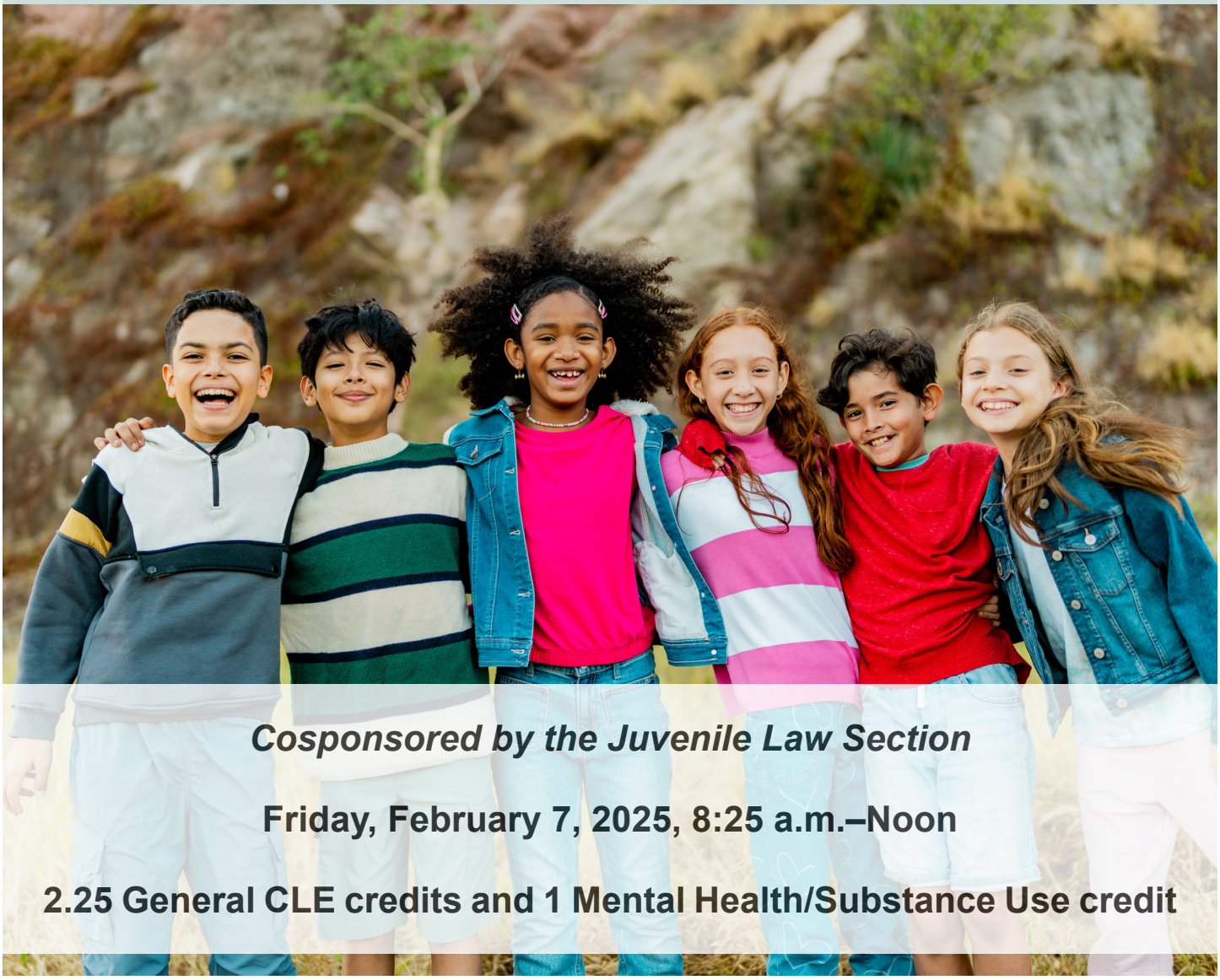
Oregon State Bar CLE Seminars

All Things Juvenile Law: Delinquency, Dependency, and Social Connectedness



Cosponsored by the Juvenile Law Section

Friday, February 7, 2025, 8:25 a.m.–Noon

2.25 General CLE credits and 1 Mental Health/Substance Use credit

ALL THINGS JUVENILE LAW: DELINQUENCY, DEPENDENCY, AND SOCIAL CONNECTEDNESS

PLANNING COMMITTEE

The Honorable Colleen Gilmartin, *Clackamas County Circuit Court, Oregon City*
Amanda Austin, *Senior Assistant Attorney General, Child Advocacy and Protection Division, Oregon Department of Justice, Portland*
Jordan Bates, *Senior Assistant General Counsel, Oregon Judicial Department, Salem*

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OREGON STATE BAR
16037 SW Upper Boones Ferry Road
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SCHEDULE

8:25 Welcome

8:30 Coregulating with Colleagues in Trauma-Rich Environments

- ✦ Signs and symptoms of secondary trauma and risks of isolation and the importance of social connectedness
- ✦ Strategies and skills to address direct trauma from professional experiences, vicarious trauma, and person and organizational protective factors
- ✦ Legal culture and practice that lead to loneliness and isolation
- ✦ Fostering social connectedness in organizations and professional communities to help mitigate secondary trauma

Kyra Hazilla (she/her), *Oregon Attorney Assistance Program, Portland*

9:30 Transition Break

9:35 Alternatives to Formal Adjudication in Delinquency Cases

- ✦ Legal overview of formal accountability agreements and conditional postponements
- ✦ Multnomah County's new restorative justice program as an alternative to traditional prosecution
- ✦ Juvenile department diversion and early intervention programs

Jordan Bates, *Senior Assistant General Counsel, Oregon Judicial Department, Salem*
Keiler Beers (he/him/his), *Metropolitan Public Defenders, Portland*
Sonya Littledeer-Evans (she/her/ella), *Deputy Director, Deschutes County Juvenile Community Justice, Bend*

10:35 Break

10:45 Adoption or Guardianship: Legal Developments

- ✦ Appellate updates
- ✦ New developments in practice
- ✦ Considerations for juvenile courts and practitioners

Marc Bass (he/him/his), *Legal Assistance Specialist, Oregon Department of Human Services, Salem*
Stacy Chaffin (she/her), *Senior Assistant Attorney General, Oregon Department of Justice, Salem*
Tiffany Keast, *Senior Deputy Public Defender, Oregon Public Defense Commission, Salem*

12:00 Adjourn

NOTES

Chapter 1

Coregulating with Colleagues in Trauma-Rich Environments

Kyra Hazilla
Oregon Attorney Assistance Program
Portland, Oregon

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oaap
Oregon Attorney Assistance Program

We are lawyers and counselors.

About the OAAP

We help lawyers, judges, and law students develop the skills they need to meet the demands of their professional and personal lives in a healthy way. Our services are confidential and free. Call or email us—we offer hope and help.

- *Well-being & stress*
- *Anxiety & depression*
- *Problem substance use*
- *Compulsive behaviors*
- *Career & lifestyle*
- *Relationships*
- *Challenging times*
- *Burnout & vicarious trauma*
- *Planning for retirement*
- *Law school challenges*

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Confidential Assistance

All communications with the OAAP are completely confidential and will not affect your standing with the Professional Liability Fund (PLF) or the Oregon State Bar. The OAAP is a confidential service of the PLF for all members of the Oregon legal community. Call us at **503.226.1057** or visit us at **oaap.org.**

Thrive in law, thrive in life.

NOTES

LOW IMPACT DEBRIEFING:

Four steps to protect you from being slimed, and to help ensure you don't traumatize your colleagues friends and family.

How do you debrief when you have heard or seen hard things?

Do you grab your closest colleague and tell them all the gory details?

Do your colleagues share graphic details with you over lunch or during meetings?

Helping Professionals often hear and see extremely difficult things in the course of their work. After a hard day, a normal reaction is to want to debrief with someone, to alleviate some of the burden of carrying what they have experienced. Debriefing is a natural and important process. The problem is that if debriefing isn't done properly it becomes "sliming" and can have negative consequences.

WHAT IS "SLIMING"?

At TEND we use the term sliming to describe the kind of debriefing that happens without warning or permission, and generally leaves the person receiving the information feeling as though they now carry the weight of this unnecessarily graphic or traumatic information. Sliming is contagious.

CONTAGION

Without realizing it, Helping Professionals can unwittingly spread traumatic stories vicariously among their colleagues, family and friends. It is common for Helpers to feel desensitized and often admit that they don't think of the secondary trauma that they pass along to the recipients of their debriefing. Some Helpers say that sharing the "gory" details is a normal part of their work. An important part of Low Impact Debriefing is to stop the contagion effect by not adding unnecessary details and thus not adding to the cumulative exposure to traumatic information.

TYPES OF DEBRIEFING

1. THE INFORMAL DEBRIEF

These happen in casual way, in a colleague's office at the end of a long day, in the staff lunchroom, the police cruiser, during the drive home or with family and friends.

Warning: Informal debriefs can evolve in a way where the listener doesn't have a choice in receiving this information. The result of these types of debriefs can be that the listener feels that they are being slimed rather than taking part in a debriefing process.

Solution: Use the 4 steps of Low Impact Debriefing

2. THE FORMAL DEBRIEF

A scheduled meeting, sometimes referred to as peer consultation, supervision or critical incident stress debriefing.

Warning: The challenge of formal debriefing is the lack of immediacy and limited or poor supervision. When a Helper has heard something disturbing during a clinical day, they usually need to debrief right away. Crisis work is so live and immediate that Helping Professionals rely on informal debriefing instead – grabbing the closest trusted colleague to unload on.

"Helpers who bear witness to many stories of abuse and violence notice that their own beliefs about the world are altered and possibly damaged by being repeatedly exposed to traumatic material."

Karen Saakvitne and
Laurie Ann Pearlman,
Trauma and the Therapist (1995).

What is a "Helping Professional"?

At TEND we say that a Helping Professional is someone whose job it is to care for others, physically, psychologically, intellectually, emotionally or spiritually. These professions include (but are not limited to) medicine, nursing, psychotherapy, counseling, social work, education, life coaching, law, criminal justice, first response, ministry.

LOW IMPACT DEBRIEFING: THE STEPS

1. SELF AWARENESS

Have you ever shocked or horrified friends or family with a work story that you thought was benign or even funny? Helping Professionals can become desensitized to the trauma and loss that they are exposed to daily. Be aware of the stories you tell and the level of detail you provide when telling a story. Are all the details really necessary? Can you give a "Coles notes" or abbreviated version?

2. FAIR WARNING

If you had to call your sister to tell her that your grandfather has passed away, you would likely start the phone call with "I have some bad news" or "You better sit down". This allows the listener to brace themselves to hear the story. Allow your listener to prepare and brace themselves by starting with "I would like to debrief a difficult situation with you and the story involves traumatic content."

3. CONSENT

Once you have warned the listener, then ask for consent. This can be as simple as something like: "I would like to debrief something with you, is this a good time?" or "I heard something really hard today, could I talk to you about it?"

The listener then has a chance to decline, or to qualify what they are able/ready to hear.

4. LIMITED DISCLOSURE

Once you have received consent from your colleague, decide how much to share, starting with the least traumatic information, and gradually progressing as needed. You may end up not needing to share the most graphic details.

"When Helping Professionals hear and see difficult things, a normal reaction is to want to debrief with someone, the problem is that we are often debriefing ourselves all over each other..."

Françoise Mathieu,
M.Ed., CCC., RP,
Co-Executive Director,
TEND

As Helping Professionals, we have made a decision to do the work we do which can include hearing and seeing very difficult things. At TEND, we believe that it is important to understand and practice self-care techniques like Low Impact Debriefing. We also believe It is equally important to be good stewards of the stories we hear, and responsibly practice Low Impact Debriefing to protect our colleagues, friends and families.

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PROFESSIONAL QUALITY OF LIFE SCALE (PROQOL)

COMPASSION SATISFACTION AND COMPASSION FATIGUE (PROQOL) VERSION 5 (2009)

When you *[help]* people you have direct contact with their lives. As you may have found, your compassion for those you *[help]* can affect you in positive and negative ways. Below are some-questions about your experiences, both positive and negative, as a *[helper]*. Consider each of the following questions about you and your current work situation. Select the number that honestly reflects how frequently you experienced these things in the *last 30 days*.

1=Never 2=Rarely 3=Sometimes 4=Often 5=Very Often

_____ 1. I am happy.
_____ 2. I am preoccupied with more than one person I help.
_____ 3. I get satisfaction from being able to help people.
_____ 4. I feel connected to others.
_____ 5. I jump or am startled by unexpected sounds.
_____ 6. I feel invigorated after working with those I help.
_____ 7. I find it difficult to separate my personal life from my life as a lawyer.
_____ 8. I am not as productive at work because I am losing sleep over traumatic experiences of a person I help.
_____ 9. I think that I might have been affected by the traumatic stress of those I help.
_____ 10. I feel trapped by my job as a lawyer.
_____ 11. Because of my work, I have felt "on edge" about various things.
_____ 12. I like my work as a lawyer.
_____ 13. I feel depressed because of the traumatic experiences of the people I help.
_____ 14. I feel as though I am experiencing the trauma of someone I have helped.
_____ 15. I have beliefs that sustain me.
_____ 16. I am pleased with how I am able to keep up with lawyering skills and protocols.
_____ 17. I am the person I always wanted to be.
_____ 18. My work makes me feel satisfied.
_____ 19. I feel worn out because of my work as a lawyer.
_____ 20. I have happy thoughts and feelings about those I help and how I could help them.
_____ 21. I feel overwhelmed because my work load seems endless.
_____ 22. I believe I can make a difference through my work.
_____ 23. I avoid certain activities or situations because they remind me of frightening experiences of the people I help.
_____ 24. I am proud of what I can do to help my clients.
_____ 25. As a result of my work, I have intrusive, frightening thoughts.
_____ 26. I feel "bogged down" by the system.
_____ 27. I have thoughts that I am a "success" as a lawyer.
_____ 28. I can't recall important parts of my work with trauma victims.
_____ 29. I am a very caring person.
_____ 30. I am happy that I chose to do this work.

