Juvenile Law 2018: Moving from the Outside In

Cosponsored by the Juvenile Law Section

Friday, February 23, 2018
8:30 a.m.–4:30 p.m.

5.5 General CLE credits and 1 Access to Justice credit
The materials and forms in this manual are published by the Oregon State Bar exclusively for the use of attorneys. Neither the Oregon State Bar nor the contributors make either express or implied warranties in regard to the use of the materials and/or forms. Each attorney must depend on his or her own knowledge of the law and expertise in the use or modification of these materials.

Copyright © 2018

OREGON STATE BAR
16037 SW Upper Boones Ferry Road
P.O. Box 231935
Tigard, OR 97281-1935
# TABLE OF CONTENTS

Schedule .................................................................................................................. v

Faculty .................................................................................................................... vii

1. Identifying and Addressing Suicidality in Youth ................................................. 1–i
   — Dr. Stewart Newman, Mind Matters PC, Hillsboro, Oregon

2. Performance Standards Revised for Better or Worse ....................................... 2–i
   — Lea Ann Easton, Dorsay & Easton LLP, Portland, Oregon

3. Addressing the Legal Concerns of LGBTQ Youth in Foster Care and Juvenile Justice Settings—Presentation Slides ..................................................... 3–i
   — The Honorable Beth Allen, Multnomah County Circuit Court, Portland, Oregon
   — John Anderson, Department of Justice Civil Enforcement Division, Portland, Oregon
   — Kristy Barrett, Sage Legal Center, Portland, Oregon
   — Jenn Burleton, TransActive Gender Center, Portland, Oregon
   — Erin Wirtz, CASA, Portland, Oregon

4. When Kids Enter the Maze of the Justice System: The Role of the Oregon Youth Authority—Presentation Slides ..................................................... 4–i
   — Erin Fuimaono, Oregon Youth Authority, Salem, Oregon
   — Debbi Martin, Oregon Youth Authority, Salem, Oregon

5. Appellate Update: October 1, 2016–January 26, 2018 ..................................... 5–i
   — Inge Wells, Department of Justice Appellate Division, Salem, Oregon
   — The Honorable Rebecca Duncan, Oregon Supreme Court, Salem, Oregon

   — Dr. Todd Ransford, Todd Ransford, Ph.D., Portland, Oregon
   — Dr. Charlene Sabin, Charlene Sabin, M.D., PC, Portland, Oregon

7. Navigating Parental Alienation in Juvenile Dependency Cases ....................... 7–i
   — Amelia Andersen, OPDS Appellate Division, Salem, Oregon
   — Amanda Austin, Department of Justice Child Advocacy Section, Portland, Oregon
   — Emily Marrer, Sage Legal Center, Portland, Oregon
   — Matthew Washchuk, Riley & Washchuk PC, Portland, Oregon
SCHEDULE

8:00  Registration

8:30  Identifying and Addressing Suicidality in Youth
✦ Discussion of suicide provokes difficult feelings
✦ The effectiveness of asking directly about suicidal thoughts
✦ Identifying suicide risk and treatment resources to mitigate this risk
Dr. Stewart Newman, *Mind Matters PC, Hillsboro*

9:15  Performance Standards Revised for Better or Worse
✦ Why were the standards revised?
✦ What are the changes?
✦ Will it change my practice?
Lea Ann Easton, *Dorsay & Easton LLP, Portland*

10:00  Break

10:15  LGBTQ Youth in Foster Care: What You Need to Know
✦ Representing LGBTQ children—laws, regulations, policies and procedures
✦ The lexicon of the LGBTQ culture—pronouns and other tricky wickets
✦ Client confidentiality issues regarding sexual orientation and/or gender identity
✦ Meeting the best interests of an LGBTQ client
The Honorable Beth Allen, *Multnomah County Circuit Court, Portland*
Kristy Barrett, *Sage Legal Center, Portland*
Jenn Burleton, *TransActive Gender Center, Portland*
Erin Wirtz, *CASA, Portland*

11:15  When Kids Enter the Maze of the Justice System: The Role of the Oregon Youth Authority
✦ OYA’s move towards a developmental approach
✦ How OYA is building developmentally appropriate environments and services
✦ OYA’s case planning process, including youth assessment and treatment in facilities and the community
✦ Benefits and challenges in managing OYA/DHS dual-commit youth
Erin Fuimaono, *Oregon Youth Authority, Salem*
Debbi Martin, *Oregon Youth Authority, Salem*

12:15  Lunch

1:15  Appellate Update
✦ 2017 juvenile law appellate decisions review
✦ Juvenile law appellate decision practice tips
✦ Questions of law currently in trial and appellate court litigation
The Honorable Rebecca Duncan, *Oregon Supreme Court, Salem*
Shannon Storey, *Office of Public Defense Services, Salem*
Inge Wells, *Department of Justice Appellate Division, Salem*
2:15 How Parent-Child Relationships Get Off Track and the Challenges for Repair

- How a child can become alienated or estranged from a parent
- Repairing the parent-child relationship—a complicated process
- Attorney involvement and the repair process—does it help or hinder?

Dr. Todd Ransford, Todd Ransford, Ph.D., Portland
Dr. Charlene Sabin, Charlene Sabin, M.D., PC, Portland

3:15 Break

3:30 Navigating Parental Alienation in Juvenile Dependency Cases

- Recent case law and an appellate perspective
- Avoiding delays with reconciliation or alternative permanency
- Barriers and strategies to address visitation and communication within families
- Holding DHS accountable to reasonable efforts toward reunification

Amelia Andersen, OPDS Appellate Division, Salem
Amanda Austin, Department of Justice Child Advocacy Section, Portland
Emily Marrer, Sage Legal Center, Portland
Matthew Washchuk, Riley & Washchuk PC, Portland

4:30 Adjourn
FACULTY

The Honorable Beth Allen, Multnomah County Circuit Court, Portland. Judge Allen sits on a dedicated family law bench that includes juvenile dependency and delinquency matters. She is cochair of the Multnomah County Child Welfare Committee workgroup on LGBTQ dependency and delinquency issues. In that role, she is involved in recruitment and training for foster parents to care for that demographic, and she created the Judge’s LGBTQ Reference Card. Judge Allen is a recent recipient of the Chief Justice’s Juvenile Court Champion Award and the Community Service Award from OGALLA, the LGBT Bar Association of Oregon, in part for her work in advancing the interests of LGBTQ foster children and young adults and youth in the juvenile justice system.

Amelia Andersen, OPDS Appellate Division, Salem.

Amanda Austin, Department of Justice Child Advocacy Section, Portland. Ms. Austin is a Senior Assistant Attorney General in the Child Advocacy Section of the Oregon Department of Justice. She has practiced in the juvenile dependency field for the past 10 years.

Kristy Barrett, Sage Legal Center, Portland. Ms. Barrett, Sage’s Executive Director and founder, has extensive experience in all aspects of juvenile dependency cases, adoptions, and the Indian Child Welfare Act. Before founding Sage, Ms. Barrett helped clients for over 16 years at the Native American Program Legal Aid Services of Oregon.

Jenn Burleton, TransActive Gender Center, Portland. As founder and executive director of TransActive Gender Center, Ms. Burleton is considered an authority and nationally recognized leader on issues relating to transgender and gender diverse children and youth. She serves on the Oregon Health & Science University Transgender Program Advisory Committee, the Equi Institute Board of Directors, and the Multnomah County Department of Human Services LGBTQ Child Welfare Workgroup. Among other awards and honors, Ms. Burleton is the recipient of the 2014 Multnomah County Sy Award for lifetime commitment to social justice, the 2013 Northwest Gender Alliance Ellen Summers Lifetime Achievement Award, and the 2012 Oregon Safe Schools and Communities Coalition Educator Award.

The Honorable Rebecca Duncan, Oregon Supreme Court, Salem. Justice Duncan was appointed to the Oregon Supreme Court in 2017 by Governor Kate Brown. Prior to joining the Supreme Court, Justice Duncan served on the Oregon Court of Appeals from 2010 to 2017, including as Presiding Judge of Department Three from 2014 to 2017. Justice Duncan is a past member of the Criminal Law Section and Constitutional Law Section executive committees and the Oregon Women Lawyers–Mary Leonard Chapter board. She frequently presents at continuing legal education programs on topics including appeals, constitutional law, criminal law, evidence, and family law.

Erin Fuimaono, Oregon Youth Authority, Salem. Ms. Fuimaono has been with the Oregon Youth Authority for 24 years. She heads up the agency’s Development Services Department, which brings together seven distinct business units to help OYA achieve sustainable practice change through the organizational alignment of project management, program development, and implementation of agency initiatives that are fundamentally related to comprehensive youth development programming. Ms. Fuimaono has also held positions as chief of operations for facility services, community resources manager, treatment services supervisor at MacLaren Youth Correctional Facility, community resources program analyst, facility living unit treatment manager, facility living unit counselor, and facility living unit group life coordinator (direct care staff). She holds an interdisciplinary undergraduate degree in adolescent psychology and multicultural studies from Western Washington University and a graduate degree in social work from Portland State University.

Emily Marrer, Sage Legal Center, Portland. Ms. Marrer represents both parents and children in juvenile dependency cases with a focus on cases involving the Indian Child Welfare Act. She is an enrolled member of the Citizen Potawatomi Nation in Shawnee, Oklahoma.

Debbi Martin, Oregon Youth Authority, Salem. Ms. Martin serves as Senior Policy Advisor to the Community Services division. She has worked for the OYA for the past 10 years and has worked as a sex offense treatment coordinator, parole/probation supervisor, and Juvenile Justice Information System (JJIS) policy manager. She previously served as a county probation officer for 15 years, specializing in youth with sex offenses and arson charges. She holds a Bachelors in Sociology from Oregon State University and a Masters in Justice Management from University of Nevada.


Dr. Todd Ransford, Todd Ransford, Ph.D., Portland. Dr. Ransford is a licensed psychologist in full-time private practice. His specialties include family therapy, couples therapy, and divorce adjustment. He performed custody evaluations for over 20 years, though he is now focused on other means of resolving family disputes, such as mediation, parent coordination, and parent-child reunification therapy.

Dr. Charlene Sabin, Charlene Sabin, M.D., PC, Portland. Dr. Sabin is a behavioral pediatrician specializing in children’s mental health, children’s adjustment to divorce, and children in foster care. She has also provided forensic consultations to the Department of Human Services—Child Welfare, custody evaluations and parent coordination in the private sector, and consultations to community mental health agencies.

Shannon Storey, Office of Public Defense Services, Salem.

Matthew Washchuk, Riley & Washchuk PC, Portland. Mr. Washchuk has experience handling criminal, juvenile, and Social Security disability matters.

Inge Wells, Department of Justice Appellate Division, Salem. Ms. Wells is a Senior Assistant Attorney General dividing her time between the Appellate Division and Child Advocacy Section of the Oregon Department of Justice. She joined DOJ in 2007 after almost 20 years in private practice.

Erin Wirtz, CASA, Portland.
Chapter 1
Identifying and Addressing Suicidality in Youth

DR. STEWART NEWMAN
Mind Matters PC
Hillsboro, Oregon

Contents
Presentation Slides ................................................................. 1–1
SAMHSA Wallet Card ............................................................... 1–27
Chapter 1—Identifying and Addressing Suicidality in Youth

“Le Suicide” – Edouard Manet (1877-1881)

IDENTIFYING AND ADDRESSING SUICIDALITY IN YOUTH

Juvenile Law 2018: Moving From The Outside In
Oregon State Bar- February 23, 2018

STEWARD S. NEWMAN, MD

MIND MATTERS, PC
Dr. Newman has no financial interest in or an affiliation with commercial interests that might pose a conflict of interest.
“I come to this magnificent house of worship tonight, because my conscience leaves me no other choice.”

-Martin Luther King Jr., Riverside Church, NYC
“Beyond Vietnam” 1967
Chapter 1—Identifying and Addressing Suicidality in Youth

Epidemic:

1: affecting or tending to affect a disproportionately large number of individuals within a population, community, or region at the same time
2: excessively prevalent

Worldwide, one suicide EVERY 40 SECONDS

WHO estimates 788,000 Annually-10.7 per 100,000 population (2015)
In the US, someone dies by suicide

**EVERY 11.7 MINUTES**

123 people each day

44,965 in the US in 2016

“IT'S HARD TO BELIEVE THAT MORE PEOPLE HAVE DIED FROM SUICIDE THAN HOMICIDE, BUT IT'S A SAD FACT.”

DAVID SATCHER, MD, PHD
16TH US SURGEON GENERAL
Chapter 1—Identifying and Addressing Suicidality in Youth

United States in 2016

Homicides: 19,362
Suicides: 44,965

Age-Adjusted Suicide Rates in the United States (1999–2014)

Data Courtesy of CDC
In Oregon

There were **772** deaths from suicide in 2016

18.9 per 100,000 people
Chapter 1—Identifying and Addressing Suicidality in Youth

---

Deaths in Oregon, 2016

- Car Crashes: 495
- Suicide: 772

---

Past Year Suicidal Thoughts and Behaviors Among U.S. Adults (2016)

Data Courtesy of SAMHSA

- 9.8 million adults had serious thoughts of committing suicide
- 2.8 million adults made suicide plans
- 1.3 million adults attempted suicide
- 0.3 million adults made no plans and attempted suicide

---

Juvenile Law 2018: Moving from the Outside In

1–8
Chapter 1—Identifying and Addressing Suicidality in Youth

2\textsuperscript{ND} LEADING CAUSE OF DEATH
FOR PEOPLE AGED 15–24
FOR PEOPLE AGED 25–34
FOR COLLEGE STUDENTS

3\textsuperscript{RD} LEADING CAUSE OF DEATH
FOR PEOPLE AGED 10–14

10 Leading Causes of Death by Age Group, United States – 2015

<table>
<thead>
<tr>
<th>Rank</th>
<th>Age Group</th>
<th>1–9</th>
<th>10–14</th>
<th>15–24</th>
<th>25–34</th>
<th>25–44</th>
<th>45–64</th>
<th>65+</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Congenital Anomalies</td>
<td>4,905</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>4,905</td>
</tr>
<tr>
<td>2</td>
<td>Short Gestation</td>
<td>4,094</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>4,094</td>
</tr>
<tr>
<td>3</td>
<td>SIDS 1,560</td>
<td>493</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>493</td>
</tr>
<tr>
<td>4</td>
<td>Malignant Neoplasms</td>
<td>356</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>356</td>
</tr>
<tr>
<td>5</td>
<td>Ischaemic Heart Disease 128</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>128</td>
</tr>
<tr>
<td>6</td>
<td>Influenza &amp; Pneumonia 97</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>97</td>
</tr>
<tr>
<td>7</td>
<td>Bacterial Meningitis 59</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>59</td>
</tr>
<tr>
<td>8</td>
<td>Chronic Lower Respiratory Disease 42</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>42</td>
</tr>
<tr>
<td>9</td>
<td>Congenital Anomalies 46</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>46</td>
</tr>
<tr>
<td>10</td>
<td>Neonatal Necrosis 40</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>40</td>
</tr>
</tbody>
</table>


Juvenile Law 2018: Moving from the Outside In
5,900 YOUTH (5-24) DIED OF SUICIDE IN 2015

- 2015 Youth Risk and Behavior shows in previous 12 months:
  - 17.7% seriously considered suicide
  - 14.6% made plan for suicide
  - 8.6% attempted suicide
  - 2.8% made attempt serious enough to require medical treatment
- Male youth are 4.34 times more likely to die by suicide

WHY ARE YOUTH SO VULNERABLE?

- Greater incidence of anxiety/depression in youth populations- increasing rapidly
- Developmental Influence- immature executive functioning, high risk behaviors
- Firearm Access in the US- 1 in 3 homes with children
- Mental Health Provider shortages
WHY ARE YOUTH SO VULNERABLE?

• Impact of Smartphone Technology
  • Influence of Social Media- FaceBook, Instagram, Twitter, SnapChat etc.
  • Increased rates of Bullying/Cyberbullying
  • Sleep Deprivation
  • 19% of teens use technology 5 or more hours daily
    • 70% more likely to have suicidal thoughts or behaviors
RISK FACTORS FOR SUICIDE

- PSYCHIATRIC DISORDERS
- PAST SUICIDE ATTEMPTS
- SYMPTOM RISK FACTORS
- SOCIO-DEMOGRAPHIC RISK FACTORS

90% of suicide victims are suffering from one or more psychiatric disorders:

- MAJOR DEPRESSIVE DISORDER
- BIPOLAR DISORDER
- SCHIZOPHRENIA OR PSYCHOTIC DISORDER
- POST TRAUMATIC STRESS DISORDER
- PERSONALITY DISORDERS SUCH AS BORDERLINE PD
- ALCOHOL OR DRUG ABUSE*
SYMPTOM RISK FACTORS
(SPECIFIC TO DEPRESSION)
- DESPERATION OR HOPELESSNESS
- ANXIETY/AGITATION/PANIC ATTACKS
- AGGRESSIVE OR IMPULSIVE BEHAVIORS
- PREPARATIONS OR REHEARSAL DURING A PREVIOUS EPISODE

**PREVIOUS SUICIDE ATTEMPT**
**SYMPTOM RISK FACTORS**
- Serious physical illness, especially recent
- Chronic pain syndrome
- History of childhood trauma or abuse
- History of being bullied
- Family history of death by suicide

**Socio-Demographic Risk Factors**
- Caucasian, Native American
- Immigrant status
- Family disruption through divorce
- Legal involvement
- Recent exposure to suicide
- Access to firearms
- Loss of financial security
Chapter 1—Identifying and Addressing Suicidality in Youth

FIREARM SUICIDES

22,938 IN 2016.

(51 %)
**WARNING SIGNS OF ACUTE RISK**

- Threatening to hurt or kill oneself
- Talking of wanting to hurt or kill oneself
- Looking for ways to kill oneself by seeking access to firearms, available pills, or other means
- Talking or writing about death, dying or suicide

**EXPANDED WARNING SIGNS**

- Increased substance (alcohol or drug) use
- No reason for living; no sense of purpose in life
- Anxiety, agitation, unable to sleep or sleeping all of the time
- Feeling trapped - like there's no way out
- Hopelessness

- Withdrawal from friends, family and society
- Rage, uncontrolled anger, seeking revenge
- Acting reckless or engaging in risky activities, seemingly without thinking
- Dramatic mood changes
Chapter 1—Identifying and Addressing Suicidality in Youth

**IS PATH WARM**

I Ideation  
S Substance Abuse  
P Purposelessness  
A Anxiety  
T Trapped  
H Hopelessness  
W Withdrawal  
A Anger  
R Recklessness  
M Mood Changes
Chapter 1—Identifying and Addressing Suicidality in Youth

**ASK THE QUESTION!**

**QPR**
- Question
- Persuade
- Refer
QUESTION- ASK ABOUT SUICIDE

Be aware of warning signs

Trust your instincts- no harm in asking

Ask to talk to the individual privately

Give yourself plenty of time to have the conversation

Don’t interrupt- let the person talk

Ask directly- avoid euphemisms

“Are you thinking about killing yourself?”

“Are you thinking of ending your life?”

“Are you having thoughts about suicide?”

Avoid negative phrasing- don’t ask:

“You’re not thinking of killing yourself, are you?”
You **CANNOT** cause someone to become suicidal by asking about thoughts of suicide.

**PERSUADE- TO STAY ALIVE**

Be willing to listen to the problem
Validate the feelings expressed
Offer empathy, not sympathy
Be non-judgmental- offer Acceptance
Offer hope- of any kind! “I want you to live.”
REFER- GET HELP

Ask them to allow you to help them
Seek out resources for evaluation and treatment
Stay with the individual until they have seen a professional

REFER- GET HELP

Emergency Department- nearest hospital
Suicide Prevention Hotline
Crisis Intervention Center
Mental Health Provider- Immediate Evaluation
OREGON RESOURCES

• Crisis Lines for each County- Oregon.gov
  • Multnomah County Crisis Line (503) 988-4888
    (800) 716-9769 / 711
  • Washington County Crisis Line (503) 291-9111
  • Clackamas County Crisis Line (503) 655-8585
  • NAMI Oregon 1-800-343-6264
  • David Romprey Oregon Warmline (800) 698-2392

NATIONAL RESOURCES

• National Suicide Prevention Lifeline
  • 1-800-273-TALK (8255)
  • En Español:
  • 1-888-628-9454
• Crisis Text Line
  • Text “Talk” to 741741
Chapter 1—Identifying and Addressing Suicidality in Youth

QPRINSTITUTE.COM

• QPR - Question, Persuade, Refer
• ASIST - Applied Suicide Intervention Skill Training
• AMHFA - Adult Mental Health First Aid
• YMHFA - Youth Mental Health First Aid
• CALM - Counseling on Access to Lethal Means
• HOP - Honest Open Proud

GETTRAINEDTOHELP.COM

Juvenile Law 2018: Moving from the Outside In
The Lifeline is **FREE**, confidential, and always available.

**HELP**
a loved one,
a friend,
or yourself.

Community crisis centers answer Lifeline calls.

---

**Suicide Warning Signs**

These signs may mean someone is at risk for suicide. Risk is greater if a behavior is new or has increased and if it seems related to a painful event, loss, or change.

