in father's care since father had not taken the necessary steps in order to address the underlying causes of that behavior. There was minimal evidence in the record that father had completed a substance abuse assessment, and there was uncontroverted testimony from a caseworker that she had received "community reports" that father still had problems with alcohol.

The court implicitly found that father's alcohol abuse was likely to lead him to engage in future domestic violence. Father's failure to complete batterer's education support the court's finding that father would likely behave violently in the future if he did not receive additional treatment. Finally, the juvenile court's finding there was a nexus between father's alcohol use and domestic violence and a current risk of harm to A was supported by expert testimony that domestic violence between spouses is a risk factor for child abuse. In this case, the domestic violence was directed toward mother and A, and mother would not be able to protect A from father's violence.

**Dept. of Human Services v. M.M., 277 Or App 120 (2016)**

**Facts:**

After a 10-day jurisdictional trial that took place over the course of five months, between December, 2014 and April 2015, the juvenile court took jurisdiction over B on the grounds that mother had a substance abuse problem that impairs her ability to safely parent and father has a substance abuse problem and mental health issues that impair his ability to safely parent the child. The court found that father was willing to give mother his prescription drugs as a way to deal with her illicit drug use. However, the court also found that father never actually gave mother his prescription drugs to use. The juvenile court found that father's willingness to share drugs with mother was drug abuse that presented a risk to B because it made mother unavailable to parent. The court also found that father abused drugs when he attempted suicide in February, 2014 by overdosing on his pain medication. In addition, the court found father's PTSD was untreated, and is a serious illness, posing a risk to B. The court found the substance abuse and mental health grounds for jurisdiction were intertwined, and that father's codependency contributed to his risk of suicide.

On appeal, father argued the evidence in the record was insufficient to allow the juvenile court to determine that his substance abuse and mental health issues existed and posed a present risk of serious loss or injury to B.

**Held:**

Reversed.
A juvenile court has jurisdiction under ORS 419B.100(1)(c) when the child's conditions and circumstances give rise to a current threat of serious loss or injury to the child. DHS has the burden to prove there is a current risk of harm and not simply that the child's welfare was endangered in the past.

In this case, the appeals court found the circumstances on which the juvenile court relied had existed approximately a year before the trial and entry of judgment, and had changed substantially. By the time the jurisdictional judgment was entered, parents had been separated for almost a year, and mother was in a relationship with someone else. No evidence regarding father's mental health was presented for the period between June 2014 and February 2015. Since father's circumstances had changed substantially since his suicide attempt in February, 2014, the court found the suicide attempt did not allow for an inference that father's mental health presented a current threat of serious loss or injury. The risks involving drug sharing and codependency identified by the juvenile court were no longer current by the time of trial.

In addition, father's mental health issue - post-traumatic stress disorder - was not tied to any risk of harm to B. There was evidence in the record that three months after father's suicide attempt, father's PTSD was being treated. There was no evidence presented as to how the PTSD posed a risk of harm to the child. Father's symptoms of nightmares, thrashing in his sleep and verbal aggressiveness over the phone with a caseworker in February, 2014 were insufficient to show a risk of harm to the child.

**Dept. of Human Services v. A.W., 276 Or App 276 (2016)**

Facts:

Mother, father and A moved in with grandfather. Grandfather had helped raise A since A was six months old. After they moved in with grandfather, mother and father had verbal arguments in the basement of grandfather's house. Grandfather asked father to leave the house after father responded aggressively to grandfather's requests for father to calm down. Grandfather filed a petition for a stalking protective order against father, stating that he feared for the physical safety of his home, and all in it, including A. After the court issued a stalking protective order against father, father yelled at the judge, who then said DHS should be involved. The following week, DHS removed A from grandfather's house and placed him in non-relative foster care. DHS filed a petition under ORS 419B.100(1)(c) alleging that A's safety was endangered based on mother's substance abuse, domestic violence in the home, exposure to chaotic living environment and chaotic situations, father's lack of emotional and behavioral regulation and father's residential instability. The juvenile court found DHS had proved all allegations, with the exception of father's residential instability.

Mother appealed, arguing there was insufficient evidence to support the allegations.

**Held:**

Reversed.

To establish jurisdiction pursuant to ORS 419B.100(1)(c), DHS must present evidence sufficient to support a conclusion that the child's condition or circumstances expose the child to a current
threat of serious loss or injury that is likely to be realized. When the petition is based on a parent's conduct, DHS must prove a nexus between the conduct and a current threat of serious loss or injury to the child.

In this case, mother testified she had used methamphetamine twice in the months leading up to the hearing. However, DHS did not present any evidence that mother used drugs while caring for A or that her drug use had an effect on her parenting. With respect to the allegation of domestic violence, there was no evidence that A had ever been exposed to that conduct or that the verbal abuse had ever escalated to physical abuse. Nor was there any evidence the parents' behavior put A at risk of suffering a harm that would justify juvenile court jurisdiction. The court also found the evidence regarding the "chaotic living environment and violent situations" and father's lack of "emotional and behavioral regulation" was insufficient because there was no evidence that A had seen or heard disagreements, or that such exposure put A at risk of serious harm or injury.

**Dept. of Human Services v. A.H., 275 Or App 788 (2015).**

**Facts:**

The juvenile court took jurisdiction over A based on allegations that: (1) mother's behaviors interfere with her ability to safely parent and place A at risk of harm; (2) A's parents could not meet her specialized needs; and (3) A had disclosed that a family member sexually abused her, and parents failed to take steps to protect her from the family member, who lived on the same property. The juvenile court subsequently entered a judgment dismissing jurisdiction and terminating the wardship of A.

Parents appealed the jurisdictional judgment. After the juvenile court terminated wardship, DHS moved to dismiss the appeal as moot.

**Held:**

Motion to dismiss denied; jurisdictional judgment reversed.

An appeal is moot when a decision will no longer have a practical effect on the rights of the parties. However, even when the main issue has been resolved, collateral consequences may prevent the controversy from being moot. In this case, the court found the potential collateral consequences were significant enough to have a practical effect and not render the case moot. Those consequences included: (1) the lack of ability of parents to seek review of a founded disposition if a legal proceeding results in a finding consistent with the founded disposition, putting the parents at a disadvantage in any future investigation by DHS; (2) negative effects on mother's employment as a teacher; and (3) in the small community where parents live, the negative social stigma associated with the court's finding that the parents failed to protect A from a sexual abuser after she disclosed abuse to them.

On the merits, the court found the record contained insufficient evidence of a current threat of harm to A. At the time of the jurisdictional judgment, A was living with her grandparents and no evidence was presented that grandparents were unsafe. Although DHS effected A's placement
with grandparents, the placement would continue without juvenile court jurisdiction or continued involvement of DHS.


Facts:

DHS filed petitions alleging father's substance abuse impaired his judgment and ability to safely parent his children, age two and six. At the jurisdictional hearing, the court heard testimony from the DHS caseworker, an investigator who had conducted father's ICPC home study, and father. Father testified he had incurred four DUlI convictions between 2002 and 2009, resulting in his repeated incarceration and participation in treatment for alcohol use. He testified that he stopped drinking and enrolled in substance abuse classes after DHS received the results from the ICPC study recommending a substance abuse assessment and any recommended treatment. However, he resumed drinking after a week because he kept waking up at night with back pain. He testified his consumption was limited to every three or five days after the children were in bed, and added that his consumption "varies". He also testified that his girlfriend is with him "24 hours a day". He explained that he was starting a relationship with his girlfriend over the course of the previous six months and they were trying to move in together.

The juvenile court found father was not credible and that he was an alcoholic who minimized his drinking problem. The court found that even though father only admitted to drinking a beer or two at a time, this presented a problem for father since he was an admitted alcoholic, served time in prison because of his drinking and depended on beer to fall asleep. The court was not persuaded that father's girlfriend would care for the children, given they lived in separate homes and had only been dating for six months.

The juvenile court found that father's substance abuse was sufficient to support the assertion of jurisdiction over the children. Father appealed, arguing: (1) DHS failed to establish a nexus between his alcohol use and a risk of harm to the children at the time of the hearing, (2) DHS did not produce any evidence that he drank to the point of intoxication at the time of the hearing, and (3) DHS presented no evidence he had ever harmed his children or that his drinking posed an actual, nonspeculative risk of future harm.

Held:

Affirmed. Under the totality of the circumstances, there was sufficient evidence in the record to support the juvenile court's finding that father's alcohol use posed a current risk of serious loss or injury to the children.

The Court of Appeals found father's extensive history of alcoholism, combined with his failure to participate in treatment, his admission that he drinks to self-medicate, and his failure to articulate how much alcohol he consumes or how often, permitted the juvenile court to infer that father was likely drinking to the point of intoxication. Further, the court found it permissible for the juvenile court to find that father's substance abuse subjected the children to a current, nonspeculative risk of harm when there wasn't anyone else in the home to look after the children when father was intoxicated.

Facts:

Mother appeared by telephone at a jurisdictional hearing. Mother moved to continue the hearing to a later date on the basis that DHS had recently amended the petition, adding new allegations for which she required discovery. DHS requested to be allowed to present its *prima facie* case without mother's participation. The juvenile court denied mother's motion and allowed DHS to proceed. Although mother continued to listen on the telephone, the court did not allow her to testify to oppose DHS's case against her.

The court entered a jurisdictional judgment over the children. Mother appealed.

Held:

Reversed.

Although ORS 419B.815(7) allows the court to establish jurisdiction after a parent has been summoned and fails to appear personally, ORS 419B.918(1) permits the court to allow a parent to appear by telephone upon timely written motion and for good cause. In this case, DHS asserted on appeal, and the Court of Appeals agreed, that once the court permitted mother to appear by telephone, the court erred by not allowing her to testify and then establishing jurisdiction in mother's "absence".


Facts:

Mother was granted a restraining order against father which prohibited him from having parenting time. Subsequently, the children were placed in foster care. In September, 2014, the juvenile court took jurisdiction over the children based on allegations related to mother and that father had failed to protect the children from mother's neglectful behavior. In October 2014, mother signed a limited power of attorney under ORS 109.056(1) that gave father the authority to make all parenting decisions for the children. In November 2014, father filed a motion to dismiss. Mother was incarcerated at the time of the hearing and the restraining order was no longer in effect. At the hearing, mother testified she wanted to give full custody of the children to father and that she preferred to have no physical contact with the children than to participate in services. A DHS worker testified that a month prior to the hearing, mother said if the children were back in Nevada, she could just go see them whenever she wanted. Father testified he would go back to Nevada if jurisdiction were dismissed. He also testified he planned to file for divorce and seek full custody of the children. If mother attempted to see the children, he said he would call the police and move to another residence unknown to mother.

The juvenile court denied father's motion to dismiss. Father appealed.

Held:

Reversed.
DHS has the burden to prove, by a preponderance of the evidence, that the facts on which jurisdiction is based persist to the degree that they pose a current threat of serious loss or injury that is reasonably likely to be realized. Without evidence that one parent is unable to protect the child from the other parent, or that the child will suffer some risk of actual harm because one parent lacks sole legal custody, lack of a custody order alone is an insufficient basis for jurisdiction.

In this case, there was insufficient evidence in the record to support a finding that father would be unable to protect the children from mother.

**Motion to Dismiss**


**Facts:**

Jurisdiction was established over the ward in 2001, when he was six years old. In 2002, the court changed the permanency plan to guardianship. In 2003, the court granted the guardians legal custody and guardianship, and placed the child under protective supervision of the court under ORS 419B.331. The court also ordered the guardians to provide annual written reports to the court and to DHS. In 2014, after the ward had turned 18, guardians filed an annual report detailing a number of problems with the ward (safety, mental health, finances, stealing), and requested a guardianship review hearing. Ward's counsel filed a motion to dismiss jurisdiction, terminate the wardship and vacate the guardianship.

At the hearing, testimony was presented that the 19 year old ward had moved out of his guardians' home and sometimes lived on the streets. He had also lived with his mother for three months, and stayed with MC for two months, until MC had become verbally aggressive. He testified he didn't feel he was in any danger when he was with his mother. At the time of the hearing, he was staying at a transitional living program. He testified to being high functioning autistic and having been diagnosed with bipolar disorder when he was 17 or 18. He stated he planned to attend a state-promoted job corps orientation and that he was seeking Social Security disability payments.

Relying on testimony presented and the guardian's report, the juvenile court found the guardians had met their burden and concluded that the following jurisdictional bases had not been ameliorated: mother's failure to protect ward from abuse by MC and ward's special educational, medical and counseling needs. The court noted the ward was living on the street, doing drugs, committing crimes and stealing. The court determined it was in the ward's best interest to continue the guardianship and denied ward's motion to dismiss jurisdiction, terminate wardship, and vacate the guardianship.

**Held:**

Reversed and remanded.

Guardians had to show, by a preponderance of the evidence, that the factual bases for jurisdiction persisted to the degree that they posed a current - not speculative - threat of serious loss or injury
that was reasonably likely to be realized. The key inquiry is whether, under the totality of the circumstances, there is a reasonable likelihood of harm to the welfare of the child, and the proponent has the burden to demonstrate a nexus between the allegedly risk-causing conduct and the harm to the child. The focus is on whether the conditions that were originally found to endanger the child persist.

In this case, the juvenile court found the following jurisdictional bases persisted: (1) mother failed to protect the child from contact with MC (mother's then partner); and (2) ward has special educational, medical and counseling needs. On appeal, the court found there was insufficient evidence in the record that mother or MC physically abused the ward or that it was reasonably likely that ward would suffer any harm from MC in the future. At the time of the hearing, ward was not living with MC and had other plans for housing. Likewise, the court found there was insufficient evidence in the record as to when the ward was diagnosed with autism and what special needs he had when the court took jurisdiction in 2001, or as they developed over the course of the court's jurisdiction over the ward. The only information about the timing of the existence or recognition of the disabilities relates to his bipolar diagnosis, which occurred when he was 17 or 18.

**Motion to Set Aside Judgment**


**Facts:**

The juvenile court entered a termination of parental rights judgment against mother after a three day trial. The trial court's decision was affirmed on appeal. Sixteen months after entry of the juvenile court judgment, mother moved to set aside the judgment under ORS 419B.923(1), on the basis that the judgment would cause harm to the child. Her motion was supported by affidavits from the designated adoptive placement, describing the bond that had developed between mother and child. Mother also submitted affidavits from others documenting her progress since the time of the TPR judgment.