YOUR SCORES ON THE PROQOL: PROFESSIONAL QUALITY OF LIFE SCREENING

Based on your responses, place your personal scores below. If you have any concerns, you should discuss them with a physical or mental health care professional.

Compassion Satisfaction _____

Compassion satisfaction is about the pleasure you derive from being able to do your work well. For example, you may feel like it is a pleasure to help others through your work. You may feel positively about your colleagues or your ability to contribute to the work setting or even the greater good of society. Higher scores on this scale represent a greater satisfaction related to your ability to be an effective caregiver in your job.

If you are in the higher range, you probably derive a good deal of professional satisfaction from your position. If your scores are below 23, you may either find problems with your job, or there may be some other reason—for example, you might derive your satisfaction from activities other than your job. (Alpha scale reliability 0.88)

Burnout_____

Most people have an intuitive idea of what burnout is. From the research perspective, burnout is one of the elements of Compassion Fatigue (CF). It is associated with feelings of hopelessness and difficulties in dealing with work or in doing your job effectively. These negative feelings usually have a gradual onset. They can reflect the feeling that your efforts make no difference, or they can be associated with a very high workload or a non-supportive work environment. Higher scores on this scale mean that you are at higher risk for burnout.

If your score is below 23, this probably reflects positive feelings about your ability to be effective in your work. If you score above 41, you may wish to think about what at work makes you feel like you are not effective in your position. Your score may reflect your mood; perhaps you were having a "bad day" or are in need of some time off. If the high score persists or if it is reflective of other worries, it may be a cause for concern. (Alpha scale reliability 0.75)

Secondary Traumatic Stress_____

The second component of Compassion Fatigue (CF) is secondary traumatic stress (STS). It is about your work related, secondary exposure to extremely or traumatically stressful events. Developing problems due to exposure to other's trauma is somewhat rare but does happen to many people who care for those who have experienced extremely or traumatically stressful events. For example, you may repeatedly hear stories about the traumatic things that happen to other people, commonly called Vicarious Traumatization. If your work puts you directly in the path of danger, for example, field work in a war or area of civil violence, this is not secondary exposure; your exposure is primary. However, if you are exposed to others' traumatic events as a result of your work, for example, as a therapist or an emergency worker, this is secondary exposure. The symptoms of STS are usually rapid in onset and associated with a particular event. They may include being afraid, having difficulty sleeping, having images of the upsetting event pop into your mind, or avoiding things that remind you of the event.

If your score is above 41, you may want to take some time to think about what at work may be frightening to you or if there is some other reason for the elevated score. While higher scores do not mean that you do have a problem, they are an indication that you may want to examine how you feel about your work and your work environment. You may wish to discuss this with your supervisor, a colleague, or a health care professional. (Alpha scale reliability 0.81)

WHAT IS MY SCORE AND WHAT DOES IT MEAN?

In this section, you will score your test so you understand the interpretation for you. To find your score on **each section,** total the questions listed on the left and then find your score in the table on the right of the section.

Compassion Satisfaction Scale

Copy your rating on each of these questions on to this table and add them up. When you have added then up you can find your score on the table to the right.

3. _____
6. _____
12. _____
16. _____
18. _____
20. _____
22. _____
24. _____
27. _____
30. _____

Total: _____

The sum of my Compassion Satisfaction questions is	And my Compassion Satisfaction level is
22 or less	Low
Between 23 and 41	Moderate
42 or more	High

Burnout Scale

On the burnout scale you will need to take an extra step. Starred items are "reverse scored." If you scored the item 1, write a 5 beside it. The reason we ask you to reverse the scores is because scientifically the measure works better when these questions are asked in a positive way though they can tell us more about their negative form. For example, question 1. "I am happy" tells us more about the effects of helping when you are *not* happy so you reverse the score

You Wrote	Change to
	5
2	4
3	3
4	2
5	1

*1. _____ = _____
*4. _____ = _____
8. _____
10. _____
*15. _____ = _____
*17. _____ = _____
19. _____
21. _____
26. _____
*29. _____ = _____

Total: _____

The sum of my Burnout Questions is	And my Burnout level is
22 or less	Low
Between 23 and 41	Moderate
42 or more	High

Secondary Traumatic Stress Scale

Just like you did on Compassion Satisfaction, copy your rating on each of these questions on to this table and add them up. When you have added then up you can find your score on the table to the right.

2. _____
5. _____
7. _____
9. _____
11. _____
13. _____
14. _____
23. _____
25. _____
28. _____

Total: _____

The sum of my Secondary Trauma questions is	And my Secondary Traumatic Stress level is
22 or less	Low
Between 23 and 41	Moderate
42 or more	High

NOTES

Trauma Mastery

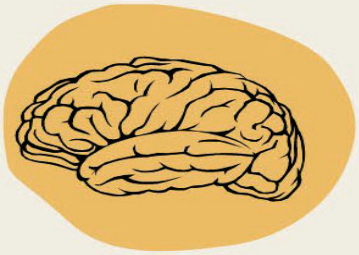
Trauma

One of the most terrifying and overwhelming parts of a traumatic experience is our lack of control over the incident.

Loss of control

Unconscious attempts at healing

To try to reconcile a traumatic situation where we experienced a dangerous lack of control, our brains create and re-create situations as similar to the traumatic event as possible. We try to turn a situation where we once felt powerless into one where we feel competent, powerful and well-equipped to create a different outcome.



Intentional Trauma Mastery

When we are able to recognize that this unconscious process is occurring, we can foster our own healing. Bringing insight, mindfulness, and authenticity to our experience allows us to recognize our natural human coping strategy. Awareness of the trauma mastery process is vital to healing.

Trauma Mastery shows up in three domains

1. Our activities: when our extracurricular or self-care activities feel compulsory, this might be worth a deeper look.
2. Our relationships: we can see this in romantic relationships as well as friendships.
3. Our choice of work: our social service systems count on the driven and selfless work of folks striving to heal from trauma.

Ask yourself:

To what degree is Trauma Mastery a factor in my work?

If trauma mastery is a factor in my choice of work, in what other areas of my life am I attending to healing my trauma? Can I support my healing in other ways?

Who do I know who is thoughtfully attending to this dynamic in their own professional life?

ADAPTED FROM TRAUMA STEWARDSHIP BY KYRA HAZILLA

NOTES

The Stories We Tell

Getting Acquainted & Getting Connected*

Stories are often the building blocks of relationships --- the way we get to know, and be known by, others. This exercise is designed to encourage connections between people through the telling of personal stories and anecdotes in an informal, small group setting.

In groups of 3 or 4, each participant specifically selects, or is randomly assigned, one of the scenarios/statements below, completes the sentence, and explains their answer to the other participants in the group. Groups are encouraged to play multiple sessions.

• I smile every time I think of....
• The last time I really felt challenged was....
• The last time I did something generous for someone was....
• I miss the days when I could....
• One of my best times just being in Nature was when....
• If you want to make my skin crawl, tease me about....
• If I could whisper something in the ear of my younger self, I would say....
• A person who doesn't know how much they have impacted my life is....
• I am proud I stood up for myself when....
• I wish everyone would forget about the time I....
• I spend too much time worrying about....
• The best gift I ever received was....
• I get nostalgic every time I travel to....
• I would really like to go back in time and thank....
• When I was younger, I thought the world was....

*Adapted from *Where Should We Begin? A Game of Stories* by Esther Perel. https://game.estherperel.com/.

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Created by - Douglas Querin, JD, LPC, CADC1

How am I Doing?

Building Relationships Self-Assessment

Small Group Exercise

Creating and maintaining healthy social connections with others generally requires attention and work. There are many activities that facilitate such connections. Few of us are adept at *every* activity; we often tend to be good at some and challenged by others. Because improvement first requires self- awareness, it is helpful to take stock of our strengths and areas for growth. From the list below, indicate your assessment of how you rank your skills for each activity, using a scale of 1-10 (1 = not yet able to do at all; 10 = perform with ease). With a trusted friend or colleague, discuss your self-assessment and steps you might take to make some improvements.

Relationship-Building Activities	Rating
1. Say hello to a stranger (e.g., in an elevator).	
2. Reach out gently to someone you know to have few friends and elevated social anxiety.	
3. Give an unsolicited compliment to a family member	
4. Give an unsolicited compliment to work colleague.	
5. Strike up a conversation with a stranger in a store checkout line.	
6. Strike up a conversation with a cashier.	
7. Call a friend/acquaintance just to say hi and see how they are doing.	
8. Send a "Thinking of you" note/text to someone you have not spoken to recently.	
9. Make a compliment to store management about an employee's helpful service.	
10. Introduce two friends you think will get along well.	
11. Call (not text/email) to check in on someone you have concerns about.	
12. Participate in neighborhood social gathering.	
13. Send someone a handwritten note to say Hi or let them know you are thinking of them.	
14. Get to know your neighbors by inviting them to your home.	
15. Ask a work colleague about their family and/or children.	
16. Have *regular* coffees and/or lunches with a friend/colleague (weekly/monthly, etc.)	

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Created by - Douglas Querin, JD, LPC, CADC1

Writing prompt

Exploring a Playful and Connected Part of Ourselves

We can use a memory of a time when we felt playfully connected to another to help prime our brain for connectedness now. It is absolutely all right to go all the way back to a summer evening catching fireflies with friends in childhood or imagine an example of playful connectedness that we have not experienced in real life. See if you can bring to mind one such moment and hold it in your awareness for a bit.

Take a moment to immerse yourself in the memory or imagined experience.

Who is there with you?

Where are you?

What sensations do you notice in your body and where do you notice them?

What sounds do you notice?

Are there any tastes or smells associated with this experience?

What do you notice about this part of yourself? [Happy? Delighted? Lively? Mischievous?]

Imagine inviting this part of you to share in your experience right now. What would this part particularly enjoy about this moment?

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Created by – Kyra Hazilla, JD, LCSW
Adapted from Internal Family Systems Model

*Complete a Square Every Day**

Social Connectedness

Learn something about your barista	Talk to a stranger on your commute	Call on old friend	Run an errand for a busy family member	Call and "speak to the manager" to offer positive feedback
Send someone a handwritten note	Buy coffee for the person behind you in line	Volunteer	Introduce yourself to a neighbor	Let a loved one know 5 things you love about them
Write a kind review	Send a "thinking of you" text to someone you haven't spoken to lately	FREE SPACE	Join a group or club about a hobby or interest	Say "Hi" to the person next to you in the elevator
Have a non-work conversation with a coworker	Reach out to a friend and ask how their day was	Strike up a conversation in line at the store	Write an e-mail or letter to a teacher or mentor who influenced you	Introduce two friends you think will get along
Ask a relative to tell you a favorite family story	Take a class about something you want to learn	Offer someone assistance with a challenging or annoying task	Tell a friend what you love about their children	Participate in a neighborhood event

**Completing multiple squares in the same day results in more powerful effects than completing the same number of squares across different days.*

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Oregon Attorney Assistance Program

Created by -Kyra Hazilla, JD, LCSW

Co-Regulating with Colleagues in Trauma-Rich Environments
Friday, February 7, 2025, 8:35 a.m. – 9:35 a.m.
Oregon State Bar Center
Presented by OAAP to:
Oregon State Bar Juvenile Law Section

Kyra M. Hazilla, JD, LCSW, is the director and an attorney counselor with the Oregon Attorney Assistance Program (OAAP). Kyra is a 2006 graduate of the University of Michigan Law School (JD) and School of Social Work (MSW). She was a public defender practicing juvenile law for most of her legal career and also worked as a contract attorney in the areas of personal injury law and civil rights law before joining the OAAP staff in 2014. She is a trained counselor having completed more than 3,500 postgraduate social service hours. She is also a clinical supervisor and provides regular clinical consultation for peers in the therapeutic community. She is a national speaker on trauma-informed lawyering and other topics. Her counseling experience includes crisis intervention; working with victims of sexual assault; drug, alcohol, and substance use counseling; mental health counseling; and survivors of interpersonal violence and their children.

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NOTES

Chapter 2A

Alternatives to Formal Adjudication: A Legal Overview

Jordan Bates
Senior Assistant General Counsel
Oregon Judicial Department
Salem, Oregon

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Alternatives to Formal Adjudication: A legal overview

Jordan Bates

Senior Assistant General Counsel

Oregon Judicial Department

February 7, 2025

Our Presentation

- Legal overview
- Juvenile Department Programs
- Multnomah County's Restorative Justice Program

2

Why?

- "The clear and unequivocal message of Oregon's juvenile code is to notify and involve parents whenever possible, to focus on the family, to involve schools and appropriate social agencies as early as possible, to handle matters informally, and to approach each child's alleged delinquency as an equitable problem rather than as a criminal problem. The least restrictive alternative disposition is preferred..."