- Talking about wanting to die or to kill oneself.
- Looking for a way to kill oneself, such as searching online or buying a gun.
- Talking about feeling hopeless or having no reason to live.
- Talking about feeling trapped or in unbearable pain.
- Talking about being a burden to others.
- Increasing the use of alcohol or drugs.
- Acting anxious or agitated; behaving recklessly.
- Sleeping too little or too much.
- Withdrawing or feeling isolated.
- Showing rage or talking about seeking revenge.
- Displaying extreme mood swings.

*Suicide Is Preventable.*

**Call the Lifeline at 1-800-273-TALK (8255).**

With Help Comes Hope
## Chapter 2

**Performance Standards Revised for Better or Worse**

**Lea Ann Easton**  
Dorsay & Easton LLP  
Portland, Oregon

### Contents

Excerpt from *Specific Standards for Representation in Juvenile Dependency Cases, Oregon State Bar, June 23, 2017*  
Foreword  
Table of Contents  
Summary and Background

<table>
<thead>
<tr>
<th>Section</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Excerpt from <em>Specific Standards for Representation in Juvenile Dependency Cases, Oregon State Bar, June 23, 2017</em></td>
<td>2–1</td>
</tr>
<tr>
<td>Foreword</td>
<td>2–2</td>
</tr>
<tr>
<td>Table of Contents</td>
<td>2–3</td>
</tr>
<tr>
<td>Summary and Background</td>
<td>2–5</td>
</tr>
</tbody>
</table>
Specific Standards for Representation in Juvenile Dependency Cases

June 23, 2017

The complete document may be downloaded from https://www.osbar.org/_docs/resources/juveniletaskforce/JTFR3.pdf.
Foreword

The Oregon State Bar has assisted in the development and dissemination of the Principles and Standards for Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases (hereafter, the performance standards) since 1996. In order for the performance standards to continue to serve as valuable tools for practitioners and the public, they must be current and accurate in their reference to federal and state laws and they must incorporate evolving best practices.

The Foreword to the original performance standards noted that “[t]he object of these [g]uidelines is to alert the attorney to possible courses of action that may be necessary, advisable, or appropriate, and thereby to assist the attorney in deciding upon the particular actions that must be taken in a case to ensure that the client receives the best representation possible.” This continues to be the case, as does the following, which was noted in both the Foreword in the 2006 revision and the Foreword to the 2009 post-conviction standards:

“These guidelines, as such, are not rules or requirements of practice and are not intended, nor should they be used, to establish a legal standard of care. Some of the guidelines incorporate existing standards, such as the Oregon Rules of Professional Conduct, however which are mandatory. Questions as to whether a particular decision or course of action meets a legal standard of care must be answered in light of all the circumstances presented.”

We hope that the revised Performance Standards, like the originals, will serve as a valuable tool both to the new lawyer or the lawyer who does not have significant experience in criminal and juvenile cases, and to the experienced lawyer who may look to them in each new case as a reminder of the components of competent, diligent, high quality legal representation.

Michael D. Levelle
Oregon State Bar President
# Table of Contents

**SUMMARY AND BACKGROUND** ........................................................................................................... 1

**The Obligations of the Lawyer for Children in Child Protection Proceedings with Action Items and Commentary** ................................................................................................................... 3

- Standard 1 - Role of the Lawyer for the Child ........................................................................ 3
- Standard 2 - Relationship with the Child Client ........................................................................ 8
- Standard 3 - Training Requirements for Competent Representation of Child Clients .......... 18
- Standard 4 - General Principles Governing Conduct of the Case ........................................... 21
- Standard 5 - Prepition .............................................................................................................. 25
- Standard 6 - Investigation ....................................................................................................... 27
- Standard 7 – Court Preparation .............................................................................................. 32
- Standard 8 - Hearings .............................................................................................................. 39
- Standard 9 – Post Hearings .................................................................................................... 42
- Standard 10 - Appeals Issues for Child’s Lawyer ................................................................. 46

**The Obligations of the Lawyer for Parents in Child Protective Proceedings with Action Items and Commentary** ................................................................................................................. 51

- Standard 1 - Role of the Lawyer for Parents ........................................................................ 51
- Standard 2 - Relationship with the Parent Client ................................................................... 54
- Standard 3 - Training Requirements for Competent Representation of Parent Clients ........ 67
- Standard 4 - General Principles Governing Conduct of a Case ............................................ 70
- Standard 5 – Prepition .............................................................................................................. 74
- Standard 6 - Investigation ....................................................................................................... 75
- Standard 7 – Court Preparation .............................................................................................. 79
- Standard 8 - Hearings .............................................................................................................. 85
- Standard 9 – Post Hearing ..................................................................................................... 88
- Standard 10 - Appeals Issues for Parent’s Lawyer ............................................................... 92

**Appendices** ................................................................................................................................. 98
Chapter 2—Performance Standards Revised for Better or Worse

Report of the
Specific Standards for Representation in Juvenile Dependency Cases

Summary and Background

In September of 1996, the Oregon State Bar Board of Governors approved the Principles and Standards for Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases. In May of 2006, the Board accepted revisions to the 1996 standards and in 2014 the Dependency and Delinquency Standards were further updated.

During the 2015 Legislative Session, the Legislature passed Senate Bill (SB) 222. The bill created a Task Force charged with recommending models for legal representation in juvenile court proceedings. The Task Force, made up of 18 members with input from numerous interested parties, met over ten months and issued the Oregon Task Force on Dependency Representation Report (hereinafter the “Report”) in July 2016. The Report included a variety of recommendations focused on improving services for children, parents, and practitioners in the juvenile dependency system, including updating the “Specific Standards for Representation in Juvenile Dependency Cases.”

In the fall of 2016, at the direction of the Oregon State Bar Board of Governors, a work group was created to address the issues raised by the Report by updating the performance standards for representation in juvenile dependency cases. This work group included members from academia as well as from both private practice and public defender offices. Task force members were Lea Ann Easton, Dorsey & Easton LLP (Chair); Amy Benedum, Oregon Judicial Department; Linn Davis, Oregon State Bar; Susan Grabe, Oregon State Bar; Joseph Hagedorn, Hagedorn Law; Leslie Harris, University of Oregon School of Law; the Honorable Megan Jacquot, Oregon Judicial Department; Amy Miller, Oregon Public Defense Services; Angela Sherbo, Youth, Rights & Justice; Shannon Storey, Office of Public Defense Services; Elizabeth Wakefield, Metropolitan Public Defenders, Inc.; and Inge Wells, Oregon Department of Justice.

The following pages include a new, fourth version of the juvenile dependency performance standards produced by the juvenile dependency task force. These standards are recommended to replace what is currently published on the Oregon State Bar website, “Specific Standards for Representation in Juvenile Dependency Cases.”
The goal of this task force was to create a revised set of standards that was both easy for the practitioner to read and understand and also provide relevant detail and explanations as necessary. Updates to the Standards include:

- Adding language addressing communication via social media
- Adding language addressing special immigrant juvenile cases/immigrant family cases,
- Adding language addressing cross-over standards for parent and child attorneys,
- Adding language addressing prepetition standards for the parent’s lawyer,
- Adding language addressing the use of a Balfour brief,
- Clarification of the role of a child’s appellate counsel in the child attorney standard,
- Clarification regarding appellate representation and ineffective assistance of counsel,
- Correcting clerical errors and inconsistencies.

Throughout the process of creating these revised standards, the task force has sought input from practitioners and judges and has incorporated suggestions when appropriate.

The Obligations of the Lawyer for Children begins on page 3.

The Obligations of the Lawyer for Parents begins on page 51.

The appendices begin on page 98.
Chapter 3

Addressing the Legal Concerns of LGBTQ Youth in Foster Care and Juvenile Justice Settings—Presentation Slides

THE HONORABLE BETH ALLEN
Multnomah County Circuit Court
Portland, Oregon

JOHN ANDERSON
Department of Justice Civil Enforcement Division
Portland, Oregon

KRISTY BARRETT
Sage Legal Center
Portland, Oregon

JENN BURLETON
TransActive Gender Center
Portland, Oregon

ERIN WIRTZ
CASA
Portland, Oregon
Calling it By Name

- **Homophobia and Transphobia:**
  - Displayed as verbal or physical harassment, negativity, and rejection because of a person's perceived or actual
    - Sexual orientation, or
    - Gender identity

- **Heterocentrism and Ciscentrism:**
  - Displayed as attitudes and assumptions that all persons are heterosexual and/or that being homosexual or transgender is inferior or negative or a “choice”
Chapter 3—Addressing the Legal Concerns of LGBTQ Youth in Foster Care and Juvenile Justice Settings

Transgender Stats

- 53% of respondents were harassed or mistreated in a public accommodation
- More than 50% rejected by family. Of those, more than 50% attempted suicide
- 61% experienced harassment, assault or expulsion in school
- As many as 1/4 have been homeless
- More than 90% experienced job discrimination
- 19% were outright denied medical treatment because they were transgender
- 50% saw doctors who did not have knowledge about transgender issues

Oregon Statutes Prohibiting Discrimination

- **OR. REV. STAT. § 659A.006** -- “public accommodations”
- **OR. REV. STAT. § 174.100** defines sexual orientation as an “individual's actual or perceived heterosexuality, homosexuality, bisexuality or **gender identity**, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual’s sex at birth.”
- **OR. REV. STAT. § 179.750(2)** -- Sexual orientation discrimination expressly prohibited in the juvenile justice institutions
- No express statutory prohibition in foster care setting
- **ORS 419B.349**—Court may review placement
Oregon DHS, “Child Welfare Programs”
Regulations on Non-Discrimination

- Foster families required to “respect the spiritual beliefs, lifestyles, sexual orientation, gender identity . . .”
  OAR 413-200-0308

- Foster families prohibited from “verbal abuse including derogatory remarks about . . . sexual orientation. . .”
  OAR 413-200-0358

- “Sexual Orientation” and “Gender Identity” not defined in Child Welfare Chapter

Foster Youth Bill of Rights

- Requires respect and specific rights for a foster child’s sexual orientation and gender identity:
  - The young person must be given clean and appropriate clothes that fit and correspond to their gender identity
  - The young person is allowed to dress and groom themselves according to their own culture and identity
  - The young person is allowed to determine and express their gender and sexual identity on they determine
**Advocacy Standards for Juvenile Attorneys**

- Advocacy Standards: express wishes, unless not in best interests of child.
- Become familiar with best practices and standards of care
  - Lambda Legal
  - National Center for Lesbian Rights
  - WPATH Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People
  - Child Welfare League of America Best Practices

---

**Sex vs. Gender**

- “Sex” typically refers to a person’s physical anatomy. This includes:
  - Chromosomes (XX, XY, XYY, XXY, etc.)
  - Genitals
  - Reproductive Organs
  - Secondary Characteristics: facial hair, breasts, musculature
Chapter 3—Addressing the Legal Concerns of LGBTQ Youth in Foster Care and Juvenile Justice Settings

Sexual Orientation

- SEXUAL ORIENTATION refers to who a person is sexually and/or romantically attracted to.
  - Gay, lesbian, straight, bisexual, asexual, and more.

Trans Language

- **Transgender**: A person whose gender identity is different from the sex they were assigned at birth.
- **Assigned Sex**: The sex a person is given at birth, usually based on genitals or chromosomes.
- **Gender Identity**: A person’s innate sense of who they are and what their gender is.
- **Transition**: The process of changing one’s life or body to bring it into harmony with their gender identity.
Who Might Be Transgender?

- People who **dress in a way** that is associated with one sex, even though they were raised as another sex.
- People who **identify** as a particular sex or gender, even though they were raised as a different sex or gender.
- People who simply **do not identify with either** male or female at all.
- People who identify with **parts of one sex or gender** and **parts of another** sex or gender.

Gender

- Refers to the **social factors** associated with biological sex – such as attitudes, behaviors, and expectations.
Gender Identity

- A person’s internal sense of being male, female, neither, or another gender.
- Gender identity is the **most important** factor in a person’s gender, and trumps all other factors, including anatomy.
Gender Expression

- The outward manifestation of a person’s gender:
  - Clothing
  - Hairstyle
  - Jewelry
  - Mannerisms

Gender Dysphoria

- The sense of distress brought about by the sense that one’s internal sense of gender does not match one’s sex assigned at birth

- From the DSM V
Gender Transition

- The process of bringing one’s external gender (including physical anatomy, appearance, clothing, mannerisms, legal identity, etc.) in line with one’s internal sense of gender.
- Effective treatment for gender dysphoria

What Does it Matter?

- Rigid expectations of gender are woven deeply into the fabric of our society
- There is a strong social/cultural bias affecting transgender people and others who do not conform to gender expectations
- Non-conformity to these expectations is punished
How Do I act?

- Use the Preferred Names and Pronouns Whenever Possible
- Emphasize Gender Identity (not birth sex)
- Challenge Assumptions about Health Care
  - Less than 25% of all transgender people have gender reassignment procedures
- Anticipate Non-Traditional Family & Community Connections

Naming

- Many transgender people prefer names that are more consistent with their gender expression or identity than the name they were given at birth
- Always use the preferred name of a transgender litigant.
  - If the name is legally changed, make sure to amend court records
- It's OK to add a AKA, if requested by the young person
- If the first name is not known, use the last name only
But, Ms. Grammar!?! 

- Pronouns: She/her, He/him, They/them, Ze/Hir
- Titles: Mr., Ms., Mx., Mrs., [Last Name], [First Name]
- Avoidance, if not obvious
- In general, always reflect back the language a person uses for themselves
- If you don’t know what language to use, you can always ask!

What’s OK to Ask?

- Ask yourself if the question is necessary for the purpose of the proceeding or conversation, or will help you better communicate with or serve a litigant
- If possible, avoid questions that are personal or specific to a person’s transgender experiences – such as questions about surgery or gender transition - unless that person offers the information or indicates a willingness to talk about it
Is it OK to…?

- Will the action demonstrate respect for a person’s gender identity?
- Will the action create investment in the legal system and administration of justice?
- Will the action have positive repercussions?
  - Name change → ID → Employment → Housing → Increased Safety and Opportunity
- Will the action affect someone who is transgender differently than someone who is not transgender?
  - Haircuts
- Will the action “out” someone as transgender?
- Will the action place a litigant at harm because they are transgender?

Make Mistakes!

- We learn as human beings by taking risks and making mistakes.
- It’s ok to make mistakes! The key piece is to own them and be accountable for them.
How Do I Gain Cultural Competency?

- Challenge what you know and be open to experiences of people who are differently situated
- Challenging assumptions about gender means thinking critically about the impact of gender roles and expectations on transgender people AND non-transgender people
- Look at structures, from intake forms to bathrooms, from hiring practices to security checkpoints, to make sure transgender experiences are included and accounted for

Procedural Fairness

- Voice—Do they feel heard?
- Respect—Do they feel treated with dignity and respect?
- Neutrality—Do they feel the decision was made without bias?
- Understanding—Do they understand what happened in court?
- Helpfulness—Do they feel that the court “cares” about them as persons?
Rules to Live By

- The Golden Rule: Treat others as you would like to be treated

- The Platinum Rule: Treat others as THEY would like to be treated

The Bright Side

- Increasing number of advocates for LGBTQ youth
- Increasing awareness of LGBTQ-specific concerns
- Resources widely available online-
  - E.g., US Dept. Health and Human Services Website
Books

- Redefining Realness - Janet Mock
- Stone Butch Blues - Leslie Feinberg
- Becoming A Visible Man – Jamison Green
- She's Not There – Jennifer Finney Boylan
- Becoming Nicole – Amy Ellis Nutt
- The Transgender Child – Stephanie Brill & Rachel Pepper
- Being Jazz – Jazz Jennings
- Gender Born, Gender Made – Diane Ehrensaft & Edgardo Menvielle
- Transitions of The Heart – Rachel Pepper

Conclusion

- The key to ensuring procedural fairness for transgender people is respecting every person's right to self-determination of their gender.

- Through affirming gender identity, educating ourselves, taking risks, owning our mistakes, and respecting diversity, we create an environment where transgender people experience procedural fairness.
QUESTIONS
Chapter 4

When Kids Enter the Maze of the Justice System: The Role of the Oregon Youth Authority—Presentation Slides

ERIN FUIMAONO
Oregon Youth Authority
Salem, Oregon

DEBBI MARTIN
Oregon Youth Authority
Salem, Oregon
Chapter 4—When Kids Enter the Maze of the Justice System: The Role of the Oregon Youth Authority

Today’s Presentation

• Case Management
• Assessment
• Community Services
• Facility Services
• OYA-DHS Dual Commitment
• How Defense Attorneys Can Help
Case Management at OYA

- Designed to meet OYA goal of protecting public, holding youth accountable, and providing reformation opportunities
- Based on identified risk and need of the youth
- Protective factors and strengths are identified and highlighted in the case plan
- Focused on criminogenic risk factors in seven domains
- Skill development areas are included for any identified domains

Assessment

- Risk and Need Assessment (RNA) completed on all youth.

- Youth in community placement receive:
  - Suicide risk assessment upon intake
  - Physical and dental exam within 30 days
  - Other evaluations as indicated
### Assessment

- Youth admitted to a Youth Correctional Facility receive:
  - Mental health and suicide risk assessment and an initial health assessment within the first hour
  - Full psychological evaluation within 30 days
  - Full physical health exam within 30 days
  - Drug and alcohol evaluation
  - Education evaluation
  - Other evaluations as indicated

### Case Planning

- Targets criminogenic need areas, such as delinquent peers, substance use, behavior/attitude and vocation/education.
- Developed within the first 60 days of commitment.
- Reviewed every 90 days at a Multidisciplinary Team (MDT) meeting,
  - MDT includes youth, family, treatment provider, probation/parole officer, tribal representative, education provider and others identified by the treatment team.
- Case plans long-term goals, short-term goals, interventions, and competencies.
Community Placement and Treatment

- Contract with 20 residential treatment providers with 34 programs around the state.
  - Congregate care and proctor care
  - On-site school and local school district
  - General treatment, specific focus areas, and independent living programs.

- Foster care
  - 36 homes around the state, capacity for 70 youth
  - Female and male homes
  - Some culturally specific homes
  - High level of oversight of the foster homes

- Ultimate goal is to have youth move home, with family, or living independently.
Field Offices and Community Residential Programs

Foster and Proctor Homes

Facilities – Treatment Options

- 5 Youth Correctional Facilities and 4 Transition Programs
- Developmental model - environments that support healthy adolescent development
- Issue-Specific programs
  - Individualized based on assessment
  - Cognitive Behavioral Treatment (CBT) model

Close-Custody Facilities
Education in Youth Correctional Facilities

- 7 independent and fully accredited high schools
  - Grant diplomas
  - Offer GED testing
- Approximately 30-40% of youth have IEPs

Education in Youth Correctional Facilities

- College coursework available through:
  - Chemeketa Community College
  - Oregon State University
  - Portland Community College
  - Portland State University
  - Rogue Valley Community College
  - Tillamook Bay Community College
  - Treasure Valley Community College
  - University of Oregon
Educational Achievements – All OYA Youth

<table>
<thead>
<tr>
<th>Youth In Close Custody and In the Community</th>
<th>2016-2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>High School Diplomas</td>
<td>GEDs</td>
</tr>
<tr>
<td>118</td>
<td>52</td>
</tr>
</tbody>
</table>

*Three Associates’ degrees and two Bachelor’s degrees

Vocational Education

67 work and training programs throughout our facilities, including:
- Computer Science
- Construction/Woodshop
- Culinary Arts
- Horticulture
- HVAC Assistant Worker
- Waste Water Technician
- Welding
Vocational Education

36 professional certifications/achievements available, such as:

- Automotive Service Excellence Certificates
- Barbering License
- Bicycle Mechanic Certificate
- Forklift Operator Certificate
- LBME Electrician’s License
- Peer Recovery Mentor Certificate
- Wildland Firefighting Certificates

Mental Health in Facilities

- 1 Qualified Mental Health Professional for every living unit (12-25 youth)
- On-going mental health and suicide risk assessment
- Medication management and psychiatry
- 3 specialized units
  - Mental health, under 18
  - Mental health, over 18
  - Complex trauma/emotionally reactive
- Access to placement at Secure Adolescent Inpatient Program for acute mental health crises/treatment
LGBTQQI Services

- Finalized policy outlining accommodations for transgender youth
  - Social accommodations
  - Preferred gender searches
  - Placement options
  - Gender identity counseling
  - Hormone therapy
- LGBTQQI support groups
- LGBTQQI staff training

OYA-DHS Dual Commitment

What are the benefits?
- Continued support to the youth from the DHS caseworker
- Options for additional resources – can use services from OYA and DHS system
- Increased collaboration – additional perspectives can lead to a more comprehensive approach
- Dependency needs are still recognized – youth is not seen as just a “delinquent”
- When OYA is ready to close case - DHS is still involved and can easily take the lead
OYA-DHS Dual Commitment

What are the challenges?

- Multiple caseworkers and systems involved, can add unnecessary work
- Youth and family can feel overwhelmed – one other person and agency for them
- Confusion of duties – can lead to duplication or absence of work

How Can Defense Attorneys Support a Client Committed to OYA?

