

This chapter will guide the caseworker and supervisor in working with the Oregon courts, attorneys, CASAs, the Citizen Review Board, service providers and community partners. The juvenile court system protects children when parental or guardian capacity is diminished such that a child's condition or circumstances endanger his or her welfare. Caseworkers must have a strong, professional and respectful relationship with the courts and other partners to appropriately serve children and families.

Section 1: The Courts

Overview

Child Welfare frequently interacts with the Oregon courts. Most often, Child Welfare caseworkers appear in juvenile court. But caseworkers also have involvement with criminal cases, domestic relations cases and other civil cases involving children and families. A child protective services investigation may lead to criminal charges against a parent or caregiver. A CPS caseworker may be called upon to testify in the criminal proceeding. The outcome in the criminal case could affect the juvenile court proceeding. At times, Child Welfare caseworkers are involved in domestic relations proceedings to assist a protective parent in obtaining legal custody of his or her child. Caseworkers may also be asked to testify about Child Welfare's previous involvement with a family. This section explains the caseworker's role in the juvenile court process, discusses typical issues involving domestic relations cases, and explains how to respond to attempts to obtain testimony and records in court proceedings.

A. The Juvenile Court

The juvenile court has the authority to provide for the safety of a vulnerable child. The juvenile court has exclusive original jurisdiction in any case involving a person who is under 18 years of age, and:

- Who is beyond the control of the person's parents, guardian, or other person having custody.
- Whose behavior is such as to endanger the welfare of the person or of others.
- Whose condition or circumstances are such as to endanger the welfare of the person.
- Who is dependent for care and support on a public or private agency that needs the services of the court in planning for the best interests of the person.

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- Whose parent, guardian or other person having custody has:
 1. Abandoned the person.
 2. Subjected the person to cruelty, depravity or unexplained injury.
 3. Failed to provide the care, guidance and protection necessary for the physical, mental or emotional well-being of the person.
 4. Failed to provide the person with the care or education required by law.

An Indian tribe has exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled on the reservation of the tribe, unless federal law vests jurisdiction in the state. In Oregon, the Burns Paiute Tribe and the Confederated Tribes of the Warm Springs Reservation have exclusive jurisdiction. Even where the tribe has exclusive jurisdiction or the child is a ward of the tribal court, the state may take emergency custody of a child temporarily off the reservation to prevent imminent physical damage or harm to the child. The caseworker must immediately contact the tribe to arrange for a return of the child to the tribe. Emergency custody must terminate when removal is no longer necessary to prevent imminent physical damage or harm to the child or when the tribe exercises jurisdiction. If termination of an emergency placement is not possible, the juvenile court must order continued placement of the child within 24 hours of the child's placement in protective custody.

1. When to Seek Court Intervention

During a CPS assessment, the CPS caseworker determines whether an identified safety threat exists, determines whether the child is vulnerable and determines whether the parents or guardians can and will protect the child. Based on this information, the CPS caseworker determines the need for a protective action, which could include an out-of-home placement for the child if the child's condition or surroundings reasonably appear to jeopardize the child's welfare.

If parents or guardians are unwilling or unable to protect the child, the parents or guardians are unwilling or unable to voluntarily manage the safety of the child, and there is an identified safety threat to which the child is vulnerable, the CPS caseworker consults with his or her supervisor about involving the juvenile court. If consultation with a CPS supervisor will delay a protective action, the CPS caseworker may consult with a supervisor after the caseworker takes the protective action. To initiate a juvenile court case, the CPS caseworker may take one of the following actions:

- File a petition alleging the child falls within the jurisdiction of the juvenile court for one of the reasons outlined in ORS 419B.100 and reiterated above.
- Seek an order from the juvenile court directing the child be taken into protective custody.

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- Seek the assistance of law enforcement to place the child in protective custody if the child's conditions or surroundings reasonably appear to jeopardize the child's welfare.
- Place the child in protective custody if the child's condition or surroundings reasonably appear to jeopardize the child's welfare and law enforcement assistance is not available. If there is any resistance or threatened resistance to taking the child into protective custody which creates a substantial risk of physical injury to any person, the CPS caseworker must wait for law enforcement assistance or seek an order from the juvenile court.

An in-home safety plan can be monitored voluntarily by DHS and juvenile court involvement is not necessary when, through the CPS assessment, the CPS caseworker has determined child safety can be managed and controlled in the child's own home and the parents are willing and able to comply with the in-home plan without court-ordered intervention and oversight. Voluntary services are not intended to be used in lieu of court-ordered services or protective custody when the CPS caseworker cannot rely on the willingness and ability of the parents to comply with the in-home safety plan.

If the child welfare assessment indicates the child cannot be safe unless there is no contact or supervised contact with one or both parents, the caseworker must bring that concern to the attention of the court by filing a juvenile court petition. During the CPS assessment, the caseworker may, on a very limited basis, develop a temporary protective action (such as one parent leaving the home voluntarily) while necessary interviews are completed. The caseworker may also develop a temporary plan with a safe and available family member, but only if the caseworker can rely on the parent to accept the temporary protective action and not compromise the safety of the child or children. These are immediate, short-term interventions to manage child safety. These actions must be reviewed as soon as additional information is obtained to determine the ongoing plan that best manages child safety. If the caseworker determines the ongoing safety plan will require restricted parental contact with the child or the child be placed in a substitute care placement, then the caseworker must seek the intervention of the court. The court has authority to limit contact between the parent and the child. Court involvement protects a parent's rights by requiring the state to prove a parent is unfit before interfering with a parent's rights to his or her child.

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Cases Involving an Indian Child

If the caseworker decides to seek juvenile court involvement, the caseworker initiates the process to determine if the child is an Indian child as defined by the Indian Child Welfare Act (ICWA) and notifies the child's tribe if ICWA applies or may apply. See Chapter II: Screening and Assessment, Assessment, Section 22.D, Determine and Respond to ICWA Status, for additional requirements for ICWA cases. The determination of the child's status should be made before the court process is initiated whenever possible so the tribe is involved at the start of the juvenile court's involvement with the family. DHS is required to make active efforts to provide remedial services and rehabilitative programs designed to prevent the break-up of the Indian family. For additional information regarding Active Efforts, See Chapter II: Screening and Assessment, Assessment, Section 16.

Procedure

- The CPS caseworker completes the form CF 1270, "Verification of ICWA Eligibility," to assist in determining whether the child is or may be an Indian child.
- If the child is enrolled or eligible for enrollment in a federally recognized tribe or Alaskan village, the CPS caseworker notifies the child's tribe when the child may be placed in protective custody or when a petition may be filed on behalf of the child.
- The CPS caseworker consults with the local office ICWA liaison, a supervisor, or the ICWA manager if the CPS caseworker has questions about whether the child is an Indian child or the involvement of a tribe.
- Before placing an Indian child in protective custody, the state must be able to prove, by clear and convincing evidence, that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical injury to the Indian child.

Cases Involving a Refugee Child

ORS 418.925 defines a refugee child as a “person under 18 years of age who has entered the United States and is unwilling or unable to return to the person’s country because of persecution or a well-founded fear of persecution on account of race, religion, sex, sexual orientation, nationality, membership in a particular group or political opinion, or whose parents entered the United States within the preceding 10 years and are or were unwilling or unable to return to their country because of persecution or a well-founded fear of persecution on account of race, religion, sex, sexual orientation, nationality, membership in a particular group or political opinion.” If the CPS caseworker decides to seek juvenile court involvement, the caseworker must initiate the process to determine the child’s refugee status and notify the Refugee Child Welfare Advisory Committee if the child is a refugee child. See Chapter II: Screening and Assessment, Assessment, Section 22.E, Determine and Respond to Refugee Status, for additional requirements if the child is a refugee child. This determination should be made before the court process is initiated to provide remedial or preventative services to manage the child’s safety in the home whenever possible.

Procedure

- If it appears the child may be a refugee child, the CPS caseworker consults with parents and other family members about the cultural heritage of the child as soon as the caseworker believes the child may be a refugee child.
- If the child appears to be a refugee child, the CPS caseworker must proceed as though the child is a refugee child until the CPS caseworker is able to confirm the child is not a refugee child.
- If child safety can be maintained, the CPS caseworker must provide remedial or preventative services to alleviate the possible harm to the child.
- The CPS caseworker may only place the child in protective custody if removal is necessary to prevent imminent, serious emotional or physical harm to the child and reasonable efforts to alleviate the harm through remedial or preventative services do not alleviate the harm, have failed, or are not practical in an emergency situation.
- If the child is placed in protective custody, the CPS caseworker follows the placement preferences in ORS 418.937: natural parents, extended family members, members of the same cultural heritage, or persons with knowledge and appreciation of the cultural heritage of the child.
- The CPS caseworker notifies the Refugee Child Welfare Advisory Committee of the placement.

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Role of the Supervisor

- Consults with the caseworker prior to a decision to place a child in protective custody or after placement if consultation before placement will delay the safety intervention.
- Consults with the caseworker prior to the worker initiating court action or after initiating court action if consultation before placement will delay the safety intervention.
- Ensures the caseworker has initiated the process to determine if the child is an Indian child or a refugee child.
- Consults with the caseworker who is denied access to a child about the need for a protective custody order from the juvenile court.

Legal References

- The Refugee Act of 1980 (P.L. 96-212)
- The Indian Child Welfare Act (25 USC sec. 1901 to 1923)
- ORS 418.925 through 418.945
- ORS 419A.004
- ORS 419B.090
- ORS 419B.100
- DHS Child Welfare Policy I-AB.5. CPS Assessment Disposition
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-ab5.pdf
- DHS Child Welfare Policy I-AB.4. CPS Assessment
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-ab4.pdf
- DHS Child Welfare Policy I-E.2.2. Placement of Refugee Children
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-e22.pdf

Forms

- CF 1270: ICWA Eligibility form
<http://dhsforms.hr.state.or.us/Forms/Served/CE1270.pdf>

2. Initiating a Juvenile Court Case

Once the CPS caseworker has determined, in consultation with his or her supervisor, that a juvenile court intervention is necessary, a CPS caseworker may initiate a juvenile court case in one of three ways:

- By seeking an order from the juvenile court directing the child be placed in protective custody.
- By placing a child in protective custody.
- By filing a juvenile court petition alleging a child falls within the jurisdiction of the juvenile court.

a. Order for Protective Custody

A juvenile court judge can issue an order that a child be taken into protective custody. The order may be endorsed on a summons, directing the officer serving the summons to take the child into custody, if it appears to the court that the welfare of the child or of the public requires that the child be immediately taken into custody. The order must set forth written findings explaining why protective custody is in the best interest of the child and describing the reasonable or active efforts that have been made to eliminate the need for protective custody or, if no efforts were made, finding that no existing services could eliminate the need for protective custody and that protective custody is in the best interest of the child. Depending on local practice, the order may be referred to as a “Pick-Up Order” or a “Warrant.”