State ex rel Juv Department v. Reynolds, 317 Or 560, 573, 857 P2d 842, 849 (1993).

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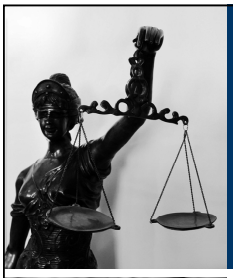

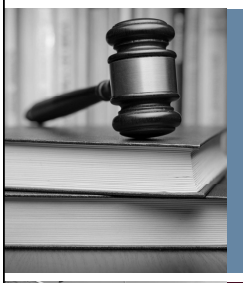

Formal Accountability Agreements

- ORS 419C.230-245
- Before a petition is filed, but after a referral to the juvenile department.
- Juvenile department must have probable cause
- Available for *any* offense type (with exceptions for DA approval)
- Youth has right to an attorney
- Contract between youth and juvenile department
- Provisions regarding victim notification, restitution, and fees. *See* ORS 419C.230
- Provisions regarding revocation and modification. *See* ORS 419C.242
- Court cannot require it. *State v. Gladen*, 168 Or App 319 (2000)

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Formal Accountability Agreements Cont.

- Youth may be required to participate in certain (legal) activities that will be beneficial to them.
- Other Requirements
  - Voluntary
  - One year or less
  - Revocable by youth
  - Revocable by juvenile department in certain circumstances
  - May not be used as evidence against a youth
  - Understandable and executed in writing
  - Signed
  - Part of the record

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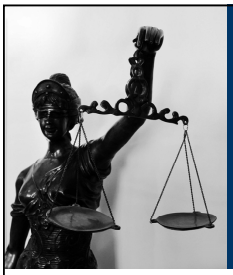

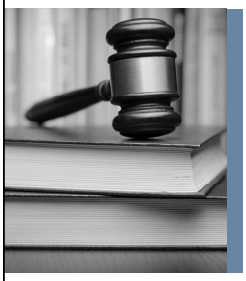

Conditional Postponement

- What even IS a conditional postponement?
  - Aka alternative disposition, conditional dismissal, etc.
  - Understood that the adjudication will be withheld, subject to certain conditions.
  - May be combined with other proposals
- After a petition is filed but prior to adjudication.
- Motion filed by the defense. Practice varies.
- Youth and the State have an opportunity to be heard.

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Conditional Postponement Cont.

- ORS 419C.400 (1) – The hearing (adjudication) shall be held by the court…and may be continued from time to time.
- ORS 419C.261 – Court has the power and discretion to dismiss or set aside. "…*furtherance of Justice*…"
  - Must consider circumstances of youth AND interests of the state.
- ORS 419C.610 – "Court may modify or set aside any order made by it…"
- *State v. Eichler*, 121 Or App 155 (1993)
- *State v. T.Q.N.*, 275 Or App 969 (2015)

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Thank you!

Jordan Bates

Senior Assistant General Counsel, OJD

Jordan.f.bates@ojd.state.or.us

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Jordan Bates is senior assistant general counsel with the Office of General Counsel at the Oregon Judicial Department. Prior to joining OGC, Jordan worked for eleven years as a juvenile defense attorney at Youth, Rights and Justice, practicing both delinquency and dependency law. Jordan also worked briefly as a staffer in the Oregon House of Representatives, which lent to her knowledge of the legislative process. Jordan resides in Portland with her husband and two kids.

NOTES

Chapter 2B

Juvenile Department Diversion and Early Intervention Programs

Sonya Littledeer-Evans
Deputy Director
Deschutes County Juvenile Community Justice
Bend, Oregon

Contents

NOTES

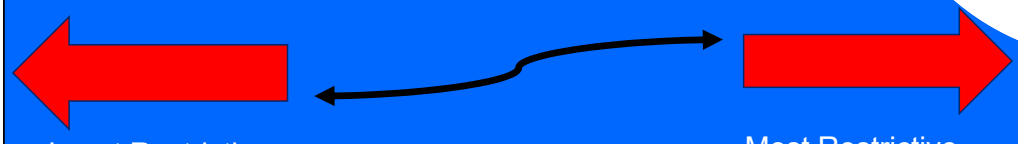
Juvenile Department Diversion and Early Intervention programs

Presented by:

Sonya Littledeer-Evans
Deputy Director, Deschutes County
Oregon Juvenile Department Directors' Association (OJDDA), Training Committee Chair

Purpose

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

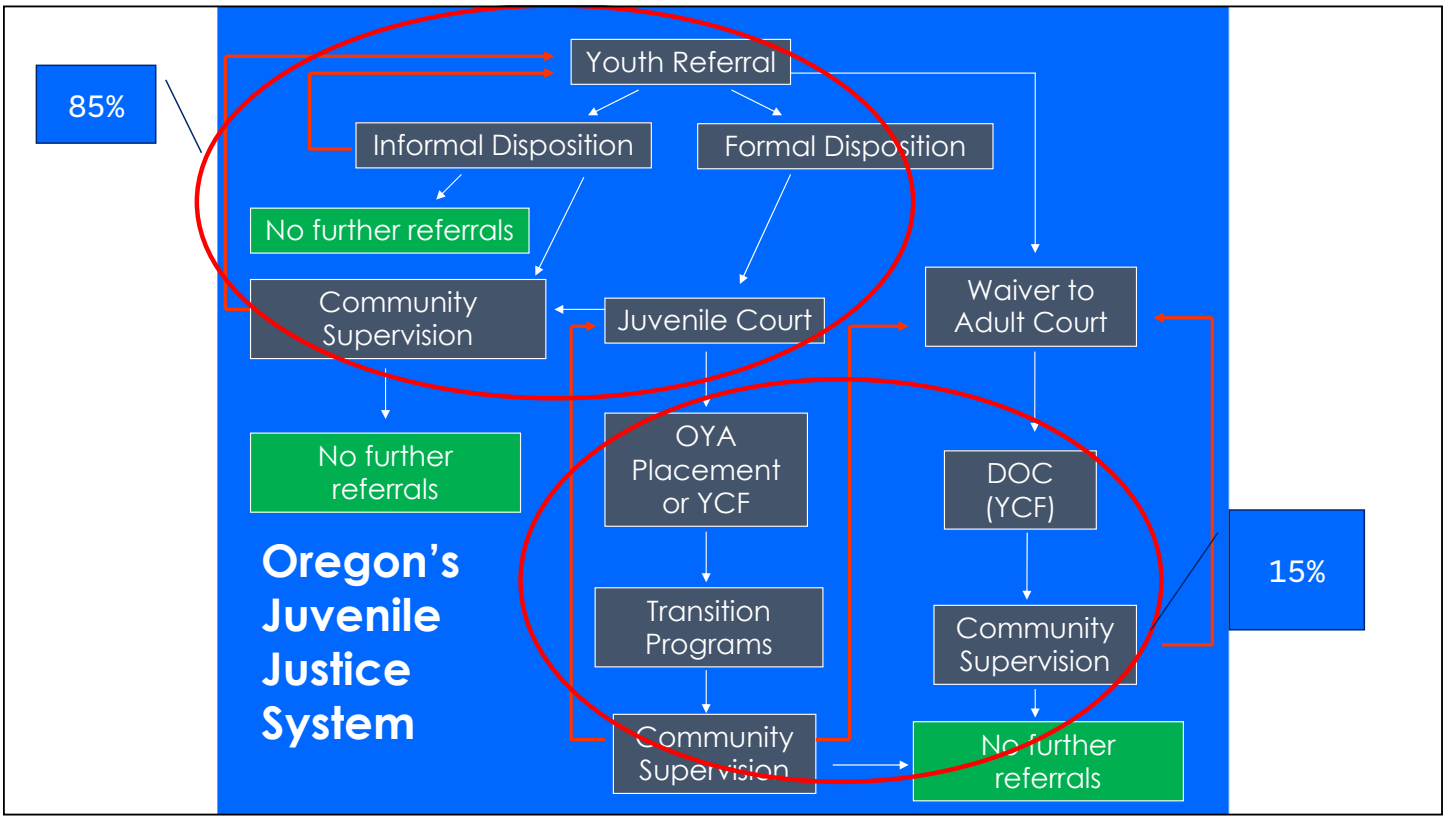


ojdda

Generalized Case Processing

Generally speaking, this is how it currently works in Oregon...

36 Counties – 36 different ways



The Principles of Effective Intervention

Assessing Risk

- We assess every youth for their "risk to reoffend".

Low **Medium** **High**

Research has shown what elements generally contribute to youth offending - "criminogenic needs".

- Department's risk assessment identifies criminogenic needs.

- Key Criminogenic Needs:
  - Attitudes, values & beliefs conducive to crime
  - Criminal peers
  - Personality (i.e. impulsive, thrill-seeking)
  - Poor family functioning & supervision

Assessment

- Brief Screens
- JCP Risk Assessment
- Juvenile Detention Risk Assessment Instrument (DRAI)

Informal Dispositions

Diversion Program (ORS 419C.225)

- Informal Sanction
- Mediation / Restorative Justice

Peer Court (ORS 419C.226)

❖ Referrals: usually first-time violations or C misdemeanors

Formal Accountability Agreement (FAA) (ORS 419C.230)

❖ Referrals: violations, AOD, behavioral, property (misdemeanor & felony

Informal Dispositions

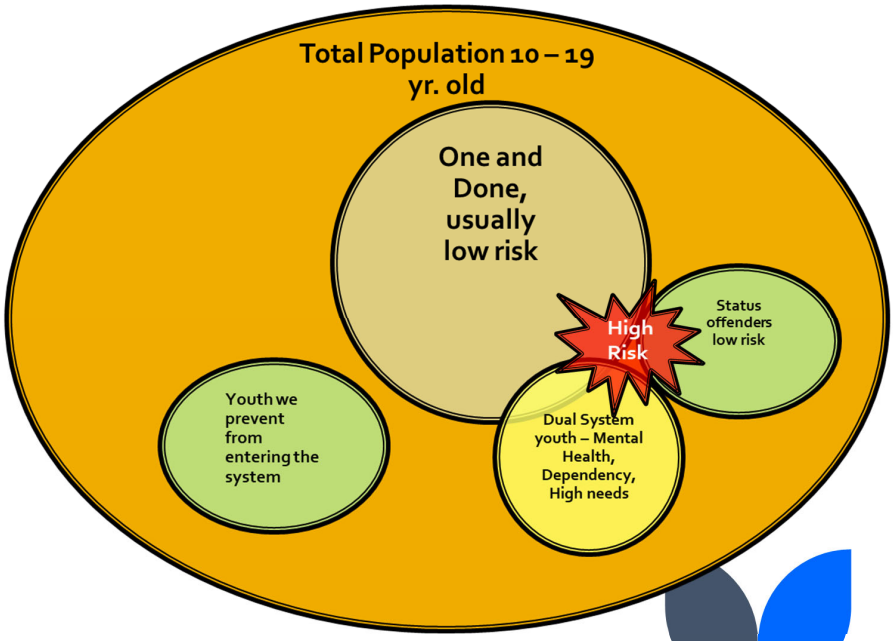
Drug Court

- Referrals: AOD misdemeanor & felony

DUII Diversion (ORS 419C.225(3))

- Referrals: First time DUII 15 and older

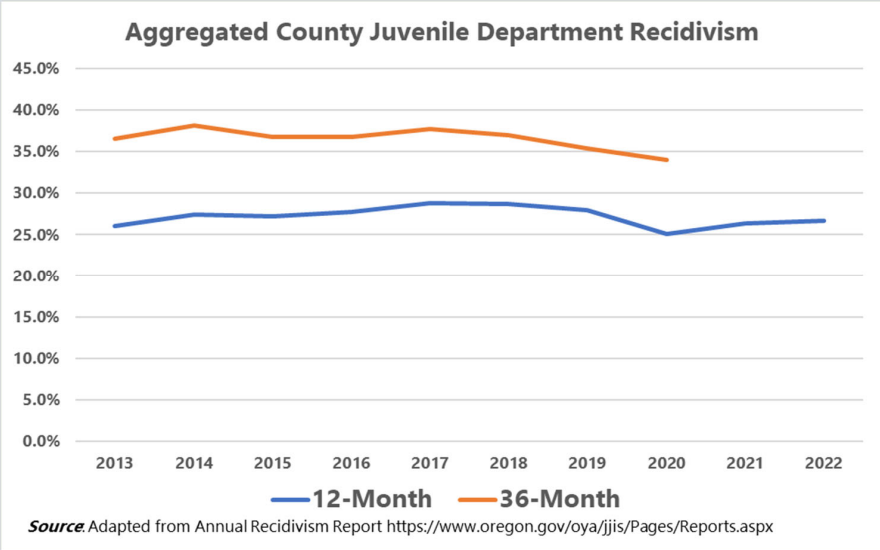
MAINTAIN PERSPECTIVE



MAINTAIN PERSPECTIVE

- 495,683 youth in Oregon ages 10-19.
- **0.88%** (4,324) of total 10-19 year olds in Oregon are under some form of **county supervision**.
- OYA supervises 740 youth w/in this same age range **(.15%)**.