Encourage youth to:

- Participate in their own case planning. We want to know what is important to them, what they need, and how they will best respond.
- Openly communicate with their probation/parole officer and treatment team; we can help more when we understand the youth’s perspective.
- Not run away!!!! Situations go from bad to worse when youth run away.
- Help youth recognize that OYA staff are not the “enemy” and really do want to help them.
How Can Defense Attorneys Support a Client Committed to OYA?

Encourage families/support people to:

- Visit their child – research shows that youth are more successful with family support and involvement
- Participate in Multi-Disciplinary team meetings and the case planning process – no one knows the youth better than their family
- Communicate regularly with the living unit, program manager, or JPPO – the more they are part of the youth’s day to day life, the better

Thank You

Erin.Fulmaono@oya.state.or.us
Deborah.Martin@oya.state.or.us

Web: www.oregon.gov/OYA
Twitter: @OregonYouth
Facebook: Oregon Youth Authority
Chapter 5

Appellate Update:
October 1, 2016–January 26, 2018

Inge Wells
Department of Justice Appellate Division
Salem, Oregon

The Honorable Rebecca Duncan
Oregon Supreme Court
Salem, Oregon

Contents

Jurisdiction and Disposition .................................................. 5–1
Permanency/Motions to Dismiss .............................................. 5–9
Termination of Parental Rights ................................................. 5–19
Interstate Compact on the Placement of Children ....................... 5–21
Supplemental Materials .......................................................... 5–23
**Jurisdiction and Disposition**

*Dept. of Human Services v. C.M.R.*, 281 Or App 886, 383 P3d 985 (2016) (Umatilla County). Mother appealed from a jurisdictional judgment entered following a hearing at which mother failed to appear. She contended that the juvenile court erred in proceeding in her absence pursuant to ORS 419B.914. That statute authorizes the court to proceed with the case “without service under ORS 419B.812 to 419B.839 if diligent efforts have failed to reveal the identity or the whereabouts of the person[.]”

**Held:** Reversed. DHS conceded that on the facts of this case, it “failed to satisfy the requirements of ORS 419B.914 as to mother and, therefore, the juvenile court erred in proceeding with the case in her absence.” *Id.* at 887.

*Dept. of Human Services v. K.C.F.*, 282 Or App 12, 383 P3d 931 (2016) (Lane County). Parents and children appealed from a jurisdictional judgment. Jurisdiction was based on allegations that father exposed the children to domestic violence against mother, father’s substance abuse and mental health condition interfered with his ability to safely parent, mother needed the assistance of the court and DHS to protect herself and the children from “the violence and control” of father, and mother lacked legal custody to protect the children. At trial, the evidence established that father had “a pattern of threatening suicide” and he made “regular threats of violence.” *Id.* at 15. DHS conceded that there was no physical abuse. However, the caseworker testified that “although father’s behavior has not included physical violence, it nonetheless constitutes domestic abuse, which is about power and control and encompasses emotional abuse.” *Id.* at 16-17. Both parents and the oldest child testified that father would not harm himself, mother, or the children. However, the juvenile court concluded that “father’s unaddressed emotional or mental health issues, his past substance abuse, and the domestic violence posed a risk of harm to the children. As to mother, the court found that she was in denial and lacked appreciation for the risk of harm posed by father to the children.” *Id.* at 18.

**Held:** Reversed. The court acknowledged that “domestic violence between parents poses a threat to children when it creates a harmful environment for the children and the offending parent has not participated in remedial services or changed his or her threatening behavior.” *Id.* at 19. However, in this case, the court held that “there is insufficient evidence of the type, degree, and duration of harm necessary to establish a threat of serious loss or injury, and we conclude for that reason that the juvenile court erred in assuming jurisdiction.” *Id.* at 20. Specifically, the court held that the caseworker’s “description of the general effect that domestic abuse can have on a child” was insufficient to support jurisdiction. *Id.*

*Dept. of Human Services v. K.C.*, 282 Or App 448, 387 P3d 476 (2016) (Klamath County). Both parents appealed from a judgment asserting jurisdiction over their infant son, K. K was removed from parents’ care at birth, based on parents’ mental health and the fact that an older sibling was already a ward of the court. At the time of K’s birth, parents executed a power of attorney transferring their parental rights to maternal grandfather, and indicated that grandfather would be caring for K. However, “DHS did
not believe that grandfather would put in place the restrictions or limitations necessary to keep K safe.” *Id.* at 449-450. Moreover, grandfather could not be certified as a placement resource. At trial, parents did not contend that they could independently and safely parent K. However, they argued that “DHS failed to establish that K would have been at risk of harm if, as they intended, grandfather was entrusted with his care.” *Id.* at 455.

**Held:** Reversed. The court held that the inability to parent independently, standing alone, is insufficient to establish juvenile court jurisdiction:

“DHS must also prove that the inability to parent independently, in fact, poses the requisite risk of harm to the child under the circumstances in which the child will be living absent juvenile court jurisdiction. In other words, when DHS seeks to establish that jurisdiction is warranted because of the parents’ inability to parent on their own, DHS must also establish that the parents will, in fact, be parenting on their own, or that, for some other reason, the parents’ deficits pose a current risk of harm to the child under the child’s actual circumstances.”

*Id.* at 456. The court found that DHS presented insufficient evidence of (1) the parents’ circumstances at the time of the hearing; (2) how the parents’ inability to parent independently posed a risk of harm to K “under K’s circumstances”; and (3) grandfather’s lack of appreciation for the severity of mother’s mental illness. *Id.* at 456-57.

**Dept. of Human Services v. J.C.S.,** 282 Or App 624, 387 P3d 484 (2016) (Marion County). This is an ICWA case. The juvenile court initially took jurisdiction over the child on the basis that father’s incarceration made him unavailable as a custodial resource. The court later asserted jurisdiction on a new allegation related to father’s domestic violence. On appeal, father argued that the juvenile court erred in asserting jurisdiction on that additional basis because DHS did not present expert testimony that custody of the child by father was likely to result in serious physical or emotional damage, as required by ICWA.

**Held:** Affirmed. The court held that “the relevant proceedings did not constitute a ‘foster care placement’ within the meaning of ICWA, because [the child] had already been removed from father’s care in the earlier proceeding and, thus, the ‘significant shift in legal rights’ that occurs when the court first asserts jurisdiction was not present in this case.” *Id.* at 625.

**Dept. of Human Services v. S.P.R.,** 283 Or App 417, 388 P3d 1246, *rev den*, 361 Or 311 (2017) (Jackson County). The juvenile court found mother’s child within its jurisdiction based on allegations relating to mother’s mental health problems, her refusal to cooperate with a CPS assessment, and domestic violence. Mother appealed, contending that the evidence was insufficient to support jurisdiction on any of those grounds.
Held: Affirmed in part, reversed and remanded in part. The court found that “the juvenile court properly asserted jurisdiction” based on the allegations relating to mother’s mental health and failure to cooperate, but that the evidence was insufficient to support the allegation relating to domestic violence. Specifically, the court found that there was evidence “that mother and father’s relationship had involved domestic violence,” but that relationship had ended “long before the hearing in this case.” Id. at 420-21. The court also found that “there was no evidence that mother had continued to engage in domestically violent relationships” or engaged in other patterns common in domestic violence situations. Id. at 421. Thus, the court reversed and remanded “for the juvenile court to enter a judgment” omitting the domestic violence allegation “as a ground for jurisdiction.” Id.

Dept. of Human Services v. S.E.K.H., 283 Or App 703, 389 P3d 1181 (2017) (Yamhill County). Father, mother, and the children appealed from a judgment taking jurisdiction over the children and denying the children’s request that the court order DHS to place them with their great-grandmother, who had intervened pursuant to ORS 419B.116. On appeal, parents contended that the evidence was insufficient to support the finding that the children were endangered. Mother and the children also claimed that the juvenile court erred in concluding that it lacked authority to direct DHS to place the children with great-grandmother.

Held: Affirmed. First, the court held, without discussion, that “the evidence was legally sufficient to permit the juvenile court to determine that jurisdiction over the children was warranted.” Id. at 706. Second, the court held that ORS 419B.337 does not give the juvenile court the authority to “direct DHS to make a specific placement of a ward committed to its custody.” Id. at 708. In reaching that result, the court relied on the text of both ORS 419B.337 and ORS 419B.349. With regard to ORS 419B.349, the court noted that the statute “gives the juvenile court the authority to review DHS’s placement decisions. That grant of review authority implies that the legislature intended that the court’s role would be to review DHS’s placement decisions regarding a ward in its custody, not to make such placements decisions for DHS.” Id. at 708 (emphasis in original).

The court rejected mother and children’s argument that ORS 419B.116(11)(a) should be construed to authorize the juvenile court to “place a ward with a person who has been granted intervenor status in a dependency case.” Id. at 709. The court held that that statute “provides only that an intervenor in a dependency case ‘may move to be considered’ as a placement for a child or ward. Such a motion would pave the way for a juvenile court to place a child directly with a movant under ORS 419B.331, or for the court to direct DHS to consider placing a child committed to its custody with the intervenor. But nothing in ORS 419B.116 states or otherwise implies that the legislature intended that, having placed a child in DHS custody, rather than in the custody of the intervenor, the juvenile court would have the
authority to order DHS to place the child with the intervenor notwithstanding the clearly stated limitations imposed by ORS 419B.349(1).”

Id. at 709-10 (emphasis in original).

**Dept. of Human Services v. C.M.**, 284 Or App 521, 392 P3d 820 (2017) (Lake County). Father appealed from a judgment taking jurisdiction over his four-year-old son, D, on the grounds that D’s conditions and circumstances endangered his welfare “because (1) mother placed D under a threat of harm by exposing him to domestic violence in the home; (2) mother failed to engage in services offered to her to help ensure D’s safety and continued to allow contact between father and D despite father’s impulsive and dangerous behavior; and (3) father exposed D to domestic violence, placing D at a threat of harm.” Id. at 522. The allegations arose out of an incident in which father tackled and choked mother, and knocked a cell phone out of mother’s 14-year-old daughter, K’s, hand when she tried to call police. Father also pushed K “away from him, and struck her in the face.” Id. at 528. D was “present but asleep in a recliner in the room where the incident took place.” Id. at 523. Following that incident, mother failed to comply with a safety plan, and D was removed from the home 11 days later. Id. at 524.

**Held:** Affirmed. First, the court rejected father’s claim that the court erred in taking jurisdiction based on the allegations that mother and father exposed D to domestic violence. Although mother did not appeal, the court held that it could consider the allegation relating to mother, because “the findings pertaining to a child’s exposure to domestic violence by each of his parents are ‘necessarily intertwined’ with one another.” Id. at 527 n 5. On the merits, the court held that the evidence was legally sufficient to prove that domestic violence had occurred, and that D had been exposed to that domestic violence despite the fact that he was asleep when the altercation occurred. Relying on the dictionary definition of “exposed,” the court found that “there was no evidence that anyone shielded or otherwise protected D from the domestic violence unfolding around him. Although there was testimony by those present that D slept through that violence, there is no dispute that D was in a chaotic and physically threatening environment.” Id. at 528. Finally, the court relied on the testimony of the caseworker that D was present and “could have been harmed” to support the juvenile court’s “implicit determination that there was a nexus between the exposure to domestic violence on that occasion and a risk of harm to D in general.” Id. at 529. In reaching that result, the court expressly rejected father’s argument that the juvenile court could not find a current threat of harm based on a single incident of domestic violence. Id. at 529. The court concluded that the risk to D was “current” because there was no evidence “that either parent engaged in services or otherwise attempted to ameliorate their issues after the January 16 incident.” Id. at 530.

Second, the court held that father had failed to preserve his claim that the juvenile court erred in taking jurisdiction based on the allegation that mother had “failed to engage in services offered to her to help her ensure the safety of the child.” Id. at 531. And finally, the court held that the juvenile court’s error in overruling a hearsay objection to a statement made by D to the caseworker was harmless because it was “cumulative of and qualitatively similar to other evidence presented at the hearing.” Id. at 532.
**Dept. of Human Services v. J.R.D.**, 286 Or App 55, 398 P3d 489 (2017) (Multnomah County). Mother failed to appear at a pretrial conference on a petition held before a juvenile court referee. DHS presented a *prima facie* case, and the referee took jurisdiction over mother’s child. After entry of the referee’s order, mother requested rehearing before a juvenile court judge as authorized by ORS 419A.150. “The court ‘affirmed’ the referee’s order without affording mother the opportunity to present additional evidence and entered a judgment taking jurisdiction” over the child. *Id.* at 57. Mother appealed, claiming that because a rehearing before a judge is conducted “*de novo,*” she was entitled to present evidence to rebut the department’s previously proven case.

**Held:** Reversed and remanded. First, the court observed, in *dicta*, that “ORS 419A.150 does not make any distinctions between appearing and nonappearing parties.” *Id.* at 61. Next, the court held that “ORS 419A.150(3) plainly grants litigants permission to offer additional evidence on rehearing.” *Id.* at 62. Finally, the court held that “because ORS 419A.150(3) unambiguously grants litigants permission to present additional evidence, those terms indicate that the rehearing under ORS 419A.150 is a rehearing of the matter before the referee as if it had been originally commenced before the juvenile court.” *Id.* at 64. In a concurring opinion, Judge DeHoog stated that “the majority opinion should not be read as holding that the juvenile court could not have denied mother’s request for a hearing altogether, as opposed to limiting the scope of the hearing that it held.” *Id.* at 66. Instead, Judge DeHoog suggested that “it is certainly not beyond dispute” that mother’s “unexcused failure to comply with a summons” constituted a “default, and, thus, a forfeiture of the right to a rehearing before the juvenile court.” *Id.* at 67.

**Dept. of Human Services v. L.S.H.**, 286 Or App 477, 398 P3d 1013, *rev den*, 362 Or 94 (2017) (Lane County). The juvenile court took jurisdiction over mother’s child, C., based on mother’s admission to the amended allegation that “[t]he mother’s physical health, mental health, and disabilities interfere with her ability to parent in the safest way possible and creates risks that are unacceptable to mother. Mother and child will benefit from the services of the court, DHS, and [the] caseworker[.]” As part of her admission, mother agreed to waive her right to an evidentiary hearing, and the court subsequently “determined that C was within the jurisdiction of the court and made her a ward of the court as required by ORS 419B.328.” *Id.* at 481. Mother appealed, contending that “her admission was insufficient” to support jurisdiction. *Id.*

**Held:** Affirmed. First, the court rejected DHS’s argument that mother’s appeal was barred by ORS 19.245(2), which “generally prohibits a party from appealing a judgment when that party consented to the entry of judgment.” *Id.* at 483. The court held that:

“mother was never asked whether she consented to entry of the judgment, and there are no other indications that mother consented to the entry of judgment, as distinct from admitting to the allegation on which the juvenile court predicated its jurisdictional determination. Beyond that, it appears that the court entered judgment because it determined on its own
that mother’s admission demonstrated that jurisdiction was warranted, not because of any expression of consent to entry of judgment by mother.”

Id. Second, the court held, relying on its holding in *Dept. of Human Services v. D.D.*, 238 Or App 134, 241 P3d 1177 (2010), *rev den*, 349 Or 602 (2011), that “the allegation to which mother admitted is one that, had mother not admitted to it and waived her right to an evidentiary hearing, would have permitted DHS to introduce evidence sufficient to establish juvenile court jurisdiction.” *Id.* at 486. In reaching that result, the court declined to “reach DHS’s contention that our line of cases holding that a party may contest a juvenile court’s determination of dependency jurisdiction on appeal, notwithstanding a failure to contest jurisdiction below, is erroneous * * * and should be overruled.” *Id.* at 482.

*Dept. of Human Services v. C.T.*, 288 Or App 593, 406 P3d 191 (2017) (Josephine County). The juvenile court asserted jurisdiction over father’s son, C, and daughter, S. Father and C appealed. Father asserted, *inter alia*, that DHS had failed to prove its allegation that exposure to domestic violence endangered the children. C asserted that DHS had failed to prove its allegation that parents endangered him by allowing him to live with paternal grandfather, who had abused his own two daughters when they were children and who, the juvenile court found, had abused S. C argued that the juvenile court erred by admitting certain testimony on that issue and in concluding that grandfather posed a threat to him.

While the appeal of the jurisdictional judgment was pending, the juvenile court dismissed jurisdiction and wardship of both children, on the state’s motion.

**Held:** Jurisdictional judgments reversed and remanded for entry of judgment establishing dependency jurisdiction based on allegations other than substance abuse; otherwise affirmed. First, the court held that the appeal was not moot because it was likely that the juvenile court’s finding that father exposed the children to domestic violence could have an adverse effect on father during any custody proceedings. 288 Or App at 600. The court also agreed with father that the case was not moot because, if the jurisdictional judgment was allowed to stand, father—who intended to allow C to live with grandparents—could not challenge DHS’s founded disposition that grandfather was an unsafe person. *Id.*

Second, the court turned to C’s challenges to the admission of certain testimony. The court concluded that C’s argument regarding the admission of a social worker’s general testimony about sex offenders—specifically, that it was not sufficiently tied to the facts of the case to be relevant—was unpreserved and any error was not obvious. *Id.* at 604. The court rejected C’s argument that some of the social worker’s testimony constituted vouching, and the court held that any error in the admission of hearsay by a caseworker was harmless. *Id.* at 604-06.

Third, the court held that the evidence before the juvenile court, including the social worker’s testimony that C had challenged on appeal, was sufficient to establish that
grandfather posed a non-speculative risk to C. The court explained, “[The social
worker’s] testimony established a nexus between grandfather’s sexual abuse of his
daughters, which went untreated and unpunished, and the risk he posed to C[].” Id. at
607.

Finally, the court held that there was sufficient evidence to support the juvenile
court’s determination that the children were at risk of harm from exposure to domestic
violence. Although parents were living apart, the record was sufficient to support the trial
court’s finding that the parents were “likely to reunite,” given that they were still married,
“mother’s residential instability,” and “that father retained a romantic interest in mother.”
Id. at 608.

Dept. of Human Services v. H.F.E., 288 Or App 609, ___ P3d ___ (2017) (Lane
County). Mother and child appealed the juvenile court’s judgment continuing child’s
placement with the Oregon Youth Authority. (At the time of the hearing, the juvenile
court had dependency and delinquency jurisdiction over child.) Mother and child asserted
that the juvenile court had failed to make the findings required by ORS 419B.449(3) and
that its decision was not supported by sufficient evidence because “the only information
in the record that supported placement with OYA was unsworn testimony.” 288 Or App
at 610.

Held: Mother and child’s assignments of error were not preserved and any errors
were not plain. First, it was not obvious that the court was required to make findings as
required by ORS 419B.449(3) because “the record shows that the hearing was held, in
large part, to address issues in the child’s concurrent juvenile delinquency case,” and the
record did not clearly show that “the relevant hearing was triggered by a request of any
party under ORS 419B.449 or the court’s receipt of a report under ORS 419B.440.” 288
Or App at 610. Second, there was sufficient evidence to support the juvenile court’s
placement and, even if the juvenile court plainly erred in considering unsworn testimony,
the court would not exercise its discretion to correct the error because, if it had been
called to the court’s attention, it could have easily been corrected. Id.

County). Father appealed the juvenile court’s judgment taking jurisdiction over his two
children, asserting, inter alia, that the court erred in ordering him to undergo a
psychological evaluation because the requirement did not “bear a rational relationship to
the bases for jurisdiction.” 289 Or App at 634.

Held: Remanded for entry of judgment omitting requirement that father was to
undergo a psychological evaluation; otherwise affirmed. DHS conceded that it “did not
allege that father had psychological problems that contributed to the bases for jurisdiction
and that it did not request a psychological evaluation.” Id. The court agreed with father’s
argument and accepted DHS’s concession. Id.

Grandparents and grandchild brought federal and state claims against state employees
who removed grandchild from grandparents’ custody and failed to name grandparents as parties in the subsequent dependency case. The removal occurred after an incident in the apartment of grandparent’s son (grandchild’s uncle), Darren. Grandmother and Darren had an argument, during which Darren was intoxicated, threatened to commit suicide, and held a handgun. Grandmother took and hid the handgun and, when she retrieved it the next morning, she accidentally discharged it. Authorities responded, and a caseworker took grandchild, who was four-years old and being raised by grandparents. Under the common-law practices and customs of the Marshall Islands, grandparents were the adoptive parents and legal guardians of grandchild. On cross-motions for summary judgment, the trial court found for defendants, and grandparents and grandchild appealed.

**Held:** Judgment granting summary judgment to defendant affirmed in part, reversed in part, and remanded; otherwise affirmed. The court affirmed the denial of plaintiffs’ motion for summary judgment on their wrongful removal claim. Plaintiffs alleged a constitutional violation of grandparents’ due process rights and grandchild’s Fourth Amendment rights. The court held that, although caseworker’s belief that grandparents were not grandchild’s adoptive parents or guardians was unreasonable, caseworker was entitled to qualified immunity on the wrongful removal claim because it was not beyond debate that “confluence of factors” facing casework at time of removal would not support a finding of exigency, and, therefore, the trial court did not err in granting defendants summary judgment on that claim. 288 Or App at 574. However, the trial court erred in granting defendants summary judgment on plaintiffs’ due process claim, based on defendants’ failure to name them as parties in the dependency case; defendants’ belief that grandparents were not grandchild’s adoptive parents or legal guardians was unreasonable, and, at the time of the filing of the dependency petition, it was beyond debate that it was unlawful to fail to name them as parties.