Procedure:

If the CPS caseworker, in consultation with his or her supervisor, determines he or she should seek an order that the child be placed into protective custody, the CPS caseworker:

- Consults with the district attorney’s office.
- If requested to do so by the district attorney’s office, prepares an affidavit for the court explaining the facts and circumstances and the risk to child safety, why protective custody is in the best interests of the child, and the reasonable or, if the Indian Child Welfare Act (ICWA) applies, active efforts made by Child Welfare to eliminate the need for protective custody of the child.
- Once the order has been issued, seeks the assistance of law enforcement to execute the order and place the child in protective custody. The CPS caseworker follows the procedures described below in the section on protective custody once the child has been placed in protective custody pursuant to the order.

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b. Protective Custody

The CPS caseworker may take a child into protective custody when the child's condition or surroundings reasonably appear to be such as to endanger the child's welfare and law enforcement assistance is not available. When there is resistance or threatened resistance to the child being placed in protective custody which creates a substantial risk of physical injury to any person, the CPS caseworker must wait for law enforcement assistance or seek an order from the juvenile court.

Procedure

- The CPS caseworker must notify parents, including a noncustodial parent; caregivers (defined to include a guardian, legal custodian, or other person acting in loco parentis, who exercises significant authority over and responsibility for a child); and the child's tribe, if applicable, in writing. The CPS caseworker must give the parent the DHS 9027 at the time the child is placed in protective custody.
- If the child is placed in protective custody without a court order, the child must be released to the custody of the child's parent or guardian or other responsible person in the state unless there is probable cause to believe the child or others may be immediately endangered by the release of the child.
- If the child is placed into protective custody without a court order, the CPS caseworker must promptly file a brief written report with the court, as required by ORS 419B.171. The caseworker completes the Protective Custody Report (CF 464), which includes the following information:
 1. The child's name, date of birth, age, and address.
 2. The name, date of birth, and address of the person having legal or physical custody of the child.
 3. Efforts made to locate and notify the person having legal or physical custody of the child and the results of those efforts.
 4. Prior Child Welfare contacts with the family or child.
 5. Reasons for and circumstances under which the child was taken into protective custody.
 6. If the child was not released, the reason why the child was not released.
 7. Efforts to determine Indian heritage of the family and placement compliance with ICWA, including a description of the active efforts made by Child Welfare to provide remedial services and rehabilitative programs designed to prevent the break up of the Indian family and how those efforts were unsuccessful.

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8. Efforts made to eliminate the need for protective custody and the results of those efforts or an explanation of the reasons why no existing services could have eliminated the need for protective custody of the child.
 9. The date and type of placement of the child and why this type of placement was chosen.
- A written report is required even if the child is released to a parent or other responsible person. The written report shall be completed and sent to the court the day the child is taken into custody or no later than the morning of the next business day.
 - If the child is not released to a parent or other responsible person, but is retained in protective custody, a shelter hearing must be scheduled within 24 hours, excluding Saturdays, Sundays, and legal holidays.
 - If the shelter hearing is the first contact the caseworker has with a parent, the parent must be provided the pamphlet, “What You Need to Know About a Child Protective Services Assessment” (SCF 1536).
 - The CPS caseworker must document all activities that surround the removal of the child in the assessment activities section of the Guided Assessment Process (GAP).
 - Within 30 days after a child is taken into protective custody, the CPS caseworker or designee must make a reasonable effort to identify and locate legal parents and putative fathers that the caseworker was unable to notify of the shelter hearing. Information about putative fathers must be recorded on form CF 418, “Father’(s) Questionnaire” and filed in the case record. See Chapter II: Screening and Assessment, Assessment, Section 17, Identifying Legal Parents and Section 2 of this chapter, Legal and Other Fathers, for specific information about identifying and locating fathers with a legal relationship to the child.

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c. Petition

If the child is not placed into protective custody, the filing of a juvenile court petition starts the process of involving the juvenile court with the family. If the child is placed in protective custody, either with or without an order, the petition should be filed prior to the shelter hearing, which must be held within 24 hours of the child's placement in protective custody.

Procedure

When a child is taken into protective custody or juvenile court intervention is necessary to ensure the child and family receive appropriate services, the CPS caseworker must make arrangements for a juvenile court petition to be filed, as provided in ORS 419B.809.

The petition must contain the following information:

- The name, age, and residence of the child.
- The name and residence of each parent.
- A factual basis as to why the child should be under the jurisdiction of the court, including sufficient information to put the parties on notice of the issues in the proceeding.
- The county in which the child resides.



If one of the circumstances described in ORS 419B.340(5) exists, such as the parent's rights to another child have been terminated involuntarily or the parent has been convicted of murder of another child of the parent, and Child Welfare does not wish to provide reasonable efforts to the parent and can identify an appropriate permanency plan for the child, the caseworker should discuss with the District Attorney's Office whether to include in the petition an allegation that one of the circumstances in ORS 419B.340(5) exists. ORS 419B.340(5) is discussed in more detail in "Disposition Hearing," Section 1.A.4.f of this chapter.

- Uniform Child Custody Jurisdiction and Enforcement Act information including: the child's present address; places the child has lived during the previous five years; names and present addresses of persons with whom the child has lived during that period; whether the petitioner has or has not participated as a party or witness or in any other capacity in any other proceeding concerning the custody of or parenting time or visitation with the child; whether the petitioner knows or does not know of any proceeding that could affect the current proceeding; and whether the petitioner knows or does not know of any person who has physical custody of the child or claims right of legal custody, physical custody, parenting time, or visitation with the child.

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The person responsible for writing the juvenile court petition varies from county to county. In some counties the CPS caseworker provides the district attorney (DA) with information requesting a petition and the DA writes the petition. In other counties the Child Welfare office may be responsible for writing the petitions. The CPS worker should seek guidance from his or her supervisor or the Child Welfare paralegal in determining the appropriate petition allegations. If a DHS employee signs the petition, the petition may be verified based on the information and belief of the employee.

The CPS caseworker should state the facts in language that fits the statutory language outlined in ORS 419B.100. For example: The child's condition or circumstances are such as to endanger the welfare of the child because [insert facts that explain why the child's welfare is endangered].

i. Special Requirements if the Child is a Refugee Child

If the child meets the definition of a refugee child in ORS 418.925, the caseworker must:

- File the petition within one working day of the child's placement in protective custody.
- Include in the petition a specific and detailed account of the circumstances which led Child Welfare to conclude the child was in imminent danger of serious emotional or physical harm; specific actions Child Welfare is taking or has taken to alleviate the need for removal; an assurance Child Welfare has complied with the placement preferences in ORS 418.937; and an assurance Child Welfare is making or has made diligent efforts to locate and to give notice to all affected refugee family members and to the Refugee Child Welfare Advisory Committee that a petition is pending.
- Provide notice of the filing of the petition to the Refugee Child Welfare Advisory Committee.
- Provide notice of the filing of the petition to all affected refugee family members (defined in OAR 413-070-0310 as biological and legal parents, extended family members, and any person within the fifth degree of consanguinity to the child) that the caseworker has been able to locate.

ii. Special Requirements for Foreign Nationals

If the child is a citizen of a foreign country and not a citizen of the United States, the child is a foreign national. The caseworker must provide a copy of the petition on a child that is a foreign national to the consulate for the child's country.

iii. Amendments

If, during further CPS assessment of the parents or legal guardians, the caseworker finds one or more of the facts claimed in the petition cannot be proven or are different than originally believed, the petition may need to be amended to more accurately reflect why the child is unsafe. If the caseworker believes the petition should be amended, the caseworker should consult with his or her supervisor and the district attorney's office. Additionally, the court may order a petition be amended. If the amendment of the petition substantially changes the petition, the court may postpone the hearing on the petition to allow the parties additional time to prepare. If new facts come to light that were not included in a petition that has already been heard by the court and the facts raise additional barriers to reunification that must be addressed before the child can be safely returned home, the caseworker should consult with his or her supervisor and the assistant attorney general assigned to the branch about the need to file a new petition.

Role of the Supervisor

- Consult with the caseworker to determine whether a child should be placed in protective custody, whether a court order for protective custody should be sought, and whether a juvenile court case should be initiated.
- Review the protective custody report and the petition.
- Ensure the caseworker has identified and notified all persons entitled to notice if a child has been placed in protective custody.
- Ensure the caseworker has identified fathers (both legal and putative) and has initiated a search for any fathers the caseworker has been unable to locate.
- Ensure the caseworker has inquired about the child's Indian heritage and, if the child is an Indian child, the caseworker has notified the child's tribe and complied with the placement preferences of the ICWA.
- Ensure that, if the child is a refugee child, the caseworker has complied with ORS 418.925 to ORS 418.945.
- Consult with the caseworker regarding possible amendments to the petition.



Legal References

- 25 USC §§ 1901 to 1963: Indian Child Welfare Act
- ORS 418.925 to ORS 418.945: Refugee Child Welfare Act
- ORS 419B.150
- ORS 419B.160
- ORS 419B.165
- ORS 419B.171
- ORS 419B.183
- ORS 419B.851(3)
- ORS 419B.872
- DHS Child Welfare Policy I-A.4.3: Identifying Legally Recognized Parental Relationships
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-a43.pdf
- DHS Child Welfare Policy I-AB.1: Introduction to CPS Rules
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-ab1.pdf
- DHS Child Welfare Policy I-AB.4: CPS Assessment
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-ab1.pdf
- DHS Child Welfare Policy I-E.2.1: Placement of Indian Children
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-e21.pdf
- DHS Child Welfare Policy I-E.2.2: Placement of Refugee Children
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-e22.pdf



Forms

- CF 418 Father'(s) Questionnaire
<http://dhsforms.hr.state.or.us/Forms/Served/ce0418.pdf>
- CF 464 Protective Custody Report
http://dhsresources.hr.state.or.us/WORD_DOCS/CE0464.doc

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3. Parties to Juvenile Court Proceedings

Parties to the juvenile court case have the right to notice; to copies of any documents filed with the court; to request a hearing; to appear with counsel at any juvenile court proceeding; to call witnesses, cross-examine witnesses, and participate in juvenile court hearings; and to appeal.

Parties to juvenile court proceedings include:

- The child.
- The parents or legal guardians of the child.
- A putative father to the child who has demonstrated a direct and significant commitment to the child by assuming, or attempting to assume, responsibilities normally associated with parenthood, unless a court found the man not to be the child's legal father or the man filed a petition for filiation that has been dismissed.
- The state.
- The juvenile department.
- A CASA (court appointed special advocate), if appointed.
- DHS or other child-caring agency if the agency has temporary custody of the child or ward.
- The child's tribe in cases subject to the Indian Child Welfare Act if the tribe has intervened pursuant to the Indian Child Welfare Act.
- A person who is permitted to intervene under ORS 419B.116.

If a child is a refugee child, any person within the fifth degree of consanguinity to the child may petition the juvenile court for standing in actions arising under ORS 419B.150 (protective custody) if the primary parenting family has been determined incompetent, missing, dead, or has had parental rights terminated as a result of judicial proceedings.

Unless a foster parent or grandparent has been granted intervenor status, foster parents and legal grandparents are not parties to juvenile court proceedings. However, when a child or young adult is committed to the Department's custody, the caseworker must notify foster parents and grandparents (who is the legal parent of the child or young adult's legal parent, as defined in ORS 109.119) of court proceedings regarding the child or young adult. The foster parent and grandparents have the right to be heard at those proceedings.