MAINTAIN PERSPECTIVE



Source Adapted from Annual Recidivism Report https://www.oregon.gov/oya/jjis/Pages/Reports.aspx

County Juvenile Department Aggregate Recidivism by Annual Cohort

Cohort Year	12-Month	36-Month
2013	26.0%	36.6%
2014	27.4%	38.1%
2015	27.2%	36.8%
2016	27.7%	36.8%
2017	28.8%	37.7%
2018	28.7%	37.0%
2019	27.9%	35.4%
2020	25.1%	34.0%
2021	26.4%	
2022	26.7%	

Source: Adapted from Annual Recidivism Report https://www.oregon.gov/oya/jjis/Pages/Reports.aspx

Thank you

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Sonya.Littledeer-Evans@deschutes.org
www.ojdda.org

NOTES

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____
CITY OF _____

State of Oregon **Case No:** _____

v.

ORDER RE: DUII DIVERSION

_____
Defendant

ODL: _____ DOB: _____

The alleged DUII occurred on *(date)*_____

Based on Defendant's *DUII Diversion Petition and Agreement,* **THE COURT ORDERS:**

The petition for diversion is
☐ **Denied**
☐ **Allowed**. The court withholds entry of a judgment of conviction pending completion or termination of the diversion agreement and orders that:

1) Defendant is ordered to comply with all terms in the *Petition and Agreement*
Assessment Evaluator information: _____
_____

2) The diversion period is 1 year beginning *(date)*_____and ending *(date)*_____
☐ Defendant must file a motion to dismiss after the diversion period ends in order for the court to dismiss the charge *(if this option is not checked the defendant does not need to file a motion to dismiss)*

3) Defendant must pay a fee of **$490.00** to the court for the diversion as required by statute unless waived or deferred. Payment is due ☐ **immediately** or ☐ **per payment schedule:**
$_____ / month due by the _____ day of each month beginning _____
☐ other: _____

4) ☐ Defendant must attend a victim impact panel approved by this court ☐ ***and*** must pay a participation fee to that program **Victim Impact Panel Date:** _____

5) ☐ Defendant must pay court-appointed attorney fees
☐ in an amount of $_____ on a schedule determined by the court. The court finds that the defendant has the ability to pay court-appointed attorney fees.
☐ as ordered in a separate limited judgment or order

6) ☐ Defendant must install and use an **ignition interlock device (IID)** in any vehicle operated by the Defendant during the period of the agreement when the Defendant has driving privileges *
☐ Defendant need not install an IID because Defendant:
☐ meets the requirements for medical exemption under Oregon Department of Transportation rules and is exempt from the IID requirement
☐ submitted to a blood, breath, or urine test that showed no cannabis, inhalants, or controlled substances, and a BAC below 0.08%

7) ☐ Defendant must be booked and fingerprinted

8) Restitution/Other: _____
_____

Judge Signature:

_____ _____

**if Defendant is required to operate an employer-owned motor vehicle, an IID need not be installed if Defendant notifies employer of the IID requirement and has written proof of the notification*

DUII Diversion – Order - Diversion (Form 2)
Page **1** of **1** *(Aug 2019)*

NOTES

DESCHUTES COUNTY JUVENILE COMMUNITY JUSTICE

REQUEST TO PARTICIPATE IN A FORMAL ACCOUNTABILITY AGREEMENT

Youth Name:
Parent/Guardian:
Address: ,

Police Report:
Referral #:
Phone Number:

Pursuant to ORS 419C.230, Deschutes County Juvenile Community Justice finds this matter to be an appropriate case to be handled by Formal Accountability Agreement (FAA) under the following conditions:

1. Upon satisfactory completion of any conditions agreed upon by the Community Justice Officer, youth and Parent/Guardian, this matter shall be dismissed. In the event the youth fails to satisfactorily complete in a timely fashion any conditions of the FAA, this matter will be referred back to the District Attorney's Office.

2. It is understood by the youth that the youth's signature on this request form is an acknowledgement of responsibility, and a waiver of the following rights and defenses:

a. Right to the presumption of innocence
b. Right to prove beyond a reasonable doubt
c. Right to a formal court hearing
d. Right to confront and cross-examine accusers
e. Right against self-incrimination
f. Right to subpoena witnesses to testify
g. Any other defenses to the charge

3. I understand that the FAA cannot be used as evidence against me at any adjudicatory hearing.

4. I understand that I have the right to a court appointed attorney at state expense if I am determined to be financially eligible under the policies, procedures, standards, and guidelines of the Public Defense Services Commission. I know that I can talk to an attorney at any time about entering into a FAA. I know the lawyer can look at my police report, tell me about the laws, help me understand my rights, and help me decide if I should enter into a FAA

5. I know that I may choose to withdraw from the FAA at any time, in writing, at which time the case will be referred to the District Attorney for the charges to be filed in Juvenile Court.

Youth Signature:_____ Date:_____

Parent/Guardian Signature:_____ Date:_____

CM 403.1

NOTES

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF DESCHUTES

In the matter of: _____ DOB: _____ A Youth.	Case No.(s): _____ **DUII DIVERSION PETTIION AND AGREEMENT, 419C.225**

The alleged DUII occurred on (date): _____

YOUTH'S AGREEMENT AND WAIVER

I am the Youth. I ask the court to grant diversion under 419C.225 for the charge of driving under the influence of intoxicants (DUII). If the court allows this petition:

1. I have read and understand all the information in the attached *Explanation of Rights and DUII Diversion Agreement* and I agree to:
    a. Abide by any conditions listed under AGREEMENT WITH THE COURT in the attached *DUII Diversion Agreement*.
2. I admit/plead no contest to the DUII charge as shown in the Petition in this case.
3. I waive (give up) the rights listed in the attached *Explanation of Rights*.
4. I waive my former jeopardy rights under the federal and state constitutions and ORS 131.595 to 131.525 in any future action on the charge or any other offenses based on the same criminal incident.
5. I understand that by entering this agreement I will not be eligible again for diversion, either as a Youth (ORS 419C.225) or as an adult (ORS 813.200 to 813.270), for 15 years. I further understand that my DMV record will continue to reflect that this diversion occurred even if I successfully have my Juvenile Record expunged.

Youth's Signature	Youth's Name	Date

Attorney' s Signature	Attorney's Name	Date

EXPLANATION OF RIGHTS AND DUII DIVERSION AGREEMENT

Read this entire form carefully. You are charged with driving under the influence of intoxicants (DUII). You can apply for the DUII Diversion Program, but you can enter the program only if you meet all eligibility requirements. The court will appoint a lawyer to help you in this process.

ELIGIBILITY FOR DIVERSION PROGRAM

You are eligible to participate in the diversion program only if:

1. You meet requirements for a Formal Accountability Agreement under 419C.230 **and**
2. You appeared in court on the date scheduled for your first appearance on the charge (unless the court finds good reason to excuse your failure to appear) **and**
3. You file for Diversion with the court within thirty (30) days of your first appearance in court (unless the court finds there is good cause to allow a later date) **and**
4. You engage in a Risk Assessment with the Juvenile Department prior to petitioning the court for Diversion.

AGREEMENT WITH THE COURT

The DUII Diversion Petition and Agreement is your agreement with the court. To have the DUII charge dismissed you must do all the following if ordered by the court:

☐ The diversion period is for one year from: _____ to: _____
☐ You will be under the supervision of the Juvenile Community Justice Department
☐ Pay restitution to: _____ on Count _____
☐ Complete an alcohol and drug abuse assessment. You must give the agency accurate and truthful information about your use of drugs and alcohol. The agency will recommend a treatment program if they find that you need treatment. Complete assessment by: _____
☐ Complete the recommended treatment program
☐ Do not use alcohol or other intoxicants (including marijuana) during the term of the diversion agreement. Do not spend time with other people who are using illegal substances or go to places where illegal substances are regularly used. Comply with state laws that prohibit the use of intoxicants
☐ Report to your Community Justice Officer (CJO) as directed and do not change place of residence without prior approval of the counselor; schedule an appointment to meet with your CJO by: _____
☐ Obey all laws and rules of your home residence
☐ Do not leave Oregon without prior approval of the Juvenile Division
☐ Be photographed and fingerprinted per ORS 419A.250
☐ Submit to random supervised drug testing as directed by the Juvenile Division
☐ Attend school every day, obey all school rules, and work to the best of your ability, or work on obtaining a GED
☐ Submit to search of your person, residence, vehicle, and personal property (including electronic devises such as computers and cell phones) if your CJO has reasonable suspicion to believe that evidence of a probation violation will be found
☐ Do not have contact/association with anyone known to be on probation
☐ Attend court review hearings. First review scheduled: _____

☐ Do not have contact with the victim or victim's family. This means you may not speak to, call, text, email, contact on social media or be near them. You may not ask other people to contact them for you: _____

☐ Do not have contact with codefendant/s listed. This means you may not speak to, call, text, email, contact on social media or be near them. You may not ask other people to contact them for your: _____

☐ Keep a curfew of _____ ☐ Juvenile Division has authority to modify

☐ Complete _____ hours of community work service at a rate of _____ hours per month, beginning _____ OR complete in full by _____

☐ Write a letter of responsibility and submit it to the CJO as directed

☐ Complete a mental health assessment and follow the recommendations of the evaluator. Evaluation to be completed by: _____. Take medications as prescribed

☐ Participate in and successfully complete the following skill groups:
- ☐ Moral Reconation Therapy if deemed appropriate by the Juvenile Department
- ☐ Functional Family Therapy if deemed appropriate by the Juvenile Department
- ☐ Individual counseling
- ☐ Family counseling

☐ Seek and maintain employment

☐ Complete GED by: _____

☐ Failure to comply with the terms of diversion may result in the imposition of intermediate structured sanctions

☐ Other conditions:

_____

ADDITIONAL INFORMATION AND WAIVER OF RIGHTS

1. The diversion agreement applies only to the DUII charge. If you are charged with other offenses arising from the same incident, the other charges will be prosecuted separately. By entering into a diversion agreement, you give up the right to have the DUII charge decided at the same time as your other charges (if any) (former jeopardy – which means the right not to be prosecuted twice for the same offense)
2. Disposition of the DUII charge will be delayed during the diversion period
3. If you successfully complete the diversion agreement, the court will automatically dismiss the DUII charge at the end of one year
4. If the court finds that you violated the terms of the diversion agreement or that you were not eligible for diversion, the court will terminate the diversion agreement. The court may hold a hearing where you can "show cause" why the court should not terminate your diversion agreement. **The court will send notice of such hearings by regular mail. If you fail to appear in court, the court can terminate the diversion agreement and may issue a warrant for your arrest**
5. The court will terminate the diversion agreement if at any time during the diversion period the court finds that you failed to fulfill all terms of the agreement. Among

other things, receiving a new DUII or an open container referral will violate the agreement

6. If the court terminates your diversion agreement or you fail to fulfill the terms of the agreement by the end of the diversion period, the court will impose disposition without a trial
7. You may file a motion asking the court to extend the diversion period, but you must file the motion within the last 30 days of your scheduled diversion period. The court may grant an extension if the court finds that you have made a good faith effort to complete the diversion program and that you can complete all remaining conditions within the extension period. The court may grant an extension only once and for no more than 180 days
8. If the court denies the diversion petition, the state cannot use your admission/no contest plea when the state continues the prosecution

THE PETITION AND AGREEMENT FOR DIVERSION IS ALLOWED

_____ _____

Circuit Court Referee Date

Sonya Littledeer-Evans

Mrs. Littledeer-Evans is currently the Deputy Director for Deschutes County Juvenile Community Justice. Having worked in Oregon's juvenile justice field 24 plus years, serving in roles such as detention worker, probation officer, supervisor, manager and administrator, Mrs. Littledeer-Evans brings a wealth of knowledge of best practices, reform strategies and lived experience to the work. Mrs. Littledeer-Evans has led implementation of local and regional innovative practices to improve outcomes for all involved, dismantle structural oppression and decrease disparate treatment in our juvenile justice system.

Drawing from her own experiences of poverty, discrimination, trauma, multicultural heritage and of being involved as a juvenile in the juvenile justice system, Mrs. Littledeer-Evans has been a motivational speaker, trainer, facilitator, classroom instructor and leader in her community for over 25 years. Mrs. Littledeer-Evans has spoken and offered trainings on a national, state and local level dealing with cultural competency, racial and ethnic disparities, gender specific issues, working with high-risk youth, equity, inclusion and social justice.

Mrs. Littledeer-Evans earned her BA Degree at the University of Oregon in Political Science with a Minor in Spanish and earned her Masters of Public Administration Degree through PSU. Mrs. Littledeer-Evans serves on the cadre of Cultural Competency Trainers in Oregon, is a certified instructor through University of Cincinnati in Effective Practices in Community Supervision (EPICS) and serves as the Chair of the Oregon Juvenile Department Directors Association (OJDDA) Training Committee and as part of the OJDDA training Faculty.

NOTES

Chapter 2C

Multnomah County's Juvenile Restorative Justice Program

Keiler Beers
Metropolitan Public Defenders
Portland, Oregon

Contents

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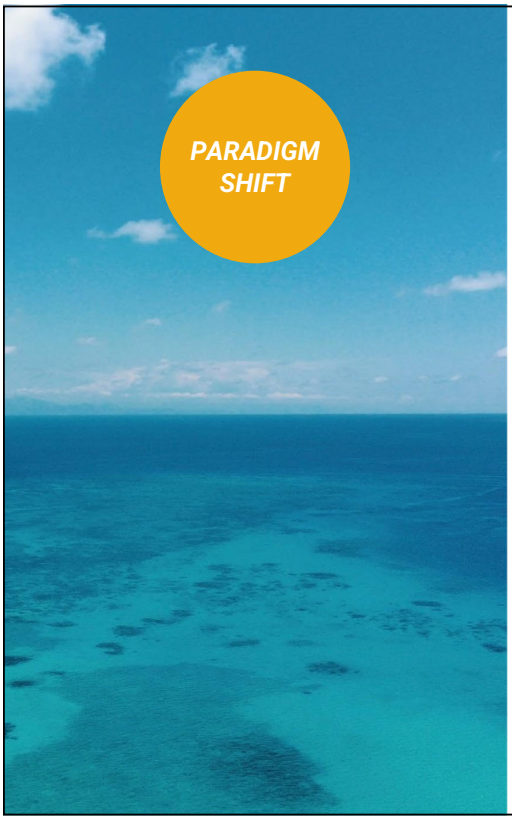


Restorative Justice

Harm is a violation of people and interpersonal relationships.