**Demaree v. Pederson, ___ F3d ___ (9th Cir 2018) (per curiam).** Plaintiffs brought wrongful removal claims against two case workers, who removed parents’ children (ages 5, 4, and 1), “during a possible sexual abuse investigation after a Wal-Mart employee [notified police] that while printing family photos dropped off by plaintiffs, they noticed several pictures portraying family nudity.” During the investigation, the children were physically examined, and the exams were normal. The district court granted summary judgment to the defendants on the ground that the defendants were entitled to qualified immunity. Plaintiffs appealed.

**Held:** Reversed. Viewing the record in the light most favorable to the plaintiffs, as required on summary judgment, the case workers violated plaintiffs’ rights by removing the children because “there was no suspected risk to the children of *serious bodily harm, molestation, imminent or otherwise.*” ___ F3d ___ (slip op at 17) (emphasis added). In addition, the removal violated the plaintiffs’ clearly established rights. Therefore, the case workers were not entitled to qualified immunity, and the district court erred in granting them summary judgment on that basis.
**Permanency/Motions to Dismiss**

*e Dept. of Human Services v. S.S.*, 283 Or App 136, 388 P3d 1178 (2016) (Josephine County). Mother, father, and child, four-year-old M, appealed from a judgment changing M’s permanency plan from guardianship to adoption. M was born drug-affected, and had been in foster care since birth. In February 2014, the juvenile court changed M’s permanency plan to guardianship, rather than adoption, based on its opinion that a permanent guardianship would enable M to continue her relationships with her current foster parent, her grandmother, and mother. Following entry of that permanency judgment, M was placed with out-of-state relatives. That placement disrupted, and in April 2015, M was returned to Oregon and placed with her former foster parent. In August 2015, the court held another permanency hearing, and changed M’s permanency plan from guardianship to adoption. In making that determination, the juvenile court found that there “was no ‘compelling reason’ under ORS 419B.498(2)(b) to preclude DHS from filing a petition to terminate parents’ rights.” *Id.* at 141.

**Held:** Reversed and remanded. First, the court rejected father’s argument that issue preclusion prevented the court from changing the plan to adoption, because it had previously rejected the department’s request to adopt a permanency plan of adoption in 2014. The court noted that ORS 419B.470 requires periodic permanency hearings, and that a “meaningful evaluation” of the appropriate plan for a child “means that the prior evaluation is not automatically preclusive.” *Id.* at 144. Second, the court held that the juvenile court’s “analysis does not reflect the ‘child-centered’ determination that is required by ORS 419B.476(5) and ORS 419B.498(2)(b).” *Id.* at 146. “Specifically, the juvenile court did not evaluate, in light of M’s specific circumstances, *** whether the plan of guardianship would better meet her health and safety needs than would the plan of adoption.” *Id.* at 147. The court noted that retaining relationships with a parent, other family members, or a long-time caregiver may be a compelling reason not to file a TPR petition, but “there is no rule of law establishing that, in all cases, the value of retaining such a relationship is or is not a compelling reasons under the statutes.” *Id.* at 147-48.

*e Dept. of Human Services v. C.L.H.*, 283 Or App 313, 388 P3d 1214 (2017) (Linn County). The child, M, was born with a serious medical condition “involving multiple intestinal atresias” and spent the first four months of her life in the hospital. She was placed in protective custody upon discharge from the hospital in October 2014. Father failed to appear for the jurisdictional trial, and the court asserted jurisdiction over M based on father’s “anger control problem” and the fact that M had “specialized care and feeding needs” that father was unable to meet. From October 2014 through March 2015, father did not visit M and had no contact with DHS. He was incarcerated in March 2015, with a scheduled release date of April 2017. DHS was aware of father’s incarceration, but had no contact with him until November 2015. After that initial contact, the caseworker spoke with father on the phone four times, but never met with him in person. The caseworker provided some information to father about M’s medical needs, but did not “develop a curriculum for father to help him prepare to meet M’s needs.” *Id.* at 318. The worker also failed to investigate the “quality and appropriateness” of anger-management and parenting courses father attended in prison.
Following a permanency hearing in March 2016, the juvenile court changed M’s case plan from reunification to adoption. The juvenile court noted father’s complete lack of involvement during the first six months of the case, and found that although DHS’s efforts were “hardly vigorous” it was “not shown that more efforts by DHS would have made a significant difference in the outcome of the case.” *Id.* at 320. On appeal, father argued that the court erred, because DHS failed to make reasonable efforts to reunify the family.

**Held:** Reversed. First, the court held that the department’s efforts are reasonable “only if DHS has given a parent a fair opportunity to demonstrate the ability to adjust his or her behavior and act as a ‘minimally adequate’ parent.” *Id.* at 322. When a parent contends that the failure to provide a particular service renders DHS’s efforts unreasonable, the juvenile court must engage in “‘something resembling a cost-benefit analysis,’ considering both the burdens that the state would shoulder in providing that service and the benefit that ‘might reasonably be expected to flow’ from that service.” *Id.* at 323. The court went on to hold that in assessing the “benefit” portion of the required cost-benefit analysis, “the juvenile court must consider the importance of the service that was not provided to the case plan and the extent to which that service was capable of ameliorating the jurisdictional bases.” *Id.* at 328. The court held that DHS may not “withhold a potentially beneficial service to an incarcerated parent (or any parent) simply because, in DHS’s estimation, reunification with the child is ultimately unlikely even if the parent successfully engages in the services and programs that DHS provides.” *Id.* at 329 (emphasis in original). Ultimately, the court held that “in light of DHS’s failure to contact father or his prison counselor for more than six months, to investigate the adequacy of the programs available to father in prison, or attempt to provide father with services focused on M’s special needs, we conclude that the record is insufficient to support a conclusion that DHS made reasonable efforts toward father for a sufficient period of time in which the juvenile court could assess his progress.” *Id.* at 332.

**Dept. of Human Services v. S.M.H.,** 283 Or App 295, 388 P3d 1204 (2017) (Deschutes County). Mother has three children, D, B, and S. D and B have different fathers, and S has no legal father. Juvenile court jurisdiction was based on mother’s substance abuse and incarceration, both fathers’ substance abuse, and one father’s failure to protect and “limited parenting relationship” with D. At the time of the permanency hearing, all three parents were incarcerated, and the juvenile court changed the children’s permanency plan to guardianship with their maternal aunt in Colorado. All three parents appealed, arguing that DHS had failed to make reasonable efforts to reunify the family.

**Held:** Reversed. The court held that “as to mother, the record lacks sufficient evidence to support the trial court’s conclusion that DHS made reasonable efforts within the meaning of” ORS 419B.476(2)(a). *Id.* at 297. Mother had been incarcerated since June 2015, and began serving a sentence at Coffee Creek in October 2015. The DHS caseworker did not contact mother’s prison counselor until December 2015, and did not have “frequent contact” with mother until shortly before the permanency hearing. The court concluded that because “DHS took so few meaningful steps to even become aware of mother’s participation in services while incarcerated (let alone support mother’s
efforts), we cannot conclude that the record was sufficient to support the trial court’s
determination that DHS made reasonable efforts over the life of the case.” *Id.* at 310.

350 (2017) (Lane County). Both parents appealed from a judgment changing the
permanency plan for their daughter, A, from reunification to adoption. A had been made
a ward of the juvenile court shortly after her birth, based on father’s mental health
condition (including PTSD), his physical abuse of mother’s older child, L, and mother’s
failure to protect L from that abuse. At the permanency hearing, both parents argued that
they had made “substantial progress” and wanted additional time to engage in services.
The juvenile court rejected their arguments, and changed the plan to adoption. Both
parents appealed, making two arguments: (1) the juvenile court erred in concluding that
they had failed to make sufficient progress for A to safely return home; and (2) the court
erred in determining that there were no compelling reasons for DHS to defer filing a TPR
petition.

**Held:** Reversed and remanded. First, the court rejected parents’ arguments that
the juvenile court erred in determining that they had made sufficient progress to make it
possible for A to safely return home. With regard to father, the court held that father’s
“hostile and disruptive behavior during the hearing” and his “combative nature during his
testimony” supported the juvenile court’s conclusion that father continued to lack “the
ability to regulate his emotions and temper and that he had not ameliorated the related
bases of jurisdiction as to A.” *Id.* at 379-80. Although father had participated in services,
the court reiterated that “mere participation” in services is not enough, and the juvenile
court “reasonably inferred that father’s anger issues persisted, despite his apparently
sincere efforts to address them through therapy and parenting training.” *Id.* at 380. With
regard to mother, the court found that despite mother’s participation in services, she
continued to lack awareness of the risks posed by father, and the juvenile court “did not
err in concluding that mother had made insufficient progress” to make it possible for A to
safely return home. *Id.* at 381-82.

Second, the court addressed mother’s argument that “the juvenile court erred in
changing the permanency plan for A to adoption, because there were compelling reasons
that filing a petition for termination of parental rights would not be in A’s best interest.”
*Id.* at 382. The court held that before the juvenile court may change a child’s permanency
plan to adoption under ORS 419B.476(5)(d), it “must first determine, under ORS
419B.498(2)(b), that there are no compelling reasons to forgo a change.” *Id.* at 369, 392.
And on the merits, the court held that “the record does not support the determination that
mother’s successful participation in services would not make it possible for A to return
home within a reasonable time — given A’s particular needs and circumstances and any
barriers that mother might face — the court’s determination under ORS 419B.498(2)(b)
was erroneous.” *Id.* at 394. Applying this reasoning, the court also reversed the
permanency judgment in the case involving mother’s child, L.

(2017) (Deschutes County). The juvenile court took jurisdiction over parents’ child, C,
based on parents’ “limited cognitive abilities that interfere with [their] ability to safely parent the child.” *Id.* at 164. Both parents moved to dismiss jurisdiction, arguing “that their cognitive limitations no longer constitute bases for jurisdiction.” *Id.* The juvenile court denied the motion, and both parents appealed.

**Held:** Affirmed. The court found:

“there is evidence that parents’ cognitive limitations persist. There is also some evidence that situations will arise for C, as a toddler, that present a risk of serious injury and that parents’ cognitive limitations interfere with their judgment and ability to recognize the danger of those situations. Moreover, that evidence is not merely speculative. Parenting services providers who have worked with the family described specific examples of past situations in which parents failed to recognize circumstances that exposed C to a serious risk of injury and then resisted advice about how to eliminate that risk. The providers also identified specific common situations that are likely to occur for C and that present a risk of serious injury to him. Finally, there is some evidence from which the juvenile court could infer that parents will not seek parenting assistance from parenting specialists, family, or friends, unless required to do so by DHS, and that, without such assistance, parents’ cognitive limitations continue to expose C to a risk of serious loss or injury.”

*Id.* at 165. The court “emphasize[d] that this is a record-dependent decision and should not be understood to suggest that cognitively impaired parents are necessarily unable to parent.” *Id.*

**Dept. of Human Services v. M.A.H.,** 284 Or App 215, 391 P3d 985, *rev den,* 361 Or 486 (2017) (Clatsop County). Juvenile court jurisdiction in this case was established in January 2015 (“the 2014 case”), based on allegations relating to mother’s criminal activities, lack of parenting skills, substance abuse, and her practice of leaving the children with unsafe care providers. In June 2015, DHS filed new petitions alleging that mother’s mental health interfered with her ability to be a safe parent. ("the 2015 case.") That petition, which was assigned a new case number, was adjudicated on August 2015. Shortly thereafter, the permanency plan in the 2014 case was changed to adoption. Parents appealed from those permanency judgments, and the Court of Appeals reversed on the ground that the juvenile court erred in changing the permanency plan to adoption in one case, while leaving the plan reunification in the other case. **Dept. of Human Services v. M.J.H.,** 278 Or App 607, 614, 375 P3d 579 (2016). While that case was on appeal, judgments were entered terminating both parents’ parental rights. Those judgments were set aside following reversal of the permanency judgments.

In July 2016, the juvenile court consolidated the 2014 and 2015 cases and held another permanency hearing. The court once again changed the permanency plan to adoption, determining that “under the totality of the circumstances over the 20 months that the children had been in foster care, DHS had made reasonable efforts to reunify the
family.” *Id.* at 222. Mother appealed, arguing that DHS failed to make reasonable efforts to assist her in ameliorating her mental health issues in the 11 months between the 2015 jurisdictional judgment and the second permanency hearing. DHS agreed that it failed to make any efforts in the three-month period between the termination trial and the reversal of the first permanency judgment. However, the department argued that under the totality of the circumstances, including the 20 months the children were in foster care, its efforts were reasonable.

**Held:** Affirmed. The court held that “in the totality of the circumstances, the juvenile court did not err in determining that DHS had made reasonable efforts.” *Id.* at 224. First, the court noted that the record contained evidence that “DHS made efforts aimed at [mother’s] mental health issues as early as March 2015[.]” *Id.* Further, the court held that “DHS’s failure to make efforts during the three-month period between mid-March 2016 and late-June 2016 is not dispositive of the reasonable efforts determination required under ORS 419B.476(2)(a).” *Id.* “Here, the particular circumstances of this case, and the extent of the efforts DHS made over its duration, including efforts made up to three months before the permanency hearing, support the juvenile court’s determination that DHS made reasonable efforts overall.” *Id.* at 225.

**Dept. of Human Services v. M.S.**, 284 Or App 604, 393 P3d 270, *rev dismissed*, 361 Or 804 (2017) (Umatilla County). The child, M, appealed from a judgment continuing the permanency plan of reunification. M had been in foster care since shortly after her birth in October 2014, based on the fact that mother’s substance abuse and mental health issues interfered with her ability to safely parent. At a permanency hearing held in the summer of 2016, M asked the court to change her permanency plan to adoption. Mother and DHS opposed the change in plan. Following the hearing, the court continued the plan of reunification, based on its finding that “further efforts will make it possible for the child to be safely returned to mother’s care within a reasonable time.” *Id.* at 608. On appeal, M contended that “absent evidence that would permit an affirmative finding that [she] can be returned to mother safely within a reasonable time, the juvenile court was required to change [her] permanency plan from reunification to adoption.” *Id.* at 608-09.

**Held:** Affirmed. The court held that as the proponent of the change in permanency plan, M “bore the burden of proving that the statutory elements for a change in plan were present.” *Id.* at 609. And under *S.J.M.*, “one of the elements that M needed to prove was that there were no compelling reasons to forego the filing of a petition to terminate mother’s parental rights.” *Id.* In light of that allocation of the burden of proof, “even if the evidence did not support the affirmative finding that M could be returned to mother within a reasonable time, a question that we do not decide, that does not require reversal of the juvenile court’s decision to continue M’s existing permanency plan. Rather, in view of *S.J.M.*, for us to reverse the juvenile court’s denial of her request for a plan change, the record would have to be such that it at least permitted, if not compelled, the contrary finding that M could not be returned to mother within a reasonable period of time, as well as the finding that there were no other
compelling reasons to forego the filing of a petition to terminate mother’s parental rights. That is not the state of the record here.”

*Id.* at 610 (emphasis in original).

**Dept. of Human Services v. D.I.R.,** 285 Or App 60, 395 P3d 970 (2017) (Lane County). Both parents appealed from a judgment changing the permanency plan for their daughter, K, from reunification to adoption. They contended that given their progress in services, the juvenile court erred in determining that K could not safely return home in a reasonable time. At the permanency hearing, DHS agreed with parents that the reunification plan should continue. The child and CASA asked that the plan be changed.

**Held:** Affirmed. The court noted that although parents “frame their arguments in terms of ‘sufficient progress,’ we understand them to argue that, given the progress they have made and will make through services, K can return in a reasonable time, pursuant to ORS 419B.476(4)(c), (5)(c), and ORS 419B.498(2)(b)(A). Because those provisions turn on whether the record was sufficient to support a determination that K could not safely return home in a reasonable time, we discuss them together.” *Id.* at 68-69 (emphasis in original). The court then held that “there is sufficient evidence in the record from which the juvenile court could find, based on K’s particular needs for permanency and stability, mother’s and father’s history of relapse with substances and domestic violence, and a history of DHS removing children from their care, that K could not safely return home in a reasonable time.” *Id.* at 72. Thus, the court did not err in changing the permanency plan to adoption. In reaching this result, the court rejected mother’s argument that the child and CASA, as the proponents of the change in plan, were required to present evidence at the hearing. The court held that “regardless of which party bears the burden of coming forward, on this record there is sufficient evidence to support the court’s determination that K could not safely return home in a reasonable time.” *Id.* at 73 n 5.

**Dept. of Human Services v. M.K.,** 285 Or App 448, 396 P3d 294, rev den, 361 Or 885 (2017) (Jackson County). Mother appealed from a permanency judgment changing the plan for her two children, E and J, from reunification to guardianship. Mother and father had a lengthy history of domestic violence, and the children were removed from the home and placed with paternal grandparents in July 2015. In August 2015, visits between the children and mother were discontinued, based on the children’s refusal to visit and the fact that the visits had been “very unhealthy.” On appeal, mother’s arguments were centered on “the children’s desire to remain with the grandparents and their refusal to participate in therapeutic visitation.” *Id.* at 454.

**Held:** Affirmed. First, the court held that DHS made reasonable efforts to reunify the family. The court found that “there is sufficient evidence in the record to permit a finding that the children would suffer harm if they were forced into therapeutic visitation with mother, and the juvenile court did not err in considering such harm.” *Id.* at 457. The court also found that DHS had consistently made efforts to get the children to consider visiting with mother. The court held that “[i]n short, both in light of the extensive efforts that DHS made and in light of the evidence that further efforts to pursue therapeutic
visitation would have been unproductive or even harmful, we conclude that the juvenile court did not err in concluding that DHS made reasonable efforts to achieve reunification.” *Id.* at 459. With regard to sufficient progress, the court rejected mother’s argument that her completion of all required services “precluded” the juvenile court from concluding that she had not made sufficient progress. *Id.* at 460. Instead, the court reiterated that “[i]n determining whether the parent has made sufficient progress, the juvenile court gives the highest priority to a child’s health and welfare.” *Id.* In this case, there was evidence that despite completing services, there was evidence that mother was still involved in a relationship with father, and that she “continued to minimize the impact of the domestic violence on the children.” *Id.* at 461. “Thus, the juvenile court could reasonably conclude that the children could not safely be returned home, regardless of mother’s completion of other services directed by DHS.” *Id.*

**Dept. of Human Services v. M.D.P.**, 285 Or App 707, 397 P3d 582, *rev den*, 361 Or 803, 361 Or 885 (2017) (Lane County). The juvenile court took jurisdiction over parents’ two children in October 2014, based on allegations relating to “domestic discord”, the parents’ chaotic lifestyle, and residential instability. At a permanency hearing in March 2016, the juvenile court changed the children’s permanency plan from reunification to guardianship. Both parents appealed from that judgment. They argued that “their participation in all of the required programs and their efforts to maintain sobriety and obtain employment and housing conclusively establish that they had made sufficient progress.” *Id.* at 713. In addition, mother contended that the fact that DHS had not removed their infant daughter from their home “should be conclusive evidence that they made sufficient progress in ameliorating the concerns underlying the jurisdictional bases.” *Id.*

**Held:** Affirmed. The court acknowledged that between October 2015 and March 2016, parents “engaged in a number of services and made some meaningful progress.” *Id.* However, the court reiterated that what is “dispositive” is not the fact that parents have participated in services; “what matters under ORS 419B.476(2)(a) is whether the parent has made sufficient progress, as a result of those services or otherwise, to overcome the concerns that gave rise to juvenile court jurisdiction.” *Id.* at 713-14 (citation omitted). Further, the court held that although “parents’ ability to care for an infant demonstrates that they have made considerable efforts to improve their relationship and living situation,” the fact that the infant remained in their care was not “determinative of whether the other children can be safely returned.” *Id.* at 716. The court pointed out that the “sufficient progress” inquiry is “explicitly centered” on whether the ward can safely return home, and the ward’s health and safety must be the paramount concerns. *Id.* Ultimately, the court held that “there is sufficient evidence in the record to support the juvenile court’s conclusion that the parents had not made sufficient progress for reunification at the time of the permanency hearing.” *Id.* at 717.

**Dept. of Human Services v. T.L.,** 287 Or App 753, 403 P3d 488 (2017) (Clackamas County). Father’s child, M, had been a ward of the juvenile court since April 2013, based on the proven allegation that “father’s current and historical use of alcohol and controlled substances interferes with his ability to provide safe, appropriate and consistent care for
the child.” By the time of the September 2016 permanency hearing, father had overcome his addiction, but M was 15 years old, she had not had contact with father for over two years, and she wanted to be adopted by her current foster parent. At the hearing, CASA asked the juvenile court to change the permanency plan for M from reunification to adoption. Father, M’s attorney, and DHS all opposed the change in plan. The juvenile court changed the plan to adoption, and father appealed. He argued that the “juvenile court erred in relying on facts extrinsic to the proven basis for jurisdiction, specifically, facts related to M’s feelings of estrangement from her father and threats to run away if she were returned to his care.” \textit{Id.} at 761.