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Procedure

The caseworker:

- Asks the available parent to identify any persons who may have legal rights to the child.
- Identifies the child's fathers and ensures that all fathers with legal rights are notified of proceedings concerning the child (See Section 2 of this chapter, Legal and Other Fathers, for information about legal fathers and other fathers who have rights).
- Provides information to the child's parents (including a putative father who has demonstrated a direct and significant commitment to the child) and legal guardians, consistent with local court practice, about the procedure for requesting court-appointed counsel.
- Provides notice of juvenile court proceedings to the child's foster parents and legal grandparents, if the legal grandparents have requested notice in writing and are not also caring for the child.
- Diligently searches for grandparents and when a child or young adult is committed to the Department's custody provides notice of juvenile court proceedings to grandparents who are the legal parents of the child or young adult's legal parent, as defined in ORS 109.119, unless 1) they have been present at court and have already been notified of the date and time of the court hearing by the court, or 2) the court has relieved the Department of the responsibility to provide such notice, after making a finding of 'good cause'.



Forms

- CF 148 'Notice of Court Hearing'
<http://dhsforms.hr.state.or.us/Forms/Served/ce0148.doc>



Role of the Supervisor

- Review the case with the caseworker to ensure all legal parties are identified and included in planning for the child.

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- Ensure the caseworker is providing notice of juvenile court proceedings to foster parents and any legal grandparent who is the legal parent of the child or young adult's legal parent, as defined in ORS 109.119, when a child or young adult is committed to the Department's custody.



Legal References

- ORS 418.935
- ORS 419A.004
- ORS 419B.116
- ORS 419B.875
- DHS Child Welfare Policy I-A.4.3: Identifying Legally Recognized Parental Relationships
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-a43.pdf

4. The Juvenile Court Process

The federal Adoption and Safe Families Act of 1997 (ASFA) requires child welfare agencies to consider child safety and a child's need for permanency as the guiding factors when working with families. In 1999, Oregon passed legislation to implement the requirements of ASFA. This legislation imposed timelines on juvenile court cases with the goal of achieving permanency for children in a timely manner.

The juvenile court process includes the following timelines:

- Within 24 hours of the child's placement in protective custody, the court holds a shelter hearing and the caseworker or district attorney files a petition.
- Within 30 days from the date the petition was filed, each party about whom allegations have been made must admit or deny the allegations.
- Within 30 days from the date the petition was filed, the caseworker must provide discovery.
- Within 60 days of the date the petition was filed, the court holds a hearing on the petition and enters a disposition order.

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- Within 6 months of the child's placement in substitute care, the Citizen Review Board conducts a review of the child's case. Subsequent reviews are conducted every six months as long as the child remains in substitute care.
- Within 12 months of the date the child was found to be within the jurisdiction of the court or within 14 months of the child's placement in substitute care, whichever is earlier, the court conducts a permanency hearing.
- If the child has been in substitute care for 15 of the most recent 22 months, Child Welfare is required to file a petition to terminate the rights of the child's parents unless:
 1. The child is being cared for by a relative and the placement is intended to be permanent.
 2. There is a compelling reason, which is documented in the case plan, for determining that filing a petition would not be in the best interests of the child.
 3. DHS has not provided to the family of the child such services as DHS deems necessary for the child to safely return home, if DHS is required to make reasonable efforts to make it possible for the child to safely return home.

The juvenile court process may vary from county to county. The court may, for instance, schedule settlement conferences prior to a hearing on a petition or require admissions or denials on a petition to be in writing. What follows are the statutory requirements for the juvenile court process.

a. Shelter Hearing/Preliminary Hearing

When a child is taken into protective custody, with or without a court order, the CPS caseworker must schedule a shelter hearing. State law prohibits a child from remaining in shelter care more than 24 hours (excluding weekends and judicial holidays) unless the court enters an order, after a hearing, finding that the child should be removed or continued out-of-the-home. A shelter hearing can also be held before a child is actually placed into protective custody. A shelter hearing gives the parent or child the opportunity to present evidence the child can be returned home without further danger of suffering physical injury or emotional harm, endangering or harming others, or not remaining within the reach of the court process prior to adjudication. At a shelter hearing the judge must also determine: whether Child Welfare made reasonable efforts or, if the Indian Child Welfare Act (ICWA) applies, active efforts to prevent or eliminate the need for the child to be removed and to make it possible for the child to safely return home, whether removal from the home is in the child's best interests, and whether the child is an Indian child, as defined by ORS 419A.004. In some counties a shelter hearing may be called a preliminary hearing or an original hearing.

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Procedure

The CPS caseworker or designee:

- Follows local practice and files the petition and the Protective Custody Report (CF 464) with the court, providing copies of the documents to all parties (see the section on Protective Custody in Section 1.A.2.b. of this chapter for more information on completing the Protective Custody Report).



Consider using the "impending danger safety threats" language to articulate the family's behaviors, conditions and circumstances that cause the child to be unsafe.

- Provides documentation to the court (either included in the Protective Custody Report or as a separate document) describing the reasonable or active efforts made to prevent the need to remove the child from the home and to provide services to make it possible for the child to return home, the diligent efforts Child Welfare has made to place the child with relatives or persons with a caregiver relationship to the child (as defined by ORS 419B.116(1)) and to place the child with his or her siblings, and the reasons why protective custody is in the child's best interests.
- Notifies the child's parents, including any presumed legal fathers and Stanley putative fathers, and the child's legal guardians, if any, of the shelter hearing by providing information to the parent or legal guardian in person or by telephone, by personally serving a summons on the parent or legal guardian, or by having a summons served on the parent or legal guardian (see the procedure on summonses in this section 1.A.4.b. for additional information about issuing and serving summonses).
- Notifies the child's tribe, if the child is an Indian child, of the shelter hearing and arranges for the tribe to appear by telephone if the tribe cannot attend the hearing.
- Provides information verbally to the court about Child Welfare's prior involvement with the family and why the child currently needs the court's intervention, including details of the safety assessment made by the caseworker and the current safety threats and parental, or legal guardian, protective capacity.
- Discloses initial discovery materials to parties to the case or, if represented, their attorneys, and continues to disclose case file materials throughout the court process. Initial discovery materials include the CPS Assessment, other 307 information, case notes and other documents that support the petition allegations.

At the shelter hearing the court is required to inform the parents and legal guardians of the child about the obligation to pay for compensation and reasonable expenses for counsel for the child,

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support of the child while the child is in state custody, and other financial obligations that might arise because the child is within the jurisdiction of the court; the assignment of support rights; the right of the parents or guardians to appeal a decision on jurisdiction or disposition; and the time for filing an appeal of a decision of the court. The court should provide the parents and guardians with a standard notice detailing this information.

The court's shelter hearing order will include the following:

- A determination of whether the child should be removed from the home or continued in care.
- A written finding describing why it is in the best interests of the child that the child be removed from the home or continued in care if the court orders removal or continuation in custody.
- Written findings as to whether DHS made diligent efforts to place the child with relatives or persons with a caregiver relationship to the child and to place with child with his or her siblings and a brief description of the efforts made if the court orders removal or continuation in custody.
- Written findings as to whether DHS made reasonable or active efforts to prevent or eliminate the need for removal of the child from the home and to make it possible for the child to safely return home and a brief description of the efforts made.
- A determination of whether the child is an Indian child.

In addition, the court may:

- Grant temporary custody of the child to DHS Child Welfare.
- Appoint attorneys for the child and the parents or legal guardians of the child.
- Appoint a court appointed special advocate (CASA) for the child.
- Receive admissions or denials to the allegations in the petition from the parents or legal guardians.
- Schedule a jurisdiction hearing within 60 days.

If the court knows or has reason to know that the child is an Indian child, the court shall order DHS to notify the child's tribe of the proceedings and of the tribe's right to intervene. The caseworker should ask the court to include in the order permission for DHS to send a copy of the petition with the notice, as required by the Indian Child Welfare Act and the regulations interpreting the Act. The

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requirements for this notice are described in this section, part 1.A.4.e, “Jurisdiction Hearing.” The case is to be treated as a case subject to the ICWA until the court determines that the case is not an ICWA case.

b. Issuance of a Summons

A summons notifies a person that a juvenile court proceeding has been initiated and directs the person to appear before the court in connection with the proceeding. A summons must provide specific information to the person, as specified in ORS 419B.815, including, but not limited to the following:

- A petition has been filed to establish jurisdiction of the named child under ORS 419B.100.
- If the person fails to appear as required in the summons, the court may establish jurisdiction without further notice to the person.
- The person has the right to be represented by an attorney.
- The parent or other person legally obligated to support the child may be required to pay a portion of the support of the child.
- If the petition alleges that the child has been physically or sexually abused, the court may enter an order restraining the alleged perpetrator from having contact with the child.

The summons may be issued by the petitioner, the petitioner’s attorney, the juvenile department, the district attorney, the assistant attorney general, or DHS.

Procedure

Responsibility for issuing the summons depends on local practice. If DHS issues the summons, the caseworker:

- Prepares a summons in substantially the form set forth in ORS 419B.818 and containing the information required by ORS 419B.815. The summons must contain the name and address of the person being served and must direct the person to do one of the following, depending on local practice:
 1. Appear personally before the court at the time and place specified in the summons for a hearing on the petition.
 2. Appear personally before the court at the time and place specified in the summons to admit or deny the allegations of the petition.

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3. File a written answer to the petition within 30 days from the date on which the person is served with the summons.

NOTE: If the court does not direct the type of response, the summons must require the person to file a written answer.

- Issues a summons to the following people:
 1. The child if the child is 12 years of age or older.
 2. The parents of the child.
 3. The legal guardian of the child.
 4. The person that has physical custody of the child if the child is not in the physical custody of a parent.
 5. A putative father who has demonstrated a direct and significant commitment to the child by assuming, or attempting to assume, responsibilities normally associated with parenthood unless a court has found that the putative father is not the child's legal father or a petition for filiation filed by the putative father has been dismissed and no appeal from the judgment or order of dismissal is pending.
 6. A putative father if notice of the initiation of filiation or paternity proceedings was on file with the Center for Health Statistics prior to the initiation of the juvenile court proceedings unless a court has found the putative father is not the child's legal father or a petition for filiation filed by the putative father has been dismissed and no appeal from the judgment or order of dismissal is pending;
- Signs and dates the summons and prepares a copy of the summons to be served on the person. The copy must contain a statement signed by the caseworker certifying the copy is an exact and complete copy of the original.
- Attaches a copy of the petition to the summons. The copy of the petition must contain a statement signed by the caseworker certifying the copy is an exact and complete copy of the original.
- Follows local practice for serving a true copy of the summons and petition on the person named in the summons. The person may be served by the following methods:
 1. Personal service by handing true copies of the summons and petition to the person to be served.
 2. Substituted service by leaving true copies of the summons and petition with a person 14 years of age or older who resides at the same dwelling house or usual place of abode as the person to be served and by mailing true copies of the summons and petition to the person to be served with a notice explaining the date of service, time of service, place of service, and the person with whom the documents were left.