↓

Violations create obligations.

↓

The central obligation is to, as much as possible, do right by the people you've harmed.

Current Criminal Legal Approach

- What law was broken?
- Who broke it?
- How should they be punished?

Restorative Justice Approach

- Who has been harmed?
- What do they need?
- Whose obligation is it to meet those needs?

Additional questions:

- Who has a stake in the situation?
- What are the causes?
- What is the appropriate process?

The Language and Orientation of Change

Criminal Legal System

- ➔ Perpetrator
- ➔ Offender
- ➔ Victim

PARADIGM SHIFT

Restorative Justice

- ➔ Person who caused harmed
- ➔ Responsible person
- ➔ Person harmed / Survivor

Equal Partiality

Facilitators are equally invested in each participant leaving with their dignity intact, regardless of their role. Rather than trying to remain neutral (which is not possible) or partial (which can lead to bias), facilitators are trained to care equally and be equally invested in the outcome for all participants.

A facilitated process that will attempt to answer three primary questions:

1. ***What happened?***
1. ***Who was impacted and/or harmed?***
1. ***How does the harm get repaired and whose obligation is it to repair the harm?***

****Staff and volunteer facilitators work with all parties independently to prepare participants for a face-to-face meeting or "dialogue".***

*****If the harmed party doesn't want to engage in a dialogue, the facilitator will explore other ways they can participate.***

Program Phases			
Enrollment	**Preparation**	**Conference**	**Plan**
Phase Description			
Following Defense counsel's Suitability Assessment, RJ facilitators and defense counsel meet with the youth who caused harm to ensure that they understand the program and to review and sign the informed consent.	Prep occurs over a series of meetings where participants separately discuss what happened, why it happened, and think through impacts and needs. Unlike prosecution, survivors identify impact and needs and shape the restorative process to best provide for healing.	During the conference, the youth, the HP, supporters for both, and community members discuss the harm, its causes, and impact. The restorative dialogue culminates in participants creating a plan to support the responsible youth in making things as right as possible.	The consensus-based plan identifies ways for the responsible person to make things right by (1) the person harmed, (2) their family/chosen family, (3) the community, and (4) themselves. Once the responsible person completes the plan, the case is closed.

Survivor Impacts

- ➔ Decreased fear of and anger towards the responsible person;
- ➔ Increased sympathy for the responsible person and their supporters;
- ➔ Decreased perceived likelihood of re-victimization;
- ➔ Decreased anxiety; increased sense of security;
- ➔ Increased feelings of self-confidence and self-worth; and
- ➔ Increased feelings of trust in others

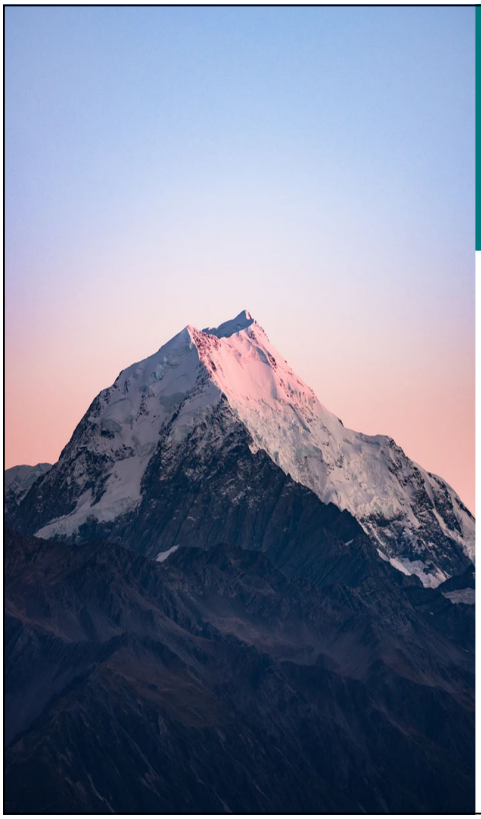
Strang, H. & Sherman, L.W

Harmed Party Impacts

- ➢ Reduces recidivism
- ➢ Builds empathy
- ➢ Reduces contact with criminal system

Core Elements of this Multnomah County's Restorative Justice Program

1. **Ending the criminalization of BIPOC**
2. **Diversion as early as workable (Pre-Petition)**
3. **Prevent net-widening**
4. **Protects confidentiality**
5. **Held by community**



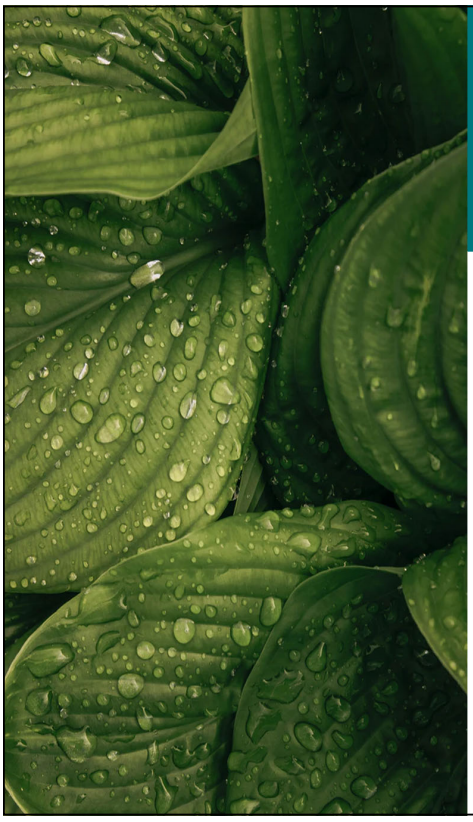
Element 1: Addressing RED & Ending BIPOC Criminalization

- Case referral:
  - **Offense Types:** Robbery 1, Robbery 2, Robbery 3, Assault 2**,** Assault 3, UUW (and others)
  - **Age Range:** All Youth
  - **No automatic criminal history restrictions**

W. Haywood Burns Institute, (2011) Successful Strategies to reduce Racial/Ethnic Disparities in JDAI Jurisdictions.

Element 2: Minimizing system contact - focused on Pre-Petition Diversion

- **Minimizing interactions with the system to help:**
  - Person Harmed
  - Responsible persons
  - Community
  - RED
  - Healing



Element 3: Prevent Net-Widening

- **Offenses that can result in detention** w/ identifiable crime survivors
- Would have resulted in incarceration or probation

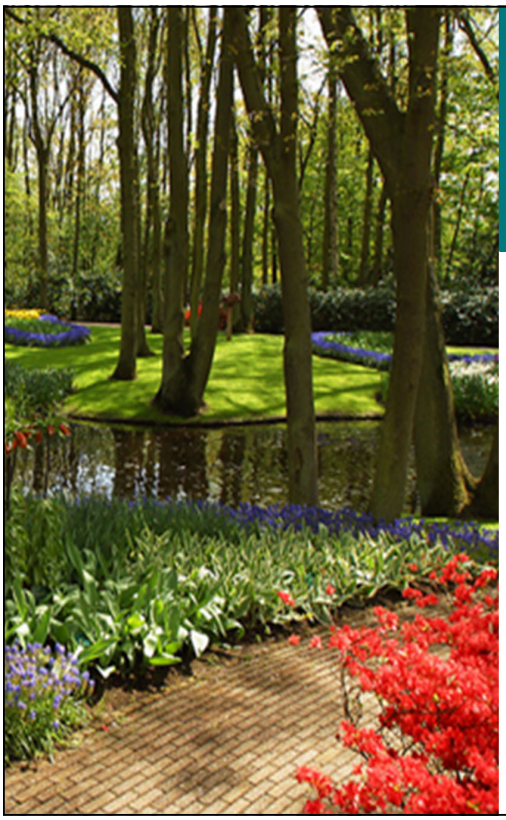
Strang, H. & Lawrence W. Sherman, L. W., Repairing the Harm: Victims and Restorative Justice, 2003 UTAH L. REV. 15, 23.

Element 4: Protecting Confidentiality

- "All Parties agree that if any new information is learned by way of the RJA process, such information will not be disseminated or used against any participant."

Protecting Truth-Telling

- ➔ **The RJ process is confidential**, including the fact that a case has been referred and a process convened.
- ➔ All Parties agree that if any new information is learned by way of the RJ process, such information **will not be disseminated or used against any participant.**
- ➔ **All participants will sign confidentiality agreements** prior to the conference in which they agree not to reveal statements or information learned as a result of the conference.
- ➔ All parties agree that any **information disclosed** within the restorative process **should not drive subsequent investigation** into any related manner and no evidence uncovered through information disclosed during the restorative process shall be admitted in any subsequent legal proceeding.
- ➔ **Confidentiality in restorative justice programs is a part of Oregon Law (SB 586).**



Element 5: Held in Community by Lutheran Community Services NW

- **RJ processes function best and are in alignment with RJ values when held by community**

Madeline M. Carter, (2019). Diversion 101: The Importance of Community Engagement to Diversionary Programs.

RPP Referral ***Process***

1) Case Eligibility	2) Assess RP's Openness	3) Assess PH's Openness	4) Consideration & Enrollment
DDA conducts an Eligibility Assessment based on identified criteria. If the case is eligible, DDA informs MPD's docket staff who then designates a member of the Defense Team to represent the RP.	Assigned defense attorney meets with RP to explain (1) RPP, (2) conduct a Suitability Assessment, (3) provide RPP and Informed Consent material, and (5) schedule next mtg.	If RP found suitable, defense attorney notifies the DDA who then conducts initial outreach to PH about RPP. Defense counsel, DDA, and LCSNW staff maintain open line of communication.	Subsequent conversations w/ RP or PH should include LSCNW staff. LCSNW staff answer questions and help assess RP readiness. Both the RP and the PH agree to RPP through voluntary consent. DDA provide referral documents to LCSNW

3

What happens when a client is held?

- DDA will attempt to contact the Juvenile Department prior to issuing a petition to determine if there is a family or other home placement for the youth.
- If there is no least restrictive placement or the DDA is unable to get ahold of the juvenile department prior to filing, DDA will file the petition and follow the screening phase and referral phase above.
- If youth is in detention, once released to home or other family placement, youth may enroll and the DDA will move to dismiss the petition. If youth is released to alternative placement, the case will be dismissed upon completion of the program or when appropriate housing outside of JSD is identified.

Why cases are sent back

- ❏ Unsuitable case (no identifiable person harmed, inappropriate case type, etc.)
- ❏ RP is not actually responsible for the harm that was caused
- ❏ RP is unable to engage in an accountability process
- ❏ RP is not interested in repairing the harm to the PH
- ❏ Picked up a new delinquency charge
- ❏ Fell out of contact with LCSNW

NOTES

Keiler Beers is a public defender with Metropolitan Public Defender. In its Parent/Child Advocacy Division, he defends the rights of youth and their families against unjust government separation, punishment and surveillance. Born and raised in Portland, Keiler has since lived in all corners of the country, working in the areas of migrant humanitarian aid, gang intervention, refugee resettlement, shelter management and youth defense. He earned a B.A. from Whitman College and a J.D. from New York University School of Law, where he was a Fellow at the Center on Race Inequality and the law. He is on the advisory board of the Western Region of the Gault Center, and an Ambassador for Racial Justice through the Juvenile Justice Initiative of Georgetown University.

NOTES

Chapter 3

Adoption or Guardianship: Legal Developments

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General Guardianships and Permanent Guardianships in Dependency Cases

1) General guardianship (ORS 419B.366)
   a) Procedure:
      i) A general guardianship can be established by the court only after the court has changed the permanency plan to guardianship. ORS 419B.366(6).
      ii) A general guardianship proceeding is initiated by the filing of a motion by a party or a person granted limited rights to do so. ORS 419B.366(1).
      iii) Upon filing of the motion, the court must determine whether there is "reason to know" the child is an "Indian child." ORS 419B.366(3) (citing ORS 419B.636(4)).
         (1) If so, the court cannot grant a general guardianship unless it first offers the parties the opportunity to engage in mediation. ORS 419B.366(4)(a)(A) (citing ORS 419B.517).
         (2) And the court cannot grant a general guardianship of an Indian child unless, if the child's tribe has requested it, an agreement is in place that requires the proposed guardian to maintain connection between the child and the tribe. ORS 419B.366(4)(a)(B).
      iv) Evidence is admissible without regard to the rules of competency or relevancy under the evidence code. ORS 419B.366(5) (citing ORS 419B.325).
   b) Elements the moving party must prove, by a preponderance of the evidence (ORS 419B.366(6); ORS 419B.366(2)):
      i) The ward cannot safely return to a parent within a reasonable time;
      ii) Adoption is not an appropriate plan for the ward;
      iii) The proposed guardian can meet the ward's needs and is willing to accept the duties and authority of a guardian; and
      iv) Guardianship is in the ward's best interests, giving consideration to the ward's wishes.
   c) Additional elements the moving party must prove, by clear and convincing evidence, when there is reason to know the ward is an Indian child (ORS 419B.366(4)(a)(C)):
      i) Including by testimony of at least one qualified expert witness under ORS 419B.642, that continued custody of the child by the child's parent or custodian is likely to result in serious emotional or physical damage to the child;
         - This evidence must show a "causal relationship" between the conditions in the child's home and the likelihood that continued

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custody of the child will result in serious emotional or physical harm to the child. ORS 419B.366(4)(b).