\textbf{Held:} Reversed and remanded. The court held that “[f]acts are not ‘fairly implied’ by a jurisdictional judgment, and thus are ‘extrinsic’ to the jurisdictional judgment, if a reasonable parent would not have known from the jurisdictional judgment that he or she needed to address the condition or circumstances exemplified by those facts.” \textit{Id.} at 763. “Consequently, if an interested party seeks to change a child’s permanency plan based on a fact other than one explicitly stated or fairly implied by the jurisdictional judgment, the party must petition for and obtain an amended jurisdictional judgment.” \textit{Id.} at 764. In this case, the court held that M’s estrangement from father “was a circumstance that had never been established as a basis for jurisdiction in this case. It was not a fact that was explicitly stated or fairly implied by the jurisdictional judgment.” \textit{Id.} at 765. In reaching that result, the court rejected the argument that the estrangement between M and father was a result of father’s substance abuse. It held that a court


cannot base its permanency determinations on the ‘consequences’ of a condition that is the jurisdictional basis if the condition no longer persists and the consequences themselves are not expressly stated in, and cannot be fairly implied from, the jurisdictional judgment. To hold otherwise would deprive a parent of constitutionally adequate notice of a deficiency that has been identified as a barrier to the child’s return home and of a meaningful opportunity to address the deficiency with the support of services provided by DHS; and would circumvent the jurisdictional petition and hearing process.”

\textit{Id.} at 766. The court acknowledged the evidence in the record that M would be endangered if she were forced to return to father’s care, but nonetheless held that “we have rejected the notion that a juvenile court can change a permanency plan based on parental deficiencies that are not expressly stated in or fairly implied by the jurisdictional judgment, even if those deficiencies endanger a child.” \textit{Id.} at 766-67. “Thus, when faced with extrinsic facts related to the estrangement between M and father and indicating that that estrangement posed risks to M’s safety, the court should have, as the attorneys for DHS, M, and father suggested at the hearing, directed that the petition be amended.” \textit{Id.} at 767.

\textbf{Dept. of Human Services v. C.E.}, 288 Or App 649, 406 P3d 211 (2017) (Douglas County). The juvenile court asserted jurisdiction over father’s two children, B and N, based on findings that father had substance abuse issues, had engaged in acts of domestic
violence with his then-wife, and had engaged in inappropriate physical discipline of the children. 288 Or App at 652. According to DHS reports, “father’s then-wife, along with his former romantic partners, described father as abusive and controlling.” Id. at 651. “A DHS worker also described father as ‘domineering with his children.’” Id.

After father completed a substance-abuse treatment program and a “Batterer Treatment Program,” N was returned to father’s physical custody. Seven months later, father was charged with promoting prostitution of his then-girlfriend, and N was removed from father’s custody. At a subsequent permanency hearing, both children moved the juvenile court to change their permanency plans away from reunification, based in part on their special needs, including behavioral and emotional issues. Father objected, asserting that he had made sufficient progress because he had completed the substance abuse program, not engaged in domestic violence with his then-girlfriend, and not used inappropriate discipline when N had been returned to him. Father also argued that the information regarding his promotion of prostitution and the children’s special needs was “extrinsic to the bases for jurisdiction and should not be considered.” Id. at 655. The juvenile court changed the children’s permanency plans away from reunification.

Father appealed, asserting that the juvenile court “erred by considering facts extrinsic to the jurisdictional bases when evaluating the sufficiency of father’s progress—specifically, the charges against father for promoting prostitution and the information about [their] special needs.” Id. at 656.

Held: Affirmed. The court reiterated that “[a] juvenile court may not change a ward’s permanency plan away from reunification ‘based on conditions or circumstances that are not explicitly stated or fairly implied by the jurisdictional judgment.’” Id. at 656 (quoting Dept. of Human Services v. A.R.S., 256 Or App 653, 660, 303 P3d 963, rev den., 354 Or 386 (2013)). The court then held that “when a jurisdictional judgment (or attached documentation) specifically identifies a potential cause underlying a jurisdictional finding, it can be ‘fairly implied’ that that identified cause will be a referent for measuring the parent’s progress.” Id. at 658 (emphasis added). Therefore, the court concluded,

“the scope of the jurisdictional basis concerning father’s domestic violence includes the potential causes of domestic violence that are explicitly cited in the case plan attached to the jurisdictional judgment—i.e., father’s controlling behavior and his pattern of pursuing unhealthy romantic relationships. In that light, facts indicating that those causes have not been ameliorated—such as, facts concerning father’s alleged participation in his romantic partner’s prostitution—are relevant to the ‘sufficient progress’ inquiry and are not ‘extrinsic’ to the basis for jurisdiction.”

Id. at 658-59 (emphasis in original). For similar reasons, the court concluded that the information relating to the children’s special needs was not extrinsic to the bases for jurisdiction; rather, it was related to whether he could provide appropriate discipline for
his children. The court noted that the initial case plan included a requirement that “father
demonstrate that he could utilize services ‘at the level of effort necessary to manage’ his
children’s behavior.” *Id.* at 659. That requirement, according to the court, “provided
reasonable notice that father’s ability to prove appropriate discipline would be assessed in
terms of whether he made the necessary changes to manage his children’s behavior.” *Id.*
(emphasis in original).

**Dept. of Human Services v. J.C.,** 289 Or App 19, 407 P3d 969 (2017), *rev allowed,* __
Or __ (Jan. 18, 2018) (Lane County). Based on mother’s substance abuse, the juvenile
court asserted jurisdiction over mother’s child, A, in 2012. In 2013, the court entered a
judgment establishing a durable guardianship under ORS 419B.366. In 2016, mother
moved to vacate the guardianship and terminate the court’s wardship over A, on the
ground that she had ameliorated the basis for jurisdiction by, among other things,
abstaining from the use of alcohol and controlled substances, establishing visitation with
A, and attending family counseling with A and A’s guardian. In closing argument, A and
her guardian “argued that mother’s motion had to be denied because mother had not
proved that it was in A’s best interest to vacate the guardianship as required by ORS
419B.368.” 289 Or App at 22. For her part, mother “argued that, because she had proven
that the factual bases for jurisdiction no longer existed, the court was required to
terminate wardship and, consequently, vacate the guardianship.” *Id.* The juvenile court
denied mother’s motion on the ground that it was not in A’s “best interest to vacate the
guardianship.” *Id.* Mother appealed.

**Held:** Vacated and remanded. The court held that the juvenile court was required
to “determine whether it continued to have jurisdiction over A and, thereby, could
continue the guardianship.” *Id.* at 24. (“By the plain terms of ORS 419B.366, a
guardianship established under that statute can continue only if the court continues to
have jurisdiction over the child. ORS 419.366(6).”) The court implicitly rejected the
argument by A and her guardian, that the juvenile court could apply the criteria for
vacating a guardianship set forth in ORS 419B.368 and deny mother’s motion on the
ground that vacating the guardianship was not in A’s best interest. 289 Or App at 23-25.

**S.H.,** 289 Or App 88, 407 P3d 972 (2017) (Deschutes County). The juvenile court
entered judgments changing the permanency plans for mother’s three children from
reunification to adoption and placed the children with their maternal aunt and uncle as
legal guardians. Mother appealed the permanency judgments, and the Court of Appeals
reversed and remanded. **Dept. of Human Services v. S.M.H.,** 283 Or App 295, 388 P3d
1204 (2017) (holding that DHS failed to make reasonable efforts toward reunification as
required by ORS 419B.476(2)(a)). On remand, mother moved to set aside the
guardianship orders and judgments, pursuant to ORS 419B.923. The juvenile court
denied the motions, ruling that “[m]other’s remedy is as provided in ORS 419B.368.”
289 Or App at 91. Mother appealed.

**Held:** Reversed and remanded. The court reviewed the statutory process for
establishing a guardianship, including that a court “may only grant a motion for
guardianship if the court has ‘approved a plan of guardianship under ORS 419.476.’” *Id.*
at 94 (Quoting ORS 419B.366(5)) (emphasis in original). Because the permanency plan on which the juvenile court established the guardianship had been reversed on appeal, “there was no validly ‘approved plan of guardianship’ to support the orders and judgments establishing the guardianship.” Id. “Under those circumstances, the court had no discretion to deny mother’s motions to set aside the guardianship judgments.” Id. at 95.

**Dept. of Human Services v. A.M.G.,** 289 Or App 437, 407 P3d 983 (2017). Mother appealed from review hearing judgments in dependency cases involving her three children. The case was governed by ICWA, and mother contended that the juvenile court erred in determining that DHS had made “active efforts” toward reunification as required by ICWA.

**Held:** Appeal dismissed. The review hearing judgments were not appealable because they “did not alter the status quo of the dependency cases, deny any affirmative relief sought by mother, or otherwise adjust the rights and duties of the parties.” 289 Or App at 439 (adhering to State ex rel Juv Dept v. Vockrodt, 147 Or App 4, 934 P2d 620 (1997) and Department of Human Services v. A.B.B., 285 Or App 409, 396 P3d 306, rev allowed, 361 Or 885 (2017)).

**Termination of Parental Rights**

**Dept. of Human Services v. M.L.B.,** 282 Or App 203, 384 P3d 175 (2016), adh’d to as modified on recons., 283 Or App 911 (2017) (Wasco County). Mother’s parental rights were terminated after she failed to appear for trial. On appeal, she contended that her trial counsel was inadequate for failing to “mount a defense” on her behalf.

**Held:** Affirmed. Citing its recent decision in Dept. of Human Services v. S.C.T., 281 Or App 246, 380 P3d 1211 (2016), the court held that “because mother did not appear at the trial, ORS [419B.819(8)] prohibited her attorney from participating in the trial on her behalf” and her inadequate assistance claim “necessarily fails for that reason. Because mother’s attorney was statutorily prohibited from presenting a defense at the trial, he was not inadequate for failing to do so.” Id. at 204. In a footnote, the court pointed out that the case would “present a different question” if trial counsel had failed to request a continuance based on mother’s “reasonable excuse” for failing to appear.

**Dept. of Human Services v. B.J.J., Jr.,** 282 Or App 488, 387 P3d 450 (2016) (Marion County). Father appealed from judgments terminating his parental rights to three children. Although DHS alleged several grounds for termination, the case reduced to father’s mental health diagnosis, his angry and aggressive behavior, and his refusal to work with DHS. On appeal, father argued that DHS failed to prove that he is presently unfit.

**Held:** Reversed. First, the court held that in order to terminate father’s parental rights, “DHS must prove more than the fact that father has difficulty managing anger and anxiety, struggles with an antisocial personality disorder, or will resort to the use of
physical violence against other adults.” *Id.* at 503. Instead, “DHS must present child-specific evidence to demonstrate that father’s emotional illness, mental illness, or mental deficiencies are seriously detrimental” to the children. “In this case, DHS has failed to prove the required nexus.” *Id.* at 503-04. Specifically, the court held that there was insufficient evidence that father’s mental illness and “his tendency to resort to violence” had “even manifested” in domestic violence or would result in physical discipline seriously detrimental to his children. *Id.* at 504. The court also concluded that the evidence was insufficient to support allegations relating to father’s failure to learn or assume parenting skills, father’s physical and emotional neglect of the children, father’s lack of a viable plan for the return of the children to his care, and his failure to effect a lasting adjustment. Ultimately, the court held that “DHS has not proved by clear and convincing evidence that he is presently unfit for the reasons alleged in the termination petition.” *Id.* at 509.

*Dept. of Human Services v. L.D.K.*, 282 Or App 510, 387 P3d 462 (2016) (Marion County). This case is the companion to *B.J.J., Jr.*. Mother appealed from judgments terminating her parental rights to six children, including the three children she has with B.J.J., Jr.

**Held:** Based in large part on its decision in B.J.J., Jr.’s case, the court held that “we are not persuaded that DHS proved by clear and convincing evidence any of the alleged bases for mother’s present unfitness.” *Id.* at 514. By the time of the termination trial, mother had been clean and sober for two years, and “there was no indication that her parenting was impaired by the use of illegal drugs.” *Id.* at 514. She was also consistently participating in visits. And because the court found that B.J.J., Jr. was not presently unfit, it held that “DHS has failed to prove that mother’s relationship with BJ, and her dependence on him as a result of her mental health problems, is seriously detrimental” to her children. *Id.* at 514-515. The court similarly rejected the other bases for termination, and concluded that “DHS’s evidence was insufficient to prove any of the alleged bases for unfitness, whether the allegations are viewed individually or collectively.” *Id.* at 516.

*Dept. of Human Services v. M.L.M.*, 283 Or App 353, 388 P3d 1226, *rev den*, 361 Or 439 (2017) (Douglas County). This is an ICWA case. Both parents appealed from judgments terminating their parental rights to their son, L. Parents raised multiple assignments of error, challenging both the requirements for termination under ORS 419B.504 and the separate requirements imposed by ICWA. They also argued that the court could not consider evidence of their “failure to maintain a clean and suitable living environment” because that “consideration was not one of the alleged bases for jurisdiction.” *Id.* at 362.

**Held:** Affirmed. First, the court rejected father’s argument that DHS failed to make active efforts because it stopped providing services to father “one to two years before the date of the termination trial.” *Id.* at 357. The court held that “although an early cessation of services” could result in a finding of no active efforts, “timing is not the only relevant consideration.” *Id.* at 358. Instead, the court must consider the “particular circumstances” of each case. And “in view of the nature of parents’ problems, we are
persuaded that DHS made active efforts to provide services to prevent the break-up of this Indian family.” *Id.* at 362. The court then held that the department’s active efforts had been unsuccessful, and that the requirements of ORS 419B.504 and ICWA had been proved beyond a reasonable doubt.

The court did not squarely address parents’ argument that the allegations in a termination petition must also be one of the bases for jurisdiction. In this case, one of the jurisdictional bases was parents’ mental health problems. The court concluded that “the evidence of parents’ failure to maintain a clean and suitable living environment is properly considered as an aspect of the admitted jurisdictional bases and part of the totality of the circumstances that we consider in determining whether parents’ conduct or condition is seriously detrimental” to the child. *Id.* at 363.

**Dept. of Human Services v. C.P.**, 285 Or App 371, 396 P3d 278, *rev den*, 362 Or 94 (2017) (Josephine County). Father appealed from judgments terminating his parental rights to his two children. At the time of the termination trial, father was incarcerated, and he had been diagnosed with a personality disorder. On appeal, he raised two arguments: (1) the juvenile court erred in excluding, as irrelevant, evidence father offered to establish the children’s paternal grandfather’s availability and suitability as a guardian; and (2) the juvenile court erred in terminating his parental rights on the basis of unfitness.

**Held:** Affirmed. First, the court held that the juvenile court erred in excluding the evidence, because “when a parent opposes termination on the ground that it is not in a child’s best interest because severing the parent’s legal connection to the child will be detrimental to the child, evidence of an alternative to termination that will preserve that legal connection is relevant to whether termination is in the child’s best interest.” *Id.* at 379. Second, on *de novo* review (and considering the evidence the trial court had excluded), the court affirmed the termination judgments. The court held that “evidence in the record proves by clear and convincing evidence that, at the time of the termination trial, father’s personality disorder, in combination with other long-standing conditions, was seriously detrimental to the children.” *Id.* at 379. Further, “[g]iven the long-standing and intractable nature of father’s personality disorder and the high probability that father will not be able to safely parent the children, it is improbable that the children can be integrated into father’s care within a reasonable time.” *Id.* at 381.

With respect to best interest, the court found that the children “have spent most of their lives out of father’s care and are not strongly bonded to him.” *Id.* at 381. Moreover, the children are bonded to each other, and “DHS has identified their current placement as an adoptive resource where they can be adopted together.” *Id.* at 382. Finally, the court found, based on evidence from the psychologists who evaluated them, that “the children’s interest in being freed for adoption is great.” *Id.* at 382.

**Interstate Compact on the Placement of Children**

**Dept. of Human Services v. A.B.**, 286 Or App 578, 401 P3d 279 (2017) (Washington County). This proceeding involved 10-year-old K. K had been a ward of the juvenile
court since 2010, and the parental rights of both of her parents were terminated in 2013. K’s maternal grandfather, who lived in California, intervened in the dependency case under ORS 419B.116 and offered to be a placement resource for K, but California declined to approve the placement under the Interstate Compact on the Placement of Children (ICPC). Despite that denial, grandfather filed a motion under ORS 419B.366 to become K’s guardian. At a permanency hearing, the juvenile court (1) set aside the judgment terminating mother’s parental rights; (2) directed mother to “sign a power of attorney” to grandfather; (3) changed K’s permanency plan to guardianship; (4) granted grandfather’s motion for guardianship; and (5) dismissed K’s commitment to DHS. DHS and K appealed, contending that ORS 419B.923 did not authorize the juvenile court to set aside the judgment terminating mother’s parental rights, and that the court violated the ICPC by placing K in a guardianship with grandfather.

**Held:** Permanency judgment and guardianship judgment reversed and remanded; otherwise affirmed. First, the court held that DHS and K failed to preserve their argument that the juvenile court lacked authority under ORS 419B.923 to set aside the judgment terminating mother’s parental rights. *Id.* at 583. Second, the court held that a “child in a durable guardianship is one who ‘cannot safely return to a parent within a reasonable time,’ ORS 419B.366(5)(a), and therefore is a ‘child requiring placement’—in other words, a child within the class covered by the ICPC.” *Id.* at 587. Therefore, the court held that “the juvenile court’s permanency and guardianship judgments violate the ICPC because those judgments have the effect of ‘caus[ing]’ K to be placed in California without the approval of California officials.” *Id.* at 588.
PERMANENCY:

*Dept. of Human Services v. L.L.S.*, 290 Or App 132, ___ P3d ___ (2018) (Marion County). The juvenile court took jurisdiction over the child, Z, in March 2016, based on mother’s admission that her substance abuse interfered with her ability to safely parent the child, and father’s admission that he “has been convicted of sexually abusing another child and is incarcerated and currently unavailable to be a custodial resource.” *Id.* at 134. A few days after the court took jurisdiction, father was transported to EOCI, to begin serving a sentence of “more than 30 years” in prison. *Id.* DHS had “no contact with father for nearly 10 months.” *Id.* at 135. In July 2016, the DHS caseworker contacted father’s prison counselor in an attempt to arrange a phone call between father and Z, but that call did not take place, because the prison counselor failed to arrange it. *Id.* In November 2016, father’s case was transferred to a new prison counselor, and that counselor arranged phone visits between father and Z in December 2016 and January 2017. The caseworker did not contact father directly, although he did send father an Action Agreement “at the end of December 2016 or in early January 2017.” *Id.* at 135.

In October 2016, mother died of a drug overdose. After mother’s death, DHS requested a permanency hearing to change Z’s permanency plan to adoption. At the hearing, father contended that DHS failed to make reasonable efforts as required by ORS 419B.476(2)(a). The juvenile court disagreed and changed the plan, concluding that “there [were] no services or supports the DHS could have provided that could have ameliorated the jurisdictional bases as they relate to [father] in this case.” *Id.* at 136. The court also relieved DHS of the obligation to make reasonable efforts under ORS 419B.340(5)(a)(D). Father appealed.

**Held:** Reversed and remanded. First, the court explained that “reasonable efforts are ones aimed at reducing or eliminating the risk of harm that led to juvenile court intervention in the first place.” *Id.* at 138. In addition, “the concept of reunifying a child with a parent within the meaning of the dependency statutes is not limited to physical reunification.” *Id.* Instead, when the dependency code is construed in view of the scope of the fundamental Fourteenth Amendment right to parent, reunification of a child with a parent means the restoration of the parent’s right to make the decisions about the child’s care, custody, and control without state supervision, even if the child will not be returned to the parent’s physical custody because of other impediments, such as incarceration.

*Id.* at 138. For that reason, “the fact that a parent may not be able to be physically reunited with a child because of incarceration or similar impediments does not excuse DHS from making reasonable efforts to reunify the parent and child[.]” *Id.* at 138-39.

Applying those standards, the court held that “the juvenile court erred in concluding that DHS’s virtually nonexistent efforts to reunify Z with father were reasonable for purposes of ORS
419B.476.” *Id.* at 139. First, the court held that “the juvenile court’s conclusion that father’s incarceration, on its own, effectively excused DHS from making efforts to ameliorate the risk posed to Z by father’s incarceration conflicts with our longstanding recognition that the fact of incarceration, standing alone, does not relieve DHS of its obligation to make reasonable efforts to ameliorate the bases of jurisdiction.” *Id.* at 140. Second, the court held that “the incarceration of a parent only provides a basis for juvenile court jurisdiction over a child if, as a result of that incarceration, the child faces a threat of serious harm, and there is a reasonable likelihood that that harm will come about.” *Id.* at 140. And finally, “the juvenile court’s misunderstanding of the jurisdictional basis as to father led it to erroneously conclude that there is nothing that DHS could do to assist father in ameliorating the risk of harm posed to Z by his incarceration.” *Id.* at 140. Although DHS could do nothing to shorten father’s prison sentence, the court concluded that “[a]t the very least, DHS could have discussed with father whether he had any ideas about how to satisfy [the Conditions of Return] from the confines of prison, and assessed whether father’s ideas, if any, would be ones that father could accomplish with reasonable assistance from DHS.” *Id.* at 141. Ultimately, the court held that “the undisputed facts demonstrate that father was not given the ‘reasonable opportunity’ contemplated by ORS 419B.476 to demonstrate that he was capable of parenting Z.” *Id.* And despite the juvenile court’s “aggravated circumstances” finding, the court held that “the juvenile court’s legal error is one that requires reversal of the permanency judgment on appeal.” *Id.* at 142.