The juvenile court denied mother's motion, concluding the court lacked authority to set aside the judgment under ORS 419B.923(1). Mother appealed.

**Held:**

Affirmed.

ORS 419B.923(1) allows the juvenile court to set aside any order or judgment made by it. The statute sets forth reasons for modifying or setting aside an order or judgment, and they include, but aren't limited to, clerical mistakes, excusable neglect, and newly discovered evidence. The court found inclusion of the examples in the statute limited the scope of the court's authority to set aside the judgment to circumstances that share a common characteristic with those examples listed in the statute. Although the court did not "identify with precision the characteristic common to clerical mistake, excusable neglect, and newly discovered evidence," it did state that allegations that the order is defective or the proceeding was unfair are "close to the mark." The
court examined whether mother's allegations contain a similar characteristic to the examples provided in the statute and concluded a change in circumstance like that alleged by mother is not a reason that would allow a court to set aside a TPR judgment under ORS 419B.923(1).

**Permanency Hearings**

- **Dept. of Human Services v. M.J.H., 278 Or App 607 (2016)**

**Facts:**

In November, 2014, DHS removed M, T and A from parents' care and filed a dependency petition for each child (hereinafter "2014 case"). In January, 2015, the court took jurisdiction over the children, and determined the plan for each child would be return to parent, with a concurrent plan of adoption. In June, 2015, DHS filed new dependency petitions for each child, creating a new case for each child (hereinafter "2015 case"). In August, the court took jurisdiction over the children based on the new allegations. The following week, the court held a permanency hearing in the 2014 dependency case. DHS sought to change the plan in the 2014 case from reunification to adoption, and advocated that the 2014 and 2015 cases should be treated separately. DHS told the court it was not seeking a change in the plans in the 2015 case, and that it could proceed in that case based on a plan of return to parent. The juvenile court concluded that since the 2014 and 2015 cases were separate, there could be a different plan as to each. The cases were not consolidated. The court changed the permanency plan for each child in the 2014 case to adoption, and did not issue a judgment with respect to the 2015 case.

Parents appealed, arguing the court could not change the plan to adoption in the 2014 case, while the plan remained return to parent in the 2015 case.

**Held:**

The court has emphasized that the juvenile dependency code contemplates that a juvenile court takes jurisdiction over a child. Once jurisdiction is established, the child becomes a ward and the court must decide who will have legal custody based on its determination of what is in the best interest and welfare of the child. The juvenile dependency code does not contemplate that a child, and decisions about the child's welfare, will be split into separate cases. Instead, the code contemplates that the court will take jurisdiction of the child and make decisions about the child based on the totality of all the circumstances of that child. When the court is required to determine the child's plan, which is referred to in the singular, the code continues to contemplate that there will only be one plan in place at a time per child. To the extent there are separate, concurrent dependency cases involving the same child, it is error for the juvenile court to set a permanency plan for a child that results in the existence of different plans for the same child at the same time.

Vacated and remanded.

**Commentary:**

The court did not decide whether maintaining two separate, but concurrent, dependency cases involving the same child is permitted under the juvenile code. As you know, this is now
common practice in courts using Odyssey. However, the court stated that the code does not appear to contemplate separate cases for one child, citing the consolidation statute (ORS 419B.806) and the provision in ORS 419B.809(6) that allows petitions to be amended "at any time." When more than one petition is filed per child, our office has provided the following guidance:

- The court is required to hold a permanency hearing no later than 12 months after the ward was found within the jurisdiction of the court under ORS 419B.100 or 14 months after the child was placed in substitute care, whichever is earlier. ORS 419B.470 (2). The date of entry into substitute care or the first jurisdictional judgment triggers the timeline.

- Subsequent amendments to a jurisdictional judgment or entry of subsequent jurisdictional judgments within that care episode do not generally impact the timing of the hearing, but may impact the court's ability to change the plan from reunification if doing so would deprive a parent of adequate notice and an opportunity to address the conditions identified in the judgment prior to the permanency hearing. See e.g., Dept. of Human Services v. A.R.S., 256 Or App 654 (2013).

- Most importantly, once the plan has been changed from reunification at a permanency hearing, entry of a subsequent jurisdictional judgment does not start a new timeline, or afford the court an opportunity to designate a plan of reunification in the subsequent jurisdictional judgment/case.

- The court can only change a court ordered permanency plan for a child at a permanency hearing under the authority of ORS 419B.476. For additional information, the Juvenile Court Dependency Benchbook outlines the legal framework and analysis of the findings that must be made (Go to "Hearings and Forms" and then to "Permanency Hearings") at a permanency hearing, including changing a plan from reunification to a different plan.


Facts:

The juvenile court held a permanency hearing at which DHS sought to change the permanency plans for the children from reunification to adoption. Father, who had been incarcerated since jurisdiction, was in opposition, and argued that DHS could not demonstrate that it had made reasonable efforts to reunify the family. During the first two days of the permanency hearing, he testified that he had sent seven letters to his children but the DHS caseworker did not deliver them because she deemed them to be inappropriate. Father testified he believed the letters were good, and did not contain anything inappropriate. Father's counsel sought a continuance because he had just learned the day prior to the hearing that the caseworker had been terminated and would not be testifying. DHS had not included copies of father's letters to the children in discovery and the DHS lawyer did not have the case file or letters at the hearing. The juvenile court allowed parents time to obtain the desired additional evidence by scheduling the final day
of the hearing a few weeks out, with the understanding that parents would subpoena DHS to produce the former caseworker's records, and locate and subpoena the former caseworker to testify. Subsequently, the court granted a DHS motion to quash father's subpoena.

Father obtained a court order directing the sheriff to transport him to the court on the day of the hearing. However, on the day of the hearing, father was not transported. Father's counsel was present and stated that father had not rested and that she was anticipating probably introducing some evidence through him. She requested that he be there personally. After the court attempted to connect father by telephone, the court directed the parties to proceed with closing argument. Following closing argument, father's counsel attempted to make an offer of proof regarding the letters, which the court refused, ruling the offer should have been made when father was in court.

On appeal, father argued the juvenile court erred in conducting the final day of the hearing in father's absence, in violation of his statutory right to participate in hearings provided in ORS 419B.875(2)(c).

Held:

Reversed.

The court reviewed the meaning of the right of a party to participate as provided in ORS 419B.875(2). In Dept. of Human Services v. D.J., 259 Or App 638 (2013) the court held a party's statutory right to participate includes the right to testify, and appearance through counsel is not a substitute when a party wishes to offer his or her own testimony. In this case, father was denied the opportunity to participate in a day of the hearing at which his testimony was critical to the presentation of evidence that the court would have considered in making its determination regarding the change in permanency plan. The letters formed a key part of father's argument that DHS failed to make reasonable efforts toward reunification.


Facts:

The juvenile court assumed jurisdiction over C based on each parent's admission that his or her lack of parenting skills impaired his or her ability to provide minimally adequate care for C. Each parent also admitted that C sustained an unexplained physical injury while in the care of parents. In mother's psychological evaluation, Dr. Deitch indicated she minimized or denied problem areas and likely had a dependent personality. That, coupled with her defensiveness and lack of an explanation of C's injury that conformed to the medical evidence, were concerning. Parenting classes were recommended. Father was given a rule out diagnosis of intermittent explosive disorder, and testing indicated a high degree of defensiveness and denial. Anger management counseling and parent training were recommended. A year after jurisdiction was established, the court changed the permanency plan from reunification to adoption. That decision was appealed and reversed.

Shortly after the first permanency hearing, C was found eligible for services for cognitive and speech delays. Initially, DHS shared this information with the foster parents, but not the parents.
Parents continued to receive trauma based parenting services and did not learn about the delays until the court held a hearing on their motion to dismiss six months later. Two months prior to the second permanency hearing, C was diagnosed with autism spectrum disorder and global developmental delays. Parents began working with a provider for the first time about C's delays, and began to show improvement in their interactions with C. Father, however, did not participate in discussions about C's autism. Parents were also encouraged to complete 12 online modules on autism between sessions to help them learn and apply new skills. Parents did not begin the online classes until a week prior to the second permanency hearing, and completed only 5 modules.

During a parent-child relationship assessment in the two months prior to the second permanency hearing, Dr. Laubacher concluded C had a primary attachment bond with foster parents, and a tertiary attachment bond with her parents. He concluded that any disruption to her primary attachment would create an intense amount of stress and possibly longer-term emotional disturbances.

The court held a second permanency hearing and considered parents' motion to dismiss and again changed the plan from reunification to adoption. Regarding the motion to dismiss, the court found that there was still no explanation for C's injuries that was consistent with the medical evidence, and that the injuries to the child were either caused by the parents or the parents should have known of the injuries. In addition, the court found the parents had been resistant to services, and in some circumstances, had refused to gain or learn from the services, and made little progress in understanding or benefitting from services.

With respect to the change in the plan to adoption, the court found, despite DHS's failure to disclose C's developmental delays earlier, DHS had made reasonable efforts. The court found the parents continued to lack the necessary parenting skills to make it possible for C to return home within a reasonable amount of time citing mother's psychological examination; C's autism diagnosis, finding that the parents' progress in meeting the child's high needs was not sufficient; and testimony that C would be emotionally traumatized if she were to leave the foster parents.

**Held:**

**Affirmed.**

Regarding the motion to dismiss, DHS has the burden to prove, by a preponderance of the evidence, that the facts on which jurisdiction is based persist to the degree that they pose a current threat of serious loss or injury that is reasonably likely to be realized. When a parent has participated in some services, yet there is a concern the parent hasn't internalized better parenting techniques, the dispositive question is what the parent will likely do. Legally sufficient evidence links the lack of insight to the risk of harm. In an unexplained injury case, the court looks at more than the presence or absence of expert testimony about the role that parents' admission might play in treatment or reducing risk to the child. Instead, the court examines the totality of the circumstances. In this case, the juvenile court made findings related to the parents' participation in services as related to their mental health conditions, and that neither parent had made an internal change with regard to their parenting skills. The appellate court found ample evidence in the record of what the parents are likely to do - mother is likely to cover up for father.
if he engages in a violent explosion directed at C and that parents will fail to provide C with the support required for her autism spectrum disorder and other needs. This was sufficient to conclude that C would experience serious loss or injury as a result.

Regarding the change of the plan from reunification, DHS bears the burden to show by a preponderance of evidence that it made reasonable efforts to reunite the family; and despite those efforts, the parents' progress was insufficient to make it possible for the child to return home safely. In making the determination, the court shall consider the ward's health and safety the paramount concerns. In determining whether DHS efforts have been reasonable, the court must consider the totality of the circumstances. The court must also consider not only the burdens that the state would shoulder in providing those services, but also what benefit might reasonably be expected to flow from them. In this case, although there was a six month delay from the time C was diagnosed with delays and the time parents' received services relating to this, the record supports an interference that providing the information earlier would not have made a difference. The parents made little progress after learning of C's developmental delays and receiving services tailored to those delays. Finally, the juvenile court considered C's health and safety as its paramount concern finding that visitation was causing more stress on the child than strengthening her relationship with parents, and that service providers had opined that C would be emotionally traumatized if she were to leave her foster parents.

Findings to Change or Continue Permanency Plan

**Dept. of Human Services v. A.S., 278 Or App 493 (2016)**

Facts:

The juvenile court established jurisdiction over K in December 2013, based on parent's stipulations which included domestic violence, mental health and mother's inappropriate physical and emotional discipline. The court held a permanency hearing in June and July of 2015 to consider whether the plan should be changed from reunification. The court heard testimony from the DHS caseworker, several psychologists, service providers, family members and friends. Both parents had been in counseling for four months and were making positive progress, with mother gaining skills to manage conflicts. The parents had also completed 14 weeks of parenting classes. Mother had completed 52 weeks of domestic violence treatment, but had not yet graduated because of her failure to acknowledge the abuse and show empathy for her children. The caseworker also noted progress and a strong relationship with K, but testified the parents failed to acknowledge their former inappropriate physical discipline of father's children and that it had been harmful to K. The child's therapist testified that K was at a stage of development that was critical for experiencing personal attachments, that he was showing signs of emotional problems related to a need for permanency, and that a guardianship would be beneficial to K because he would know he would be growing up in his grandparents' home. The court found DHS had made reasonable efforts, the parents had not made sufficient progress for the child to be safely returned home, and the evidence did not support a determination that further efforts by DHS would make it possible for K to return home within a reasonable time. The court further found the parents lacked insight into the reasons why the court assumed jurisdiction, and would be unlikely to gain that insight within a reasonable time. The court
changed the plan to durable guardianship with the maternal grandparents, whom K had lived with since the initial removal in 2013.

Parents appealed.

Held:

Affirmed.

Before the court can change a permanency plan away from reunification, the court is required to determine that DHS has made reasonable efforts to make it possible for the child to safely return home, and that the parents progress was insufficient for the child to safely return home. In addition, the juvenile court may continue a plan of reunification if it determines that further efforts will make it possible for the ward to safely return home within a reasonable time. In this case, the Court of Appeals found the evidence was legally sufficient to support the juvenile court's determinations. With respect to the reasonable time determination, it was permissible for the juvenile court to infer that it will take mother at least a year to parent when the juvenile court noted mother's inability to regulate her behavior based on her testimony, mother's refusal to admit she had caused harm to father's older children, and there was testimony from a psychologist that mother would not experience sustained improvement with respect to empathy and accountability for her behavior for at least eight to 10 months from the date of the hearing.

► Dept. of Human Services v. C.M.E., 278 Or App 297 (2016)

Facts:

M was in foster care between May, 2007 and 2010 based on mother's mental health and substance abuse problems. After returning to mother's care, M maintained a close relationship with foster parents. Over the next few years, DHS received several reports about mother's parenting. M was removed from mother again in 2014, after she had been off of her mental health medications for a year, and was living in unsanitary and unsafe conditions. In May, 2014, the court took jurisdiction based on mother's mental health and her failure to improve her parenting skills despite having received services.