- Substance abuse and other specified factors do not, in and of themselves, establish the necessary "causal relationship."

ii) That active efforts to reunite the family did not eliminate the need for guardianship based on serious emotional or physical damage to the child; and

iii) That the proposed guardianship placement comports with the placement preferences of ORS 419B.654, unless the court determines that clear and convincing evidence establishes good cause to depart from the placement preferences.

d) A general guardianship terminates when

i) The court vacates it pursuant to ORS 419B.368.

- Note: ORS 419B.368 authorizes the court to vacate a guardianship when "[t]he conditions and circumstances that gave rise to *the guardianship* have been ameliorated." ORS 419B.368(3). Those "conditions are circumstances" are not necessarily the same as the conditions or circumstances that gave rise to *jurisdiction*. *See Dept. of Human Services v. J.C.*, 365 Or 223, 444 P3d 1098 (2019).

ii) The ward is no longer subject to the court's jurisdiction pursuant to ORS 419B.328.

- Note: a parent (or other person) may move the court to dismiss jurisdiction while a general guardianship is in place; if the parent proves that jurisdiction no longer continues, *e.g.* because they have ameliorated the jurisdictional bases, the court's jurisdiction ends, and the court must vacate the guardianship. *See Dept. of Human Services v. J.C.*, 365 Or 223, 444 P3d 1098 (2019).

2) Permanent guardianship (ORS 419B.365)

a) Procedure

i) The court may establish a permanent guardianship any time after jurisdiction has been established but prior to the filing of a TPR petition, or after the court's dismissal of a TPR petition. ORS 419B.365(1).

ii) Any party or a person granted rights of limited participation may file a petition for permanent guardianship. ORS 419B.365(1).

iii) Upon filing of the petition, the court must determine whether there is "reason to know" the child is an "Indian child. ORS 419B.365(3).

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(1) If so, the court cannot enter a permanent guardianship unless it first offers the parties the opportunity to engage in mediation. ORS 419B.365(5)(a)(A).

(2) And the court cannot enter a permanent guardianship of an Indian child unless, if the tribe has requested it, an agreement is in place that requires the proposed guardian to maintain connection between the child and the tribe. ORS 419B.365(5)(a)(B).

- Note: There is no reference to ORS 419B.325 in ORS 419B.365, so all rules of evidence, including competency and relevancy, apply to permanent guardianship proceedings.

b) Elements the moving party must prove, by clear and convincing evidence (ORS 419B.365(4):

i) "The grounds cited in the petition are true"

- Note: "the grounds" for establishing a permanent guardianship "are the same as those for" TPR (ORS 419B.365(2)). So the moving party must prove a statutory basis for TPR under ORS 419B.502-.510.
- Note: the Court of Appeals has described the issue of whether a permanent guardianship can be granted on grounds other than those that form the bases for jurisdiction as an "open legal question." *Dept. of Human Services v. N.B.*, 335 Or App 494, 499, 558 P3d 878 (2024).

ii) It is in the ward's best interests that the parent never have physical custody of the ward but that other rights and duties should not be terminated.

iii) Additional elements the moving party must prove, beyond a reasonable doubt, if the ward is an Indian child (ORS 419B.365(5)):

(1) Including by testimony of at least one qualified expert witness under ORS 419B.642, that continued custody of the child by the child's parent or custodian is likely to result in serious emotional or physical damage to the child;

- This evidence must show a "causal relationship" between the conditions in the child's home and the likelihood that continued custody of the child will result in serious emotional or physical harm to the child. ORS 419B.365(5)(b).
- NOTE: substance abuse and other specified factors do not, in and of themselves, establish a causal relationship.

(2) Active efforts to reunify the family did not eliminate the need for guardianship based on serious emotional or physical damage to the child; and

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(3) The placement comports with the placement preferences of ORS 419B.654(1).

c) A permanent guardianship terminates when
   i) The ward becomes 21 years of age; or
   ii) The court vacates it pursuant to ORS 419B.368.
      - Note: unlike a general guardianship, a parent cannot move to vacate a permanent guardianship. ORS 419B.368(7).

NOTE ON APPEALING A GUARDIANSHIP JUDGMENT:

- Any person represented by court-appointed counsel—child or parent—who wishes to appeal a guardianship judgment may do so via the OPDC online referral form. In utilizing the online referral form, counsel for a child should select "child" under Client Information/Role of Client in the Case, and the referral will then be routed to the appropriate entity.

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Guardianship (and guardianship-related) cases, 2024

Dept. of Human Services v. N.B., 335 Or App 494 (Oct 16, 2024)
Multnomah County; Michael S. Loy, Judge

The department petitioned the circuit court to establish a permanent guardianship for the parents' child, L. In doing so, the department alleged that both parents were unfit under ORS 419B.504, that the father was neglectful under ORS 419B.506, and that the guardianship served L's best interests. After a trial at which the father did not appear (but the mother did), the court denied the petition based on the department's failure to prove its allegations against the father. The court did not reach the department's allegations against the mother or the best-interest element.

The department and L appealed, arguing that the Court of Appeals should exercise its discretion to review de novo and grant the permanent guardianship petition in the first instance. The Court of Appeals declined to do so and affirmed:

> "Upon consideration, we are unpersuaded to exercise our discretion to conduct de novo review. As to DHS's first argument, nothing in the record suggests to us that the juvenile court's view of the evidence was colored by its opinion on an open legal question regarding the relationship between the bases for dependency jurisdiction and the ultimate grounds for finding unfitness or neglect in a termination-of-parental-rights or guardianship proceeding. * * * Given [the court's] statement, and the lack of anything in the record that causes us to believe that the court's view on that issue improperly affected how it viewed the evidence, we reject DHS's first argument.
>
> "As to DHS's second argument, it is true that the juvenile court did not make express findings of fact or credibility determinations. But DHS's evidence regarding father was uncontroverted, so no credibility determinations were necessary. Moreover, the court's extended discussion with DHS's counsel, during which the court pointedly noted a variety of gaps in DHS's evidence and theories, gives substantial insight into the court's view of the evidence, notwithstanding the lack of express findings.
>
> "As to DHS's third argument—that the court's ruling does not comport with uncontroverted evidence in the record—it is true that DHS's evidence was uncontroverted. However, the court did not disregard that evidence; rather, it found that the evidence did not persuasively prove either that father was unfit under ORS 419B.504 or that father had neglected L within the meaning of ORS 419B.506 during the relevant time period.
>
> "Ultimately, we are unpersuaded that this is the type of 'exceptional' case that merits de novo review. Neither DHS nor L has identified any basis for reversal absent de novo review. Accordingly, we affirm."

(Internal footnote and citation omitted.)

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***Dept. of Human Services v. K.T.*, 334 Or App 55 (July 31, 2024)**
Marion County; Courtland Geyer, Judge

The mother in this TPR appeal had developmental disabilities and intellectual impairments, and her child, K, who was nearly three years old at the time of trial, had significant physical disabilities and developmental delays. K had been in foster care since a few months after her birth. Over the life of the dependency case, K received in-home therapies with her foster care provider, but the mother was not included in those sessions because the foster care provider did not want the mother in her home. The mother attended many of K's appointments but struggled to understand K's medical conditions and the fact that K was developmentally delayed. The mother also became overwhelmed at meetings where she could have learned more about K's conditions, so the department stopped the meetings. The mother received hands-on parent training during supervised visits, but her parenting stayed about the same, she needed constant reminders to practice learned skills, and she eventually refused further parenting services because she believed she was a good parent.

The mother and K both qualified for disability assistance, but that assistance would not include childcare. At the TPR trial, mother maintained that she was ready to care for K, but she did not know K's medications or what services K needed. Due to her higher level of need, K was vulnerable to unhealthy attachments and had a higher need for permanency and limited transitions than other children. The mother and K had a bond, but K's "primary attachment" was to her foster care provider. The foster care provider wanted to adopt K and was not interested in a guardianship because the mother became frustrated over miscommunications and would yell in front of K, which upset K. Nonetheless, the foster care provider was willing to mediate an agreement for post-adoption visitation with the mother.

The circuit court ruled that the mother was unfit to parent K under ORS 419B.504 based on the mother's failure to make a lasting adjustment, to present a viable plan for K's return to her care, and to learn needed parenting skills. The court further ruled that terminating the mother's parental rights was in K's best interest under ORS 419B.500.

The mother appealed, contending that the department failed to prove that it was improbable that K could be reunited with her in a reasonable time because the department had barred her from participating in K's in-home therapies and had not assisted her and K in obtaining disability services. The mother also argued that the department had failed to prove that TPR was in K's best interest because her need for permanency could be met by a guardianship. The Court of Appeals disagreed with the mother's ORS 419B.504 arguments:

> "* * * The record demonstrates that, despite efforts to raise mother's awareness about child's significant medical needs and assist her in developing skills to parent child, mother continued to be unable to understand child's needs in any detail and failed to consistently respond to child's cues without prompting. Although mother was not included in the in-home therapies, she was given the opportunity to participate in regular meetings about child's needs, including meetings with child's therapists, but was unable to continue with those meetings because she felt overwhelmed. At trial, mother

> could not remember any of the information conveyed during those meetings, and she could not identify child's current services or medications. In addition, at visitation, mother received six months of hands-on parenting training, but still required constant reminders throughout the training to use the skills she had been taught. At trial, mother could only name redirection as a skill that she had learned after six months. Visit supervisors also testified that her parenting skills stayed about the same. Given mother's history and minimal progress in other services, we conclude that including mother in child's in-home therapies would not have appreciably improved mother's ability to integrate child into her home with a reasonable time.
>
> "We similarly find that developmental disabilities services would not make it likely that child could be integrated into mother's home within a reasonable time. The record shows that mother qualified for 24 hours per month of DSP assistance with her own day-to-day support needs, not to include childcare, and that child qualifies for 24 hours per month of DSP assistance for skill building, not to include childcare. That level of assistance would not be sufficient to address child's significant daily care needs. The record also indicates that it was unknown when a DSP or other disability services provider could be available to mother or child, and that mother did not know how a DSP could assist her."

As to the ORS 419B.500 best-interest element, the Court of Appeals first explained that "[a]sserting on appeal that a specific type of guardianship is the appropriate permanency option for a child is an argument that should be preserved below to develop a full record on this issue." Although the mother did not do so, the Court of Appeals explained that, in exercising its *de novo* review function, it would "consider the issue of guardianship, to the extent it was developed in the record." But the Court of Appeals rejected the mother's best-interest argument and affirmed the TPR judgment:

> "The record establishes that child has developed a primary attachment to [the foster care provider], who wishes to adopt her. Although mother and child have some type of bond, [K's psychological evaluator] opined that it is not a primary attachment, and that opinion is supported by other testimony in the record about child's demeanor with mother and others. [The foster care provider] has adopted other high-needs children and knows how to care for child and access services for her. [The foster care provider] is willing to negotiate an agreement for ongoing contact between mother and child and understands the importance of such contact for children. The record establishes that mother becomes frustrated very easily over miscommunications and unexpected changes, which causes mother to respond aggressively or to disengage altogether, responses that would be harmful to child and potentially disruptive in the context of a guardianship for child. [K's psychological evaluator] also explained the importance of minimizing any transitions for child and preserving child's primary attachment. On *de novo* review, given the circumstances of this child, on this record, we are persuaded by clear and convincing evidence that termination of mother's parental rights is in child's best interests, leaving child's adoptive parents to

accommodate whatever continuing contact with mother is in accordance with child's best interests."

***Dept. of Human Services v. J.M.-A.*, 333 Or App 334 (June 26, 2024)**
Washington County; Oscar Garcia, Judge

The trial court terminated the father's parental rights to his two-year-old daughter based on unfitness, ORS 419B.504, and neglect, ORS 419B.506.

On appeal, the father assigned error "only to the juvenile court's determination that termination of his parental rights is in child's best interest as required by ORS 419B.500." In support of that assignment, the father presented two arguments: (1) "a permanent guardianship would satisfy child's need for permanency," and (2) "the evidence was not sufficient to support the court's determination that termination was in child's best interest given that no adoptive resource was identified at the time of trial."

The Court of Appeals rejected the father's first argument as unpreserved:

> "To preserve an issue claimed as error, a party must have raised the issue in the original proceeding. * * * At trial, father argued in his opening statement that 'he is in a position to have custody,' adding that 'guardianship of child would still be a viable and appropriate possibility if you do not terminate father's parental rights.' He maintained during his testimony that he wanted the child to 'return' to him. Father's assertion that he expected to have custody of child and his reference to a 'guardianship' do not clearly raise the issue of a permanent guardianship, given that a parent may not move to terminate a permanent guardianship and resume a custodial rule."