In a dissenting opinion, DeVore, J., noted that father “was represented by counsel before the juvenile court and this court, and he did not intimate that DHS failed to make reasonable efforts because it did not ask him if he had ‘any ideas’ for another caregiver. Nor did he offer one. Although DHS certainly bore the burden of persuasion as to reasonable efforts, DHS cannot be expected to disprove every unspoken negative.” *Id.* at 150. The dissent concluded that by reversing and remanding for a new permanency hearing, “what we really do is delay the permanency plan, delay adoption, delay the certainty and stability that a child needs, and elevate procedural criticism over the paramount interests of a child.” *Id.* at 151.

**APPEALS**

*Dept. of Human Services v. A.B.*, 362 Or 412, ___ P3d ___ (February 8, 2018). Mother appealed from a judgment taking jurisdiction over her child, J, contending that “the evidence was insufficient to support the court’s jurisdictional findings.” *Id.* at 416. While the appeal was pending, the juvenile court entered an order terminating the wardship, and mother filed a notice of probable mootness. The Appellate Commissioner dismissed the appeal, and mother subsequently petitioned for reconsideration. In her affidavit, she described the collateral consequences she would suffer as a result of the juvenile court’s judgment. Those consequences included:

1. [the judgment] will disadvantage her in any future departmental child abuse and neglect proceedings and in any custody proceedings against the child’s father;
2. it limits her options for employment or volunteer work requiring a background check; and (3) it stigmatizes her with her child’s service providers.

*Id.* at 427.
The Appellate Commissioner granted reconsideration and reinstated mother’s appeal. The Court of Appeals, in a per curiam opinion, dismissed the appeal as moot, stating that it was “not persuaded that the circumstances establish the kind of collateral consequences that prevent this appeal from being moot.” *Id.* at 418, citing *Dept. of Human Services v. A.B.*, 283 Or App 907, 908, 389 P3d 409 (2017). Mother petitioned for review.

**Held:** Affirmed. First, the Court held that termination of the wardship does not necessarily render the appeal moot; whether dismissal is appropriate will depend on the particular circumstances presented. If a parent identifies practical effects or collateral consequences that the parent believes will result from the judgment, then the department has the burden to persuade the appellate court that those consequences are factually incorrect or legally insufficient. The burden is on the department to prove that a jurisdictional judgment will have no practical effect on the rights of the parties and is therefore moot.

*Id.* at 414. Following that procedure in this case, the Court held that “[g]iven the concerns that mother has identified, the department has met its burden to persuade us that, in this case, the jurisdictional judgment will not have practical effects on mother’s rights.” *Id.* at 430.
Chapter 6
How Parent-Child Relationships Get Off Track and the Challenges for Repair

**Dr. Todd Ransford**
Todd Ransford, Ph.D.
Portland, Oregon

**Dr. Charlene Sabin**
Charlene Sabin, M.D., PC
Portland, Oregon

Contents

Presentation Slides: High-Conflict Families. ................................. 6–1
Presentation Slides: Therapy Options for Parent-Child Estrangement .................. 6–7
Chapter 6—How Parent-Child Relationships Get Off Track and the Challenges for Repair

High conflict families

Risk factors and ingredients for estrangement

The vulnerabilities for any child

Separation
Reconnection (both create anxiety)
Not having both parents at once
Loyalty conflict can be inevitable, even in low conflict families, Whose fault is this?
Vulnerabilities vary with age, history
Vulnerabilities of children, cont.

Security, anxiety and attachment is impacted by parental conflict (Frosh, et al)

Suggestibility is impacted by security of attachment (Weede, Goodman, et al)

Parental vulnerabilities overlap with child vulnerabilities re: attachment, anxiety

Vulnerabilities of children, cont.

• Preschoolers distress, clinging, how do parents interpret this?

• Older children’s alliances

• Maneuvering, telling tales

• Children on the autism spectrum
Chapter 6—How Parent-Child Relationships Get Off Track and the Challenges for Repair

Generalities

• Most children are not measurably impacted by divorce
• The children most impacted are boys, and children of high conflict parents, children whose parents relocate or are unavailable, children who experienced trauma, children who experience economic changes, children who relocate

Family variables in divorce adjustment

• How long was the marital conflict going on?
• How open was the marital conflict?
• How preoccupied are the parents by the conflict?
• Historic parenting patterns
Risk factors for high conflict and estrangement

- Never married parents
- Overly involved extended family
- Allegations of sexual abuse or domestic violence
- Mental health issues in the parents, usually personality issues

Parental contributions

- Aligned parent may be anxiously attached to child and promote child’s anxiety about separation or the other parent
- Non aligned parent may be excessively harsh or emotionally distant, demanding of loyalty.
Parental contributions, cont.

• Aligned parent may voice that estranged parent is dangerous, or inappropriately share other adult issues with the child, thereby giving the child more information with which to “take sides”.
• Child may feel protective of aligned parent if there have been threats or domestic violence with that parent as the victim.

Parental contributions, cont.

• Estranged parent may lack empathy and insist on apologies, or being vindicated.
• Estranged parent may be focused on the role of the other parent and the conflict rather than on his or her relationship with the child.
Other contributions

- Extended family may increase polarization, intergenerational issues of anxiety, and enmeshment
- Therapists, attorneys and extended family act like “a greek chorus,” off stage influences
Therapy Options for Parent-Child Estrangement

Todd Ransford, Ph.D.

Goals

• Protection/safety of the child
• Re-establishing healthy relationships between children and parents
Assessment and Treatment Options

Justified Rejection
• Supervised parenting time
• Reunification therapy with safety provisions

Child Alignment / Mixed Cases
• Family therapy with different subgroups
• Involvement of rejected parent and favored parent

Parental Alienation
• Moderate cases – family therapy combined with external “heavy” (detailed court order, review hearing, PC)
• Severe cases – Overcoming Barriers Camp, Family Bridges Program, reversal of custody, or give up and leave child with favored parent

The Fear/Avoidance Pitfall

• The longer the no-contact period persists, the harder it is to overcome
  • Phobias – when you successfully avoid the feared object, you experience relief. To overcome this, you need exposure without bad experiences
  • Dissonance Reduction – people need their actions and beliefs to be consistent. If I’m rejecting my parent, there must be a good reason for this (e.g., She’s dangerous or a bad person)
• Favored parent reactions

Limiting Expectations in Treatment

• Tough conversations go better when there is a relationship in place
• Family members often come in with unrealistic scripts
  • Parent: “Once I apologize (or explain), everything can go back to normal”
  • Child: “I’m going to tell him all the reasons I hate him”
• Limited parent-child relationships can be fine
• Family members often come in with black & white thinking and extreme solutions. We want to promote flexible thinking, empathy, multiple perspectives
Helpful Hints for Attorneys

- Be wary of extreme stances. Dysfunctional family dynamics often get replicated among professionals.
- Communicate the expectation that all family members will participate in treatment, including the favored parent.
- Waiting for the child to feel “ready” or doing only individual child therapy is often counterproductive.
- Separate the therapy role from the enforcer role.
Chapter 7

Navigating Parental Alienation in Juvenile Dependency Cases

**Amelia Andersen**
OPDS Appellate Division
Salem, Oregon

**Amanda Austin**
Department of Justice Child Advocacy Section
Portland, Oregon

**Emily Marrer**
Sage Legal Center
Portland, Oregon

**Matthew Washchuk**
Riley & Washchuk PC
Portland, Oregon

**Contents**

Presentation Slides ........................................... 7–1


*Dept. of Human Services v. T. L.*, 287 Or App 753 (2017) .................................................. 7–27
Navigating Parental Alienation Issues in Juvenile Law

Amelia Andersen, Deputy Public Defender
Amanda Austin, DOJ Child Advocacy Section
Matt Washchuk, Riley and Washchuk
Emily Marrer, Sage Legal Center

Cases

- Dept. of Human Services v. T.L., 287 Or App 753, 403 P3d 488 (2017)
Reasonable Efforts

- Identify the basis for jurisdiction.
  - “[B]oth DHS’s efforts and a parent’s progress are evaluated by reference to the facts that formed the bases for juvenile court jurisdiction.” *Dept. of Human Services v. N.T.*, 247 Or App 706, 715-16, 271 P3d 143 (2012).

- Did the department’s efforts not qualify as reasonable?
  - EX - Failed to provide visitation for ___ amount of time.

- As a general matter, the court may consider any harm to the child.
  - The juvenile court may “properly consider evidence of any harm that the children would suffer from forcing them into therapeutic visitation with mother.” *M.K.*, 285 Or App at 456-57.

- ICWA - “active efforts.”

Sufficient Progress

- Identify the basis for jurisdiction.

- Can the child’s alienation from their parent be “fairly implied” from the jurisdictional basis?
  - Would a reasonable parent have known from the jurisdictional judgment that she needed to address the issue of alienation?

- No?
  - Is evidence of alienation “extrinsic” to the jurisdictional judgment?
  - “A juvenile court cannot base its permanency determinations on the ‘consequences’ of a condition that is the jurisdictional basis if the condition no longer persists and the consequences themselves are not expressly stated in, and cannot be fairly implied from, the jurisdictional judgment.” *T.L.*, 287 Or App at 766.

- Yes?
  - Was the parent’s progress toward ameliorating the jurisdictional basis sufficient?
Chapter 7—Navigating Parental Alienation in Juvenile Dependency Cases

Practical realities of day to day practice

EVERYDAY I'M LAWYERING

Strategies to Reasonable Efforts

1. Visitation within 48 hours of Initial Shelter Hearing
2. Consistent visitation schedule (Routine works for everyone!)
3. Ask court for an order requiring more than once weekly hourly visitation
4. Can the visit be supervised by someone other than DHS?
5. Be mindful of child’s educational and developmental needs during scheduling
6. Ensure visitation doesn't interfere with parents' court ordered services or work schedule
7. What's the best way to communicate?
   1. Email
   2. Phone
### Barriers

1. **Distance or Transportation**
   1. Gas voucher
   2. Bus pass
   3. Relative or friend available to transportation
   4. Close to public transportation

2. **Level of Supervision**
   1. What level of supervision is needed?
      1. Least restrictive natural environment
   2. Family and friends as Safety Services Providers
   3. Community resources for visitation
   4. Make up visitation for DHS cancelled visitation
   5. Hands-on parenting classes
      1. Additional visitation time
   6. Grandparent and family visitation at least monthly

### Incarcerated Parents

1. What resources are available at the institution where the parent is incarcerated?
   1. Phone calls
   2. Video conferences
   3. In-person visitation
   4. Letters and photo updates
   5. Family or friends able to transport?
   6. Once a parent is released, work to eliminate the delays between visitation
Pre or Post visit behaviors

- What do we do when a child is displaying behaviors before or after a visit?
  - Adults work to identify what additional supports are available:
    - Time of day
    - Environment and location
    - Interfering with important activities or school schedules
    - Too many transitions
    - Not enough structure in visit
      - Hands on parenting
      - SSA in the room
      - More activities available

Child who doesn’t want to visit

- Strategies To Ensure Reasonable Efforts Are Made
  - Meeting with the therapist (or other identified providers) and parent to discuss the child’s services
    - Child’s current needs
    - Therapeutic goals
    - What and why visit recommendation is being made?
    - Harm to child if contact is forced?
  - Therapeutic consult
    - What does the therapist recommend to start contact?
      - Letters
      - Photo
      - Card
      - Letter of Accountability or Clarification by Parent to Child
      - No contact....?
      - Have the child undergo an psychological assessment evaluating the parent child relationship (last resort)
Chapter 7—Navigating Parental Alienation in Juvenile Dependency Cases

Child focused solutions to visits

- Set clear expectations and goals with all parties
- Child picks the environment (DHS office, therapist, park, relative home)
  - Letter or card
  - Skype or Video Call instead of In-Person
  - Limit the time of the first visit
- Does the child need time before or after the visit to check in with a certain support?
- Child identifies who they want to attend the visit as a support
- Identify questions the child will want addressed with the parent so the parent is prepared
- Are there special toys or items does the child need at visit?

What can a parent do when a child doesn’t want to visit?

- Provide DHS with letters and cards to hold until child is ready to receive them
- Meet with the child’s therapist or other providers when recommended
- Provide photos or a family photo book of important people or memories
- Meet with caseworker to better understand child’s needs and remain informed on school and medical updates
Honoring the child’s voice

- Emphasize it’s ok for the child to change their mind about visitation
- Go at the child’s pace
- Continue to check in with client on visitation

What do the OARs say about visitation?

- Chapter 413-070-0800 (to 900) addresses DHS’s role in developing visitation plans for children in substitute care.
- DHS must consider how a visitation plan:
  - Protects a child’s safety and well-being
  - Is in the best interest of the child
  - Reduces trauma the child suffers from when separated from his/her primary attachment figure
  - Complies with court orders on visitation
  - And prioritizes visitation with attachment figures (which may vary based on the child and the primary case plan)
Which OARs help parents get visits? (Visitation Rights)

- OAR 413-070-0830(1): The child or young adult, a parent or guardian, and each sibling have the right to visit each other while the child or young adult is in substitute care. The child or young adult, the parent or guardian, and each sibling have the right to visit as often as reasonably necessary to develop and enhance their attachment to each other.

- OAR 413-070-0830(3): When Department resources alone cannot meet the family contact and visitation needs of the child or young adult, the caseworker must solicit help from family and community resources.

Which OARs help children prevent visitation? (Visitation Rights)

- OAR 413-070-0830(2)(a-d): DHS can prohibit or cancel visits for numerous reasons, including:
  - When there is reason to believe a parent will neglect or abuse a child during the visit
  - When DHS cannot ensure the supervision available will protect the child
  - When the visit simply does not meet the best interests of the child
  - Or when a court prohibits visits (and a child has the right to seek this prohibition through the juvenile court)
Which OARs help parents get visits?
(How to Prioritize)

- OAR 413-070-0855(1): [Unless the court has pre-empted DHS’s visitation plan,] the caseworker determines a hierarchy of the attachments of the child or young adult and prioritizes visits with the parents or guardians and siblings.
- OAR 413-070-0855(2): When the case plan is reunification, visitation with parents and siblings is the “first priority,” and
- OAR 413-070-0855(3): When the case plan is other than reunification, the visitation priority is both to preserve attachment to parents and siblings and to promote attachment to the permanent resource (with whom the child presumably already lives).

Which OARs help children prevent visitation?
(How to Prioritize)

- OAR 413-070-0855(1): While DHS needs to prioritize visits with parents, a caseworker may consider a child’s expressed preferences on visitation.
- OAR 413-070-0855(3): If the case plan is not reunification, a child’s attachment to his/her permanent resource has the same priority as preserving attachment to parents and siblings. In an effort to finalize the primary plan, it may be helpful to have a psychologist opine on the need to work on the permanent resource’s attachment in order to keep a child stable. Theoretically, children could also choose or need to prioritize visitation with other siblings over the parents.
Which OARs help parents get visits?
(Types of Visitation Plans)

- DHS needs to develop an ongoing visitation plan within 30 days of the child entering substitute care. OAR 413-070-0860(2)(a).
- When DHS “prohibits” visits on an ongoing basis, OAR 413-070-0860(2)(f) requires DHS to document, in the written visitation plan, the reason for each prohibition and state under which conditions DHS would resume contact.
- When developing a visitation plan, DHS must take into account many things that affect parents (OAR 413-070-0860(2)(i)(A-K)):  
  - Pick days/times/length/location/etc. that maximize contact between parent and child and that supports the primary case plan.
  - Do things to support the ongoing safety plan, like letting parents participate in letter writing, phone calls, emails, etc., as well as attend doctors’ appointments, school events, church, etc.
  - Work with parents’ work and treatment obligations.
  - Address a parent’s barriers to visitation, such as transportation, child care, adaptations for those traveling long distances, etc.

Which OARs help children prevent visitation?
(Types of Visitation Plans)

- OAR 413-070-0860(2)(a)(A)(ii): Whenever a caseworker develops an ongoing visitation plan, the caseworker must involve the child, if the child’s age and development allows for it.
- OAR 413-070-0860(2)(d): A visitation plan must support child safety, the ongoing safety plan, and the best interests of the child.
- OAR 413-070-0860(2)(i)(B): Any written visitation plan must meet the unique needs of the child (taking into account age and development), as they affect the child’s attachment to a parent.
Risky Options

**For parents:**
- For otherwise safe parents, file a motion to dismiss if the parent didn’t admit to an allegation about the relationship with the child. Following T.L., the court cannot consider extrinsic evidence (such as the breakdown in the parent-child relationship), and therefore, may have to conclude no jurisdictional basis still exists.
  - **Risk:** Your child immediately runs away, has a breakdown, or otherwise endangers his/her welfare when faced with returning to your home.

**For children:**
- Following T.L., file a new petition that alleges the breakdown in the parent-child relationship should be a jurisdictional basis. If proven, the child will not have to return home until this condition has been ameliorated, and realistically, the child will control whether that happens.
  - **Risk:** If a parent doesn’t file a motion to dismiss, you’re likely able to keep a case open indefinitely (and a child out of a parent’s home) when the court considers the relationship at its hearings. Legally and practically, it’s much harder for a court to make supportive findings if this issue is litigated, and the child loses.
IN THE COURT OF APPEALS OF THE
STATE OF OREGON

In the Matter of J. E. K.,
a Child.

DEPARTMENT OF HUMAN SERVICES,
Petitioner-Respondent,
v.

M. K.,
Appellant.

Jackson County Circuit Court
15JU04275; A163188 (Control)

In the Matter of E. E. M. K.,
a Child.

DEPARTMENT OF HUMAN SERVICES,
Petitioner-Respondent,
v.

M. K.,
Appellant.

Jackson County Circuit Court
15JU04276; A163189

Lisa C. Greif, Judge.

Argued and submitted February 6, 2017.

Amelia Anderson, Deputy Public Defender, argued the cause for appellant. With her on the briefs was Shannon Storey, Chief Defender, Juvenile Appellate Section, Office of Public Defense Services.

Jeff J. Payne, Assistant Attorney General, argued the cause for respondent. With him on the brief were Ellen F. Rosenblum, Attorney General, and Benjamin Gutman, Solicitor General.

Before Duncan, Presiding Judge, and DeVore, Judge, and Garrett, Judge.
GARRETT, J.

Affirmed.
GARRETT, J.

In this consolidated juvenile dependency case, mother appeals the juvenile court’s permanency judgments that changed the permanency plan for her children from reunification to guardianship with the paternal grandparents. Mother argues that the juvenile court erred in concluding that, despite the Department of Human Services’ (DHS) reasonable efforts to effect reunification, mother had not made sufficient progress for the children to safely return home. We conclude that the record contains sufficient evidence to support the juvenile court’s conclusions and, accordingly, affirm.

The parties do not request that we engage in de novo review under ORS 19.415(3)(b), and this is not an exceptional case in which we exercise our discretion to do so. See ORAP 5.40(8)(c) (“The Court of Appeals will exercise its discretion to try the cause anew on the record or to make one or more factual findings anew on the record only in exceptional cases.”). We, therefore, defer to the juvenile court’s findings of historical fact and assume that the juvenile court implicitly found predicate facts necessary to support its disposition. Dept. of Human Services v. C. L. H., 283 Or App 313, 315, 388 P3d 1214 (2017). Our review is limited to determining whether the evidence, as supplemented and buttressed by permissible derivative inferences and considered in the light most favorable to the juvenile court’s disposition, was sufficient to support those conclusions that mother now challenges. Dept. of Human Services v. T. M. S., 273 Or App 286, 288, 359 P3d 425 (2015). We state the facts consistently with our standard of review.

Mother and father are the married parents of E and J, who were 16 and 10, respectively, at the time of the permanency hearing. The parents had at least a four-year history of domestic violence; the altercations occurred almost...
daily, often in the children’s presence, and included physical assaults and verbal fights, name calling, and profanity. Mother had filed multiple restraining orders against father over those years, reporting instances when father had put his arms around mother’s neck and pinned her to the couch, had threatened to take the children, and had stabbed the bed with a pocket knife. Mother also reported that father isolated mother from family and friends, and committed other acts of emotional and verbal abuse. Nevertheless, after mother had obtained the restraining orders against father, mother invariably allowed father to return to the home.

DHS first became significantly involved with the family in 2011, when DHS received a report that the children had been present for a scene of domestic violence between father and mother, for which father eventually pleaded guilty to assault. DHS determined that the children were at risk of harm and placed the children in mother’s custody. DHS dismissed its wardship of the children after mother filed a restraining order against father.