At a permanency hearing in December, 2014, the court found DHS had failed to make reasonable efforts during the first seven months of the case, and declined to change the permanency plan. At the next permanency hearing in August, 2015, evidence was presented that mother had made some progress, and DHS had developed an in home safety plan involving a grandparent, allowing M to return home. Although the safety plan was similar to the one in effect in 2010, additional protections had been added: grandmother was now listed on mother's lease, had a key to mother's apartment and was appointed as mother's legal guardian. However, the child and the CASA argued the court should change the plan to adoption, because mother continued to show lack of insight into her mental health and although participating in services, mother had failed to learn from them and develop an adequate parental role in relation to M. The child, age 8, expressed a desire to live with the foster parents until he turned 18. A psychological report on M indicated that he had possible cognitive impairments; that he needed a secure caregiver (as provided by his foster parents); and needed a caregiver who could advocate for M's needs at school and provide him with a stable and enriched environment.
The juvenile court determined the plan should be changed to adoption and found: (1) DHS made reasonable efforts; (2) Mother failed to make sufficient progress; (3) M could not be safely returned within a reasonable time that meets M's needs (M needed permanency, and a subsequent removal would be catastrophic for him); and (4) there was no compelling reason that a TPR petition should not be filed.

Held:

Affirmed.

The court set forth the test for changing a permanency plan from reunification to adoption: the court must find DHS made reasonable efforts and the parents made insufficient progress for the child to safely return home. DHS's efforts and the parent's progress is evaluated according to the facts that formed the bases for juvenile court jurisdiction. If the court changes the permanency plan to adoption, the court's order must include the court's determination as to whether one of the circumstances in ORS 419B.498(2) is applicable. In addition, the court reiterated (citing Dept. of Human Services v. M.H., 266 Or App 361, 367 (2014)), that ORS 419B.498(2) requires the court to determine whether it is in the child's best interests not to file a petition for termination because the child can be returned home within a reasonable time.

In this case, the court found the juvenile court's determination that mother had made insufficient progress was supported by evidence in the record. Service providers expressed significant concerns about mother's parenting abilities; her failure to develop a parental role with M; her lack of knowledge about how to meet M's needs; her inability to independently care for herself and M; and continuing lack of insight into the cause of DHS's involvement with the family. In evaluating mother's argument that she is not required to be able to parent the child independently to have M returned home, the court distinguished this case from other cases in which the parent had access to live-in parenting support or permanent, alternative living arrangements. In contrast, the proposed safety plan would only require members of mother's support network to check in twice a day to monitor mother. The juvenile court was permitted to find this was insufficient, especially in light of the fact that a similar safety plan lead to the M's removal.

With respect to the ORS 419B.498(2)(b)(B) question of whether the bond between mother and M was a compelling reason for the court to decline to change the plan to adoption, the court found sufficient evidence for the juvenile court's determination that it was not, including the child's testimony, additional evidence in the record that M had developed a strong attachment to his foster family, and reports from service providers that mother's role was that of a friend, peer or play partner to M.


Facts:

T was removed from mother's care at age five. The juvenile court established jurisdiction based on mother's substance abuse. Mother was provided with counseling, medication management, a psychological evaluation, drug intervention and housing with an intensive case management program. Thirteen months after entry into care, T was returned home on a trial reunification. During that time, it took vigorous prompting by service providers for mother to follow through
with services for herself and for T. She also relapsed on methamphetamine. Six months later, a week after police were called to the home to respond to late night partying and domestic violence, T was removed again. Mother was referred back to mental health and intensive outpatient treatment. She tested positive for methamphetamine in September, 2014 and was discharged from treatment in November for noncompliance.

At the permanency hearing in November, mother and child argued any change in plan should be delayed pending the completion of a psychological evaluation that was ordered by the juvenile court three months earlier. The juvenile court rejected that argument and changed the permanency plan to adoption finding that mother had made insufficient progress for T to safely return home. Mother and child appealed.

Held:

Affirmed.

(1) The evidence was legally sufficient to support the court's determination that mother had not made sufficient progress under ORS 419B.476(2)(a). The juvenile court found any progress made was due to the considerable help of service providers and mother was unable to progress on her own. The juvenile court also noted mother's repeated relapses and recent discharge from treatment due to noncompliance.

(2) The evidence was legally sufficient to support a determination that the bond between mother and T did not constitute a compelling reason to avoid a change in plan under ORS 419B.498(2)(b). The court found the caseworker's testimony that T "loves her mother very, very much", T's decision to appeal the change of permanency plan at age six, and mother's counsel's statement that mother desired to parent T and be a good parent were inadequate to establish a compelling reason under the statute. Nor was there persuasive evidence that adoption was unlikely to be achieved when relatives in Texas expressed an interest in being an adoptive resource.

(3) The record did not establish a reason for not filing a termination of parental rights petition under ORS 419B.498(2)(c). The evidence did not establish the juvenile court needed an updated psychological evaluation in order to assess mother's progress in addressing substance abuse, which was the basis of jurisdiction. Mother and T did not establish the services an updated psychological evaluation could have provided were different than what mother was already receiving.

Reasonable Efforts

Dept of Human Services v. S.S., 278 Or App 725 (2016)

Facts:

M and J, two and three years old, were removed from their mother's care in July, 2013. DHS scheduled visits between mother and the children during July and August 2013. In September 2013, mother was arrested on charges including attempted murder and numerous counts of identity theft. Mother admitted to a jurisdictional allegation that she was incarcerated for an
unknown period of time, and was unable to be a custodial resource for the children. In October 2013, the juvenile court took jurisdiction based on mother's admission and father's failure to appear.

The children had extraordinary behavioral difficulties. While mother was in jail, DHS decided that visits would not be appropriate for the children. Mother began writing letters to them, and the caseworker believed the content was appropriate. However, the caseworker decided in December 2013, in consultation with the foster mother, that it may be inappropriate to bring up the letters with their children due to their age. M's therapist also recommended against sharing mother's letters due to M's age. In April 2014, the juvenile court referee found DHS had made reasonable efforts to reunite the children with mother, but noted it was unclear why the therapist was recommending no contact. The court ordered DHS to ensure that the children re-establish contact with the mother as soon as appropriate. Meanwhile, M made a sex abuse disclosure. Shortly thereafter, when the caseworker read a letter from mother to M and J, it appeared to trigger some past anxiety responses.

Mother continued to write letters and requested telephone calls. At a permanency hearing in June 2014, the referee continued the permanency plan of reunification and found that DHS had made reasonable efforts toward reunification. The referee explained that M's therapist was recommending against contact due to the children's reactions to the contact, and that DHS was arranging for mother to have phone contact with the therapist to assist both parties to have more understanding of the history and current needs of the children. However, due to the therapist's hours, DHS did not arrange contact.

In September 2014, mother pleaded guilty to three counts of identity theft and one count of third-degree assault. She was sentenced to 48 months and expected to be released between late 2015 and mid-2016. She was moved to the Coffee Creek Correctional Facility, where there are facilities to allow visits with children. In December 2014, the referee deferred findings on DHS's efforts to reunify, finding that mother still had not had visitation with the children and her letters had not been delivered. The referee ordered DHS to refer the family to a therapist able to assist mother and children to reestablish relationships. However, DHS did not find a new therapist for M. Instead, the existing therapist tried discussing mother with M during therapy sessions, and each time, M would regress.

In March 2015, at the next permanency hearing, the caseworker testified: (1) there remained concerns that M would be traumatized from contact with mother; (2) mother had participated in all services and programs available to her, including alcoholics anonymous, narcotics anonymous meetings and a parenting class; and (3) mother would not be available to parent for 18 months - a period that would be too long for the children to wait given their ages and need for permanency. The referee found that DHS had made reasonable efforts to reunify during the period since the last hearing and that mother had failed to make progress sufficient to allow for reunification within a reasonable amount of time.

Mother sought a rehearing de novo, which took place in July 2015. At the rehearing, the evidence was similar, although there were a couple of updates: (1) Mother acted appropriately during a visit with J, however, J regressed after the visit and M was afraid she would have to see mother as well; and (2) mother was going to be the teaching assistant the next time the parenting
class was offered; was in minimum security and working in an office; hoped to be placed in d/a treatment soon; and had no disciplinary reports. The court found that M and J had not developed a meaningful relationship with mother before she was incarcerated, and that the children were traumatized in mother's care and continue to suffer from trauma. In addition, DHS did not obtain a therapist skilled at rebuilding the parent-child relationship after the permanency hearing in December, 2014, but there was no "no reasonable efforts" finding in the case. The juvenile court "affirmed" the referee's determination that the permanency plan should be changed to adoption.

On appeal, mother argued it was error for the juvenile court to change the plan based only on the determination that DHS's efforts between January and April 2015 were reasonable. Mother argued that DHS's efforts over the life of the case were not reasonable as a matter of law because DHS cut off all contact between mother and the children for more than a year and then made only four months of efforts toward reunification.

**Held:**

Reversed and remanded.

The court explained that evaluation of the reasonableness of DHS's efforts includes efforts over the life of the case. The type and sufficiency of efforts that the state is required to make and whether the types of actions it requires parents to make are reasonable depends on the particular circumstances.

In this case, mother took full advantage of the services available to her and consistently sought contact with the children. Her criminal activity and consequent incarceration as well as lack of contact with the children were the cause of the court's jurisdiction. The period from December 2014 to April 2015 was not sufficient in length to afford a good opportunity to assess the family's progress toward reunification - specifically to assess the children's progress toward being able to reestablish their relationship with mother. The court found it was error to fail to consider DHS's efforts over a longer period before deciding whether those efforts were reasonable. Even assuming DHS efforts prior to June 2014 were reasonable, no efforts for a six month period (July and December 2014) and then four months of reasonable efforts, was not sufficient. The period of DHS efforts to reunify the family was too short (in light of DHS's previous failure to make efforts) to allow the court to meaningfully assess whether the family was making progress toward reunification.

Given that the children's lack of a relationship with mother was among the adjudicated circumstances that endangered them, the court concluded that four months of efforts to rebuild the relationship was not enough to compensate for six months of failure to allow contact or even prepare the children for contact with their mother.
Reviewability

- Dept. of Human Services v. B. P., 277 Or App 23 (2016)

Facts:

The court made the following orders and judgments related to the petition and amended petitions filed as to M:

9/2/14: An order was signed by a referee reflecting that mother stipulated to petition allegations, and that allegations as to father were being set for trial.

10/10/14: An order was signed by a judge finding the child within the jurisdiction of the court and containing findings and orders regarding one parent.

11/21/14: An order was signed by a referee with findings and orders regarding both parents. It referenced jurisdictional findings made on 10/10/14 and made dispositional orders.

Father filed a rehearing request within 10 days, seeking a rehearing on "disposition".

12/19/14: Rehearing held in front of judge. Father argued the judge's findings on 10/10/14 were insufficient to justify jurisdiction and moved to dismiss. Judge ruled that a rehearing on a ruling made by a another judge is not appropriate and advised father he could appeal that decision. As to the rehearing of the dispositional order on 11/21/14, the court entered an order on 1/6/15 "affirming" the referee's decision.

1/29/15: The referee entered a "Judgment Establishing Dependency Jurisdiction as to Both Parents" and "Judgment of Disposition" as a judge pro tempore indicating that the dispositional orders from 11/21/14 were final because no party had requested a rehearing.

Father filed a notice of appeal of the judge's 1/6/15 order, which the Court of Appeals found was not appealable. Father filed an amended notice of appeal indicating he was also appealing the 1/29/15 order.

2/19/15 - Review hearing held. Referee signed a review order.

3/18/15 - The same referee entered a review judgment as a judge pro tempore, which incorporated the 2/19/15 order in its entirety into the judgment as a final judgment.

4/7/15 - Father filed another amended notice of appeal as to the 3/18 judgment; then requested a summary determination of appealability of 3/18 judgment. The Chief Judge of the Court of Appeals concluded the 3/18/15 judgment was not appealable, rather, it was simply a judgment that adopted a prior referee order.

Father challenged the juvenile court's decision to take jurisdiction over his daughter. The child and DHS argued father's appeal should be dismissed because the juvenile court's decision finding M within the jurisdiction of the court was not made in the form of an appealable judgment. The
The issue on appeal is whether the appellate court could review father's challenge to the court's assertion of jurisdiction in the 1/29/15 judgment.

**Held:**

The judgment entered on 1/29/15 is appropriately reviewable by the Court of Appeals.

The court stated the dispositive issue was whether the 1/29/15 judgment is properly characterized as a jurisdictional judgment. A jurisdictional judgment in juvenile court proceedings, for purposes of appeal, includes a judgment finding a child within the jurisdiction of the court. ORS 419A.205(1)(a). The court recognized in *State ex rel Juv Dept v J.W.*, 345 Or 292 (2008), a judgment under the juvenile appeals statutes (ORS 419A.200 and ORS 419A.205(1)(a)) must also comply with the statutes in ORS chapter 18 that govern judgments generally. In interpreting ORS 18.005, the Oregon Supreme Court has explained that a judgment consists of two distinct parts: (1) substantively, the trial court must make a concluding decision on one or more requests for relief; and (2) formally, the trial court must ensure that the concluding decision is reflected in the judgment document.

With that background in mind, the court stated the dispositive question was whether the 1/29/15 judgment substantively expressed a concluding decision on jurisdiction over M. The court found it was significant that the juvenile court labeled the 1/29/15 judgment explicitly as a jurisdictional judgment. In addition, the court found the incorporation of the 11/21/14 order in its entirety fairly demonstrated the court intended to issue a concluding decision on jurisdiction.

On the merits, the court accepted DHS's concession that the evidence was legally insufficient to support jurisdiction. Reversed.

**Commentary:**

This case raises a number of procedural issues around how jurisdiction is established post *Dept. of Human Services v. W.A.C.*, 263 Or App 382 (2014) when one parent admits to allegations and the other parent requests a trial. JCIP developed an Admissions to Petition form in cooperation with the JELI Model Forms Committee, OPDS and attorneys representing the state as a way to allow the court to take one parent's admissions pending resolution of the other parent's allegations. Putting the admitted and proven allegations together into a jurisdictional judgment at the conclusion of trial provides a mechanism for a parent to appeal if desired. Beware, however, that if the admitted allegations no longer reflect the child's condition and circumstances at the time of the hearing, the judgment is at risk of being reversed. See *Dept. of Human Services v. A.F.*, 268 Or App 340 (2014)

Service

**Dept. of Human Services v. K.G.A.B., 278 Or App 391 (2016)**

**Facts:**

DHS filed a petition to terminate mother's parental rights. Two months later, after DHS attempted to personally serve mother, it filed a motion requesting authorization to serve the summons by publication in a newspaper with general circulation in Deschutes County. In support of the motion, DHS filed an affidavit detailing unsuccessful efforts to locate a valid address for mother, including searching the records of numerous state agencies, records of the federal bureau of prisons and two publicly available locator websites. DHS provided further detail in an affidavit, stating it found five differing addresses for mother in or near Deschutes county and two in Portland, but none were current. DHS also located an account for mother on Facebook where mother posted she resided in the Bend, Oregon area. The affidavit did not state that mother's Facebook page also contained a reference to mother being in Florida, close to Tampa. The court granted DHS's motion, and mother was served by publication in the Bend Bulletin.