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3. Office service by leaving true copies of the summons and petition with a person apparently in charge at the office maintained for conducting business by the person to be served and by mailing true copies of the summons and petition to the person to be served with a notice explaining the date of service, time of service, place of service, and the person with whom the documents were left.
 4. Service by mail by mailing true copies of the summons and petition to the person to be served by first class mail and by certified or registered mail, return receipt requested, or by express mail.
- Consults with a supervisor and contacts the district attorney's office for assistance if a person who must be served with a summons cannot be served with one of the above methods. If the person cannot be served, a summons may be served by publication. The caseworker should attempt to locate an absent parent by following the procedure outlined in Chapter II: Screening and Assessment, Assessment, Section 17.
 - Follows local practice for filing the original summons and the proof of service with the court. Proof of service or of mailing may be made by:
 1. The sheriff or deputy sheriff certificate of service indicating the time, place and manner of service and, if the summons was not personally served, when, where and with whom copies of the summons and petition were left.
 2. The certificate of the server, indicating the time, place and manner of service; that the server is a competent person of at least 18 years of age and a resident of this state or of the state where the summons and petition were served; and either stating the server reasonably believes the person served is the identical one named in the summons if the summons was personally served, or stating when, where, and with whom copies of the summons and petition were left if the person was served by substituted service or office service.
 3. A written acceptance of service by the person to be served.
 4. The certificate of the person completing the mailing or an attorney for any party detailing the circumstances of the mailing and attaching a copy of the return receipt. Service by mail is complete on the date the person to be served signs a receipt for the mail.

NOTE: In the case of substituted service or office service, proof of service may include both the certificate of the server and a certificate from the person who mailed the statement of service and true copies of the summons and petition to the person to be served. Service by substituted service or office service is not complete until the statement explaining when, where, and with whom the documents were left and true copies of the summons and petition are mailed to the person to be served. Proof of service by substituted service or office service should include a copy of the statement that was mailed to the person to be served.

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c. Disclosure/Discovery

Disclosure: Information or documents provided to other persons:

- If required or permitted by state law, federal law, federal regulations or state administrative rules (CASA, CRB, LAE, other child welfare agencies, hospitals, doctors, court reports).
- Pursuant to a court order.
- As required by Subpoena Duces Tecum.
- In response to a public records request.
- As part of Discovery; see additional information below.
- To facilitate the provision of services to children, parents, or families.
- In other circumstances where DHS is required or authorized (release of information) to release information or documents.

Discovery: Ongoing statutory obligation to disclose specific types of information and documents to all parties in a juvenile court proceeding within mandated time lines.

Once a petition has been filed on a child, the parties to the case are entitled to information from the case file. ORS 419B.881 outlines the specific information that must be provided to all parties:

- The names and address of all persons the party intends to call as witnesses at any stage of the hearing, together with relevant written or recorded statements or memoranda of any oral statements of such persons.
- 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.
- 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.
- 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.

Disclosure of case file materials is an ongoing responsibility of Child Welfare. In addition to the material that Child Welfare is required to provide to the parties under ORS 419B.881, in certain circumstances Oregon law requires Child Welfare to disclose additional information. For instance, ORS 409.225 requires Child Welfare to disclose records that contain information about an

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individual child, family, or other recipient of services to the juvenile court in proceedings regarding the child, and ORS 419B.035 requires Child Welfare to disclose records compiled under the child abuse reporting law to attorneys of record for the child or the child's parent or guardian in any juvenile court proceeding. In cases of domestic violence, the caseworker should be cautious about providing information that may put either the nonabusing parent or the child in an unsafe situation. If good cause is shown, the court may order that an otherwise required disclosure be denied, restricted, or deferred. Thus, in the case of domestic violence, the court may restrict the disclosure of the nonabusing parent's address. Consult with your supervisor for additional information regarding this procedure.



Disclosure applies to most all case management activities, including collateral information included with letters and referrals to schools, providers, service coordination, etc.

Drug and alcohol information may not be disclosed without either a release of information from the parent whose records are being disclosed or a court order that complies with federal regulations at 42 CFR part 2. The caseworker should attempt to get a signed release authorizing DHS to provide drug and alcohol records to the Citizen Review Board, the juvenile court, and all parties to the juvenile court case.

In addition to drug and alcohol information, there may be other information in the file which should not be disclosed to other parties; protected mental health and medical records, communications between Child Welfare and DOJ, and information that may pose a safety threat to victims of domestic violence. Documents or case notes consisting of attorney-client privileged information should be clearly marked as ATTORNEY CLIENT PRIVILEGED COMMUNICATIONS and should not be disclosed. All of these types of information should be removed from the Child Welfare file before a party is given access to the case file.

Procedure

A standardized procedure for identification, preparation and distribution of Disclosure/Discovery documents is in the process of being developed and will be provided as a separate document in early January 2010. This will include guidelines on redacting confidential information from documents.

d. Hearing to Admit or Deny Allegations in the Petition

No later than 30 days after a petition alleging jurisdiction is filed, each party about whom

allegations have been made must admit or deny the allegations. Admissions and denials may either be made orally in court or in writing. Some courts may schedule a hearing for the purpose of receiving admissions and denials to the allegations in the petition. If a person admits each of the allegations in the petition, the court may enter an order directing the disposition of the case or may schedule a disposition hearing. If allegations in the petition are denied, the court may issue an order directing the person to appear at the jurisdiction hearing. Allegations that are not admitted are deemed denied.

e. Jurisdiction Hearing

The jurisdiction hearing is the hearing at which the parties present evidence to prove or disprove the facts alleged in the juvenile dependency petition. State law requires this hearing occur within 60 days of the date the petition is filed, unless the court has entered an order finding good cause to continue the hearing beyond the 60-day time limit. Each allegation in the petition not admitted must be proved by a preponderance of competent evidence. The court may dismiss one or more allegations in the petition after the proponent of the petition (usually the State) has presented its evidence if the court finds the petitioner has failed to prove the allegations or the allegations do not constitute a legal basis for jurisdiction. The court may not dismiss the petition prior to the jurisdiction hearing unless every party has been given the opportunity to investigate and present a case supporting the petition or has waived the opportunity to investigate and the right to present a case. If the court finds it has jurisdiction under ORS 419B.100, the court has jurisdiction over a party who has been properly served with a summons, a child under 12 years of age who is the subject of the petition, and any other party in ORS 419B.875(1).



Procedure

- Prior to the jurisdiction hearing, the caseworker should discuss the caseworker's testimony with the district attorney's office. In cases involving an Indian child, the caseworker should meet with the district attorney's office and the child's tribe to discuss the need to have an expert witness testify regarding the petition allegations, the child's safety, and the risk the parents present to the child. The court must find, by clear and convincing evidence, including the testimony of an expert witness, that the continued custody of the Indian child by the parent or

The Indian Child Welfare Act requires the party seeking the foster placement of an Indian child in any involuntary proceeding in state court, where the court knows or has reason to know that an Indian child is involved, to notify the parent or Indian custodian and the Indian child's tribe of the pending proceeding and of the tribe's right to intervene in the proceeding. 28 USC § 1912(a). See Chapter I; Section 8: Indian Child Welfare and Working with Native Families, for notification requirements in compliance with the Indian Child Welfare Act.

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child. A qualified expert witness must be someone who possesses special knowledge of social and cultural aspects of Indian life.

- In cases involving an Indian child, the caseworker must notify the child's tribe, in writing, of the date, place, and time of the hearing at least 10 days prior to the hearing date.
- Prior to the hearing, the caseworker should review the CPS assessment, case notes and other documentation to prepare to testify at the hearing.

f. Disposition Hearing

After the evidentiary hearing, the court will enter an order directing the disposition of the case. If the court determines the petition allegations were not proven by a preponderance of the evidence, the court will dismiss the petition. If the court finds one or more of the petition allegations were proven, the court may conduct a disposition hearing immediately following the jurisdiction hearing or may set a separate hearing. The disposition hearing must occur within 28 days of the court assuming jurisdiction unless the court finds good cause to hold the hearing later.

Procedure

At this hearing the caseworker:

- Presents a court report to the court and all parties providing information about the family and the case plan. The contents and format of the court report are discussed in depth in "Court Reports," Section 1.A.5. of this chapter.
- Provides information to the court showing Child Welfare has made reasonable efforts or, if the child is an Indian child, active efforts to prevent or eliminate the need for removal of the child from the home and to make it possible for the child to safely return home. A description of the efforts made by Child Welfare must be included in the court report. A more thorough description of reasonable and active efforts is found in Section 3.B of this chapter.
- Provides information to the court, in a case involving an Indian Child, that Child Welfare has made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that those services were unsuccessful.
- Provides information to the court that the placement for an Indian child is consistent with the placement preferences of the ICWA, which include, in order of preference:
 1. A member of the Indian child's extended family.

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2. A foster home licensed, approved, or specified by the Indian child's tribe.
 3. An Indian foster home licensed or approved by an authorized non-Indian licensing authority.
 4. An institution for children approved by an Indian tribe or operated by an Indian organization, which has a program suitable to meet the Indian child's needs.
- Provides information to the court showing Child Welfare has made diligent efforts to place the child with relatives or persons who have a caregiver relationship with the child (as defined by ORS 419B.116) and diligent efforts to place the child with his or her siblings.
 - Provides information to the court that the placement for a refugee child is consistent with the child's culture and tradition and is with one of the following, in order of preference, unless such a placement is inappropriate or inconsistent with the child's best interests:
 1. Natural parent.
 2. Extended family members.
 3. Members of the same cultural heritage.
 4. Persons with knowledge and appreciation of the child's cultural heritage.

If the court has found one or more of the petition allegations proven by a preponderance of the evidence, the court must make the child a ward of the court. The court's order may direct the child be placed under protective supervision or the child be placed in the legal custody of DHS for care, placement, and supervision.

- **Protective supervision:** If the court finds it is in the best interest and welfare of the child to be under protective supervision, the court may direct the child remain in the legal custody of the child's parents or other person with whom the child is living, be placed in the legal custody of a relative or a person maintaining a foster home that is approved by the court, or in a child care center or youth care center authorized to accept the child. The court may also grant guardianship of the child to the suitable person, entity or agency to which the court granted legal custody. The court may specify particular requirements, including but not limited to restrictions on visitation by the child's parents; restrictions on the child's associates, occupation and activities; restrictions and requirements on the person having legal custody; and requirements for visitation by and consultation with a juvenile counselor or other suitable counselor.
- **Commitment to the custody of DHS:** If the court finds it is in the best interest and welfare of the child to be placed in the legal custody of DHS, the court may, but is not

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required to, grant guardianship of the child to DHS. The court may also specify the particular type of care, supervision, or services to be provided by DHS to the child and to the parents or guardian of the child. The court may make an order regarding visitation by the child's parents or siblings.

A court order removing a child from the home or continuing the child in care must include written findings as to whether:

- Removal of the child from the child's home or continuation of care is in the best interest and for the welfare of the child.
- Reasonable efforts, considering the circumstances of the child or parent, have been made to prevent or eliminate the need for removal of the child from the home or to make it possible for the child to safely return home.
- Diligent efforts have been made to place the child with relatives or persons with a caregiver relationship to the child and to place the child with his or her siblings.

The court must give a preference to placement of the child with relatives or persons with a caregiver relationship with the child. If the child is an Indian child, the placement preferences of the ICWA must be followed. If the child is a refugee child, the placement preferences in ORS 418.937 must be followed.