In May 2015, DHS received reports that J was being suspended from school because of behavioral problems and was out on his own all day, without any supervision or means of contact, and that father was back living in the house with mother, despite a restraining order against him. DHS was again contacted in early July 2015 regarding another incident of domestic violence, in which mother and father had gotten into a physical fight and mother had hit father with a frying pan. DHS also received a report that J was still being allowed “to roam through town” without supervision, and that mother had locked E out of the house at 10 p.m. one night, that E had called the police for help, and that although the officers and E knocked on the door, mother did not respond. The grandmother eventually drove to the house and took E to her home.

After interviewing both parents and concluding that the children should be placed with the grandparents, DHS filed a petition for dependency, alleging as bases for the juvenile court’s jurisdiction: (1) “[d]omestic violence in the [mother’s] home creates a harmful environment for the child”; and (2) “[d]omestic violence in the [father’s] home
creates a harmful environment for the child.” DHS reported at that time that the home environment was not calm “both when [father] is in the home and when the boys are not being supervised,” and that “given [mother’s] extensive history of continuing to allow [father] back into the home [in violation of the] restraining orders, [and of] exposing her children to violence,” the children were best placed with the grandparents. The juvenile court assumed jurisdiction on July 20, 2015.

In a report filed with the juvenile court in October 2015, DHS reported that the home remained dangerous for the children because the parents continued to engage in the same dangerous behavior of domestic violence in the home. The children were fearful of returning back to the same situation they were in before, and wished to remain with their grandparents because the children felt they had a stable family life there. The caseworker further reported that DHS had provided mother with supervised visitation of the children, but the case worker had stopped the visits because the children had immense anger toward mother and refused to visit her, and because the visits “had been very unhealthy.” Consequently, there had been no visits with mother since August 2015.

DHS created, and mother agreed to, an action agreement for the purpose of reuniting the family. Mother agreed to maintain regular contact with her caseworker, attend therapeutic counseling visits, complete a mental health assessment, complete a substance abuse assessment, and attend domestic violence treatment classes. At the time of the permanency hearing, mother had completed the substance abuse assessment and the domestic violence classes. Additionally, she had twice attempted to file divorce papers against father, which had been dismissed because the attempted service on father failed both times. Mother was also requesting therapeutic visitation with the children, but the children still refused to see mother.

2 Father had also been offered transportation services, domestic violence classes, and supervised visitation with the children. The record does not indicate that he completed the domestic violence classes, but he visited his children under the grandparents’ supervision.
Both E and J testified at the permanency hearing, describing in detail their parents’ behaviors and the effect that those behaviors had had on E and J. E described how mother once hit him with a belt with metal studs, as hard as she could “until I bled,” and that once, in an apparent drug-induced state, mother threatened him with a butcher knife, running after him until he was able to find his own knife to defend himself. E testified that his parents’ fights, most of which involved mother and father calling each other “bad names” and swearing at each other, were “kind of like an everyday basis. Like it was natural.” The effect of those daily fights caused E to “stop[] caring,” and J explained, “I was always at the skate park. I wasn’t even near the house.” Both E and J had poor attendance at their schools before their removal from their parents, and J had been suspended from school multiple times for behavioral problems that had included “throwing chairs at people.” E described being homeless for four years, and staying in places where he could hear the sound of bongs being used in the next room. Mother acknowledged in her testimony that the boys’ home circumstances during this time were not good, and blamed their homelessness on “another domestic violence issue that we had.”

Both children reported to DHS that their grandparents’ home was their only stable environment and that they felt safe, secure, loved, and nurtured there. The children’s behavior, their school attendance, and their academic performance had improved in the care of their grandparents. E had started to feel motivated to learn again, had a part time job, and was playing football, and J intended to play football and baseball.

Both children testified that they were afraid to return to mother because they believed that she would do the same things that she had done before, and they would again be exposed to drugs and the parents’ domestic violence. They believed that, contrary to mother’s testimony, father was again living with mother and they did not believe that their mother was sincere in her progress. They also feared that, if they were to meet with mother in a therapeutic visit, mother would manipulate J, as she had done in the past, by promising J things if he would come back to her.
The record reflects that E, in particular, had expressed great anxiety about returning to mother—that he would be physically harmed, threatened, or emotionally abused. The psychologist who evaluated E and J in December 2015 concluded that,

“should [E] return to the care of his parents, I would anticipate a change in trajectory—that is, [E] has been doing better since coming into his grandmother’s home and, sadly, I would expect deterioration in his overall level of function should he return to his parents’ care without very substantial changes being made in their ability to manage their roles as parents.”

DHS’s initial recommendation for the permanency plan was reunification. By the time of the permanency hearing on August 3, 2016, DHS had changed its recommendation to guardianship; the children’s attorney, the court appointed special advocate (CASA), and father all agreed with DHS’s recommendation. Mother opposed the change, arguing that she had completed the services required by DHS and had made sufficient progress. Mother also requested that the court require the children to engage in therapeutic visitation with mother. The juvenile court set a contested case hearing for September 7, 2016, to determine whether the permanency plan should be changed to guardianship.

At the September 7 hearing, DHS, rather than seeking an immediate change of the plan, requested that the juvenile court allow mother another 120 days in which to attempt therapeutic visitation with the children. The children and the CASA held to their positions and expressed their readiness to move forward with the hearing, and the juvenile court held the hearing. After reviewing the reports and hearing testimony from the DHS caseworker, the children’s mental health counselor, mother, and the children, the juvenile court ordered the permanency plan changed from reunification to guardianship and entered judgment accordingly. Mother appeals that judgment.

The issue that mother raises on appeal concerns the children's desire to remain with the grandparents and their refusal to participate in therapeutic visitation. Mother argues that DHS should have done more to effect therapeutic
visitation, and that, in light of mother’s completion of the required programs, the children’s desire to stay with their grandparents and their refusal to participate in therapeutic visitation were not adequate grounds for concluding that mother’s progress was insufficient for the children to return home.

ORS 419B.476(2)(a) directs our analysis. It provides:

“If the case plan at the time of the hearing is to reunify the family, [the juvenile court shall] determine whether [DHS] has made reasonable efforts *** to make it possible for the ward to safely return home and whether the parent has made sufficient progress to make it possible for the ward to safely return home. In making its determination, the court shall consider the ward’s health and safety the paramount concerns.”

As presented here, those provisions pose two concerns. The proponent of the change in the permanency plan must prove by a preponderance of the evidence “that (1) [DHS] made reasonable efforts to make it possible for the child to be reunified with his or her parent and (2) notwithstanding those efforts, the parent’s progress was insufficient to make reunification possible.” Dept. of Human Services v. S. M. H., 283 Or App 295, 305, 388 P3d 1204 (2017). According to mother, the preponderance of the evidence does not support either the juvenile court’s conclusion that DHS made reasonable efforts or its conclusion that mother’s progress was insufficient. We address each of those arguments separately.

As to reasonable efforts, although mother acknowledges that DHS provided her with some services to effect reunification, she argues that, because DHS “identified therapeutic visitation as the key service necessary for reunification,” and then failed to provide that service, DHS necessarily did not make reasonable efforts. DHS responds that its efforts to effect therapeutic visitation were reasonable, and failed for the legitimate reason that the children adamantly refused to participate and would have been harmed if forced to engage in the visits against their will.

The reasonableness of DHS’s efforts “depends on the particular circumstances of each case and [is] assessed in the totality of the circumstances with reference to the facts
that formed the adjudicated bases for jurisdiction.” *Dept. of Human Services v. M. A. H.*, 284 Or App 215, 223, 391 P3d 985 (2017) (citation omitted; internal quotation marks omitted). The uncontroverted evidence shows that DHS provided, and mother completed, domestic violence classes and substance abuse assessments; that DHS provided mother with transportation services; that the children received mental health counseling; and that, on 13 occasions, DHS provided visitation for mother with the children, until the children refused further visits beginning in August 2015. It is also uncontroverted that DHS recommended therapeutic counseling, that the DHS caseworker asked the children on multiple occasions about visiting mother, and that the children’s mental health counselor asked E and J in their separate counseling sessions with him if they wanted to return to mother. The record indicates that the children’s answers never varied; they adamantly refused to meet with mother.

Mother argued at the permanency hearing that she had asked DHS for therapeutic visitation and that the permanency plan should not be changed until DHS had tried to effect therapeutic visitation one more time. The parties presented two possible options in that regard—either forcing the children to participate or giving mother the opportunity to engage in a letter-writing process that, according to the children’s mental health counselor, could eventually lead the children to agree to therapeutic visitation. Consequently, mother’s argument appears to be that DHS failed to make reasonable efforts to effect reunification because DHS did not pursue either of those options.

Mother is correct that our focus in the “reasonable efforts” analysis is on whether DHS’s efforts gave mother “a reasonable opportunity to demonstrate [her] ability to adjust [her] behavior and become a ‘minimally adequate’ parent.” *Dept. of Human Services v. M. K.*, 257 Or App 409, 417, 306 P3d 763 (2013) (internal quotation marks omitted). Nevertheless, DHS’s efforts to assist mother are considered under the totality of the particular circumstances in this case, in light of the paramount concern for the children’s health and safety. *Id.* at 416. Thus, as mother concedes, the juvenile court could properly consider evidence of any harm
that the children would suffer from forcing them into therapeutic visitation with mother.

Mother argues, however, that the record does not contain sufficient evidence of harm—just evidence that the children refused visits. We disagree. This is not a case where the children merely expressed a preference to remain with their grandparents. At the time that they first refused further visits with mother, they expressed to the DHS caseworker their fear and anger that they would be returned to the same situation with mother and father that they had experienced before. In their testimony at the permanency hearing, the children said that they believed a return to mother would expose them again to their parents’ domestic violence and that they would cease doing well in school under those circumstances. They were also concerned that mother would use a visit to manipulate J. The record also reflects the caseworker’s determination that visits should be ceased not only because of the children’s refusal to participate, but because the visits were “unhealthy.” Finally, both the caseworker and the children’s mental health counselor opined that forcing the children to meet with mother would be detrimental to them. Mother offered no evidence countering the children’s expressed fears or the caseworker’s and the counselor’s belief that forced visits would be harmful. Thus, there is sufficient evidence in the record to permit a finding that the children would suffer harm if they were forced into therapeutic visitation with mother, and the juvenile court did not err in considering such harm.

In addition to the possible harm from forced visitation, the juvenile court was also entitled to consider DHS’s efforts in the context of the children’s adamant refusal to cooperate with visits.

The record indicates that, despite the children’s fears and their refusals to see mother, DHS did not cease attempting to provide therapeutic services. Instead, the caseworker and the mental health counselor, on multiple occasions, suggested to the children visitation with mother. The caseworker testified:

“At every visit I ask them how they’re feeling about visiting with Mom, how they’re feeling about—honestly, quite
frankly, having some contact with Mom. They have numer-ous times *** indicated that they did not want to have any contact. I’ve offered to be there myself to be present at visits and they said ‘No.’ [E] quickly says—objects to that. [J] also does. And I’ve had private conversations with them away from each other as well.”

The caseworker further testified, “I go over special stuff mom’s been doing well, trying to get something set up whether it’s visits where they even go to the counseling ses-sions with her and they’ve refused to do that.”

Mother contends that DHS’s efforts were not rea-sonable, because DHS did not also pursue the letter-writing process that the children’s mental health counselor testified he had used successfully with other families. That process, the counselor explained, involved helping mother to write a letter to the children that demonstrated her understanding of how her behavior had adversely affected them. The coun-selor testified:

“And then once the letter was really strong enough, and that would take some work, then at that point—again, if I [am] working with the kids, then I would introduce the let-ter to the [children] and see if they were—would be willing to hear Mom read the letter to them. The way that meet-ing would be structured is Mom doesn’t get to do anything except read the letter and the kids get to ask any questions that they want to ask. And the therapist’s job is to make sure that the kids don’t end up feeling guilty or trying to take care of Mom. And that’s a possible way to begin the healing process.”

Implicit in the juvenile court’s determination that DHS made reasonable efforts is its finding that it was not unreasonable for DHS to decline to pursue the letter-writing option. The evidence supports that finding in several ways. The mental health counselor testified that, although he had had some success with the letter-writing process in other cases, those cases involved children who were eager to reunite with their parents; he could not recall success in any case “where the kids were absolutely so rigidly adamantly ‘No way.’” The counselor also acknowledged that, even if the process were successful in leading to therapeutic visitation, the letter-writing process could take as long as two months
before visits would become viable. Furthermore, the juvenile court specifically found that mother continued to minimize the effects of the domestic violence on the children. Given that the main purpose of the letter-writing process would be for mother to show that she fully understood the impact of her conduct, it is reasonable to infer that mother’s minimization of that conduct would further extend the time needed for the letter-writing process to be effective. In short, both in light of the extensive efforts that DHS made and in light of the evidence that further efforts to pursue therapeutic visitation would have been unproductive or even harmful, we conclude that the juvenile court did not err in concluding that DHS made reasonable efforts to achieve reunification.

We now turn to the “sufficient progress” issue. Mother argues that the juvenile court erred in concluding that mother had “not made sufficient progress toward meeting the expectations set forth in the service agreement, letter of expectation and/or case plan, and the child[ren] *** cannot be safely returned to mother’s care.” According to mother, the juvenile court erred for two reasons: (1) the court, by considering evidence of the children’s alienation from mother as one of the grounds for changing the permanency plan, made its conclusion on a basis extrinsic to the juvenile court’s original jurisdiction, see Dept. of Human Services v. D. W. C., 258 Or App 163, 171, 308 P3d 316, rev den, 354 Or 490 (2013) (court must find that “the parent has not made sufficient progress in ameliorating the barrier to reunification that is identified in the jurisdictional judgment”); and (2) mother’s completion of all of the required programs and her progress resulting from those programs conclusively established that mother had made sufficient progress.

Mother’s first argument was not raised before the juvenile court. A claimed error is not reviewable “unless the error was preserved in the lower court.” ORAP 5.45(1). We may consider “an error of law apparent on the record,” id., but mother has not argued, nor would we conclude from our review of the record, that the juvenile court’s consideration of the children’s alienation from mother constituted error apparent on the record. The record indicates, rather, that the children wanted the permanency plan changed because
they believed that they would be harmed if returned to mother. Mother acknowledged the children’s continuing alienation from her, but argued that the court should address the alienation by ordering therapeutic visitation.\(^3\) Mother did not object to the evidence pertaining to the children’s alienation from her, nor did she argue that the jurisdictional petition operated as any constraint precluding the juvenile court’s consideration of that evidence. We, therefore, decline to address mother’s first argument.

Mother’s second argument is that the uncontroverted evidence that she had completed all of the required programs and had shown progress as a result of those programs “precluded” the juvenile court from concluding that she had not made sufficient progress. DHS responds that ORS 419B.476(2)(a) requires not just that a parent make progress, but that the parent has made sufficient progress so that the children can safely return home. We agree with DHS. In determining whether the parent has made sufficient progress, the juvenile court gives the highest priority to a child’s health and welfare. *Dept. of Human Services v. S. J. M.*, 283 Or App 592, 598, 388 P3d 1199 (2017). “Even if a parent has completed all services that have been required, evidence that a parent continues to engage in behavior that is harmful to a child supports a determination that the parent has not made sufficient progress to make it possible for the child to return home.” *Dept. of Human Services v. G. N.*, 263 Or App 287, 297, 328 P3d 728, rev den, 356 Or 638 (2014). Consequently, regardless of mother’s completion of and progress in the required programs, if mother was still engaging in behaviors that would be harmful to her children, the court could conclude that mother’s progress was not sufficient for them to safely return home. Such evidence exists here.

\(^3\) Mother’s counsel argued to the juvenile court:

“Here, we have a parent who has done her progress. She’s made amazing progress and here we are at a standstill because the children apparently don’t want to see her, which appears to be really unnatural to me. We have pushed for counseling to try and bridge that gap, and the response is they’re not interested, which I’m puzzled by. I understand that the children may be angry, but that is really the whole purpose of counseling. These are her children. They should be with a parent. If the parent is safe and this mother is safe[.]”
It is clear from the record that the children suffered harm as a result of the domestic violence in their home. One can reasonably infer from this record that, because of the fights and domestic violence, the children’s lives were in constant upheaval. DHS was called multiple times about domestic violence in the home, father was in and out of jail for violating restraining orders, and the parents' fights and violent behavior led E to “stop[] caring,” and caused J to stay away from the home until late at night, sometimes in the company of older children who “smok[ed] pot.” As we have already noted, as a result of the domestic violence, mother and the children were homeless for four years, and stayed at residences where the children were exposed to drug use. Both children had poor attendance at their schools and J had been suspended multiple times for behavioral problems in class that included J throwing chairs at people. There was evidence in the record that J’s violent behavior at school was directly linked to the domestic violence at home. As a result of the parents’ domestic violence at home, E had been physically and emotionally harmed—as well as threatened with both—and as a result of the domestic violence and its accompanying consequences, E sometimes suffered panic attacks just at the thought of being returned to his mother.

The record also permits a conclusion that mother continued to engage in behavior that would create a risk of the same types of harm if the children were returned. The record reflects that mother repeatedly allowed father back into the home even after obtaining restraining orders against him; there was some evidence that father was again living with mother at the time of the permanency hearing. In addition, as discussed above, there was evidence that mother continued to minimize the impact of the domestic violence on the children. Thus, the juvenile court could reasonably conclude that the children could not safely be returned home, regardless of mother's completion of other services directed by DHS.

Affirmed.
IN THE COURT OF APPEALS OF THE
STATE OF OREGON

In the Matter of M. L.,
a Child.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Respondent,

v.

T. L.,

Appellant.

Clackamas County Circuit Court
110440J;
Petition Number 110440J02;
A163309

Susie L. Norby, Judge.

Argued and submitted March 2, 2017.

Holly Telerant, Deputy Public Defender, argued the cause
for appellant. With her on the briefs was Shannon Storey,
Chief Defender, Juvenile Appellate Section, Office of Public
Defense Services.

Jeff J. Payne, Assistant Attorney General, argued the cause
for respondent. With him on the brief were Ellen F.
Rosenblum, Attorney General, and Benjamin Gutman, Solicitor
General.

Before DeVore, Presiding Judge, and Garrett, Judge, and
Duncan, Judge pro tempore.

DUNCAN, J. pro tempore.

Reversed and remanded.
court based its permanency determination on circumstances not fairly implied by, and thus extrinsic to, the jurisdictional judgment. Therefore, the juvenile court erred in changing the plan.

Reversed and remanded.
DUNCAN, J. pro tempore

In this juvenile dependency case, father appeals the juvenile court’s judgment that changed the permanency plan for his daughter, M, from reunification to adoption. As required for such a change, the juvenile court concluded that the Department of Human Services (DHS) had made reasonable efforts to make it possible for M to safely return home, but that father had not made sufficient progress to make it possible for her to do so. Assessments of DHS’s efforts and a parent’s progress must be made in light of the bases for the juvenile court’s jurisdiction. Here, the sole basis for the juvenile court’s jurisdiction over M, as to father, was father’s substance abuse. At the time of the permanency hearing at issue, it was undisputed that father had successfully remediated his substance abuse problem. The juvenile court’s concern at the hearing was M’s estrangement from father. The attorneys for DHS, M, and father informed the juvenile court that it could not change M’s permanency plan based on the estrangement because it was not an adjudicated jurisdictional basis. The juvenile court disagreed and changed the plan. Because, as explained below, the juvenile court erred by changing the plan based on facts extrinsic to the jurisdictional judgment, we reverse and remand.

Whether a juvenile court erred by relying on facts extrinsic to a jurisdictional judgment “is a legal question that we review for errors of law.” Dept. of Human Services v. G. E., 243 Or App 471, 480, 260 P3d 516, adh’d to as modified on recons, 246 Or App 136, 265 P3d 53 (2011). When doing so, we review the evidence, as supplemented and buttressed by permissible derivative inferences, in the light most favorable to the juvenile court’s determination and assess whether, when so viewed, the record was legally sufficient to permit that outcome. Dept. of Human Services v. N. P., 257 Or App 633, 639-40, 307 P3d 444 (2013).

Father has three children, R, M, and T, but only M’s permanency plan is at issue in this appeal.1 In February 2013, when M was 11 years old, DHS took protective custody of the children. In April 2013, the juvenile court asserted

---

1 Mother did not participate in the permanency hearing at issue and is not a party on appeal.
jurisdiction over the children based on a single allegation as to father—that “father’s current and historical use of alcohol and controlled substances interferes with his ability to provide safe, appropriate and consistent care for the child.” In the jurisdictional judgment, the juvenile court ordered father to participate in services, including a drug and alcohol evaluation, drug and alcohol treatment, random urinalyses, a psychological evaluation, and parent education classes.

In August 2013, father’s counsel failed to appear on father’s behalf at a permanency hearing, and in September 2013, based on evidence that had been presented at the August hearing, the juvenile court entered a permanency judgment changing M’s plan from reunification to guardianship. Father appealed from the judgment, asserting, among other things, that he had received inadequate assistance of counsel. We affirmed, *Dept. of Human Services v. T. L.*, 269 Or App 454, 344 P3d 1123 (2015), but the Supreme Court reversed and remanded for the juvenile court to determine whether father was prejudiced by counsel’s absence, *Dept. of Human Services v. T. L.*, 358 Or 679, 705, 369 P3d 1159 (2016).