At the termination hearing, mother did not appear, and mother's attorney argued service was ineffective because the summons and petition should have been published in Florida, near Tampa, in addition to Deschutes County. The juvenile court found DHS did not have enough information about mother's location to view it as a location that might reasonably result in actual notice to mother, and ruled the order authorizing service was adequate. The court conducting the hearing in mother's absence and terminated mother's rights.

On appeal, the court considered whether or not the juvenile court could validly authorize service by publication in Deschutes County considering the failure of DHS to disclose that mother's Facebook page indicated she was in Florida.

**Held:**

Affirmed.

Citing ORS 419B.824(6)(c), the court explained, an order for service by publication must direct that the publication be made in a newspaper of general circulation where the action was commenced, or if there is no such newspaper, in a newspaper designated as most likely to give notice to the person to be served. If DHS knows of a specific location other than the county where the action is commenced where publication might reasonably result in actual notice, this must be stated in the affidavit and the court may order publication in that location in lieu of, or in addition to, publication in the county where the action is commenced. In this case, the court found the evidence regarding mother's location in Facebook did not establish that mother resided in Florida or that she would be there for any length of time. Under these circumstances, the record supported the trial court's finding that the information DHS possessed was too tenuous for DHS to understand Florida to be a location that might reasonably result in actual notice.
**Dept. of Human Services v. M.C.-C., 275 Or App 121 (2015)**

Facts:

This dependency proceeding involved four children who live in Oregon. Father lived in Mexico. DHS sent a summons to father in Mexico in August, 2012 through a delivery service that required his signature. Subsequently, father appeared in the proceeding multiple times, personally by telephone and through counsel. He participated in a range of hearings, and affirmatively invoked the assistance of the court by requesting continuances and disclosure of protected information about his children.

More than two years after service, father moved to dismiss for lack of personal jurisdiction based on defective service. The juvenile court denied father's motion.

**Held:**

Affirmed.

The Hague Service Convention requires that the service of civil complaints, including juvenile dependency petitions, be made through the Mexican Central Authority. The method of service used in this case did not comply with the Convention. However, under Oregon law, a party claiming that a court lacks personal jurisdiction because of a defect in service must raise that issue at the earliest possible occasion. If a party appears and requests relief that could only be granted if the court had jurisdiction, and fails to promptly raise any issues about defects in service or lack of personal jurisdiction, then the party waives the ability to raise those issues. Citing ORS 419B.836 in a footnote, the court noted that language in the juvenile code indicates that the legislature generally intended that defects in service not obstruct the exercise of jurisdiction, unless due process requires otherwise.

**Termination of Parental Rights**

**Dept. of Human Services v. K.M.J, 276 Or App 823 (2016)**

Facts:

The state filed petitions to terminate mother’s parental rights to C and S. Mother was served with a summons directing her to file a written answer to the petition no later than 30 days after the date of service to admit or deny the allegations in the petition. The summons also stated that if she failed to file a written answer or appear at any subsequent hearing, the court may, without further notice, terminate her parental rights. Mother filed a written answer denying the allegations in the petition. The court issued a notice of termination trial for March 6 and 7, 2014. In February, 2014, mother wrote letters to her attorney, DHS and the court, indicating she was aware of the trial dates, but that she lacked transportation to the hearing in Oregon and had no telephone. Mother did not appear on March 6, 2014, however, her attorney was present. The court asked mother’s counsel if there was any reason the court shouldn’t proceed with the trial. Counsel replied no.
The court allowed DHS to present evidence and testimony in mother’s absence, including testimony that mother had a mental illness and borderline IQ functioning. The court found mother had adequate notice, relying on the attorney’s statement that his office sent notice to mother's address, on the caseworker’s testimony that she had recently spoken with mother and she was aware of the trial date, and on mother’s letter that indicated she knew of the trial date. The court terminated mother’s rights.

Mother appealed, arguing the court did not give her the notice required by ORS 419B.820 and therefore lacked the authority to terminate her rights.

**Held:**

Reversed.

ORS 419B.819(7) authorizes the juvenile court to terminate a parent’s parental rights when a parent fails to appear at a hearing related to the petition after being served with a summons and a true copy of the petition under ORS 419B.819(1) and (2). When a summons requires the parent to file a written answer under ORS 419B.819(2)(c) and the parent files an answer contesting the petition, the court is required to provide an additional oral or written order providing the parent with notice of the items in ORS 419B.820(1) through (5). The court found it was plain error to terminate mother’s parental rights in her absence, prior to providing the requisite notice set forth in ORS 419B.820. Even though mother had actual knowledge of the trial date, the appellate court found that the notice provided in the summons more than a year prior to the trial date was insufficient to ensure that mother knew the consequences of her failure to appear.

► **Dept. of Human Services v. T. M. B., 276 Or App 641 (2016).**

**Facts:**

DHS filed petitions to terminate mother's parental rights to children A and B. DHS served mother with the petition and summons, which provided the juvenile court could terminate mother's parental rights in her absence and without further notice if she failed to appear at subsequent proceedings based on ORS 419B.819(7) and ORS 419B.819(4)(b). The juvenile court provided mother with written and verbal notice of the trial date of March 31, 2015 at 9:00 a.m. Mother failed to appear at that time. The juvenile court postponed the proceedings for two hours in case mother was late or lost while Mother's attorney's office tried to contact her by phone and e-mail. When the juvenile court reconvened two hours later, mother's attorney reported that mother e-mailed him at 12:34 a.m. that day, stating she had arrived in Portland, and would be coming in to meet the attorney in his office that morning before trial. The juvenile court proceeded to trial in mother's absence and terminated mother's parental rights to both children. Later that day, mother's attorney moved the juvenile court to set aside the termination judgments asserting mother's failure to appear was due to good cause because she mistakenly believed that the trial began on April 1 rather than March 31. The juvenile court denied the motions, noting that mother had been provided notice, many email attempts were made to contact her and she failed to appear.
In the termination judgments, the juvenile court set out written findings stating that mother sent an email to her attorney at 12:30 a.m. on March 31st, indicating that she had arrived in Portland and that she would see him that morning in his office. She later failed to show up.

Mother appealed, arguing her nonappearance was due to excusable neglect and that the juvenile court abused its discretion by denying the motions.

Held:

Affirmed.

ORS 419B.923(1)(b) authorizes a juvenile court to set aside termination judgments in cases of excusable neglect, and requires the court to engage in a two step process: (1) a party must establish that the party's nonappearance was the result of excusable neglect; and (2) if the party makes that predicate showing, the juvenile court retains some range of discretion to determine whether, in the totality of the circumstances, to allow the motion. In accordance with the legislative history, the court has interpreted excusable neglect to encompass a parent's reasonable, good faith mistake as to the time or place of a dependency proceeding. This includes a good faith mistake as to the time of the hearing, even if it is careless.

In this case, the record allows the inference that mother provided contradictory information regarding her nonappearance. Mother's explanation for her failure to appear was controverted by her own earlier statement that she would be coming to her attorney's office to meet him before trial on March 31. As a matter of law, the record did not establish that mother made a good faith mistake regarding her court date.


Facts:

Mother's termination of parental rights trial began on December 17, 2014. On the second day, her attorney requested a continuance "at least for the day" to allow mother to seek medical attention after suffering an assault from her husband and his girlfriend. The juvenile court agreed to continue the trial until the afternoon to allow mother time to go to the hospital. Her attorney requested a second continuance in the afternoon, since mother was still at the hospital waiting to be evaluated. The juvenile court allowed this and scheduled a status conference for December 29, explaining it was to make sure everyone is on the same page about how the case is reset, and whether it would be set at the same time as another dependency case involving one of mother's children. The court also stated that if mother was unable to make it for health reasons, that would be the only excuse the court was willing to accept. Mother's caseworker informed mother of the status conference. Mother's attorney appeared at the status conference, but mother failed to appear. DHS moved for an order of default. The court noted DHS was within its rights to ask for a default but there was insufficient time to hear DHS's *prima facie* case. A subsequent hearing was scheduled for December 31. Again, mother's attorney appeared and mother did not. The court found that mother's failure to appear on both dates constituted a default, and signed an order of default. The court proceeded to hear DHS's *prima facie* case and entered a judgment terminating mother's parental rights to Z.
Mother appealed, arguing the juvenile court erred in finding she was in default, because she was not required to attend the December 29 status conference.

Held:

Reversed and remanded.

On appeal, the court considered whether the juvenile court's actions were authorized by ORS 419B.819(7), which allows the court to terminate a parent's rights if he or she fails to appear as directed by the summons or court order for any hearing related to the termination petition. The court noted that ORS 419B.819(8) requires the parent to appear personally, and not through counsel, when the summons requires the parent to appear personally, or if a court orders the parent to appear personally at a hearing in the manner provided in ORS 419B.820. In this case, DHS conceded the court had not made such an order for the hearing on December 29, so a default was not appropriate. Since mother did not have actual notice of the hearing date on December 31, there was no basis for finding her in default on that date.

**Dept. of Human Services v. E.N., 273 Or App 134 (2015)**

Facts:

This case involves an appeal from a judgment denying DHS's petition to terminate mother's parental rights to A based on ORS 419B.504 (unfitness). The juvenile court found DHS failed to meet its burden of proof that mother's conduct and conditions were seriously detrimental to A at the time of the termination hearing because lack of specific cognizable mental or physical harm to A. At the time of trial, A was doing well in foster care, however, there was testimony from a child psychologist that she was not bonded with mother, and that her window for establishing a bond with a new caregiver was closing.

A and DHS appealed.

Held:

Reversed.

The general test for termination of parental rights based on unfitness is: (1) the parent has engaged in conduct or is characterized by a condition that is seriously detrimental to the child; (2) integration of the child into the parent's care is improbable within a reasonable time due to conduct or conditions not likely to change; and (3) termination is in the best interests of the child.

On de novo review, the court considered testimony from A's caseworker and foster parent that A needs a stable, calm, child focused primary caregiver in order to avoid risk of emotional and behavioral regulation issues, attachment difficulties and mental health issues. That testimony, combined with evidence that mother still had problems with drug use, mental health, failed to have a thought out plan for reunification, had an inability to commit to a long-term adjustment of her circumstances through participation in services, and her stop-and-start treatment behavior, established she would provide A with instability and exposure to a chaotic lifestyle. *The court found potential harm to the child can be sufficient, and the child's wellness at the time of trial*
does not preclude a determination of serious detriment. In sum, the court found there was clear and convincing evidence that mother's conduct and conditions would be seriously detrimental to A.

With respect to the second prong of the test, the court found the evidence established the window for A to form a new primary attachment was closing. Although mother had made recent progress in DBT, her 3 1/2 year history of starting and stopping treatment, continued resistance to long term change, and unwillingness to work with DHS to identify and access services made it improbable that A could be integrated into mother's care within a reasonable time.

Finally, considering the history and circumstances set forth in the opinion, the court found termination of mother's rights was in A's best interests.
July 2016 to January 2017

Juvenile Delinquency


Youth was found to be under the court's jurisdiction based on an act that, if he were an adult, would constitute sexual abuse in the first degree, and was committed to OYA custody. The court ordered youth be placed in a program other than a youth correctional facility and that he complete sex offender treatment. Youth had a series of three out-of-home placements, and was removed from each based on allegations that he engaged in sexual conduct with other youth, and that he failed to complete treatment. Subsequently, after considering and rejecting youth's proposal to live with his grandmother, OYA placed youth in a correctional facility and planned to place him in a residential treatment program in Portland. Youth requested a review hearing pursuant to ORS 419C.626.

At the hearing, youth called his grandmother as a witness, who testified she would provide full time supervision and would transport the youth to treatment appointments. The court also heard testimony from a sex offender therapist and juvenile department program manager that the youth may not have access to treatment in the community where his grandmother lives. After the hearing, the court issued a written order approving the OYA placement, and including findings of fact required under ORS 419C.626(3). The youth challenged the sufficiency of the court's findings under ORS 419C.626(3)(a), arguing the findings did not specify "why" continued out-of-home placement is "necessary," as opposed to another placement.

Held:

Affirmed.

The trial court's findings satisfied the specificity requirement of ORS 419C.626(3)(a). The trial court found that placing youth in an at-home placement would be a risk to community safety, that youth would not be appropriate for community supervision through the local probation department, and that youth would not be able to access the sex offender treatment that he was required to complete in his proposed community placement. Those findings demonstrated that the trial court met its obligation under ORS 419C.626(3)(a) to state "why" it ordered that youth continue in the out-of-home placement and that the placement was "necessary."


After a hearing, the juvenile court found youth to be within its jurisdiction under ORS 419C.005 for committing acts that, if committed by an adult, would constitute unlawful possession of marijuana, unlawful delivery of marijuana, and four counts of identity theft. Pursuant to ORS 419C.615, youth petitioned the juvenile court to set aside the judgment finding him within its jurisdiction. Youth contended that he was denied his constitutional right to adequate assistance of counsel in the underlying juvenile delinquency proceeding because his attorney had failed to
conduct an adequate and effective investigation into the facts and circumstances of his case. Specifically, youth asserted that the attorney was inadequate for failure to conduct a polygraph of youth, hire a handwriting expert to identify writing on a birth certificate relating to the identity theft charge, interview and call witnesses, and request the disclosure of exculpatory evidence from the deputy district attorney. The juvenile court denied youth's amended petition to set aside the judgment. Youth appealed, contending the court erred in determining he had not been denied adequate assistance of counsel, and that the deficient performance found by the court to have occurred was not prejudicial to youth.

Held:

Affirmed. In order to prevail on his claim regarding inadequacy of counsel, youth had to prove that his counsel failed to exercise reasonable professional skill and judgment and that youth suffered prejudice as a result. The reasonableness of counsel's performance is evaluated from counsel's perspective at the time of the alleged error and in light of all of the circumstances. Prejudice is established by showing that counsel's advice, acts or omissions had a tendency to affect the result of the prosecution. In this case, the juvenile court did not err in denying youth's amended petition because youth's attorney's actions in representing youth were individually either constitutionally adequate or not prejudicial to youth's defense.