If the court places the child in the legal custody of DHS, the court's order must include the following:

- A determination whether DHS has made reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to prevent or eliminate the need for removal of the child from the home.
- A determination of whether DHS has made reasonable or active efforts to make it possible for the child to safely return home if the child was removed prior to entry of the disposition order.
- A description of the preventative and reunification efforts made by DHS and why further efforts could or could not have prevented or shortened the separation of the family.

In addition, the court's order may include the following:

- Recommendations regarding the primary and concurrent permanency plans for the child.
- An order requiring the parent to participate in specific treatment or training if the court

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finds in an evidentiary hearing that treatment or training is needed by the parent to correct the circumstances that resulted in wardship or to prepare the parent to resume the care of the child and participation by the parent in treatment or training is in the child's best interests.

- An order setting the permanency hearing for the child, which must be held either 12 months from the date the child was found within the jurisdiction of the court or 14 months from the date the child was placed in substitute care, whichever is earlier.

Finally, if the court finds that certain circumstances exist, the court may make a finding that DHS is not required to make reasonable efforts to make it possible for the child to safely return home. Those circumstances include:

- Aggravated circumstances, which may include but are not limited to:
 1. The parent has caused the death of any child by abuse or neglect.
 2. The parent has attempted, solicited, or conspired to cause the death of any child.
 3. The parent has caused serious physical injury to any child by abuse or neglect.
 4. The parent has subjected any child to intentional starvation or torture.
 5. The parent has abandoned the child as described in ORS 419B.100(1)(e).
 6. The parent has unlawfully caused the death of the other parent of the child.
- The parent has been convicted in any jurisdiction of one of the following crimes:
 1. Murder of another child of the parent.
 2. Manslaughter in any degree of another child of the parent.
 3. Aiding, abetting, attempting, conspiring, or soliciting to commit murder of another child of the parent or manslaughter of another child of the parent.
 4. Felony assault that results in serious physical injury to the child or another child of the parent.
- The parent's rights to another child have been terminated involuntarily.

If the court makes a finding that DHS is not required to make reasonable efforts to prevent or eliminate the need for removal of the child from the home or to make it possible for the child to safely return home and DHS decides it will not make such efforts, the court must hold a permanency hearing no later than 30 days after the finding.

g. Review Hearing

The juvenile court has the authority to review the child's situation at any time. Each party has a

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right to request a hearing. In addition, the court may hold a hearing after receiving a report filed under ORS 419B.440 to review the child's condition and circumstances and to determine if the court should continue jurisdiction and wardship or order modifications in the care, placement and supervision of the child. The reports that are required by ORS 419B.440 are discussed in more detail in "Court Reports," Section 1.A.5. of this chapter. The court must hold a hearing in the following situations:

- When parental rights have been terminated and Child Welfare has not physically placed the child for adoption or initiated adoption proceedings within six months of the termination.
- Not later than six months after the court received a report from Child Welfare because it placed the child with the child's parent or a person who was appointed the child's legal guardian prior to the child's placement in the legal custody of DHS.
- Within 30 days of the court receiving a report from Child Welfare because, for six consecutive months, the child has been in the physical custody of the child's parent or a person who was appointed the child's legal guardian prior to the child's placement in the legal custody of DHS.
- If requested by the child, the child's attorney, the parents, or Child Welfare within 30 days of receiving from the court a report filed pursuant to ORS 419B.440.

Procedure

- If the court will hold a review hearing and the caseworker has not prepared a report under ORS 419B.440, the caseworker should prepare a court report providing updated information to the court and the parties. The court report should follow the format in "Court Reports," Section 1.A.5 of this chapter. The caseworker should follow local practice requirements for submission of court reports.
- If the caseworker has already prepared a court report as required by ORS 419B.440, the caseworker need not prepare an additional court report unless the caseworker has updated information to provide to the court and the parties.
- No later than 3 days prior the hearing, the caseworker must disclose to all parties any information that must be disclosed under ORS 419B.881 (see "Disclosure/Discovery," Section 1.A.4.c of this chapter for information on required disclosures).

If the court was required to conduct a review hearing as explained above or the court exercised its discretion to hold a review hearing after receiving a report required under ORS 419B.440 and the court continues the child in substitute care, the court's findings must state:

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- Why continued care is necessary and the expected timetable for return or other permanent placement.
- Whether Child Welfare has made diligent efforts to place the child with relatives or with persons having a caregiver relationship with the child (as defined by ORS 419B.116) and to place the child with his or her siblings.
- The number of placements made, schools attended, face-to-face contacts with the assigned caseworker, and visits with parents or siblings since the child has been in the guardianship or custody of DHS, and whether the frequency of each of these is in the best interests of the child.
- If the child is 14 or older, whether the child is progressing adequately toward graduation from high school and, if not, the efforts that have been made by Child Welfare to assist the child to graduate.

In a review hearing, the court should consider the efforts made to develop the concurrent case plan, including but not limited to identification of appropriate permanent placement options for the child both inside and outside of Oregon and, if adoption is the concurrent case plan, identification and selection of a suitable adoptive placement for the child. The court may order DHS to consider additional information in developing the case plan or concurrent case plan.

If the child is in the legal custody of DHS but has been placed in the physical custody of the child's parent or a person who was appointed the child's legal guardian prior to the child's placement in the legal custody of DHS, and the decision after the review hearing is to continue the child in the legal custody of DHS and the physical custody of the parent or guardian, the court's findings must state:

- Why it is necessary and in the best interests of the child to continue the child in the legal custody of DHS.
- The expected timetable for dismissal of DHS' legal custody and for termination of wardship.

h. Permanency Hearing

The court must conduct a permanency hearing:

- If a child is in substitute care, no later than 12 months after a child is found to be within the court's jurisdiction or 14 months after the child was placed in substitute care, whichever is earlier.
- No later than 30 days after making a finding that DHS is not required to make reasonable efforts to make it possible for the child to safely return home, if DHS determines it will

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not make reasonable efforts to reunify the family.

- No later than 3 months after the date a child is removed from court-sanctioned permanent foster care.
- No later than 30 days after receiving a report from Child Welfare if Child Welfare has not physically placed the child for adoption or initiated adoption proceedings within six months of the date the child's parents surrendered the child for adoption or an order terminating parental rights was entered.
- No later than 90 days after vacating a guardianship order under ORS 419B.368.
- As soon as possible after receiving a request to conduct a permanency hearing from Child Welfare, the child's parents if parental rights have not been terminated, an attorney for the child, a court appointed special advocate (CASA), a citizen review board, or a tribal court, unless good cause otherwise is shown.
- Upon the court's own motion.

If a permanency hearing is conducted because a child has not been physically placed for adoption or because adoption proceedings have not been initiated within the required timeframe, subsequent permanency hearings must be held every six months until the child is physically placed for adoption or adoption proceedings have been initiated. In other cases, permanency hearings must be held every 12 months for as long as the child remains in substitute care.

Procedure

To prepare for the permanency hearing, the caseworker:

- Gathers information regarding the parents and the child from service providers.
- Staffs the family situation with the supervisor, other appropriate Child Welfare staff, and the assistant attorney general assigned to the local office to determine the appropriate case plan for the child.
- Prepares a court report using the format described in "Court Reports," Section 1.A.5. of this chapter.
- Includes in the court report a list of the efforts made by Child Welfare to make it possible for the child to safely return home or, if the permanent plan is something other than return to parent, the reasonable efforts made to place the child in a timely manner in accordance with the permanent plan and to complete the steps necessary to finalize the permanent

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placement.

- Includes in the court report the comprehensive plan for the child's transition to independent living if the child is either 16 or older or the child is at least 14 and there is a comprehensive plan for the child's transition to independent living.
- Includes in the court report the efforts made to develop the concurrent permanent plan, including but not limited to, identification of appropriate permanent placement options both inside and outside of Oregon.
- Includes in the court report Child Welfare's recommendation of the plan that should be adopted at the permanency hearing.
- Provides the court report to the court and all parties following local practice.
- Discloses to all parties, at least 3 days prior to the hearing, any information that must be disclosed under ORS 419B.881 and has not previously been disclosed (see "Disclosure/Discovery," Section 1.A.4.c of this chapter).

The court shall enter an order within 20 days of the permanency hearing, which must include the following:

- If the case plan at the time of the hearing was to reunify the family, the court's determination as to whether DHS has made reasonable efforts or, if the ICWA applies, active efforts to make it possible for the child to safely return home and a brief description of the efforts made.
- If the case plan at the time of the hearing was to reunify the family, the court's determination as to whether the parent has made sufficient progress to make it possible for the child to safely return home.
- If the case plan at the time of the hearing was something other than to reunify the family, the court's determination as to whether DHS has made reasonable efforts to place the child in a timely manner in accordance with the permanent plan and to complete the steps necessary to finalize the permanent plan and a brief description of the efforts made.
- If the case plan at the time of the hearing was something other than to reunify the family, the court's determination as to whether DHS has considered permanent placement options for the child, including options both inside and outside of Oregon.
- The permanency plan for the child, including whether and, if applicable, when the child will be returned to the parent, the child will be placed for adoption and a petition for termination of parental rights will be filed, the child will be referred for establishment

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of a legal guardianship, or the child will be placed in another planned permanent living arrangement.

- If the permanent plan for the child is return home because further efforts will make it possible for the child to safely return home within a reasonable time, the court's determination of the services in which the parents are required to participate, the progress the parent's are required to make, and the period of time within which the specified progress must be made.
- If the permanent plan for the child is adoption, the court's determination as to whether there exists an exception to the mandate in ORS 419B.498 that DHS file a petition to terminate parental rights.
- If the permanent plan for the child is establishment of a legal guardianship or placement with a fit and willing relative, the court's determination as to why neither placement with the parents nor adoption is appropriate.
- If the permanent plan is a planned permanent living arrangement, the court's determination of a compelling reason, that must be documented by DHS, why it would not be in the best interests of the child to be returned home, placed for adoption, placed with a legal guardian, or placed with a fit and willing relative.
- If the court decides to continue the child in substitute care, the court's findings as to why continued care is necessary as opposed to returning the child home or taking prompt action to secure another permanent placement, the expected timetable for return or other permanent placement, and whether DHS has made diligent efforts to place the child with relatives or persons with a caregiver relationship with the child (as defined by ORS 419B.116) and to place the child with his or her siblings.
- The number of placements made, schools attended, face-to-face contacts with the assigned caseworker and the visits with parents or siblings since the child has been in the legal custody of DHS and whether the frequency of each of these is in the best interests of the child.
- If the child is 14 years of age or older, the court's determination as to whether the child is progressing adequately toward graduation from high school and, if not, the efforts that have been made by DHS to assist the child to graduate.
- If the child is 16 years of age or older, or if the child is at least 14 and there is a comprehensive plan for the child's transition to independent living, the court's determination as to whether the comprehensive plan for the child's transition to independent living is adequate to ensure the child's successful transition to independent

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living, whether DHS has offered appropriate services pursuant to the plan, and whether DHS has involved the child in the development of the plan.

- If the child is an Indian child, the tribal affiliation of the child.
- If the child has been placed in an interstate placement, the court's determination of whether the interstate placement continues to be appropriate and in the best interest of the child.

If the court order establishes a timetable for return home or for placement in another planned permanent living arrangement because the current placement of the child is not expected to be permanent and Child Welfare does not meet the timetable set forth in the order, the caseworker must notify the court and all parties that the timetable was not met.