In June 2016, at the hearing on remand, the parties stipulated to an order vacating the 2013 permanency judgment and reinstating the plan of reunification. By that time, M was 15 years old and had not had in-person contact with father in over two and a half years. Because of the lack of contact, the parties also stipulated, and the juvenile court ordered, that “DHS shall engage a reintegration therapist or an equivalent service to assist Father and Child to overcome any current feelings of estrangement or alienation.” The court then set a “short hearing” in September 2016 to review the progress of the reintegration therapy. It also set a hearing in December 2016 “to conduct a Permanency Hearing pursuant to ORS 419B.470(6)” and to hear any motion to dismiss filed by father.

In early August 2016, DHS arranged an initial meeting between father and M, but, by all accounts, the

2 Father had visited M on a regular basis from March 2013 until mid-December 2013, at which point DHS terminated the visits because father had refused to provide DHS a urine sample.
meeting did not go well. Both M and father had different expectations going into the meeting. M believed that the meeting was an opportunity for her to tell father that she did not want to engage in therapy, that she wanted to be adopted by her foster care provider (the mother of one of M's friends), and that she wanted father to relinquish his parental rights. She also believed that her attorney and her court-appointed special advocate would be present to support her and help her facilitate the relinquishment. Father believed that the meeting would be a first step toward ongoing family therapy to build trust and develop a relationship after years of separation. At the meeting, he was surprised when M expressed her desire to be adopted and asked M to spend time with him before making that decision. M agreed, but later expressed to her therapist and foster care provider that she had felt pressured into doing so and did not want to visit with father. After the meeting, M refused to engage in further therapy with father or to have any contact with him.

At the September 2016 hearing, which is the hearing at issue in this appeal, the parties agreed that father was sober and had been for some time. He also had stable housing and full-time employment, and one of his children, R, had been returned to his care. Also at the hearing, DHS presented evidence about the meeting between M and father. M's caseworker testified that, after the meeting, M had felt “tricked” by DHS into attending the meeting, and that father was “manipulative” and “was trying to get her to change her mind and wasn’t listening to her when she said she wanted to be adopted.” In addition, M's therapist testified that, in asking M to agree to visit with him, it “kind of seemed like [father] was bargaining.” She explained that she “would characterize the trust relationship or the trust that [M] has for her father” as “[n]one” and that she could not “imagine that [father's bargaining] helped build trust between them.”

M also testified:

“I don't know I agree with respecting (indiscernible) or family counseling (indiscernible) because I haven't seen him in two-plus years so I don't know where anybody is going with that.
"* * * * *"  

“And for me, regardless of any of it, I want to be adopted. There’s no changing my mind. There’s no so many visits before I change my mind.

“I want to be adopted. I will not change my mind.

“If I do get placed with him, you’ll never see me again. I’m not making a bluff. I’m not afraid to run. I’ve done it in the past. I do not want to be adopt—or I do not want to go back to my dad.

“I want to be adopted by not my foster provider, but my mom. She’s been there for me through all of this, even before I was with her. I want to be adopted.

“That’s it.”

M’s court-appointed special advocate moved to change M’s permanency plan from reunification to adoption on the ground that adoption was “what’s best for [M].” The advocate explained that she had worked with M for over three years, and although M had not previously expressed an interest in being adopted, she did once she was placed with her current foster care provider:

“[M] is a very strong-willed child. ***. She knows what she wants. She’s wanted this for—for—since she’s been living with the new parents basically, where I’ve never heard her mention being adopted before.

“She wants to be adopted by this—this mom. This mom totally loves and cares for her and she feels so comfortable in that house.”

Neither DHS nor M’s attorney supported a change in plan at that time. Because the jurisdictional basis was substance abuse, which the parties agreed father had addressed, and because the case was in a “reunification posture,” they did not believe that there was “sufficient reason to change the plan.” Instead, they asserted that addressing the estrangement between M and father “would take *** separate jurisdictional grounds.” M’s attorney explained:

“What needs to happen is the new petition that we’ve talked about for some time needs to be filed that has to do with the estrangement rather than the drug and alcohol
issue, because the drug and alcohol issue obviously has been addressed. There’s no issue that it has not.”

Similarly, father argued that the juvenile court lacked authority to change the plan because he had successfully remediated his substance abuse problem; alternatively, father argued that, even if the court could rely on the estrangement, DHS had not made reasonable efforts to address it:

“[ORS] 419B.476(2)(a) talks about the case plan being reunification and whether or not reasonable efforts have been made and whether the parent has made sufficient progress to make it possible for the ward to safely return home.

“* * * * *

“The jurisdictional basis is substance abuse, and certainly [father] has made more than sufficient progress for the child to safely return home. He has a child in his home.

“Your honor allowed that child to return to that home ***. We dismissed wardship to accomplish that. And there’s no dispute that he is in full recovery and has remediated his substance abuse issues.

“So as it relates to the court’s authority to change the plan under [ORS] 419B.476(2)(a), I would submit to the court that *** because of the jurisdictional basis which binds the Court’s decision, he has more than compensated for that and the child could safely be returned home. Therefore, it’s not appropriate to change the plan today.

“[Father] is looking forward to working reunification therapy, which was ordered by [another judge]. And the purpose of that was to help father and child overcome feelings of estrangement or alienation.

“The agency has failed to comply with that court order. The agency has not yet made a referral during the process of trying to get one together for the Kinship House, and it will take them an additional 30 days, *** which will be almost three months after it was ordered.”

(Emphases added.)

After closing arguments, the juvenile court concluded that DHS had made reasonable efforts toward reunification
and that, despite these efforts, father had made insufficient progress to make it possible for M to safely return home. In its ruling from the bench, the juvenile court explained, in part:

“I do find that DHS made reasonable efforts to implement the reinstated reunification plan, given the extreme alienation that has taken root in the child over the years of estrangement.

“[Father’s counsel] referred to [ORS 419B.476(2)(a)] as the provision of law that precludes a change of plan today, and that provision reads: The Court shall determine whether DHS has made reasonable efforts to make it possible for the ward to safely return home and whether the parent has made sufficient progress to make it possible for the ward to safely return home. Both of those things.

“And then it says: In making its determination, the Court shall consider the ward’s health and safety as the paramount concerns.

“The child testified today that if she is forced to return to her father, she will run and she’s not bluffing. She is categorically opposed to further reunification efforts. She is very clear that she will regress in the most harmful way if a reunification is forced, and I’m convinced that she means it.

“I believe that even an attempt to force [M] to engage with the Kinship House will place her at grave risk of regressing to unsafe behaviors that it took her two years to overcome. I do not believe that it is a reasonable risk to take, particularly given that the Court’s number one statutory concern is the child’s safety.

“So it is not simply whether the parent has made sufficient progress. And as you know, because I returned [R] to you, I believe you have. The problem is, you’re not the only person in the case.

“* * * * *

“So I—I acknowledge that father appears to have firmly beaten his addiction and I applaud him for that again. Nonetheless, that—that was the original jurisdictional basis that created a dynamic with the child which continues to endanger her should she be forced to return home.

“* * * * *
“Like everyone here, I continue to hope for clarification between [M] and her father, and this ruling does not foreclose that possibility, but it is clear that with [M], father has to do more than just beat his addiction to create safety for her.

“He must also find a way to demonstrate to her that he trusts her in order to enable her to trust him and in order to create a situation in which she would not endanger herself by running away from any further contact with him at the expense of everything she has built in her life, which is substantial.”

(Emphases added.)

After the hearing, the juvenile court issued a judgment that changed M’s permanency plan from reunification to adoption, which father appeals.

On appeal, father asserts that, in changing the plan, the juvenile court erred in relying on facts extrinsic to the proven basis for jurisdiction, specifically, facts related to M’s feelings of estrangement from her father and threats to run away if she were returned to his care. According to father, the juvenile court could not rely on those facts because they were “never alleged and proven as a basis for jurisdiction.” They were “extrinsic to father’s substance abuse because father could not have been expected to know from the court’s assertion of jurisdiction that his failure to independently remedy the estrangement between him and his daughter could result in the termination of his parental rights.”

We begin our analysis with a review of juvenile dependency law. As we have observed, the statutes governing dependency jurisdiction are intended to protect the interests of children and parents and to promote family reunification, in all but extreme cases:

“The state policies underlying dependency jurisdiction in Oregon include ‘safeguard[ing] and promot[ing] each child’s right to safety, stability and well-being.’ ORS 419B.090(3);
‘guard[ing] the liberty interest of parents protected by the Fourteenth Amendment to the United States Constitution,’ ORS 419B.090(4); and, other than in cases of extreme conduct under ORS 419B.502, ‘offer[ing] appropriate reuni-fication services to parents and guardians to allow them the opportunity to adjust their circumstances, conduct or conditions to make it possible for the child to safely return home within a reasonable time,’ ORS 419B.090(5).”

*Dept. of Human Services v. N. M. S.*, 246 Or App 284, 292, 266 P3d 107 (2011) (brackets in *N. M. S.*).

The juvenile court has exclusive jurisdiction “in any case involving a person who is under 18 years of age” and “[w]hose condition or circumstances are such as to endanger the welfare of the person or of others[.]” ORS 419B.100(1). As we explained in *N. M. S.*:

“Under ORS 419B.809(4)(b), a petition alleging juris-diction under ORS 419B.100 ‘must set forth in ordinary and concise language’ ‘the facts that bring the child within the jurisdiction of the court, including sufficient information to put the parties on notice of the issues in the proceeding.’ The court’s task is to determine whether the facts, if proved or admitted, would be sufficient to establish jurisdiction under ORS 419B.100.”

246 Or App at 293. Additionally, “[t]he court, on motion of an interested party or on its own motion, may at any time direct the petition be amended. If the amendment results in a substantial departure from the facts originally alleged, the court shall grant such continuance as the interests of justice may require.” ORS 419B.809(6).

Generally, a juvenile court must conduct a perma-nency hearing within 12 months after a child is found within the court’s jurisdiction or within 14 months after the child is placed in substitute care, whichever is earlier. ORS 419B.470(2). Changes to permanency plans are governed by ORS 419B.476. As relevant here, ORS 419B.476(2)(a) provides:

“If the case plan at the time of the hearing is to reunify the family, [the juvenile court shall] determine whether [DHS] has made reasonable efforts *** to make it possible for the ward to safely return home and whether the parent has
made sufficient progress to make it possible for the ward to safely return home. In making its determination, the court shall consider the ward’s health and safety the paramount concerns.”

Thus, to change a child’s permanency plan away from reunification, the proponent of the change must prove by a preponderance of the evidence, and the juvenile court must determine, both “that (1) [DHS] has made reasonable efforts to make it possible for the child to be reunified with his or her parent and (2) notwithstanding those efforts, the parent’s progress was insufficient to make reunification possible.” Dept. of Human Services v. S. M. H., 283 Or App 295, 305, 388 P3d 1204 (2017).4

As we explained in Dept. of Human Services v. N. T., 247 Or App 706, 715-16, 271 P3d 143 (2012),

“both DHS’s efforts and a parent’s progress are evaluated with reference to the facts that formed the bases for juvenile court jurisdiction. *** If a court, in making its determination under ORS 419B.476(2)(a), relies on facts other than those explicitly stated or fairly implied by the jurisdictional judgment, and in doing so affects the substantial rights of a parent, the determination cannot be sustained.”

(Emphasis added; some internal citations omitted.); see also N. M. S., 246 Or App at 300 (“If the parental condition or characteristic is not one that fairly can be implied from the facts found in the jurisdictional judgment, then it is outside the scope of the court’s jurisdiction[,]” (Emphasis in original.)). Facts are not “fairly implied” by a jurisdictional judgment, and thus are “extrinsic” to the jurisdictional judgment, if a reasonable parent would not have known from the jurisdictional judgment that he or she needed to address the condition or circumstance exemplified by those facts. See G. E., 243 Or App at 480 (reliance on facts not expressly alleged in a petition “substantially affect[s] a parent’s rights if a reasonable parent would not have had notice from the petition or the jurisdictional judgment as to what he or she

4 In addition, when, as here, a party seeks to change a plan to adoption the party must also prove by a preponderance of the evidence that none of the circumstances set forth in ORS 419B.498(2) apply; those circumstances negate the requirement that DHS file a petition to terminate the parents’ rights. ORS 419B.476(5)(d).
must do in order to prevent the state from assuming or continuing jurisdiction over the child’); N. M. S., 246 Or App at 300-01 (applying the standard from G. E. in the permanency context). Consequently, if an interested party seeks to change a child’s permanency plan based on a fact other than one explicitly stated or fairly implied by the jurisdictional judgment, the party must petition for and obtain an amended jurisdictional judgment.

For example, in N. M. S., 246 Or App at 300-01, where the juvenile court asserted jurisdiction over the mother’s children based on a nonaccidental injury to one of the children, we reversed the juvenile court’s subsequent change of the children’s permanency plans from reunification to adoption on the ground that, in determining that the requirements for the change had been satisfied, the juvenile court had relied, in part, on concerns about the mother’s general parenting and housekeeping skills. We explained that “although [the] mother was on notice from the jurisdictional judgment that she needed to address any condition that could have caused the risk of nonaccidental injury to her children, such conditions would not, in any event, include general parenting skills or poor housekeeping.” Id. at 301 (emphasis in original).

Similarly, in Dept. of Human Services v. J. R. L., 256 Or App 437, 450-52, 300 P3d 291 (2013), where the juvenile court asserted jurisdiction over the mother’s child based on the mother’s lack of suitable housing, we held that the juvenile court erred in changing the child’s permanency plan from reunification to adoption based on the mother’s failure to address her depression and anxiety. We concluded that the mother “was not given adequate notice that her progress toward obtaining safe and stable housing could be measured by her progress in addressing her mental health issues.” Id. at 449; see also Dept. of Human Services v. A. R. S., 256 Or App 653, 664, 330 P3d 963, rev den, 354 Or 386 (2013) (juvenile court erred in changing permanency plan based on the mother’s purported personality disorder because, even if mother had an underlying personality disorder, “nothing in the jurisdictional judgment would have alerted mother to [the] proposition” that she needed to address her mental
health condition “to cure the conditions that formed the bases for the court’s jurisdiction”).

Here, the jurisdictional judgment expressly identified a single barrier to M and father’s reunification, father’s substance abuse. As noted, at the permanency hearing, the parties agreed that father had been sober for some time, and the juvenile court observed that “father appears to have firmly beaten his addiction” and that it had “returned [R]” to father. Nevertheless, the juvenile court concluded that father had not made sufficient progress to make it possible for M to safely return home. According to the court, father had “to do more than just beat his addiction to create safety for [M].”

In so concluding, the court improperly relied on evidence relating to the estrangement between M and father—including evidence that M was alienated from father, did not want to be reunified with him, and would regress to unsafe behaviors if reunification was pursued. The estrangement was a circumstance that had never been established as a basis for jurisdiction in this case. It was not a fact that was explicitly stated or fairly implied by the jurisdictional judgment.

The juvenile court’s oral ruling reveals that the court erroneously believed that it was authorized to rely, almost entirely, on the purported estrangement between M and father in making its determinations under ORS 419B.476(2)(a) for two reasons: (1) because the estrangement was a consequence of father’s substance abuse, and (2) because ORS 419B.476(2)(a) requires the court to “consider the ward’s health and safety the paramount concerns” and the estrangement created a situation “in which [M] would endanger herself by running away from any further contact with him.”

With regards to the juvenile court’s first reason, even assuming that “the original jurisdictional basis *** created [the] dynamic” of estrangement, that dynamic itself cannot provide a basis for the court’s permanency determination, because the estrangement is a circumstance that is not fairly implied by the jurisdictional petition or judgment. Father could not be expected to know from the jurisdictional
judgment that his progress in addressing his substance abuse, the sole barrier to reunification expressly identified in the judgment, could be measured by his ability to address any estrangement that might develop between him and M. The estrangement was a separate issue from the substance abuse. The petition and report from DHS’s initial investigation indicate that DHS was primarily concerned that father’s substance abuse impaired his ability to parent M, because it caused him to expose the children to controlled substances and caused the children to have poor school attendance.

Indeed, there is no evidence that the estrangement even existed at the time of the jurisdictional judgment. To the contrary, court reports in the record indicate that M continued to express a strong desire to return home to her parents for years after her removal, and M’s court-appointed special advocate informed the court that M had not expressed an interest in being adopted until being placed with her current foster care provider.

A juvenile court cannot base its permanency determinations on the “consequences” of a condition that is the jurisdictional basis if the condition no longer persists and the consequences themselves are not expressly stated in, and cannot be fairly implied from, the jurisdictional judgment. To hold otherwise would deprive a parent of constitutionally adequate notice of a deficiency that has been identified as a barrier to the child’s return home and of a meaningful opportunity to address the deficiency with the support of services provided by DHS; and would circumvent the jurisdictional petition and hearing process.

With regards to the juvenile court’s second reason, the mandate in ORS 419B.476(2)(a) that “the court shall consider the ward’s health and safety the paramount concerns” does not authorize a juvenile court to change a child’s plan because of risks posed by an unadjudicated condition or circumstance. Although the record supports the court’s conclusion that M would be in danger “should she be forced to return home,” we have rejected the notion that a juvenile court can change a permanency plan based on parental deficiencies that are not expressly stated in or fairly implied by the jurisdictional judgment, even if those deficiencies
endanger a child. In N. M. S., DHS argued that the reasoning in G. E. should not apply in the permanency context based, in part, on the concern that “the juvenile court ‘cannot simply ignore’ serious parental deficiencies *** that are apparent at the time of the permanency hearing, but that were not the basis for jurisdiction[].” 246 Or App at 298. In rejecting that argument, we explained, “G. E. does not require the court to ignore such deficiencies; rather, it envisions amendment of the jurisdictional petition in those circumstances[].” Id.; see also G. E., 243 Or App at 481 (when the substantial rights of a parent are affected by a change in “facts,” “the court must direct that the petition be amended and grant such continuance as the interests of justice may require”). Thus, a juvenile court may not circumvent statutory procedures, which are intended to protect both children and parents by ensuring adequate notice, provision of reasonable services directed toward reunification, and allowance of a reasonable time to make progress toward reunification. Where, as here, a juvenile court has concerns about an unadjudicated condition or circumstance, the court, on the motion of an interested party or on its own motion, can direct that the petition be amended, and, thereby, set in motion the proper procedures for addressing any possible endangerment. Thus, when faced with extrinsic facts related to the estrangement between M and father and indicating that that estrangement posed risks to M’s safety, the court should have, as the attorneys for DHS, M, and father suggested at the hearing, directed that the petition be amended.6

5 Similarly, in this case, DHS argues that “father’s argument that this court should not consider [M]’s testimony asks this court to ignore the statutory mandate that, in determining the permanency plan, the court ‘shall consider the ward’s health and safety the paramount concerns.’”

6 For its part, on appeal DHS argues that the parties’ stipulation at the June 2016 hearing that the juvenile court would order reunification therapy, and statements made by the court during that hearing, establish that “father and the other parties to the case considered the reunification therapy—which was necessary to address the estrangement—to be part and parcel of the services related to the substance abuse allegation, and that ‘alienation’ was not a separate basis for jurisdiction.” We disagree. Nothing in the stipulation itself or the court’s explanation of the stipulation indicates that the parties understood “alienation” to be a part of the substance abuse basis for jurisdiction. Indeed, DHS’s assertion at the September 2016 permanency hearing was to the contrary. As described above, DHS informed the juvenile court that it could not change M’s plan without amending the jurisdictional judgment.
In summary, because the juvenile court based its permanency determinations on circumstances not fairly implied by the jurisdictional judgment, we reverse and remand.

Reversed and remanded.

At oral argument, DHS also argued that a change in plan was permissible because father had actual notice of his need to remedy the problem. In support of that contention, DHS again relies on the parties’ stipulation at the June 2016 hearing that the juvenile court would order reunification therapy. But, it is clear from the record that father did not stipulate that the jurisdictional judgment should be amended to include the estrangement as a basis. Thus, his stipulation cannot remedy the lack of constitutionally adequate notice in the jurisdictional judgment. As we explained in N. M. S.,

“[I]f the parental condition or characteristic is not one that fairly can be implied from the facts found in the jurisdictional judgment, then it is outside the scope of the court’s jurisdiction, and that deficit cannot be remedied by claims of ‘actual notice’ through case plans or *** letters of expectation. That is so because, as we held in G. E., a petition or jurisdictional judgment must provide a parent with reasonable notice of the deficiencies that he or she must address in order to prevent continued jurisdiction; if it does not, it affects a ‘substantial right’ of the parent—viz., the right to constitutionally adequate notice—and the petition or judgment must be amended before the court can rely on such ‘extrinsic facts’ in its permanency decision.”

246 Or App at 300 (first emphasis in original; second emphasis added); see also J. R. L., 256 Or App at 449-50 (quoting N. M. S. to reject DHS’s argument that mother had actual notice that her unadjudicated mental health issues could be used to measure her progress for permanency purposes because court reports “indicated that mother needed to address her depression and anxiety issues” and that those issues “play[ed] into [her] lack of follow through in both the areas of employment and housing,” which were adjudicated jurisdictional bases (brackets in original)).