Juvenile Dependency

Child Abuse Assessment Dispositions and Foster Home Certification


The Department of Human Services (DHS) appeals a permanency judgment, challenging provisions in the judgment that ordered DHS to reverse a "founded disposition" for child abuse and reinstate the foster home certification of child's former foster parents. Foster parents cared for child for almost two years--from the time the juvenile court took jurisdiction over child when she was eight months old until January 2015. In January 2015, DHS removed child from foster parents' home after foster father was reported for slapping his six-year-old daughter in the face. DHS performed a child abuse assessment under its administrative rules which resulted in a "founded disposition" for child abuse. DHS informed foster parents that their foster home certification was likely to be terminated, and they voluntarily withdrew their certification. DHS further decided that it was not in child's best interests to pursue adoption by foster parents. In a subsequent permanency judgment, the juvenile court concluded that DHS had incorrectly coded its child abuse assessment as "founded" and ordered DHS to reverse the "founded disposition" and reinstate foster parents' certification.

Held:

The disposition of a child abuse assessment and the process for foster home certifications are administrative actions subject to review under Oregon's Administrative Procedures Act (APA). When the APA provides for review of an agency action, the APA is the exclusive means of reviewing the validity of that action. Because neither foster parents nor any other party sought
review of DHS's administrative actions under the APA, it follows that, in a separate juvenile dependency proceeding, those administrative decisions were not before the juvenile court, and the court erred by ordering DHS to undo those actions in a permanency judgment. Portion of permanency judgment ordering the Department of Human Services to undo founded disposition and restore foster parents' certification reversed; otherwise affirmed.

**ICWA**

► **Dept. of Human Services v. J.C.S.,** 282 Or App 624 (2016)

The juvenile court asserted jurisdiction over S in July, 2015. Shortly thereafter, DHS filed a new dependency petition. In April 2016, the court asserted jurisdiction over S based on the new allegation. Father appealed the 2016 judgment, arguing the court erred by asserting jurisdiction over S without expert testimony that custody of S by father was likely to result in serious emotional or physical damage, as required by the Indian Child Welfare Act (ICWA).

**Held:**

Affirmed. The 2016 jurisdictional proceeding was not a "foster care placement" within the meaning of ICWA because S had already been removed in the earlier proceeding. The court found the "significant shift in legal rights" that occurs when the court first takes jurisdiction was not present in this case. Therefore, it was not error for the court to establish jurisdiction without expert testimony.

**Inadequate Assistance of Counsel**


Mother failed to appear at a termination trial and appealed from the judgment terminating her rights, arguing that her attorney failed to mount a defense on her behalf, which rendered his assistance inadequate. On appeal, the court held that because mother did not appear at the trial, ORS 419B.815(8)* prohibited her attorney from participating in the trial on her behalf. Because he was statutorily prohibited from presenting a defense at the trial, he was not inadequate for failing to do so. The court noted that if mother had a reasonable excuse for failing to appear and her attorney failed to request a continuance, that would present a different question.

*The correct cite for TPR cases is actually ORS 419B.819(8).

► **Dept. of Human Services v. M.U.L.,** 281 Or App 120 (2016)

**Facts:**

This case was back before the Court of Appeals after the Supreme Court vacated the Court of Appeals' earlier decision in **Dept. of Human Services v. M.U.L.,** 270 Or App 343 (2015)(M.U.L. I) vac'd and rem'd, 359 Or 777 (2016) and ordered reconsideration in light of **Dept. of Human Services v. T.L.,** 358 OR 679 (2016). In MUL I, the Court of Appeals affirmed the trial court's judgment terminating mother's rights, and declined to consider mother's claim that she received
inadequate assistance of counsel, reasoning that the claim was unpreserved and could not be raised for the first time on appeal.

Mother's inadequate-assistance claim relates to the appointment of a guardian ad litem (GAL) for mother in her termination case. After the TPR petition was filed, the circuit court found mother was unfit to proceed in her criminal cases and ordered her committed to the Oregon State Hospital (OSH). She was diagnosed with schizophrenia and prescribed antipsychotic and mood-stabilizing medications. Two months later, mother had stabilized to the point that she was able to hold conversations. The juvenile court held a hearing on whether to continue the GAL appointment. DHS requested the appointment continue, and mother's attorney did not object. The juvenile court ruled the GAL appointment would continue. The trial was held two months later. Mother's treating psychiatrist and an OSH nurse testified that they had determined mother was able to aid and assist her attorney and had discharged her three days earlier. A DHS caseworker also acknowledged mother was "stable". Mother testified at the trial and appeared to understand the questions she was asked. Neither mother nor her attorney raised an objection to the continuing appointment of the GAL during the TPR trial. Mother's parental rights were terminated.

Held:

Vacated and remanded.

Mother argued the juvenile court erred in continuing the GAL appointment after OSH staff determined that mother was competent to aid and assist in her criminal proceedings. In M.U.L. I, the Court of Appeals rejected that argument, because mother's challenge was not preserved and no error was plain. The court found the relevant statute, ORS 419B.237(2) did not create any sua sponte obligation for the juvenile court to determine whether the GAL appointment should be terminated.

Mother also argued that her counsel was constitutionally inadequate for failing to seek removal of the GAL. A parent asserting inadequacy of counsel has the burden of proving both that counsel was inadequate and that the inadequate representation prejudiced the parent. In termination cases, the standard by which counsel's performance is measured is whether a termination proceeding was fundamentally fair, as that term has been used in federal due process cases. The essence of fundamental fairness is the opportunity to be heard at a meaningful time and in a meaningful manner. In support of her claim that counsel was inadequate, mother cited two statutes: (1) ORS 419B.245(5) (the parent's attorney shall inquire at every critical stage in the proceeding as to whether the parent's competence has changed and, if appropriate, shall request removal of the guardian ad litem), and (2) ORS 419B.237(2)(a) (the juvenile court shall remove the GAL upon request by the parent or the parent's attorney if the court determines the parent no longer lacks substantial capacity either to understand the nature and consequences of the proceeding or to give direction and assistance to the parent's attorney).

The Court of Appeals agreed with mother's statutory analysis that if mother's attorney had made the request to remove the GAL, the juvenile court would have been required to remove the GAL because the court lacks discretion under ORS 419B.237(2)(a) to continue the GAL appointment if the parent no longer lacks substantial capacity. The court reasoned that if mother's attorney
should have, in the reasonable exercise of professional skill and judgment, requested removal of the GAL, and if the failure to do so led to the continuation of the GAL against mother's wishes, then that failure has implications for the fundamental fairness of the termination proceeding. It could have impaired mother's ability to meaningfully defend against the termination petition.

The Court of Appeals held mother raised a colorable claim that her counsel was inadequate, but the existing record did not contain sufficient information for the Court of Appeals to resolve the merits of the claim. The case was remanded to the juvenile court for an evidentiary hearing pursuant to ORS 419B.923.

**Jurisdiction**

**Appearance through Counsel**


**Facts:**

DHS served mother and father with a summons and a petition to establish juvenile court jurisdiction. The summons directed each parent to appear in person before the court on January 22, 2105 at 2:30 p.m. to admit or deny the allegations in the petition and at any subsequent court-ordered hearing. The summons instructed, "You must appear personally.. an attorney may not attend the hearing in your place. If you do not appear at the hearing... or at any subsequent court-ordered hearing, the Court may proceed in your absence, without further notice to you..."

The parents personally appeared as directed on the summons. At a subsequent hearing in September, the juvenile court issued an order that directed parents to appear again in person on December 3, 2015, and December 7 through 9, 2015 for a prospective trial. The order stated, "The parent shall appear in person at the call proceeding. The parent's attorney may not attend the call hearing in place of the parent. If the parent fails to appear in person at call, the court, without further notice and in the parent's absence, may immediately make the child(ren) ward(s) of the court." The order repeated the warning for the trial appearance.

Parents failed to appear on December 3. DHS proceeded to present a prima facie case before a juvenile court referee. Based on the testimony of two witnesses, the referee found all of the allegations proven. Through counsel, mother requested a rehearing. The court conducted a rehearing on December 17, 2015, however, the parents failed to appear again. DHS presented its prima facie case, and the court allowed the attorneys for mother and father to make evidentiary objections. The court concluded the state had proven the allegations in the petition. Parents appealed. DHS argued that by failing to appear at the hearing, parents waived their ability to appeal.

**Held:**

Affirmed.

ORS 19.245(2) provides that a party to a judgment given for want of an answer may not appeal from the judgment. The court noted this provision applies to juvenile cases. However, in this
case, ORS 19.245(2) does not preclude the appeal, because the parents had responded to their summons in the manner it directed - by personal appearance at the initial hearing at which they contested the allegations. After they had answered, they failed to appear at a subsequent hearing date.

Parents argued that they should have been allowed to participate in the hearing through their attorneys. The court examined the text and legislative history of ORS 419B.815(8), which requires a parent to appear personally and states that the parent may not appear through his or her attorney. The court concluded that after a parent has initially answered the petition and summons, and the court has ordered the parent to appear at subsequent proceedings, a parent who later violates the court's order to appear personally may be found to be in "default" under the provisions of ORS 419B.816(7). When a parent is ordered by the court to appear in person, ORS 419B.815(8) does not permit a parent to appear through counsel. The court went on to explain that although a parent's attorney may appear when the parent is absent, the attorney may not make evidentiary objections. The court noted, however, that an attorney may appear to explain a parent's reason for not being present, and may make a motion to continue the hearing. In addition, ORS 419B.923 provides a parent the right to move to set aside a judgment on grounds such as excusable neglect.

Conditions and Circumstances: 419B.100(1)(c)

► Dept. of Human Services v. K.C., 282 Or App 448 (2016)

Parents had two children, G and K. At the time of K's birth, G was already in foster care, and DHS had received information that the parents' conditions had not been ameliorated. Based on this, two caseworkers went to the hospital and informed the parents that K was going to be taken into protective custody. The parents informed the caseworkers that they had relinquished their parental rights to grandfather. However, the caseworkers continued to have concerns that mother, who was living in grandfather's home, would still be parenting on her own and could take K whenever she wanted. Grandfather was also not certified as a placement resource.

In December, 2015, the court asserted temporary jurisdiction over K after a shelter hearing. In April 2016, at the jurisdictional hearing, DHS asked the court to take judicial notice of the shelter hearing as well other hearings and "updates" that had taken place in G's case. During the hearing, the court heard testimony from Dr. Sweet, a psychologist, that the parents had significant mental health issues that impaired their ability to parent. Several DHS witnesses also testified that the parents, although minimally engaged, functioned adequately during visits and had made some progress, although not enough to eliminate their safety concerns. The DHS certifier testified that grandfather's request for certification was denied because, among other things, mother was living in the home. No additional testimony was presented as to grandfather's fitness to care for the child.

The juvenile court took jurisdiction over K based on the testimony presented, and based on testimony at previous hearings (acknowledging that circumstances may have changed), that grandfather might be likely to leave the child unattended with the mom. Parents appealed, arguing that DHS failed to establish that K would have been at risk of harm if grandfather was entrusted with his care.
In order to establish jurisdiction over a child, DHS must present evidence that the child's current circumstances pose the requisite nonspeculative risk to the child, absent juvenile court jurisdiction. The parents are not required to be able to parent independently. If DHS seeks to establish jurisdiction based on the parents' inability to parent independently, DHS must prove the parents will actually be parenting on their own, or that the parents' deficits pose a current risk of harm to the child under the child's actual circumstances.

DHS presented insufficient evidence regarding the parents' circumstances at the time of the hearing necessary to establish or infer that K faced a current risk of harm. Although evidence was presented about mother's mental health issues and father's substance abuse, there was insufficient evidence in the record to indicate the extent to which those problems posed a risk to K at the time of the jurisdictional hearing. In addition, DHS did not present evidence about how the parents' deficits would pose a risk to K under K's circumstances, in the grandfather's home. DHS's concern that grandfather would not put in place necessary limitations on the parents was not supported by any evidence in the record. There was also no evidence to support DHS's concern that grandfather did not understand the severity of mother's illness or that he was likely to leave K with mother unattended. Finally, there was no evidence to infer that the parents were reasonably likely to remove K from grandfather's care.

**Dept. of Human Services v. K.C.F., 282 Or App 12 (2016)**

DHS filed a dependency petition in November, 2014 alleging that the children were at risk of harm because father exposed them to domestic violence, and that father's substance abuse and mental health condition interfere with his ability to safely parent. It also alleged mother needed the assistance of the court and DHS to protect herself and the children from the violence and control of father and that she lacked legal custody to protect the children. After the petition was filed, mother reported to DHS that father was remorseful, that he had quit drinking and smoking marijuana, moved out of the house, and promised he would never threaten mother again. However, he continued to monitor the home with security cameras. She subsequently reported to DHS father had gone back on his promise not to be cruel and manipulate. Four days later she expressed concern to the caseworker that the forced separation was harming the family and she urged a prompt resolution. DHS filed an amended petition, adding an allegation that mother fails to understand the emotional damage and safety risk posed by father, and failed to take protective action.

At the jurisdictional hearing, a caseworker testified that the allegation of domestic violence was based on father's threats of violence and the impact of father's behavior on the children's emotional well-being. DHS conceded that there was no physical abuse, but nevertheless, that father's behavior constituted domestic abuse that was harmful to the children. Father testified that since the filing of the petition, he had not consumed alcohol or marijuana, had regularly been attending substance abuse counseling, has submitted to weekly Urinalysis, and had been sober for 65 days and had abstained from marijuana for 75 days. He testified that the statements he made to mother about suicide and homicide were stupid, and that he didn't intend those
statements as actual threats and did not believe that mother took them seriously. He said he was not suicidal and would not hurt himself, mother or the children. Mother confirmed father's statements. A testified that she had once heard father threaten suicide but had not heard him threaten homicide and she did not believe father would commit suicide or harm mother or herself.

The juvenile court concluded DHS had met its burden of proof. The court expressed about father's need to control mother, citing an incident eight or nine years earlier where father pinned mother down in bed, father's threats of physical harm, and an incident where he threw water in mother's face. In relation to the mental health allegation, the court found father's conduct (anger and need for control) demonstrated there was an underlying problem. Finally, the court found that father's abstention from marijuana and alcohol was relatively brief. As to mother, the court found she was in denial and lacked appreciation for the risk of harm posed by father to the children. Finally, the court noted that although A seemed to be close to the parents, she was sufficiently concerned that she developed a "safety plan" and had sought out community resources in the event she needed to leave home because of parental conflict.