At the hearing the court may:

- Determine whether DHS has made reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to make it possible for the child to safely return home if the case plan changed during the period since the last court hearing or review by the Citizen Review Board and a plan to reunify the family was in effect for any part of that period.
- Determine whether DHS has made reasonable efforts to place the child in a timely manner in accordance with the case plan and to complete the steps necessary to finalize the permanent placement if the case plan changed during the period since the last court hearing or review by the Citizen Review Board and a plan other than to reunify the family was in effect for any part of that period.
- Determine the adequacy of and compliance with the case plan and the case progress report.
- Review the efforts made by DHS to develop the concurrent permanent plan.
- Order DHS to develop or expand the case plan or concurrent permanent plan and provide a case progress report to the court and the other parties within 10 days after the permanency hearing.
- Order DHS to modify the care, placement and supervision of the child.
- Order the Citizen Review Board to review the status of the child prior to the next court hearing.

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- Set another court hearing at a later date.

i. Hearings to Implement the Permanent Plan (Guardianship/Termination)

Once the case plan changes from a plan to reunify the family to adoption, establishment of a legal guardianship, placement with a relative, or a planned permanent living arrangement, the court may conduct one or more hearings to implement the permanent plan. The caseworker should consult with his or her supervisor and, if appropriate, the assistant attorney general assigned to the local branch or the Multnomah County deputy district attorney handling the termination case, for information about how to prepare for a hearing to implement the permanent plan for the child.

S Role of the Supervisor

- Consult with the caseworker to ensure that each child's case follows the timelines required by Oregon law and the Adoption & Safe Families Act.
- Ensure that diligent efforts have been made to place the child with relatives or persons having a caregiver relationship with the child and that diligent efforts have been made to place the child with his or her sibling.
- Ensure that the caseworker has complied with the Indian Child Welfare Act requirements.
- Ensure that the caseworker has complied with ORS 418.925 to ORS 418.945 (Refugee Child Welfare Act).
- Ensure that the caseworker is knowledgeable about the juvenile court process and is in compliance with court procedures.
- Ensure that a summons and petition are served on all persons that are required to be served.
- Consult with the caseworker if a person cannot be served with a summons.
- Consult with the caseworker regarding the disclosure of case file materials to the parties and ensure that relevant information that may be disclosed is provided to the court and the parties.

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- Staff the case with the caseworker to determine the permanent plan for the child and accompany the caseworker to internal staffings or staffings with the assistant attorney general.
- Give approval for AAG consultation in legal matters related to contested hearings.
- Accompany the caseworker to complicated court proceedings when requested and accompany or arrange for someone else to accompany a new caseworker to his or her first court hearing to provide training and support.



Legal References

- 25 USC §§ 1901 to 1963: Indian Child Welfare Act
- Public Law 105-89: The Adoption and Safe Families Act
- 42 CFR Part 2: Confidentiality of Alcohol and Drug Abuse Patient Records
- ORS 418.925 to ORS 418.945: Refugee Child Welfare Act
- ORS 409.225
- ORS 419A.004
- ORS 419B.035
- ORS 419B.100
- ORS 419B.116
- ORS 419B.117
- ORS 419B.185
- ORS 419B.192
- ORS 419B.305
- ORS 419B.310
- ORS 419B.325
- ORS 419B.328
- ORS 419B.331
- ORS 419B.337
- ORS 419B.350
- ORS 419B.343

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- ORS 419B.349
- ORS 419B.368
- ORS 419B.370
- ORS 419B.385
- ORS 419B.387
- ORS 419B.440
- ORS 419B.443
- ORS 419B.446
- ORS 419B.449
- ORS 419B.452
- ORS 419B.470
- ORS 419B.476
- ORS 419B.498
- ORS 419B.803
- ORS 419B.812
- ORS 419B.815
- ORS 419B.818
- ORS 419B.823
- ORS 419B.824
- ORS 419B.875
- ORS 419B.830
- ORS 419B.833
- ORS 419B.839
- ORS 419B.869
- ORS 419B.878
- ORS 419B.881
- ORS 419B.890
- UTCR 11.050
- State ex rel Juv. Dept. of Multnomah County v. Charles, 70 Or App 10 (1984).

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- DHS Child Welfare Policy I-AB.4: CPS Assessment
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-ab4.pdf
- DHS Child Welfare Policy I-B.1.1: Authority for Providing Services
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-b11.pdf
- DHS Child Welfare Policy I-B.3.1: Developing and Managing the Case Plan
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-b31.pdf
- DHS Child Welfare Policy I-B.3.2.1: Substitute Care Placement Reviews
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-b321.pdf
- DHS Child Welfare Policy I-E.3.6: Achieving Permanency
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-e36.pdf
- DHS Child Welfare Policy I-I.3: Court Reports
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-i3.pdf



Forms

- CF 464: Protective Custody Report
http://dhsresources.hr.state.or.us/WORD_DOCS/CE0464.doc

5. Court Reports

A court report is a written report prepared by a caseworker that provides the judge and the parties with information about the case, including: a summary of the situation that clearly articulates the identified safety threats, present or impending; the analysis of those threats; actions taken to manage and control the threats; discussion of caregiver capacity to protect or not, and how all of this information informs the safety decisions and intervention recommendations of Child Welfare. If the child is out of the home, the report clearly articulates the conditions for return, that is, what exactly has to happen in order for the family to be reunited. These conditions must be directly related to eliminating or decreasing safety threats and increasing the parent's or caregiver's protective capacities. They are behaviorally stated, not task oriented (i.e., not parent will go to counseling). If the protective capacity assessment has not been completed at the time of the first report, the first report will contain an initial assessment, which can be completed and further explained in later court reports.

The length and format of the court report depend on the purpose of the report and the preferences of the court. If the caseworker is preparing a court report for a shelter hearing, the caseworker prepares the Protective Custody Report. The caseworker prepares a 333 Case Plan for a disposition hearing and a permanency hearing.

For most hearings, the court report is to include some or all of the following information:

- Date of the hearing, name of the caseworker, juvenile court case number, and Child Welfare case number.
- The child's full legal name and date of birth.
- The parents' full legal names, addresses, and dates of birth.
- The full legal name, address, and date of birth of the child's legal guardian, if any.
- The legal status of the child's father or fathers.
- Whether jurisdiction has been established over the child.
- The child's residence, except when the child is in foster care, the caseworker does not provide the exact address and instead indicates that the child is in a DHS Child Welfare certified foster home.
- The names of the attorneys for the parties.
- If applicable, whether the child is an Indian child or a Refugee child.

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- A history of Child Welfare contacts with the family, which includes the most recent referral to Child Welfare, the protective action taken, the identified safety threats, the safety analysis, and the CPS assessment disposition.
- Information about each parent or legal guardian, including: family social history, enhanced parental protective capacities (cognitive, emotional, and behavioral), diminished parental protective capacities (cognitive, emotional, and behavioral), relationship with the child, and other parental factors that bear on the parents' ability to provide for the safety, permanency, and well-being of the child.
- A list of visits the child has had with the child's parents and siblings since the child has been in the legal custody of Child Welfare, including the place and date of each visit.
- Information about the child, including: family history; school history, including, if the child is 14 or older, the number of high school credits the child has earned; placement history, including a list of all placements made since the child has been in the legal custody of Child Welfare and the length of time the child spent in each placement; vulnerability; strengths; problems; talents; relationships with others; disabilities; physical health; and mental health.
- The type of care, treatment and supervision that Child Welfare is providing to the child and an analysis of the effectiveness of the care being provided.
- A description of the ongoing safety plan currently in place and whether or not the child is able to return to the parent's home at this time.
- A list of dates of face-to-face contacts the caseworker has had with the child since the child has been in the legal custody of Child Welfare and the place of each contact or, if the child is placed outside the state, whether the child has been visited no less frequently than once every six months by a state or private agency.
- The diligent efforts being made by Child Welfare to identify and locate relatives and to place the child with a relative or a person with a caregiver relationship to the child.
- The diligent efforts being made by Child Welfare to place the child with his or her siblings.
- A description of the parents' involvement with planning as well as that for other relatives, community partners and service providers.
- A description of the action agreement developed with the parent, the services the parent was referred to, and parental involvement with services.

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- A description of the conditions for return of the child, the expected outcomes and the actions that will be taken to achieve the outcomes.
- An outline or summary of the reasonable, or if the Indian Child Welfare Act applies, active efforts made by Child Welfare to return the child to the parent, or to complete the steps necessary to finalize the permanency plan.
- A description of the parent's progress on achieving the outcomes set out in the conditions for return.
- A description of the alternate or concurrent permanency plan and efforts made with regard to the plan, such as identification of a permanent placement for the child.
- Recommendations for court orders, including orders regarding:
 1. Visitation between the parent and the child.
 2. Expected outcomes for the parent related to eliminating or decreasing the identified safety threats, as outlined in the action agreement and which are rationally related to the basis for juvenile court jurisdiction.
 3. Services for the child, as outlined in the safety plan.
 4. Safe and stable housing.
 5. Contact with unsafe people.
 6. Providing relative information to Child Welfare for possible placement if the parent has been unwilling to do so.
 7. Conditions for return home.
 8. Reasonable or active efforts.
 9. Changing the case plan for the child.
 10. Relieving the Citizen Review Board.
 11. Terminating Child Welfare's legal custody and, if applicable, guardianship of the child and terminating wardship.

Where appropriate to do so, if consistent with local practice, the caseworker should attach documentation to the court report (i.e., a copy of the action agreement or a psychological evaluation).

Most courts prefer that subsequent court reports not repeat the same information in prior court reports, except information that is pertinent to the current situation of the child and the parent. Each district has developed a court report format in conjunction with that district's juvenile court, so the caseworker should follow local practice on the structure and content of the report.

Required Court Reports (No Hearing Identified)

Oregon law requires Child Welfare to file reports with the court or the Citizen Review Board even though no hearing is scheduled in the case.

- A report to the court is required when a child is moved from one substitute care placement to another, or a child is placed in the parent's home. The caseworker will:
 1. Inform the court of the child's move prior to the move or as soon as practicable after the child is moved.
 2. Use the 333 form as the court report when possible. A report is not required if the court has received a report or treatment plan indicating the actual physical placement of the child.

Depending on local practice, notification may be done at a hearing, through a letter, or with the assistance of the assistant attorney general assigned to the local branch, with supervisor approval. The caseworker should see his or her supervisor for direction.

- A report to the court is required when a child has been placed in the legal custody of Child Welfare as the result of a court order and remains under Child Welfare custody for six consecutive months from the date of the initial placement and no less frequently than each six months thereafter. The caseworker will:
 1. Prepare a court report using the 333 form. The report must include the information required by ORS 419B.443(1) but need not contain information in prior reports. If the child's case is being regularly reviewed by the Citizen Review Board, the report after the initial report shall be filed with the Citizen Review Board rather than the court.
- A report to the court is required when a child has been surrendered for adoption or the rights of the child's parents have been terminated and Child Welfare has not physically placed the child for adoption or initiated adoption proceedings within six months. The caseworker will:
 1. Prepare a court report using the 333 form. The report must include the information required by ORS 419B.443(1) but need not contain information in prior reports.
- A report to the court is required when a child is in the legal custody of Child Welfare but has been placed for six consecutive months in the physical custody of a parent or a person who was appointed the child's guardian prior to the child's placement in the legal custody of Child Welfare. The caseworker will:
 1. Prepare a court report using the 333 form. The report must include the information required by ORS 419B.443(1) but need not contain information in prior reports. In

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addition, the report must include a recommended timetable for dismissal of Child Welfare's legal custody and termination of wardship and a description of the services that Child Welfare will provide to the child and the physical custodian to eliminate the need for Child Welfare to have legal custody. The report shall be filed with the court even if the Citizen Review Board is regularly reviewing the case.