But the Court of Appeals agreed with the father's second argument and reversed the TPR judgment based on the department's failure "to show by clear and convincing evidence that terminating father's parental rights serves child's best interest." The court began its analysis with a summary of the child's severe medical problems:

> "Child was born premature in September 2021 with an array of medical conditions that have led to several uncommon diagnoses. Those diagnoses include a genetic mutation known as KAT6B (which causes child to have seizures and epilepsy), a urinary condition known as hydronephrosis that leads to recurrent urinary tract infection, a muscle condition known as hypotonia, which causes motor delays and speech disorders, and a neurological malformation in the brain that causes additional health issues. Because of those conditions, child is medically vulnerable and experiences frequent hospitalizations, and her needs are extremely high. Additionally, child is nonverbal, has problems with her eyesight and hearing, and is fed entirely by feeding tube, all of which contribute to the challenges of meeting her needs."

At the TPR trial, which occurred approximately two years after the child's birth, there was "no dispute that child requires an exceptional level of care, that father has not consistently visited her and has not developed the skills to attend to her complex needs, and that caring for child requires special

training." The department "had not identified an adoptive family at the time of trial," but it "maintained that it was in child's best interest to be freed for adoption by a family that can provide child with 'the love, structure, and permanency that she needs and deserves.'" The department also "argued that father, who had not consistently visited child or acquired skills to understand her medical needs, was not capable of doing that" and that "father declined visitation and refused to attend child's medical appointments."

On *de novo* review, the Court of Appeals was "not persuaded that the record establishes that father declined visitation and refused to attend child's medical appointments, or that his actions convey a lack of interest or concern for child's welfare." "Rather," the court explained, "the record does not establish that the department actually facilitated visits in a way that was workable for father, who was working regularly and who also completed services to address substance abuse and domestic violence." "[T]he department's offers of visit times," the court continued, "were set during child's hospitalizations or medical appointments, and were often scheduled imminently, on the same day or the next day."

Ultimately, despite the father's "lack of a bond with child" and his inability "to attend to her complex needs," the Court of Appeals was "not persuaded" that "terminating contact with a biological parent who cares for her" was in the child's best interests, particularly given the department's failure to identify "an adoptive placement at the time of trial":

> "The visits that did occur raise no concern about father's interest in child. For example, [the foster provider] testified that when father visited child after the termination petition was filed, he was 'really, really loving and sweet,' texted afterward asking for pictures, and texted again a few days later asking about child and 'wondering' about 'being able to come to appointments.' Father testified, 'If child was given to me today, I would sit at the hospital all day until they taught me everything I needed to know to go home again.'
>
> "* * * * *
>
> "[C]hild's complex and long-term needs suggest some uncertainty as to a permanent adoptive placement on this record, despite the department's assurances that 'prospects' exist for adoptive placement. Under the totality of the child's circumstances, severing her legal relationship with the only certain relationship child has at this point cannot be said to be in her best interests on this record."

In reaching that conclusion, the Court of Appeals rejected the department's argument that adoption was "the only resolution that provides for [the child's] best interests in the long term," as "the court's wardship will 'necessarily end' when child reaches 21 years of age," "while child will require lifelong care that father will not be able to provide." "[A]lthough adults with disabilities may rely heavily on the goodwill and capacity of parents or caregivers to advocate on their behalf," the court explained, "there is no clear legal requirement that imposes parental obligation to do so when a severely compromised child reaches adulthood." Thus, "the end of a wardship when child turns 21

does not establish that adoption is necessary to child's best interests; once child reaches adulthood, she will likely require another form of guardianship, whether she is adopted or not."

***Dept. of Human Services v. L.P.*, 332 Or App 659 (May 22, 2024)**
Multnomah County; Morgan Wren Long, Judge

The father appealed from judgments terminating his rights to his two children (O and C) on the bases of unfitness and best interest.

The Court of Appeals held that a recitation of the facts would not benefit the parties, the bench, or the bar and on *de novo* review, held that

> "Clear and convincing evidence demonstrates that at the time of the TPR proceedings father had not developed the skills needed to be a minimally adequate parent for O and C, especially given the nature and specifics of their high needs. In addition, clear and convincing evidence in the record makes it highly probable that father would continue to be unable to protect the children from mother, notwithstanding father's testimony that he has ended his relationship with mother. * * *
>
> "Finally, clear and convincing evidence demonstrates that termination is in the children's best interests. In reaching that conclusion, we have given serious consideration to the parties' arguments relating to the strong bond and love between father and the children, the significant racial and cultural issues presented because the children are Black children and the potential adoptive family is white, and the availability of a permanent guardianship, which can also fulfill a child's need for permanency in some cases. However, after balancing the children's interest in maintaining a legal connection to father and the children's interest in being freed for adoption in the context of the grounds on which we have found father unfit, we determine that the balance in these specific circumstances weighs in favor of termination."

(Internal quotation marks and citations omitted).

***Dept. of Human Services v. M.C.C.*, 332 Or App 565 (May 15, 2024)**
Lane County; Erin A. Fennerty, Judge

The father appealed from a judgment terminating his parental rights to his daughter. On appeal, the father challenged only the court's conclusion that termination of his rights was in his daughter's best interest under ORS 419B.500.

The Court of Appeals affirmed, reasoning:

> "[This court] is not inclined to minimize the potential role of a biological parent in passing along important aspects of cultural identity, nor to minimize the concerns about a Black parent regarding his child being raised in a white family. This record does not support a conclusion that child does not have an interest in maintaining a relationship with father or any of her paternal relatives, nor that father had any reason to know that she would experience harm in the care of his relatives, nor that none of child's paternal relatives has anything to offer

her. This record likewise does not support the view that whatever choices father made that resulted in his incarceration provide a reason to conclude that he has nothing to offer child as the one biological father she will ever have. The actions of [the foster care provider] to support whatever relationship with father is possible during his incarceration reflects an appropriate estimation of child's best interests, and the [foster care providers]' efforts to connect child to her heritage in other ways available to them do not replace what biological family members may be capable of offering. This record does not support a contrary view.

"Nevertheless, the record does support a concern regarding father's capacity to support a permanent guardianship. Though father's testimony early in the termination trial regarding the role he might play in the context of a guardianship may reflect more ignorance than bad intent, this court is not inclined to reject the juvenile court's finding that his expressions of respect for the importance of child's relationship with the [the foster care providers] were not credible. Given father's past attempts to disrupt child's relationship with them and to minimize the importance of that attachment, there is reason for concern that father would foment conflicts that would not be in child's best interest. Father has not persuaded us that a permanent guardianship is in child's best interest under these circumstances, given that history.

"We emphasize that our conclusion that termination of the legal relationship between father and child is in child's best interest does not include a conclusion that child has no interest in maintaining whatever relationship is possible with father and her paternal relatives in a way that protects her primary attachments. This record includes significant evidence that the [foster care providers] understand the importance of that concern, including the efforts they have made to build and maintain child's relationships with her maternal relatives and also with father and to do the same for their other children. This court's role is to ascertain what is in child's best interest, not to delegate that task to potential adoptive parents. While we conclude that, on this record, termination of father's legal relationship with child is the best means of protecting child's need for permanency, we do so mindful that preserving whatever relationship with father is possible is also in her best interest and, given the evidence, is likely achievable under these circumstances despite termination of father's parental rights."

***Dept. of Human Services v. A.L.B.*, 332 Or App 467 (May 8, 2024)**
Jackson County; Benjamin M. Bloom, Judge

The mother appealed from judgments terminating her parental rights to her three children (A, Y, and N) on the basis of unfitness. On appeal, the mother only challenged the court's conclusion that termination of parental rights was in her children's best interest under ORS 419B.500.

The central issues in the underlying dependency cases were the mother's mental health and her physical abuse of the children, especially A. The mother acknowledged that the children suffered "trauma" in her care but took only partial responsibility for it and placed the primary blame on the father, who previously relinquished his parental rights. While the children were in foster care, the department moved the children multiple times, but, by the time of the TPR trial, the children had been living with the mother's sister (the aunt) for approximately 18 months. The aunt wanted to adopt the children if allowed to do so, and she preferred adoption over permanent guardianship because the

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mother had already "frequently objected" to decisions the aunt was making for the children. The aunt was willing to allow the mother to have contact with the children if the children's wanted it and the mother could engage with them in a "healthy way."

The Court of Appeals affirmed the TPR judgments:

> "On appeal, mother concedes that she is unfit but contends that termination is not in the children's best interest, urging that a permanent guardianship would better provide for the children's need for permanency. She maintains that she caused injury to A when she was under stress that would not be present if the children remained in a guardianship with her sister, notes that she engaged consistently and safely in visitation with the children, argues that concerns about her disrupting a guardianship are speculative despite her contentious relationship with her sister, and expresses concern that her sister might sever contact with the children post-adoption for reasons inconsistent with the children's best interests.
>
> "After reviewing the record *de novo*, we are persuaded that DHS proved by clear and convincing evidence that termination is in the children's best interest. The evidence establishes that mother's conduct toward A was abusive, and that A and Y continue to suffer trauma connected to mother's conduct and conditions and evince distress after visits. Further, the children's attachment to mother appears to be insecure, and mother's history of conflicts with her sister over decisions related to the children, along with mother's lack of progress in addressing her mental health conditions, support valid concerns about her capacity to abide by boundaries set in her contact with the children. Circumstances where, as in this case, a parent is making excuses for the conduct that supports the finding of unfitness and demonstrates a poor capacity to cooperate with the terms of a permanent guardianship counsel against a finding that a permanent guardianship serves the best interest of the children. We conclude that termination of mother's parental rights is in the children's best interest on this record."

2024 – 2025 Guardianship Case Law Outlines

***Dept. of Human Services v. C. H.*,** 373 Or 26, 559 P3d 395 (2024).

- Legal requirements
  - DHS is required to file a petition to terminate parental rights when a child has been in substitute care for 15 of the most recent 22 months, unless an exception applies. ORS 419B.498.
  - Exceptions include, among other things, that "[t]here is a compelling reason, which is documented in the case plan, for determining that filing such a petition would not be in the best interests of the child or ward." ORS 419B.498(2)(b).
  - "Compelling reasons" include, among other things, that "[a]nother permanent plan is better suited to meet the health and safety needs of the child or ward, including the need to preserve the child's or ward's sibling attachments and relationships." ORS 419B.498(2)(b)(B).
  - In the permanency hearing context, when the juvenile court changes a permanency plan to adoption, the juvenile court is required to determine "whether one of the circumstances in ORS 419B.498(2) is applicable."
  - "[T]he party who wishes to show that one of the exceptions in ORS 419B.498(2)(b) applies bears the burden of proof." *C. H.*, 373 Or at 60 (citing *Dept. of Human Services v. S. J. M.*, 364 Or 37, 53, 430 P3d 1021 (2018)).
- Parents sought to show that one of the exceptions applies, and it was their burden to show a compelling reason that terminating their parental rights would not be in A's best interest, including, if appropriate, proving that a permanency plan other than adoption is better suited to meet A's needs. ORS 419B.498(2)(b)(B).
  - Parents argued that some other permanent plan would be better than adoption to meet A's health and safety needs, but they did suggest that another viable permanent plan exists.
    - Parents suggested that guardianship would be better suited to meet A's needs, but they have not explained why guardianship would be preferable to adoption.
- The child's welfare is the courts "paramount concern." ORS 419B.476(2)(a).
  - A spent her entire life in substitute care.
  - Even acknowledging parents' bond with A, we cannot say that the juvenile court erred as a matter of law in concluding that it is not in A's best interest to force her to remain in substitute care for an indeterminate additional period while DHS searches for a suitable guardian.

***Dept. of Human Services v. M. C. C.*,** 332 Or App 565, 549 P3d 1280 (2024).

- 2017: child was born, father was incarcerated, child removed at 4 months.
- May 2018: DHS placed the child with current resource parents, identified adoptive placement.
- Father is black, resource family is white, and the child is mixed race.
  - Court rejected juvenile court finding that the child "does not have an interest" in maintaining relationship with father and his family.

  - Court "not inclined to minimize the potential role of a biological parent in passing along important aspects of cultural identity, nor to minimize the concerns about a Black parent regarding his child being raised in a white family."
  - Resource parents' efforts to connect child to her heritage "do not replace what biological family member may be capable of offering."
- Permanent guardianship was not in the child's best interest:
  - Attachment to father
    - Child knows father but does not display attachment to father.
    - Child's attachment is to resource family, including other children in the home.
  - Father may attempt to disrupt guardianship:
    - Father made past attempts to disrupt child's placement.
    - Father minimized importance of child's attachment to resource family.
    - Father may provoke conflict that is not in child's best interests.
- Best interest determination does not include conclusion that child has no interest in maintaining whatever relationship is possible with father and her paternal relatives in a way that protects her primary attachments.
  - Resource parents understood the importance of that concern.

Dept. of Human Services v. L. P., 332 Or App 659, 550 P3d 466 (2024)
- Termination was in the children's best interest.
  - COA gave "serious consideration" to "significant racial and cultural issues presented because the children are Black children, and the potential adoptive family is white."
  - Permanent Guardianship—disruption likely—NOT in the children's best interest
    - Children would face family pressure to vacate guardianship.
- Severing *legal* relationship does not mean severing *any* relationship between father and children.
  - Resource parents committed to fostering relationship if it can be done in a way that protects the children's need for a stable placement.