 Held:

Reversed.

To establish jurisdiction under ORS 419B.100(1)(c), the state must prove that a child's welfare is endangered because, under the totality of the circumstances, there is a current threat of serious loss or injury that is likely to be realized. There must be a nexus between the parent's conduct or condition and harm to the child. A current threat of harm cannot be found based on speculation that conditions or circumstances persist at the time of the hearing. There must be evidence that such threats in fact persist.

Domestic violence between parents poses a threat to children when it creates a harmful environment for the children and the offending parent has not participated in remedial services or changed his or her threatening behavior. The court found the evidence in the record was insufficient to support the court's finding of a risk of serious harm to the children. Although there was evidence that father was emotionally abusive to mother and that the parents' conflict affected the children, there was no evidence of a present risk of serious harm that was likely to occur.

► Dept. of Human Services v. P.R.H., 282 Or App 201 (2016)

Father appealed a judgment asserting jurisdiction over his daughter, arguing that DHS failed to prove by clear and convincing evidence under the Indian Child Welfare Act, that any risk of harm to the child was current at the time of the jurisdictional hearing. The juvenile court concluded that DHS failed to prove an allegation against mother related to a serious nonaccidental injury while in father's care, but took jurisdiction based on evidence of parents' past involvement in the production or manufacture of byproducts of marijuana. On appeal, DHS conceded the record was insufficient to prove that, at the time of the hearing, parents' past involvement in the production or manufacture of byproducts of marijuana created a current risk
of harm to the child's welfare. The Court of Appeals agreed and reversed the jurisdictional judgment.

ICPC

► Dept. of Human Services v. Z.E.W., 281 Or App 394 (2016)

Facts:

The juvenile court asserted jurisdiction over the children based on allegations that mother, who had physical custody of the children in Oregon, had substance abuse and mental health issues that threatened the children's welfare and that father, who lived out of state, did not have legal custody of the children and had not taken steps to obtain it. A year later, father moved to dismiss jurisdiction, asserting that the adjudicated bases for jurisdiction did not provide grounds for continuing jurisdiction. The juvenile court denied the motion in part because Arizona had declined to approve father as a placement for the children through the Interstate Compact for the Placement of Children (ICPC). Father appealed, arguing that his lack of a custody order did not expose the children to a particularized and nonspeculative risk of serious loss or injury. DHS conceded the juvenile court erred, and the Court of Appeals agreed, reversing the permanency judgments denying father's motion to dismiss. While the appeal was pending, the juvenile court held a hearing on amended petitions alleging that Arizona had again declined to approve father as a placement through ICPC. The juvenile court rejected father's argument that ICPC doesn't apply until jurisdiction is established, or in this case, unless the state has proven that the grounds that brought the children within the court's jurisdiction continue to exist, and entered jurisdictional judgments based in part on the lack of ICPC approval. Father appealed.

Held:

Reversed and remanded.

The court held that father's lack of ICPC approval does not, in itself, provide a basis for asserting jurisdiction over the children. The court cited to ORS 419B.334 that allows the court to place the ward in protective supervision out of state, if there is an interstate compact or agreement or an informal arrangement with another state permitting the ward to reside in another state. The court found DHS failed to present legally sufficient evidence to establish that the children were endangered by their conditions and circumstances.

Missing Parent - FTA

► Dept. of Human Services v. C.M.R, 281 Or App 886 (2016)

The juvenile court entered a jurisdictional judgment following a hearing at which mother was not present and had not been served with the petition and summons. On appeal, mother asserted that the juvenile court erred in proceeding with the hearing in her absence under ORS 419B.914, which allows the court to proceed with the case without service if diligent efforts have failed to reveal the identity or whereabouts of the person. DHS conceded that it failed to satisfy the
requirements of ORS 419B.914, and therefore, the court erred. The Court of Appeals agreed and reversed the jurisdictional judgment.

Multiple Petitions

 ► Dept of Human Services v. B.P., 281 Or App 218 (2016)

Facts:

In March 2014, DHS removed M from father and disallowed contact between father and M based on allegations of sexual abuse, drug abuse and neglect. Mother admitted to petition allegations related to mental health. The court held a jurisdictional hearing as to father in October 2014, and found DHS failed to prove the petition allegations. However, at the conclusion of the hearing and upon consent of both parties, the court amended the petition and asserted jurisdiction over M based on findings that father was neglectful by not enrolling the child in school for three months and by regularly failing to bring the child to school on time; the child's educational and social needs were not being met and the child suffered harm by falling behind and needing to repeat her kindergarten year in school. Father appealed the judgment, arguing the court's findings that father neglected M's educational and grooming needs and allowed M to have contact with her mother despite a contrary visitation order were insufficient to support jurisdiction. While the appeal was pending, the court changed the permanency plan to adoption in May 2015. In June, DHS filed a petition to terminate father's parental rights. In October, 2015, after a hearing on the 2015 petition, the juvenile court asserted jurisdiction over M on several grounds: (1) M's PTSD and other emotional, psychological and behavioral problems, and father's unwillingness to meet those special needs; (2) father's failure to visit M, and (3) father's failure to participate in court-ordered therapeutic services. In November, 2015, the juvenile court conducted a permanency hearing and continued the permanency plan of adoption from the May, 2015 permanency judgment. On the same day, DHS amended the petition to terminate father's parental rights to include the findings of both jurisdictional judgments. Father failed to appear at the TPR trial in December, and the juvenile court, after receiving evidence from DHS, terminated father's parental rights. Father appealed both the 2015 jurisdictional judgment and the TPR judgment.

On March 16, 2016, the Court of Appeals reversed the 2014 jurisdictional judgment, accepting DHS's and M's concessions that the allegations found to be proved by the juvenile court were insufficient to support jurisdiction.

Held:

Affirmed.

2015 Jurisdictional Judgment. The reversal of the 2014 judgment did not render the 2015 judgment invalid as a matter of law, and the juvenile court did not err in asserting jurisdiction over M based on the 2015 petition. The court found the issues that were adjudicated in the 2015 petition were distinct from those adjudicated in 2014. The court rejected father's argument that the juvenile court committed plain err by failing to consider mother's fitness to parent in making
the 2015 jurisdictional determination. At the time of the 2015 jurisdictional hearing, the 2014 jurisdictional judgment was still valid. The juvenile court took judicial notice of the 2014 case file, which included admissions by mother of her inability to parent M. Father did not object to consideration of the 2014 file, acknowledged it contained mother's admission, and presented no evidence to challenge mother's admission. The court found the record did not plainly demonstrate that the juvenile court did not consider mother's previous admission when it asserted jurisdiction over M.

TPR Judgment. Father argued the juvenile court lacked authority to terminate father's parental rights because the termination petition was predicated on the reversed 2014 jurisdictional judgment and the May 2015, permanency judgment (which was also based on the 2014 jurisdictional judgment). The court found the allegations in the TPR petition were based on both the 2014 and 2015 jurisdictional judgments, the majority of which were related to findings the court made during the 2015 dependency proceeding. In addition, the May 2015 permanency judgment that changed M's plan to adoption after the 2014 jurisdictional judgment was continued in a separate order after the 2015 jurisdictional judgment. The court held father’s argument did not provide a basis for the court to reverse the TPR judgment on appeal.

UCCJEA

► Dept. of Human Services v. R.M.S., 280 Or App 807 (2016)

Facts:

Prior to the jurisdictional hearing, mother moved to dismiss DHS's petition, arguing that Oregon lacked jurisdiction under the UCCJEA because she and N had resided in the state of Washington for the entirety of N's life. DHS argued that mother had been effectively living in Oregon since 2014, but had been maintaining an address in Washington to prevent child welfare authorities and father's parole officer from discovering that the family was living together in Oregon. The juvenile court denied mother's motion to dismiss, finding that the evidence that the child was spending a substantial amount of time in Washington County was sufficient for purposes of determining that venue was appropriate under ORS 419B.118(1).

Mother appealed, and challenged the court's determination that Oregon has jurisdiction to make mother's child a ward of the court.

Held:

Vacated and remanded.

The juvenile court failed to apply the UCCJEA criteria in resolving mother's jurisdictional challenge and, instead, applied the analysis applicable to determining venue. The UCCJEA sets forth the rules for determining jurisdiction in custody cases involving multiple jurisdictions, and applies to dependency proceedings in Oregon. ORS 419B.803(2).

**Facts:**

A 17 year old child petitioned the juvenile court to take dependency jurisdiction over him so he could qualify for federal special immigrant status. Petitioner was born in El Salvador, where he lived with his father until he fled in 2013. Father would hit petitioner with a belt, cord or rope, sometimes daily. Petitioner was also being pressured to be in gangs that were threatening to kill him if he didn't do bad things to people. His mother was deceased. At the time he filed the petition, he was in the custody of the federal Office of Refugee Resettlement.

The juvenile court held a preliminary hearing to determine if the court had jurisdiction under the UCCJEA, and concluded it had temporary emergency jurisdiction under ORS 109.751(1). At the jurisdictional hearing, father failed to appear after receiving proper notice. Petitioner testified and presented an investigator's report that included confirmation from petitioner's sister of the abuse. The state argued petitioner had not met his burden to prove a risk of harm from father's abuse. The juvenile court found petitioner had proven the following allegations: the child's mother is deceased; the child's father repeatedly physically abused the child until he fled; the child ran away from father's home; the child has been threatened with physical harm by criminal gangs in El Salvador and is at risk of harm if he returns to El Salvador; the child has no legal guardian in the U.S.; the child is in the physical custody of ORR which has been unable to identify any relatives with whom the child could live. However, the juvenile court dismissed the petition. Subsequently, petitioner turned 18 years of age and filed a timely appeal.

**Held:**

Motion to dismiss denied. Reversed and remanded.

1. **Motion to dismiss.**

The state argued the petitioner's appeal was moot because petitioner had turned 18 years old, and the juvenile court can take dependency jurisdiction only over a child who is under 18. The court held that a juvenile court's exclusive jurisdiction over a dependency case involving a person who is under 18 years of age attaches at the initiation of proceedings and is not lost merely because the child turns 18 before wardship is established.

2. **UCCJEA emergency jurisdiction.**

The court considered the question of whether a court can exercise temporary emergency jurisdiction under ORS 109.751(1) when it is unknown when a child might be returned to the abusive parent, but the return could occur at any time. The court concluded that the juvenile court properly exercised its temporary emergency jurisdiction because it was undisputed that petitioner was at risk of abuse if he were returned to his father in El Salvador, and that return could happen at any time.
3. Dependency jurisdiction.

Under ORS 419B.100(1)(c), the key inquiry is whether, under the totality of the circumstances, there is a reasonable likelihood of harm to the welfare of the child. The court held the findings made by the juvenile court, as well as the underlying evidence and permissible inferences drawn from that evidence, required the juvenile court to take dependency jurisdiction over petitioner.

**Motion to Dismiss**

► *Dept. of Human Services v. C.P.*, 281 Or App 10 (2016)

Facts:

The children were removed from parents' home in 2012 due to domestic violence, substance abuse, parenting deficits, father's criminal activity, and mother's mental health. At a permanency hearing in 2014, father stipulated that he would be unavailable to parent the children within a reasonable time and agreed that a change in permanency plans to something other than reunification was warranted. DHS argued the plans should be changed to adoption, while father argued the plans should be changed to a guardianship plan with grandfather as guardian. The court changed the plans to adoption after finding that guardianship was not appropriate due to grandfather's lack of a relationship with the children, his long hours spent away from home as a truck driver, and the fact that he must rely on his aged mother for a substantial part of the child care. After the change in permanency plan, father moved to dismiss jurisdiction based on grandfather's ability to care for children. Father argued that because he had executed a delegation of parental authority to grandfather, under *Dept. of Human Services v. A.L.*, 268 Or App 391 (2015), there was not a current threat of harm to the children nor any continuing basis for jurisdiction. After a hearing, the court issued an order denying father's motions. Father appealed.

Held:

Affirmed.

In *Dept. of Human Services v. T.L.*, 279 Or App 673 (2016), the court addressed whether evidence that another person is available and willing to help parents care for a child in a way that will mitigate the risks identified in the jurisdictional bases is relevant to the determination of whether dependency jurisdiction continues. The court held such evidence is governed by "principles of evidentiary relevance," and will generally be probative of whether there is a continued risk of harm posed by the jurisdictional bases. In addition, this may be raised by a parent after the plan has been changed from reunification, however, there is a presumption that the jurisdictional bases continue to make it unsafe for the child to return home, and the parents bear the burden of proof on the motion to dismiss, if the proponent of continuing jurisdiction invokes that presumption.

In this case, the parties litigated the motion to dismiss under their understanding of the law at the time of the hearing (prior to the decision in *T.L.* ) that DHS had the burden of proving by a preponderance of the evidence that the factual bases for jurisdiction persisted and continued to
posed a risk of harm that was likely to be realized. Although the burden of proof was not appropriately applied, the Court of Appeals found no error because the burden of proof was more favorable to father. Viewing the evidence in the light most favorable to the court's decision to deny father's motions to dismiss jurisdiction and terminate the wardships, the court found the record was legally sufficient to support the court's determination. The court found evidence that grandfather had difficulty setting or maintaining boundaries with the parents was particularly important given that parents' inability to safely parent the children was undisputed.

► *Dept of Human Services v. T.L.*, 279 Or App 673 (2016)

**Facts:**

Shortly after T's birth, the juvenile court made him a ward following his parents' admissions that his welfare was endangered within the meaning of ORS 419B.100(1)(c) by mother's substance abuse and mental health issues, and by father's incarceration and substance abuse. About a year later, the court changed the permanency plan from reunification to adoption. Eight months following the permanency hearing, the parents filed a motion to terminate wardship and dismiss dependency jurisdiction, arguing that the availability of an aunt to assist them in parenting T would mitigate any risk of the continuing conditions that led to the juvenile court exercising jurisdiction. The juvenile court determined the evidence about the aunt was not relevant to the legal issue presented: whether the identified bases for jurisdiction contained in the jurisdictional judgment continued. The court denied the motion and determined the original grounds for jurisdiction were still present.