- A report to the court is required when a child in the legal custody of Child Welfare needs medical care or other special treatment. The caseworker will:
 1. Prepare a plan for the child's care or treatment within 14 days after assuming custody of the child.
 2. Provide the court with a copy of the plan, including a time schedule for implementation.
 3. Provide progress reports to the court as requested, and at least annually.
 4. Notify the court when the plan is implemented.
 5. Notify the court of any revisions to the plan and the reasons for the revisions.

See Chapter IV: Section 21 for more information on a medically needy child.

Role of the Supervisor

- Review the caseworker's court report to see if it is professionally done and provides the court with needed information about the family.
- Assist the caseworker, when needed, in determining appropriate recommendations for the court to order.
- Ensure a report is made to the court prior to or as soon as practicable after the caseworker moves a child in foster care or returns a child home and consult with the caseworker about the appropriate format for the report.
- Ensure the caseworker files a medical plan for a medically needy child according to the appropriate timelines.
- Ensure other required reports are completed and contain the necessary information.



Legal References

- ORS 419B.346
- ORS 419B.440
- ORS 419B.443
- DHS Child Welfare Policy I-I.3: Court Reports
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-i3.pdf



Forms

- CF 0333: Case Plan
http://dhsresources.hr.state.or.us/WORD_DOCS/CE0333a.doc

6. Court Orders

The caseworker will:

- Obtain a written copy of the order filed by the court.
- Read the order thoroughly to ensure that the order reflects the caseworker's recollection of the court's statements at the hearing and to ensure that the caseworker understands the order.
- Consult with his or her supervisor if the caseworker has any questions about the order, if the order raises a legal issue that requires mandatory consultation with an assistant attorney general, or if the caseworker disagrees with the order.
- Comply with the order.

If there is an error in the order (i.e., the order is incorrect or the order fails to contain a required finding), the caseworker will immediately inform his or her supervisor and get permission to contact the assistant attorney general assigned to the branch. The order remains in effect until it is modified, so the caseworker must comply with the existing order during this time. The caseworker should discuss compliance with the order with his or her supervisor and the AAG. If the juvenile court has ordered a parent to complete a specific service, the caseworker should refer the parent to the appropriate service, especially when Child Welfare pays for the service. See Chapter VI: Family Support Services for service referral procedures.

S Role of the Supervisor

- Give approval for an AAG consultation in cases where mandatory consultation with an assistant attorney general is required or for assistance with orders that are incomplete, inaccurate, or with which the agency disagrees.

B. Domestic Relations Cases

Overview

Child Welfare caseworkers have only limited contacts with domestic relations cases. Typically, domestic relations cases deal with issues regarding marital dissolution, separation, family abuse prevention, and parent and child rights and relationships.

Child Welfare caseworkers may be served with a subpoena to appear as a witness in cases of marital dissolution or child custody if the caseworker had involvement with the family, either as part of a Child Protective Services investigation or an open Child Welfare case. If the caseworker is served with a subpoena, requiring the caseworker to testify, to provide records, or to provide records and testify, the caseworker:

- Consults with his or her supervisor about the confidentiality of DHS records.
- Refers to Section 1.C of this chapter for information on responding to subpoenas.

When a parent has made significant progress in achieving the expected outcomes of a case, child safety is being sustained in the parent's home, the safety threats have been eliminated or mitigated, and child safety can be sustained without ongoing Child Welfare involvement, but the parent needs an order granting the parent custody and control of the child in order to protect the child, the caseworker:

- Refers the parent to his or her attorney to discuss options for obtaining legal custody of the child.
- Requests the juvenile court maintain wardship of the child, place the child under the protective supervision of the court with legal custody to the parent, and terminate Child Welfare's legal custody and, if applicable, guardianship, until that parent can obtain a circuit court order granting the parent legal custody of the child.
- Closes the Child Welfare case as outlined in Chapter III: Section 17, "Closing the Case," after the court vacates Child Welfare's legal custody and guardianship.

S Role of the Supervisor

- Consult with the caseworker regarding a subpoena, the confidentiality of DHS records, and testifying.
- Assist the caseworker in preparation of testimony.
- Approve consultation with the assistant attorney general assigned to the local office in cases where there are legal questions about a subpoena, records, or testimony.

C. Responding to Subpoenas, Summonses, and Court Orders

1. Overview

Any department employee, case record or a child in the department's legal custody can be the subject of a subpoena, summons or court order. A subpoena is directed to a person and may require the person to testify as a witness at a particular time and place on behalf of the party issuing the subpoena or may require the person to produce books, papers, documents or other things and permit inspection of them at a particular time and place. A subpoena may require appearance and testimony under oath at a location outside of the courtroom, called a deposition. A summons notifies a person that a court action has been initiated against them and requires the person to appear before the court either in person, at a designated time and place, or by filing a document with the court.

If the department or an employee is not able to legally comply with the subpoena, summons or court order, or if there are questions about whether the department can or should comply (i.e., a subpoena compels a child in the custody of the department to testify and testifying may not be in the child's best interests), the department must seek assistance from an assistant attorney general (AAG) to protect client rights and to ensure that the department follows state and federal laws regarding the confidentiality of client and department records. This section guides department staff to properly respond to subpoenas, summonses, or court orders.

Procedure

The department employee receiving the subpoena, summons, or court order must:

- Date stamp the document and note the method by which the document was received (by mail, by hand delivery, by facsimile, etc.).
- If the document is a summons or subpoena directed to a specific department employee and the employee receiving the document is not the named employee, immediately

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deliver the summons or subpoena to the named employee.

- If the document is a summons or subpoena directed to a child in the legal custody of the department, immediately deliver the document to the assigned caseworker for the child.
- If the document is a court order directing a specific department employee to take a particular action and the employee receiving the document is not the named employee, immediately deliver the court order to the named employee.
- If the document is a court order in a juvenile court proceeding or in another proceeding involving a child in the legal custody of the department, a family member of a child in the legal custody of the department, or a family with whom the department is working voluntarily, immediately deliver the court order to the assigned caseworker for the child or family.
- If the document is a summons or subpoena that is not directed to a specific department employee but rather is directed to the department generally or to the “custodian of records,” immediately deliver the summons or subpoena to the caseworker assigned to the case or, if a caseworker is not assigned to the case, to the local employee designated to review records requests.
- If the document is a court order requiring the production of department records, immediately deliver the court order to the caseworker assigned to the case or, if a caseworker is not assigned to the case, to the employee designated to review records requests.

NOTE: Due to the unusually short timeframe within which the department must typically comply with a subpoena, summons, or court order, the employee receiving the document may not leave the document for an employee who is absent. If the employee to whom the document should be delivered is gone, the employee receiving the document must deliver it to the designated employee’s supervisor or to staff providing coverage for the designated employee.

Once the subpoena, summons, or court order is received by the department employee named in the subpoena, summons, or order, by the caseworker or by the employee designated to review records requests, the named employee, the caseworker, or the employee designated to review records requests, examines the subpoena, summons, or court order to determine:

- What type of proceeding is involved (criminal, domestic relations, paternity, juvenile dependency, etc.).
- What court issued the subpoena (state, federal, out-of-state, etc.).

- What the document requires and when.

NOTE: If payment for witness fees or copying costs accompanies a subpoena or subpoena duces tecum, the named employee, caseworker, or the employee designated to review records requests, must notify his or her supervisor of the payment. The payment may need to be returned to the attorney issuing the subpoena if the department objects to the subpoena. If the payment can be kept, it must be surrendered to the department.

2. Responding to Summonses, Subpoenas, or Court Orders in Juvenile Dependency Cases

In a juvenile dependency proceeding, a summons may be issued to require the appearance of any person whose presence the court deems necessary. A subpoena may be issued by an attorney for any party, by the clerk of the court, or by a judge. Under ORS 419B.884, before a subpoena in a juvenile case may command a person to appear for a deposition, the deposition must be authorized by the court. In addition, department employees are expected to comply with an informal notice to attend a juvenile court hearing.

Procedure

Once the caseworker assigned to the juvenile court case receives the document and reviews it, the caseworker:

- If the document is a court order, follows the procedure in this chapter, Section 1.A.6, Court Orders.
- If the document requires the caseworker's presence at a court hearing, through either a summons or a subpoena, complies with the command. If the caseworker has any questions about his or her ability to comply, the caseworker should consult with his or her supervisor and seek approval to consult with an AAG.
- If the document requires the testimony or appearance of a child in the custody of the department, provides a copy of the document to the child's attorney and, if appropriate, arranges for the child to appear. If the caseworker has any questions about whether it is in the child's best interests to appear, the caseworker should consult with his or her supervisor and discuss the concerns with the child's attorney. If questions remain, the caseworker should seek approval to consult with an AAG.
- Notifies his or her supervisor of any order that requires the disclosure of department records. If there are any questions regarding the disclosure of records, the caseworker

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should seek approval to consult with an AAG.

- Consults with his or her supervisor and seeks approval to consult with an AAG if a subpoena requires the caseworker to appear for a deposition.
- Consults with his or her supervisor if the time to respond to the subpoena, summons, or court order is less than 24 hours or is otherwise unreasonable.
- Consults with his or her supervisor and seeks approval to consult with an AAG if the order requires the caseworker to appear and show cause why the caseworker should not be held in contempt of court.
- Consults with his or her supervisor if the caseworker has any questions about his or her ability to testify.

If the department employee receiving the document is named in the subpoena, summons, or court order and is not the caseworker assigned to the case, the employee consults with his or her supervisor, the caseworker, and the caseworker's supervisor. If there are any questions about whether the employee should comply, the caseworker should seek approval from his or her supervisor to consult with an AAG.



Drug and alcohol information regarding a parent cannot be disclosed without a court order or an authorization from the parent permitting the department to disclose the records to the court and the parties to the juvenile court case. Under federal law, a court order authorizing the disclosure of drug and alcohol records must contain specific findings. The disclosure of protected health information must be required by law or made pursuant to a written authorization. The caseworker must log the disclosure of protected health information on the DHS 2097. Refer to DHS Child Welfare Policies I-A.3.1 and I-A.3.2; Section 1.A.4.c, Disclosure/Discovery, of this chapter; and Chapter I: Section 4, Confidentiality, for more information on the confidentiality of department records.

3. Responding to Summonses and Court Orders (Not Involving the Disclosure of Department Records) in Civil Cases

The department may receive a summons or a court order in a civil case. For instance, if the department is sued, the department may be served with a copy of the complaint and a summons requiring the department to respond to the complaint within 30 days. In addition, the department could receive a court order, other than orders requiring the disclosure of records, in a civil case.