Dept. of Human Services v. K. T.**,** 334 Or App 55, 554 P3d 832 (2024).
- Background
  - Child born with significant medical needs:
    - Required attentive caretaker
    - More vulnerable to attachment challenges
    - Higher need for permanency
  - Mother had cognitive and mental health issues:
    - Mother did not understand—at a detailed level—the child's significant needs and how to address them.
  - Resource parents were potential adoptive placement:
    - Not interested in guardianship because of mother's behavior, which upset child.
    - Open to mediation to allow continued visits and recognized importance of maintaining contact.
- Guardianship was not in the child's best interest:

  - Child's primary attachment was to resource mother.
  - Some type of bond with mother but not a primary attachment.
  - Resource parent adopted other high needs children, knew how to care for her, and was willing to negotiate for ongoing contact.
  - Mother's conduct potentially disruptive to guardianship.

Dept. of Human Service v. A. L. B., 332 Or App 467, 549 P3d 39 (2024).

- Permanent guardianship was not in the child's best interest.
  - Children had an insecure attachment to mother.
  - Mother had not addressed her mental health condition, which supported valid concerns about her capacity to abide by boundaries.
- When parent is making excused for the conduct that supports finding of unfitness AND demonstrates a poor capacity to cooperate with the terms of a permanent guardianship, THEN permanent guardianship is not in the child's best interest.

NOTES

Selected Oregon Revised Statutes

419B.328 Ward of the court; duration of wardship. (1) The court shall make a child found to be within the jurisdiction of the court as provided in ORS 419B.100 a ward of the court.

(2) The court's wardship continues, and the ward is subject to the court's jurisdiction, until one of the following occurs:

(a) The court dismisses the petition concerning the ward;

(b) The court transfers jurisdiction over the ward as provided in ORS 419B.127, 419B.130, 419B.132 or 419B.633;

(c) The court enters an order terminating the wardship;

(d) A judgment of adoption of the ward is entered by a court of competent jurisdiction; or

(e) The ward becomes 21 years of age.

(3) Notwithstanding subsection (2) of this section, if a permanent guardianship has been established under ORS 419B.365, the court's wardship continues, and the ward is subject to the court's jurisdiction, until:

(a) The court vacates the guardianship under ORS 419B.368 and subsequently enters an order terminating the wardship; or

(b) The ward becomes 21 years of age. [1993 c.33 §105; 1995 c.422 §70; 2003 c.396 §54; 2003 c.576 §447; 2021 c.398 §59; 2023 c.125 §1]

419B.365 Permanent guardianship; petition; when filed; procedure. (1) At any time following establishment of jurisdiction and wardship under ORS 419B.100, but prior to the filing of a petition under ORS 419B.500, or after dismissal of a petition filed under ORS 419B.500 if it fails to result in termination of the parent's rights, a party, or person granted rights of limited participation for the purpose of filing a guardianship petition, may file, and the court may hear, a petition for permanent guardianship. If the Department of Human Services chooses not to participate in a proceeding initiated by an intervenor under ORS 419B.875, the state is not foreclosed from filing a subsequent action should the intervenor's petition be denied.

(2) The grounds for granting a permanent guardianship are the same as those for termination of parental rights.

(3) Upon the filing of a motion to establish guardianship under this section, the court shall make a finding, subject to the procedures under ORS 419B.636 (4), regarding whether there is reason to know that the child is an Indian child.

(4) The court shall grant a permanent guardianship if it finds by clear and convincing evidence that:

(a) The grounds cited in the petition are true; and

(b) It is in the best interest of the ward that the parent never have physical custody of the ward but that other parental rights and duties should not be terminated.

(5) (a) Notwithstanding subsection (4) of this section, the court may grant the permanent guardianship of an Indian child only:

(A) If the court has offered the parties the opportunity to participate in mediation as required under ORS 419B.517;

(B) If requested by the tribe, an agreement is in place that requires the proposed guardian to maintain connection between the Indian child and the Indian child's tribe; and

(C) If after inquiry as required under ORS 419B.636 (2) and notice as required under ORS 419B.639 (2), and in addition to any other findings required for the termination of parental rights under ORS 419B.500 to 419B.524, the court finds:

(i) That evidence, including the testimony of one or more qualified expert witnesses under ORS 419B.642, establishes beyond a reasonable doubt that the continued custody of the Indian child by the child's parent or custody by the child's Indian custodian is likely to result in serious emotional or physical damage to the Indian child;

(ii) That active efforts under ORS 419B.645 to reunite the Indian family did not eliminate the necessity for permanent guardianship based on serious emotional or physical damage to the Indian child; and

(iii) That the placement of the Indian child complies with the placement preferences described in ORS 419B.654 (1).

(b) The evidence under paragraph (a) of this subsection must show a causal relationship between the particular conditions in the Indian child's home and the likelihood that custody or continued custody of the Indian child will result in serious emotional or physical damage to the particular Indian child who is the subject of the child custody proceeding, as defined in ORS 419B.603. Evidence that shows the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse or nonconforming social behavior does not, by itself, establish a causal relationship as required by this paragraph.

(c) As used in this subsection, "custody" and "continued custody" have the meanings described in ORS 419B.606.

(6) A guardianship established under this section continues unless vacated under ORS 419B.368 or the ward becomes 21 years of age. [1997 c.873 §3; 1999 c.59 §119; 1999 c.859 §23; 2003 c.229 §6; 2003 c.396 §63a; 2007 c.333 §1; 2020 s.s.1 c.14 §43; 2021 c.398 §60; 2023 c.125 §2]

419B.366 Guardianship; motion; procedure. (1) A party, or a person granted rights of limited participation for the purpose of filing a guardianship motion, may file a motion to establish a guardianship. The motion must be in writing and state with particularity the factual and legal grounds for the motion.

(2) Except as otherwise provided in subsection (3) of this section, the facts supporting any finding made or relief granted under this section must be established by a preponderance of evidence.

(3) Upon the filing of a motion to establish guardianship under this section, the court shall make a finding, subject to the procedures under ORS 419B.636 (4), regarding whether there is reason to know that the child is an Indian child.

(4) (a) The court may grant the guardianship of an Indian child only:

(A) If the court has offered the parties the opportunity to participate in mediation as required under ORS 419B.517;

(B) If requested by the tribe, an agreement is in place that requires the proposed guardian to maintain connection between the Indian child and the Indian child's tribe; and

(C) If after inquiry as required under ORS 419B.636 (2) and notice as required under ORS 419B.639 (2), the court:

(i) Finds, by clear and convincing evidence, including the testimony of one or more qualified expert witnesses under ORS 419B.642, that the continued custody of the Indian child by the child's parent or custody by the child's Indian custodian is likely to result in serious emotional or physical damage to the Indian child;

(ii) Finds that active efforts under ORS 419B.645 to reunite the Indian family did not eliminate the necessity for guardianship based on serious emotional or physical damage to the Indian child; and

(iii) Finds that the placement of the Indian child complies with the placement preferences as described in ORS 419B.654 (1) or, if not, upon the moving party's motion under ORS 419B.654 (3), the court finds, by clear and convincing evidence, that there is good cause to depart from the placement preferences.

(b) The evidence under paragraph (a) of this subsection must show a causal relationship between the particular conditions in the Indian child's home and the likelihood that custody or continued custody of the Indian child will result in serious emotional or physical damage to the particular Indian child who is the subject of the child custody proceeding, as defined in ORS 419B.603. Evidence that shows the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse or nonconforming social behavior does not, by itself, establish a causal relationship as required by this paragraph.

(c) As used in this subsection, "custody" and "continued custody" have the meanings described in ORS 419B.606.

(5) In a proceeding under this section, the court may receive testimony and reports as provided in ORS 419B.325.

(6) If the court has approved a plan of guardianship under ORS 419B.476, the court may grant the motion for guardianship if the court determines, after a hearing, that:

(a) The ward cannot safely return to a parent within a reasonable time;

(b) Adoption is not an appropriate plan for the ward;

(c) The proposed guardian is suitable to meet the needs of the ward and is willing to accept the duties and authority of a guardian; and

(d) Guardianship is in the ward's best interests. In determining whether guardianship is in the ward's best interests, the court shall consider the ward's wishes.

(7) Unless vacated pursuant to ORS 419B.368, a guardianship established under this section continues as long as the ward is subject to the court's jurisdiction as provided in ORS 419B.328. [2003 c.229 §2; 2007 c.333 §2; 2020 s.s.1 c.14 §44; 2021 c.398 §61]

419B.367 Letters of guardianship; reports by guardian; review of reports; legal status and liability of guardian. (1) Upon granting a motion for guardianship under ORS 419B.366 or upon granting a petition for guardianship under ORS 419B.365, the court shall issue letters of guardianship to the guardian. As provided in ORS 419A.255, a guardian may disclose letters of guardianship when necessary to fulfill the duties of a guardian. Letters of guardianship must be in substantially the following form:

State of Oregon,)

) LETTERS OF

County of _____) GUARDIANSHIP

BY THESE LETTERS OF GUARDIANSHIP be informed:

That on _____ (month) _____ (day), 2____, the _____ Court, _____ County, State of Oregon, appointed _____ (name of guardian) guardian for _____ (name of ward) and that the named guardian has qualified and has the authority and duties of guardian for the named ward including legal custody of the ward, except as provided below.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed the seal of the court at my office on _____ (month) _____ (day), 2____.

(Seal)

_____, Clerk of the Court

By _____, Deputy

(2) If the ward is an Indian child and the court finds that an agreement is in place between the Indian child's tribe and the guardian that requires the guardian to maintain contact between the Indian child and the Indian child's tribe, the order must include the terms of that agreement.

(3) In the order appointing the guardian, the court shall require the guardian to file with the court a written report within 30 days after each anniversary of appointment and may:

(a) Specify the frequency and nature of visitation or contact between relatives, including siblings, and the ward, if the court determines that visitation or contact is in the ward's best interests;

(b) Enter an order for child support pursuant to ORS 419B.400 that complies with ORS 25.275; and

(c) Make any other order to provide for the ward's continuing safety and well-being.

(4) The report required under subsection (3) of this section must:

(a) Contain a summary sheet that:

(A) Identifies the written report and includes the date of submission and the name of the submitting person; and

(B) Is maintained as part of the record of the case under ORS 419A.255 (1);

(b) Be maintained in the supplemental confidential file under ORS 419A.255 (2); and

(c) Contain an affidavit attesting to the accuracy of the report or contain a declaration under penalty of perjury immediately above the signature line of the guardian as follows: "I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury."

(5) (a) Upon timely receipt of a report under subsection (3) of this section, the court shall review the report and maintain the report as described in subsection (4) of this section. The court may:

(A) Direct the local citizen review board to conduct a review;

(B) Subject to the availability of funds, appoint a court visitor and require the visitor to file a report with the court; or

(C) Conduct a court review.

(b) If the court does not receive a report under subsection (3) of this section in a timely manner, the court shall:

(A) Direct the local citizen review board to conduct a review;

(B) Subject to the availability of funds, appoint a court visitor and require the visitor to file a report with the court; or

(C) Conduct a court review.

(6) Except as otherwise limited by the court, a person appointed guardian has legal custody of the ward and the duties and authority of legal custodian and guardian under ORS 419B.373 and 419B.376. A guardian is not liable to third persons for acts of the ward solely by reason of being appointed guardian. [2003 c.229 §3; 2005 c.84 §1; 2007 c.333 §3; 2013 c.417 §6; 2015 c.119 §4; 2015 c.121 §11; 2020 s.s.1 c.14 §45]

419B.368 Review, modification or vacation of guardianship order. (1) The court, on its own motion or upon the motion of a party and after such hearing as the court may direct, may review, modify or vacate a guardianship order.

(2) The court may modify a guardianship order if the court determines to do so would be in the ward's best interests.

(3) The court may vacate a guardianship order, return the ward to the custody of a parent and make any other order the court is authorized to make under this chapter if the court determines that:

(a) It is in the ward's best interests to vacate the guardianship;

(b) The conditions and circumstances giving rise to the establishment of the guardianship have been ameliorated; and

(c) The parent is presently able and willing to adequately care for the ward.

(4) The court may vacate a guardianship order after determining that the guardian is no longer willing or able to fulfill the duties of a guardian. Upon vacating a guardianship order under this subsection, the court shall conduct a hearing:

(a) Within 14 days, make written findings required in ORS 419B.185 (2) and (3)(d) and (e) and make any order directing disposition of the ward that the court is authorized to make under this chapter; and

(b) Pursuant to ORS 419B.476 within 90 days.

(5) In determining whether it is in the ward's best interests to modify or vacate a guardianship, the court shall consider, but is not limited to considering:

(a) The ward's emotional and developmental needs;

(b) The ward's need to maintain existing attachments and relationships and to form attachments and relationships, including those with the birth family;

(c) The ward's health and safety; and

(d) The ward's wishes.

(6) In addition to service required under ORS 419B.851:

(a) A party filing a motion to vacate a guardianship shall serve the motion upon the Department of Human Services.

(b) A party filing a motion to terminate wardship under ORS 419B.328 shall serve the motion upon the department.

(7) Notwithstanding subsection (1) of this section, a parent may not move the court to vacate a guardianship once a guardianship is granted under ORS 419B.365.

(8) If a guardianship is established under ORS 419B.366 and 419B.371, the court shall conduct a court review not later than 60 days before the ward reaches 18 years of age. At the hearing, the court shall inform the ward that after reaching 18 years of age the ward may not be placed in substitute care in the legal custody of the department. [2003 c.229 §4; 2007 c.333 §4; 2007 c.806 §7; 2012 c.86 §3; 2020 s.s.1 c.14 §58; 2021 c.398 §72; 2023 c.125 §3]

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