Father appealed.

**Held:**

Vacated and remanded.

On a motion to dismiss dependency jurisdiction, a juvenile court must determine: (a) whether the jurisdictional bases pose a current threat of serious loss or injury to the ward, and if so, (b) whether that threat is reasonably likely to be realized. Evidence that another person is able to assist in caring for a child in a way that would mitigate the risk posed by the jurisdictional bases is probative of the second element of that inquiry, and a juvenile court errs when it excludes that evidence or otherwise fails to take it into account in assessing whether dependency jurisdiction continues.

If the permanency plan for a child is something other than reunification, there is a presumption that the child cannot safely return home. DHS may invoke this presumption, requiring a parent seeking dismissal of dependency jurisdiction to prove the jurisdictional bases no longer endanger the child. If DHS chooses to invoke this presumption, a parent moving to dismiss will be required to prove that he or she has ameliorated the jurisdictional bases to the degree that she or he no longer poses a threat to the child that is reasonably likely to be realized.

The dissent argued that after jurisdiction is established, it is too late for the parent to propose an alternative living situation that would protect the child from the risk, and that the standard for analyzing a motion to terminate wardship should be whether the adjudicated conduct persists, or
alternatively, whether that conduct has been ameliorated sufficiently that it no longer poses a risk to the child.

*Motion to Set Aside Voluntary Acknowledgment of Paternity*

**Dept. of Human Services v. A.I.W., 283 Or App 89 (2016)**

DHS petitioned the juvenile court to change the designation of paternity to the child from the man (legal father) who signed a Voluntary Acknowledgment of Paternity (VAP) at the time of A's birth to appellant, A's biological father. Under ORS 109.070(5)(f), a VAP shall be set aside if the court finds that the acknowledgment was signed because of fraud, duress or material mistake of fact, unless, giving consideration to the interests of the parties and the child, the court finds that setting aside the acknowledgment would be substantially inequitable. At the hearing, uncontested evidence established that legal father believed he might be the biological father when he signed the VAP. However, later genetic testing confirmed that the appellant is the biological father. A had been living with legal father for over a year, and at the time of the hearing, mother was living with biological father.

After the hearing, the court issued a letter opinion denying DHS's petition to change the designation of paternity. In its opinion, the court determined that legal father had signed the VAP due to a material mistake of fact, however, after giving consideration to the interests of the parties and the child, setting aside the VAP would be substantially inequitable.

A's biological father, appealed and argued that the court erred because it failed to make a record sufficient to permit review of that decision.

**Held:**

Reversed and remanded.

When a trial court exercises discretion it must describe the reasons for its decision so as to enable meaningful appellate review. On the record presented, the juvenile court's explanation was insufficient for the Court of Appeals to determine what factors the court relied on to conclude that it would be "substantially inequitable" to set aside the VAP. In this case, the juvenile court identified two factors that weighed positively for appellant - that he seemed to articulate an understanding of A's needs that exceeded that of legal father (who relied on his mother to assist him) and he has established a relationship with A, spending time camping with him. The juvenile court then observed that there were several factors about appellant that weighed against him, but did not identify specifically what those factors were.
Permanency Hearing

Compelling Reasons

► Dept. of Human Services v. S.S., 283 Or App 136 (2016)

Facts:

M was placed in non-relative foster care (with White) in October 2012, shortly after being born drug-affected. Both parents failed to complete treatment and were inconsistently attending visits when they both were arrested in April 2013, eventually leading to terms of incarceration through August 2016 (mother) and September 2020 (father). While in Coffee Creek Correctional Facility, mother consistently participated in available programs and visitation with M. Grandmother also began visits in March 2013 and developed a positive relationship with M.

In late 2013, DHS asked the court to change the permanency plan from reunification to adoption, while mother argued for a plan of guardianship - preferably with grandmother. White was also willing to be a permanent resource. In February 2014, the court changed the plan to permanent guardianship, explaining that it was not appropriate to change the plan to adoption because there was evidence that M had bonded with grandmother and White and that mother had been participating in available services and visits. In September 2014, DHS moved M to a relative placement in Kansas. The relatives limited M's communication with grandmother, mother and White, and eventually indicated they did not want to serve as a permanent resource for M. M was placed back in White's home, and regular visits with grandmother and mother resumed.

In August 2015, DHS sought to change the permanency plan to adoption. At the permanency hearing, a DHS caseworker testified that M was very bonded with White and also had bonded with grandmother. The caseworker also testified that adoption is generally preferred over guardianship because of the primary attachment needs of the child and because guardianships can be vacated (and are less permanent). The court changed the permanency plan from guardianship to adoption, finding there was no "compelling reason" under ORS 419B.498(2)(b) to preclude DHS from filing a petition to terminate parents' rights. The juvenile court relied on State ex rel Juv. Dept. v. Geist for the proposition that statute provides a presumption that adoption is in the best interests of the child. In addition, the court stated that compelling reasons would be limited to issues created by the parents and not an issue with the child. Mother, father and child appealed.

Held:

Reversed and remanded.

The court set out the general legal framework for the court's determination of the permanency plan. The juvenile dependency code requires permanency hearings to be held at regularly scheduled intervals and upon the request of a party. After a permanency hearing is held, the juvenile court is required by ORS 419B.476(5) to enter an order within 20 days, including specific findings. When the court determines the permanency plan for the child should be adoption, the court's order must include a determination of whether one of the circumstances in
ORS 419B.498(2) is applicable. ORS 419B.498(2)(b) requires DHS to file a petition to terminate parental rights if the child has been in substitute care for 15 out of the most recent 22 months unless there is a compelling reason for determining that filing the petition would not be in the best interests of the child. Compelling reasons include, but are not limited to, circumstances where another permanent plan is better suited to meet the health and safety needs of the child, including the need to preserve the child's relationships. The Court of Appeals has interpreted this language to require a "child-centered" determination based on a current evaluation of the child's circumstances.

In this case, the court held the juvenile court did not evaluate, in light of M's specific circumstances (including her bonds with mother, grandmother and White), whether the plan of guardianship would better meet her health and safety needs than would the plan of adoption. The court went on to explain that retaining a relationship between a parent or a child may or may not be a compelling reason under the statute. The juvenile court must consider the best interests of the child given the particular circumstances of that child. In a footnote the court explained that the *Geist* opinion does not obviate the need for the court to conduct the analysis required by ORS 419B.476(5) and ORS 419B.498(2), statutes that were enacted after the *Geist* opinion was issued. Finally, the court rejected father's argument that issue preclusion prevented the court from changing the plan to adoption in August 2015 after refusing to do so in February of 2014, since the juvenile code requires periodic permanency hearings during which the court is required to evaluate the appropriate permanency plan for the child.

► **Dept. of Human Services v. S.J.M., 283 Or App 367 (2017)**

**Facts:**

L came into care after his father physically abused him, and the parents lied about it. His sister, A, was born a month later, and removed as well. The juvenile court took jurisdiction based on allegations that mother and father lacked the parenting skills to safely parent, father's abuse of L and mother's failure to protect, and father suffered from a mental health condition that interfered with his ability to parent. Mother and father were ordered to obtain psychological evaluations, to participate in counseling and parenting training and to maintain safe and stable housing. Approximately 15 months later, the court held a contested permanency hearing. Evidence was presented that mother had consistently engaged in services, DHS had noticed improvements in her parenting, she was responsive to feedback, had accepted responsibility for her part in the abuse and was bonded with her child. However, additional evidence showed that mother's focus on father hindered her progress as a parent and hindered her ability to protect the children. Father also received good reports from treatment providers, however, sometimes minimized or denied the abuse. He also had trouble regulating his emotions, including in the courtroom. Finally, mother and father secretly got married without informing DHS, service providers or the court, at a time when DHS thought they were having no contact with each other. Their relationship was volatile. At the end of the hearing, the juvenile court changed the permanency plan from reunification to adoption, finding that DHS had made reasonable efforts, the parents had made insufficient progress and that there was not a compelling reason for determining that filing a petition to terminate the parents' rights would not be in the child's best interests.
Mother and father appealed, arguing they had made sufficient progress for the child to return home, ORS 419B.476(2)(a). Mother additionally argued that there were two compelling reasons—specifically, her participation in services that would make it possible for her child to return home within a reasonable amount of time and the bond that she shared with her child—for the court to forgo a change of plan, ORS 419B.498(2)(b)(A), (B).

Held:

Reversed and remanded.

Parental progress determination: The Court of Appeals held the juvenile court's finding that the parents' had made insufficient progress for the children to safely return home was supported by evidence in the record. The juvenile court's inference that father lacked the ability to regulate his emotions and temper was permissible based on father's exhibited behavior (which included outbursts in the courthouse). The juvenile court was not required to conclude father had made sufficient progress just because father had completed DHS services. Rather, ORS 419B.476(2)(a) requires the court to focus on the child's health and safety. Father's behavior, combined with evidence that father was hesitant to acknowledge his treatment of L constituted abuse provided a basis for the court to conclude that he had not ameliorated the related bases of jurisdiction. With respect to mother, the juvenile court's finding of insufficient progress was supported by evidence that she remained unable to recognize the danger that father posed to the child.

Compelling reasons: The court considered whether ORS 419B.476(5)(d) and ORS 419B.498(2)(b) require the juvenile court to determine whether there are compelling reasons not to proceed with termination before changing the plan to adoption. After considering the text, context and history of the statutory provisions, the court determined a juvenile court must make a compelling reasons determination before changing a plan from reunification to adoption. The statutory scheme requires the court to carefully evaluate DHS's decision to change a permanency plan for a child to ensure the decision is most likely to lead to a positive outcome for the child.

In this case, the juvenile court, in its narrative findings regarding mother's progress noted that "The Court finds that the child cannot be safely returned to Mother's care in a reasonable time." In addition, the juvenile court checked the appropriate boxes on the permanency judgment indicating that no compelling reasons exist. The Court of Appeals found there was insufficient evidence in the record to support these findings. For example, there was nothing to suggest that A's anticipated stay in care would be unacceptably long given her age, or her unique permanency needs. Also, there was no evidence of how long mother would have to remain in services before she could become a safe parent for A, or how such a delay would impair A's best interests. Given mother's participation and progress, there was no evidence that her continued participation would not enable her to become at least a minimally competent parent within a reasonable time given A's particular needs.
Reasonable Efforts

► Dept. of Human Services v. S.M.H., 283 Or App 295 (2017)

Facts:

Parents appealed the judgment of the juvenile court changing the permanency plans for three children from reunification to guardianship. Mother assigned error to the juvenile court's ruling that DHS made reasonable efforts to make reunification possible as required by ORS 419B.476(2)(a).

Jurisdiction as to mother was based on substance abuse, and later, her unavailability as a parenting resource due to incarceration. Initially after the first child was placed in care, DHS referred mother to drug and alcohol treatment, provided regular visits, and the caseworker had regular face to face contact with mother. However, about nine months after the initial out of home placement, mother was assigned a new caseworker, Moles, who worked only two days per week but handled a full time case load. A few months after the new caseworker was assigned, mother was incarcerated at Coffee Creek Correctional Facility. For the first eight months of mother's incarceration, despite mother's requests, DHS did not provide financial assistance for video and telephone visits between mother and the children, and for a six month period, the new caseworker documented no face-to-face contact with mother. DHS did not contact mother's prison counselor or maintain regular contact with mother until several months before the permanency hearing. Mother was incarcerated for most of the year leading up to the permanency hearing. During that time, mother maintained regular contact with her children, actively participated in programs that were available to her, and frequently tried to contact the family's caseworker.

At the permanency hearing, mother's prison counselor testified that DHS had contacted him four times inquiring about visitation and eligibility. He also reported that mother was eager and wanting to learn, and was making the best of her time in prison. She had successfully advocated for herself to gain entrance into an alternative incarceration program, parenting classes and substance abuse support groups. She was approved to enter an intensive, residential treatment program, which would allow her to be released as early as nine months after the permanency hearing.

The juvenile court adopted DHS's description of reasonable efforts provided in the uniform court report. The Court of Appeals noted that the DHS description of efforts primarily addressed those actions that were expected of the parents, and not the efforts that DHS actually made (the Court of Appeals later found that there was insufficient evidence in the record to support the DHS statement that it maintained monthly contact with the parents, as set forth in the court report). The juvenile court described DHS's efforts as follows: drug and alcohol evaluation(s), making referrals for counseling, making referrals for dealing with the parents' addiction issues, while noting that the parents had put themselves in a situation in which they ended up in custody where they can't have access to their child, and the only way services could be provided was through the Department of Corrections.
Held:

Reversed and remanded. The record contained insufficient evidence to support the trial court's conclusion that DHS made reasonable efforts.

The reasonableness of DHS's efforts depends upon the particular circumstances of each case. DHS must make reunification efforts for each parent. DHS's efforts are reasonable only if DHS has given the parents a reasonable opportunity to demonstrate their ability to adjust their conduct and become minimally adequate parents. DHS efforts are judged over the life of the case with an emphasis on the period before the hearing sufficient in length to afford a good opportunity to assess parental progress. DHS is not excused from making reasonable efforts because a parent is incarcerated.

When assessing DHS's efforts, a juvenile court properly considers the length and circumstances of a parent's incarceration and evidence specifically tied to a parent's willingness and ability to participate in services, however the focus is on DHS conduct and a parent's resistance to DHS's efforts does not categorically excuse DHS from making meaningful efforts toward that parent. The court distinguished this case from Dept. of Human Services v. S.W., 267 Or App 277 (2014), in which the juvenile court's reasonable efforts determination was affirmed despite an extended period of minimal efforts from DHS with respect to an incarcerated parent, noting that in this case, mother maintained regular contact with her children throughout to the life of the case. She also acknowledged that her drug abuse harmed and endangered her children and independently maintained close contact with her children while incarcerated, despite DHS's failure to respond to her requests for assistance. While mother was willing to engage in services after her arrest and incarceration, DHS did not meet mother's efforts in kind, instead placing responsibility for the family's case in the hands of a part-time caseworker, who by her own admission, did not timely provide services to mother due to her full-time workload at DHS.