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Sometimes, a court will issue an order called an Order to Appear and Show Cause in order to bring a person before the court. A court may issue an order to appear and show cause directing a person to appear before the court to show cause why he or she should not be held in contempt of court.

Procedure

Once the document is reviewed, the named employee, the caseworker, if the document involves a child in the legal custody of the department, or the employee designated to review records requests:

- If the document is a summons directed to a named employee or to the department generally, forward the summons to the Department of Justice immediately.
- If the document is a summons directed to a child in the legal custody of the department, consults with his or her supervisor and provides a copy of the document to the attorney for the child, if any. If there are any questions about how to respond to the summons, seeks approval to consult with an AAG.
- If the document is a court order, consults with his or her supervisor to determine if the department can or should comply with the order. If there are questions about whether the department can legally comply or should comply, seeks approval to consult with an AAG.
- If the document is a court order directed to a child in the legal custody of the department, consults with his or her supervisor and provides a copy of the order to the child's attorney, if any. If there are any questions about how to respond to the order, seeks approval to consult with an AAG.
- If the response time is less than 24 hours or is otherwise unreasonable, consults with his or her supervisor and seeks approval to consult with an AAG if the response time for an order or summons is less than 24 hours or is otherwise unreasonable.
- If the summons or court order is from an out-of-state court, notifies his or her supervisor and seeks approval to consult with an AAG.

4. Responding to Subpoenas and Court Orders to Disclose Records or to Testify in Civil Cases or Administrative Proceedings

Information held by the department regarding a child or family is confidential under a number of state and federal laws. Even if a subpoena or court order requests testimony and does not seek the disclosure of records, testimony about confidential records is protected by the public officer privilege. To protect the confidentiality of information about a child or family, the Department must seek assistance from an AAG whenever a subpoena or court order in a civil case or administrative

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proceeding requires the department to disclose information that is confidential.



If the subpoena or court order requires disclosure of "all DHS records" relating to a specific person and is not specifically directed to Child Welfare, the employee reviewing the subpoena or court order should contact Central Office for assistance. The subpoena may demand production of records held by other DHS programs, such as Self-Sufficiency.

Procedure

The employee named in the subpoena, the caseworker, or the employee designated to review records requests:

- Reviews the subpoena or court order to determine what records are being requested.
- Determines whether the department has the records (this includes determining whether the records are at any department location, including central office, at an offsite storage location, or stored on someone's computer). If there are questions about whether the department has custody or control over the requested records, consults with his or her supervisor and seeks approval to consult with an AAG.
 1. If the department does not have the requested records, contacts the attorney that issued the subpoena and explains that the department does not have the records. Telephone contact with an attorney should be followed with a letter confirming the conversation. **NOTE:** Notifying an attorney that the department does not have records does not relieve the department of its responsibility to comply with a subpoena to appear and testify. If the attorney does not withdraw the subpoena, the employee should consult with his or her supervisor and seek approval to consult with an AAG.
 2. If a court order requires disclosure of records that the department does not have, consults with his or her supervisor and seeks approval to consult with an AAG.
- Reviews the records requested in the subpoena to determine what kinds of records are being sought (i.e.,: CPS records, drug and alcohol records, medical records, juvenile court records), whether the department has a written authorization that permits it to disclose the requested records, and whether the department may legally comply with the subpoena or court order and provide the records. Even if the subpoena is for testimony only, department records should be reviewed to determine if questions might be asked about

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confidential information.

- Notifies his or her supervisor about any court order requiring the testimony of a department employee or the disclosure of a department record.
- Notifies his or her supervisor and seeks approval to consult with an AAG if:
 1. A subpoena requires testimony at a deposition.
 2. A subpoena or court order requires a response in less than 24 hours or is otherwise unreasonable.
 3. A subpoena or court order is from an out-of-state court.
- If the department is legally required to comply with the subpoena or court order, discloses the records pursuant to the subpoena or court order and keeps a copy of the records that are disclosed for the file. If the employee has any question about whether the department can or should comply with the subpoena or court order, the employee should consult with his or her supervisor and seek approval to consult with an AAG. If the disclosure includes protected health information, the disclosure must be logged on the DHS 2097.
- If the department has the discretion to disclose the records and decides that it is appropriate to exercise that discretion in this case, discloses the records pursuant to the subpoena or court order, keeps a copy of the records that are disclosed for the file, and documents in the file the reasons why the department has determined that it is appropriate to exercise its discretion.
- If the department may not legally comply with the subpoena or court order or determines that it is not appropriate to exercise its discretion in this case, consults with his or her supervisor and seeks approval to consult with an AAG.
- If the department is legally required to comply with the subpoena or court order but it would be harmful to a child if records were disclosed to certain persons, consults with his or her supervisor and seeks approval to consult with an AAG.
- If the department may provide some of the records requested but may not provide all the records or may provide records if certain information in the records is redacted, consults with his or her supervisor and seeks approval to consult with an AAG.



If a document contains both information that is subject to a subpoena or court order and information that is not subject, and the information that is subject to the subpoena or court order can legally be provided, the document must be redacted before it can be disclosed. The document should be redacted to remove information that is not subject to disclosure. The person responding to the subpoena or court order should note in a cover sheet the general information that was redacted (i.e., information regarding a third party). If the document cannot be redacted, a supervisor should be consulted.

5. Responding to Subpoenas and Court Orders Requiring Testimony or the Disclosure of Department Records in Criminal Cases

Based on local practice and case law regarding the disclosure of department records in criminal cases, parties may seek department records for purposes of an *in camera* inspection by the court.

Procedure

The caseworker or the employee designated to review records requests:

- Notifies his or her supervisor that a court order was received for *in camera* review of department records.
- Reviews the court order to determine the records that must be disclosed.
- Determines whether the department has the records (this includes determining whether the records are at any department location, including central office, at an offsite storage location, or stored on someone's computer). If there are questions about whether the department has custody or control over the requested records, consults with his or her supervisor and seeks approval to consult with an AAG.
- If the department does not have the records, consults with his or her supervisor and seeks approval to consult with an AAG.
- Reviews the records to be provided for *in camera* review to determine what kinds of records are being sought (i.e., CPS records, drug and alcohol records, medical records, juvenile court records).
- If the court order seeks drug and alcohol records, consults with his or her supervisor and

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seeks approval to consult with an AAG. The court order must contain specific findings to permit the release of drug and alcohol records under federal law.

- If the court order does not require the disclosure of drug and alcohol records or the department does not have drug and alcohol records, provides the records to the court by making a complete copy of the records, certifying that the copy is a true and complete copy of the department's file, sealing the records and the certification in a manila envelope, attaching the court order to the outside of the envelope with a cover sheet (a copy of a cover sheet is included in the appendix), and delivering the documents to the court. If protected health information was disclosed, the employee logs the disclosure on the DHS 2097.
- If the court order requires the disclosure of drug and alcohol records, consults with his or her supervisor and seeks approval to consult with an AAG.
- Consults with his or her supervisor and seeks approval to consult with an AAG if disclosure of the records to certain persons would be harmful to a child.
- Notifies his or her supervisor and seeks approval to consult with an AAG if the order is from an out-of-state court.
- Notifies his or her supervisor and seeks approval to consult with an AAG if the order requires a response within 24 hours or is otherwise unreasonable.

Responding to Subpoenas Requiring the Department to Disclose Records to the Court for *In Camera* Review

Procedure

The caseworker or the employee designated to review records requests:

- If the subpoena is accompanied by a court order to produce the records to the court for an *in camera* review, follows the procedures above for court orders for *in camera* review.
- If the subpoena is not accompanied by a court order to produce the records to the court for an *in camera* review, consult with his or her supervisor and seek approval to consult with an AAG. Drug and alcohol records and protected health information may not be disclosed without a court order or a written authorization.
- If the subpoena demands a response within 24 hours or is otherwise unreasonable,

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notifies his or her supervisor and seeks approval to consult with an AAG.

- If the subpoena is from out-of-state, notifies his or her supervisor and seeks approval to consult with an AAG.

Responding to Subpoenas for Testimony or Disclosure of Records in a Criminal Case

Procedure

If a subpoena does not request *in camera* review by the court, the employee named in the subpoena, the caseworker, or the employee designated to review records requests:

- Determines if the court has conducted an *in camera* review of department records and, if so, whether records were released to the parties pursuant to the court's *in camera* review. If records were already released pursuant to an *in camera* review and the subpoena requests testimony only, the employee should consult with his or her supervisor. The employee can testify as to matters that the court has disclosed pursuant to its *in camera* review. The employee should bring the prepared statement in the appendix about the confidentiality of department records and ask the court to order the employee to testify about records that were disclosed pursuant to an *in camera* review. If there are any questions, the employee and the supervisor should consult with an AAG.
- If the court has not conducted an *in camera* review of the records or the subpoena seeks records in addition to records that were released pursuant to an *in camera* review, follows the procedures for responding to subpoenas in civil cases.
- If the subpoena requests testimony before the grand jury, contacts the deputy district attorney that issued the subpoena to discuss the scope of the testimony. If the caseworker or employee has any concerns about the testimony after contacting the deputy district attorney, the employee consults with his or her supervisor.

6. Information to Provide to the Department of Justice

Because of the often short timeframe within which to respond to subpoenas, summonses, and court orders, an assistant attorney general should be consulted as soon as possible and must be provided with specific information during the initial consultation.

Procedure

Once a supervisor has approved consultation with an AAG, the caseworker, the employee to whom the summons, subpoena, or court order is directed, or the employee designated to review records

requests:

- Contacts the AAG assigned to the local branch. If possible, this contact should be made by the DHS paralegal.
- Provides the AAG with copies of the court order, summons, or subpoena and any written authorizations to disclose records; notifies the AAG of the date the document was received and how the document was received (i.e., hand-delivery, by certified mail, by fax); identifies the type of documents that are requested by the subpoena or court order (drug and alcohol records, CPS records, etc.); and, if possible, provides the AAG with copies of any documents requested.
- Consultation with an AAG on a predisposition/jurisdiction must be approved by the CAF assistant administrator and the assistant attorney in charge for the branch AAG.

Role of the Supervisor

- Review any orders served on the caseworker.
- Review any court orders for department records.
- Review any non-juvenile court orders for department records, the testimony of a department employee, or the presence of a child in the legal custody of the department.
- Consult with the caseworker about the disclosure of department records, the testimony of a department employee, or other questions involving summonses, subpoenas, or court orders.
- Give approval to consult with an AAG on issues involving the confidentiality of department records; the legal sufficiency of a subpoena, summons, or court order; a subpoena, summons, or court order issued in an out-of-state case; the timeline for a response to a subpoena, summons, or court order; or the need to protect a child in the legal custody of the department.
- Assist the caseworker in preparing to testify in court.



Legal References

- ORS 40.270
- ORS 419B.839
- ORS 419B.884
- ORS 419B.893
- ORS 419B.896
- DHS Child Welfare Policy I-B.1.2 Responding to Subpoenas, Summonses and Court Orders
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-b12.pdf
- DHS Child Welfare Policy I-A.3.1 Procedures for Maintaining Confidentiality
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-a31.pdf
- DHS Child Welfare Policy I-A.3.2 Confidentiality of Client Information
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-a32.pdf