In this case, the juvenile court lacked sufficient evidence to support a conclusion that mother would not have benefited from additional services. Mother's conduct (her willingness to engage in services and desire for contact with her children and DHS) demonstrates that additional efforts by DHS could have materially contributed to the goal of ameliorating the jurisdictional bases. In addition, the court noted there was no evidence that DHS's inaction for significant periods of time was due to a decision to cease efforts, but rather the record reflected that DHS failed to adequately engage with mother because it did not allocate sufficient resources to the family's case. Since there was insufficient evidence to support the juvenile court's determination that DHS made reasonable efforts with respect to mother, the court reversed the permanency judgments for the three children.

 Dept. of Human Services v. C.L.H., 283 Or App 313 (2017)

Facts:

Father appealed the judgment of the juvenile court changing the permanency plan for his child (“M”) from reunification to adoption. Father assigned error to the juvenile court's ruling that DHS made reasonable efforts on his behalf as required by ORS 419B.476(2)(a).
Early in the case, father did not visit his child or participate in services, and he was subsequently incarcerated. Although DHS promptly learned of his whereabouts, DHS did not contact father or his prison counselor for over six months, did not assess the adequacy of the programs in which father had participated while incarcerated, did not provide visits between father and child, and did not facilitate training for father related to his child's special medical needs (which was part of the jurisdictional bases). The juvenile court determined that even if DHS had made all of the efforts that father argued it should have made, those efforts would not have made reunification between father and M possible in the near future, considering father's length of incarceration. The court also noted the child would have been in substitute care for over three years (most of the child's life), and had significant bonds with the foster family. The juvenile court reasoned there was no evidence that additional efforts would have materially advanced father's ability to reunify with his child.

Held:

Reversed and remanded.

The juvenile court is authorized to change a permanency plan away from reunification only if DHS proves by a preponderance of the evidence that (1) it made reasonable efforts to make it possible for the child to be reunified with his or her parent and (2) notwithstanding those efforts, the parent's progress was insufficient to make reunification possible. 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. The juvenile court must evaluate DHS's efforts over the entire duration of the case, with an emphasis on a period before the hearing sufficient in length to afford a good opportunity to assess parental progress. When a parent argues that DHS's failure to make specific efforts rendered the agency's efforts unreasonable, the juvenile court must engage in something resembling a cost-benefit analysis considering both the burdens that the state would shoulder in providing that service and the benefit that might reasonably be expected to flow from that service.

The Court of Appeals distinguished this case from Dept. of Human Services v. S.W., 267 Or App 277 (2014), in which the juvenile court's reasonable efforts determination was affirmed despite an extended period of minimal efforts from DHS with respect to an incarcerated parent. The court explained that when the juvenile court assesses the benefit portion of the required cost-benefit analysis, the juvenile court must consider the importance of the service that was not provided to the case plan and the extent to which that service was capable of ameliorating the jurisdictional bases. When available, the juvenile court properly considers evidence tied to a parent's willingness and ability to participate in and benefit from the service that was not provided. This analysis does not turn upon whether that service will ultimately make reunification possible. While the court may consider the length and circumstances of a parent's incarceration in assessing DHS's efforts, the reasonable efforts inquiry focuses on whether DHS provided the parent with an opportunity to demonstrate improvement regarding the jurisdictional bases. The court went on to explain that DHS may not withhold a potentially beneficial service to a parent simply because reunification with the child is ultimately unlikely even if the parent successfully engages in the services and programs that DHS provides. DHS must make reasonable efforts so that the juvenile court is in a position to evaluate the parent's progress.
toward the goal of reunification. The circumstances and duration of a parent's incarceration may then be considered when the court determines whether the parent has made sufficient progress.

In this case, the Court of Appeals found the services that DHS failed to provide - evaluating the anger management and parenting programs available to father in prison and educating father on his child's special needs and day to day care - were directly related to the conditions that gave rise to jurisdiction. Because DHS did not meaningfully attempt to provide those services or stay in regular contact with father once his whereabouts became known, the juvenile court had little evidence regarding father's willingness and ability to participate in and benefit from those services. Even though DHS would have to develop specific programming for father based on his child's medical needs, DHS did not present evidence that doing so would be burdensome, and the potential benefit of father gaining those skills to safely care for the child is substantial. The juvenile court erred in failing to consider all of the circumstances relevant to the cost-benefit analysis. In light of DHS's failure to contact father or his prison counselor for more than six months, to investigate the adequacy of the programs available to father in prison, or attempt to provide father with services focused on M's special needs, the court found the record was insufficient to support a conclusion that DHS made reasonable efforts toward father for a sufficient period of time in which the juvenile court could assess his progress. After DHS has made reasonable efforts, the juvenile court may ultimately conclude that he has not made sufficient progress to make reunification possible, even if he actively participates in services. The court must root its decision about whether to change the permanency plan away from reunification in considerations of M's health and safety. If M becomes bonded to her foster parents and father is unable to develop a relationship with her in a reasonable time, those facts will have a significant bearing on the sufficiency of father's progress. However, until DHS makes meaningful efforts to provide father with reunification services, the juvenile court is not authorized to change the plan away from reunification.

**Reviewability**

► *Dept. of Human Services v. S.M.S.*, 281 Or App 720 (2016)

Father appealed a juvenile court judgment taking jurisdiction over his daughter K. The juvenile court had declined to place K with father, finding that K had mental health difficulties that required supervision and treatment that father was unable to provide, and that father's attitude, behavior and perception result in the refusal or failure to meet the child's exceptional needs that affect her safety. While his appeal was pending, the juvenile court terminated the wardship, and DHS moved to dismiss father's appeal as moot. Father argued that his appeal was not moot because it may impact his ability to volunteer at his children's schools and as a youth-sports coach.

Held:

Appeal dismissed as moot. An appeal is moot when resolution of the main issue in controversy will no longer have a practical impact on the rights of the parties. A party appealing the jurisdictional judgment must establish the existence of collateral consequences that prevent the controversy from being moot. The asserted consequence must have a significant probability of actually occurring. In this case, the court found that father did not establish a significant
probability the judgment would produce adverse collateral consequences primarily because DHS and juvenile court records are confidential and unavailable to the public. Father did not identify any applicable custom, policy, statute, rule, or practice that presented a significant likelihood that the jurisdictional judgment would be disclosed.

**Temporary Custody**


The child was a ward of the court in this juvenile dependency proceeding, and also was charged with conduct that, if committed by an adult, would constitute third degree assault in a juvenile delinquency proceeding. After finding the child unfit to proceed in the delinquency proceeding, the court entered judgment in both cases placing the ward/youth in the temporary custody of the Oregon Youth Authority. The child appealed, arguing that because she had not been adjudicated as delinquent under ORS 419C.005, the court lacked authority to order her into OYA's custody. DHS conceded that there is no statutory authority that grants OYA authority to take custody over the child in this case. The Court of Appeals agreed and reversed. A related appeal in the delinquency case was dismissed as moot. *State v. S.R.R.*, 281 Or App 621 (2016).

**Termination of Parental Rights**


Facts:

In this case governed by the Indian Child Welfare Act (ICWA) mother and father appeal from a judgment terminating their parental rights. On appeal, parents challenge DHS's proof as to nearly every requirement for termination. In particular, father argues that DHS has not demonstrated that it has made "active efforts" to provide services to prevent the break-up of the family as required by ICWA because the services that DHS provided were not sufficiently current to the termination of parental rights trial.

Held:

Affirmed. A determination as to whether DHS has made "active efforts" under ICWA depends on the particular circumstances of the case, which includes the nature of the parents' problems. Although an early cessation of services could indicate that DHS has not made "active efforts," timing is not the only relevant consideration to this determination. DHS demonstrated beyond a reasonable doubt that the services that it provided to parents constituted "active efforts."


Mother appealed judgments terminating her parental rights to six children. The case against mother rested, in large part, on mother's relationship with the father of the three youngest children, BJ. The Department of Human Services (DHS) sought to terminate mother's rights on the ground, among others, that mother suffered from a personality disorder that causes mother to be overly dependent on her partner--in this case, BJ, whom DHS alleged was himself unfit to
parent the children. After a consolidated trial, the trial court terminated both mother's and BJ's parental rights.

**Held:**

Reversed and remanded.

In *Dept. of Human Services v. B. J. J.*, 282 Or App 488 (2016), the Court of Appeals concluded that DHS failed to prove that the father, BJ, was an unfit parent at the time of the termination trial. In light of that decision, and DHS's lack of clear and convincing evidence to support the other alleged bases for mother's unfitness, the termination judgments with respect to mother were reversed. By the time of trial, mother's substance abuse problems had been treated successfully, and she had been clean for two years. She consistently engaged in visitation, and although she was often late, there is no basis to conclude that she was unfit by reason of physical or emotional neglect at the time of trial. Since DHS failed to prove that father's use of physical discipline or lack of parenting skills were seriously detrimental to his children, there is insufficient evidence to establish mother's dependence on the father was seriously detrimental to the children. Finally, although there was some evidence that the older children were fearful of father, and that mother's parenting skills were less than ideal, there was insufficient evidence that these problems were seriously detrimental to the children to the level that termination of parental rights would be justified.

► *Dept of Human Services v. B. P.*, 281 Or App 218 (2016)

**Facts:**

In March 2014, DHS removed M from father and disallowed contact between father and M based on allegations of sexual abuse, drug abuse and neglect. Mother admitted to petition allegations related to mental health. The court held a jurisdictional hearing as to father in October 2014, and found DHS failed to prove the petition allegations. However, at the conclusion of the hearing and upon consent of both parties, the court amended the petition and asserted jurisdiction over M based on findings that father was neglectful by not enrolling the child in school for three months and by regularly failing to bring the child to school on time; the child's educational and social needs were not being met and the child suffered harm by falling behind and needing to repeat her kindergarten year in school. Father appealed the judgment, arguing the court's findings that father neglected M's educational and grooming needs and allowed M to have contact with her mother despite a contrary visitation order were insufficient to support jurisdiction. While the appeal was pending, the court changed the permanency plan to adoption in May 2015. In June, DHS filed a petition to terminate father's parental rights. In July, 2015, DHS filed a second dependency petition with allegations as to father only. In October, 2015, after a hearing on the 2015 petition, the juvenile court asserted jurisdiction over M on several grounds: (1) M's PTSD and other emotional, psychological and behavioral problems, and father's unwillingness to meet those special needs; (2) father's failure to visit M, and (3) father's failure to participate in court-ordered therapeutic services. In November, 2015, the juvenile court conducted a permanency hearing and continued the permanency plan of adoption from the May, 2015 permanency judgment. On the same day, DHS amended the petition to terminate father's parental rights to include the findings of both jurisdictional
judgments. Father failed to appear at the TPR trial in December, and the juvenile court, after receiving evidence from DHS, terminated father's parental rights. Father appealed both the 2015 jurisdictional judgment and the TPR judgment.

On March 16, 2016, the Court of Appeals reversed the 2014 jurisdictional judgment, accepting DHS's and M's concessions that the allegations found to be proved by the juvenile court were insufficient to support jurisdiction.

Held:

Affirmed.

2015 Jurisdictional Judgment. The reversal of the 2014 judgment did not render the 2015 judgment invalid as a matter of law, and the juvenile court did not err in asserting jurisdiction over M based on the 2015 petition. The court found the issues that were adjudicated in the 2015 petition were distinct from those adjudicated in 2014. The court rejected father's argument that the juvenile court committed plain err by failing to consider mother's fitness to parent in making the 2015 jurisdictional determination. At the time of the 2015 jurisdictional hearing, the 2014 jurisdictional judgment was still valid. The juvenile court took judicial notice of the 2014 case file, which included admissions by mother of her inability to parent M. Father did not object to consideration of the 2014 file, acknowledged it contained mother's admission, and presented no evidence to challenge mother's admission. The court found the record did not plainly demonstrate that the juvenile court did not consider mother's previous admission when it asserted jurisdiction over M.

TPR Judgment. Father argued the juvenile court lacked authority to terminate father's parental rights because the termination petition was predicated on the reversed 2014 jurisdictional judgment and the May 2015, permanency judgment (which was also based on the 2014 jurisdictional judgment). The court found the allegations in the TPR petition were based on both the 2014 and 2015 jurisdictional judgments, the majority of which were related to findings the court made during the 2015 dependency proceeding. In addition, the May 2015 permanency judgment that changed M's plan to adoption after the 2014 jurisdictional judgment was continued in a separate order after the 2015 jurisdictional judgment. The court held father's argument did not provide a basis for the court to reverse the TPR judgment on appeal.


Father appealed judgments terminating his parental rights with respect to his twins, EM and EJ, and his other son, X. The trial court ruled that father's rights should be terminated on the basis of unfitness (ORS 419B.504), because of father's personality disorder, anger management problems, housing instability, and failure to make a lasting adjustment to those conditions and circumstances. Father appealed.

Held:

Reversed and remanded.
To terminate a parent's rights based on unfitness, the court must find that (1) the parent has engaged in conduct or is characterized by a condition that is seriously detrimental to the child; (2) integration of the child into the parent's care is improbable within a reasonable time due to conduct or conditions not likely to change; and (3) termination is in the best interests of the child. In considering part one of the test, the court focuses on the detrimental effect of the parent's conduct or condition on the child, and the inquiry is child specific and calls for testimony regarding the needs of the particular child. Also, the unfitness must exist at the time of termination hearing.

In this case, DHS was required to prove the requisite nexus to father's parenting - i.e, that his mental or emotional problems rendered him incapable of providing care for his children for extended periods of time, or have been seriously detrimental to the children - through child specific evidence. In this case, the only incidents of violence in father's past involved other adult males, and there was little evidence of the frequency of the incidents or that father was modeling violent behavior in front of his children. No evidence was presented on how father's behavior affected the children. In addition, there was insufficient evidence of how father's use of physical discipline (spanking) would affect the children any differently than the thousands of children who are being raised in similar circumstances (the mental health experts who testified about the children's needs did not testify about the seriously detrimental effect that physical discipline would have on these children). Although there was mixed evidence presented at trial regarding father's parenting ability, the parenting coaches who testified said they were not concerned about the children's safety. There was insufficient evidence that father was unfit on the basis of physical and emotional neglect when father had been visiting his children and making efforts to work with parenting coaches, and when there were questions about whether the parents had been notified of the children's medical appointments. Regarding father's lack of a viable plan for the children to return home, the court found concerns about barriers to visibility in the home (for the parents to monitor the children's special needs) were not significant enough to show the home could not be made safe. In addition, although father was unwilling to work with DHS, there was insufficient evidence to indicate father would not rely on agencies like WESD and medical providers, for assistance to meet the children's medical and educational needs.