



Juvenile Dependency Benchmark Series

Shelter Hearing

Prior to the Hearing

1. Read the court report.
2. Make preliminary determination if ICWA applies.
3. Ensure your court has set up a process to appoint attorneys in advance for parents and children, and that they are provided a copy of the report/petition and have an opportunity to meet with their clients prior to the hearing. Consult "Model Shelter Hearing" Protocol for additional details.

Preliminary Matters

4. Provide Notice of Obligations/Rights of Parents Notice (JCIP form based on ORS 419B.117). Appoint counsel on the record and ask if they will waive reading and advice of rights.
5. Identify court report on the record as a document you intend to rely, allow for objections, and mark and receive as an exhibit. ORS 419A.253
6. If child is present, acknowledge him or her first and let parties know if the child should be present for all or just part of hearing.
7. Ask parents and children:
 - a. What language are you most comfortable with?
 - b. Do you understand what this hearing is about?
 - c. Have you gone over the petition with your lawyer?
 - d. If not waived by attorney, read petition and advise parent of rights. ORS419B.117 (see JCIP form)
 - e. What family members or other important people should be involved?
8. Ask DHS:
 - a. Has paternity been established? Child support?
 - b. Is there a putative father (acknowledged paternity but not legally established)?
 - c. If father missing, has DHS: Asked mother, age appropriate child, and other relatives about identity and whereabouts of father and father's relatives? Used search/family finding technology to locate? Checked jail/prison/probation/parole?
9. Determine who else is present and acknowledge them (you may later want to solicit their input on child's needs, placement, and visitation).
Acknowledge that grandparents and foster parents have right to be heard and tell them you will allow them that opportunity at appropriate time. If absent, ask worker if proper notice was given to grandparents and to current care provider if not parent.
10. Appoint CASA if available and out of home placement (recommended highly for teens and children under age 5).
11. Determine if there are other pending cases involving child that should be consolidated with this one. ORS 419B.806
12. Ask all participants, "Do you know, or is there a reason to know, if the child is an 'Indian child' under the Indian Child Welfare Act (ICWA)?" If yes, follow process in "ICWA: Shelter Jurisdiction Benchmark" in conjunction with this benchmark.

The rules of evidence don't apply, except for the rules on relevancy and privilege. ORS 419B.185(1)(b). All evidence considered by the judge needs to be in the record through stipulation, testimony, judicial notice or admitted exhibits.

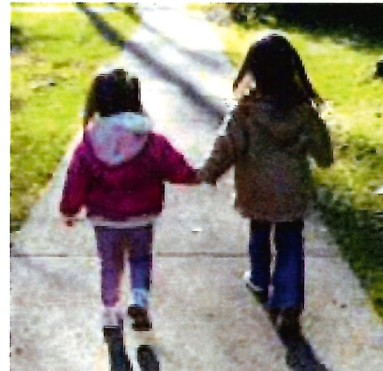
Determine Subject Matter Jurisdiction Under UCCJEA

13. Is this the child's home state or was home state within 6 months of today?

Determine Reasonable Efforts

14. Has DHS made Reasonable Efforts ("RE")?

- a. RE to provide services/support to prevent removal?
- b. Was referral of child and child's family made to Strengthening, Preserving and Reunifying Families Program? ORS 418.595.
- c. Since removal, were RE made to make it possible for child to return home safely?
- d. It is reasonable efforts to make no efforts in an emergency situation.
- e. Does report describe the RE efforts sufficiently? List those efforts in the judgment, or mark the report as exhibit, allow parties to object, adopt as court's written findings, and attach to the judgment. ORS 419A.253



THE THREE BIG QUESTIONS

Can child go home today?

15. Child and parents must be given opportunity to provide evidence that the child can be returned home without further danger of suffering physical injury or emotional harm, endangering or harming others, or not remaining within reach of the court process prior to adjudication.
16. If in child's best interest to be placed at home, how will safety be monitored (safety plan/safety service provider)?
17. Enter Orders regarding Parent(s).
 - a. Safety conditions/reference to voluntary entry into necessary services.
 - b. Enter Juvenile Restraining Order if appropriate.
 - c. Enter order governing conduct of parties e.g. no discussions with child.
 - d. Order for child support if appropriate.

If not, is this the best temporary placement?

18. Make finding that out of home placement in the best interest of child.
19. Determine if this foster placement is the least restrictive and most family-like.
 - a. If not placed in home, did DHS make *diligent efforts* to place with relatives?
 - b. Did DHS make *diligent efforts* to place siblings together?
 - c. If not, order DHS to investigate relatives or family friends; set second shelter. Consider asking relatives and friends present for input.
20. What is the ability of the proposed caregiver to meet the child's physical, emotional, developmental and educational needs, including the child's need to continue in the same school or educational placement?
 - a. Ask parents, DHS, grandparents and foster parents (if present) about child's specific needs, favorite people, toys, comfort items, special medical needs.
 - b. Order DHS to provide immediate appropriate treatment/services for child to address trauma, physical and mental health.
 - c. Address critical developmental needs of children zero to three.
 - d. Discuss older child's school placement and plan to meet educational needs and extracurricular interests. If the plan is to change the child's school, determine whether that is in the child's best interests. ORS 339.133.
21. Grant temporary custody -- usually granted to DHS but statute allows grant of temporary custody to "suitable person."

What is the plan and why?

22. DHS policies require preparation of a *Temporary Visit and Contact Plan* when the child first enters care. Ask about it.
23. The first visit should occur within 48 hours when possible, and no later than one week of the child's entry into care. Consider ordering the first visit if one hasn't been arranged.

24. DHS policy requires development of an *Ongoing Visit and Contact Plan* within 30 days. Ask the worker what that might look like.
25. Visits once a week in office are usually not enough. The child, parent or guardian, and sibling each have a right to visit as often as reasonably necessary to develop and enhance their attachment to each other. Lack of resources is not a justification to limit visits.
26. DHS policy requires that when DHS resources alone cannot meet the family contact and visitation needs of the child the caseworker must solicit help from family resources and the community.
 - a. Ask DHS what it has done to engage relatives/grandparents in assisting with supervision and creating the *Visit and Contact Plan*.
 - b. Ask relatives and friends present for input. How could they provide support?
27. The Court can order DHS to provide a certain number of supervised or unsupervised visits weekly. ORS 419B.337 (3).

Set The Next Hearing

28. Set a second shelter if necessary – no more than a few days to week out.
29. Set non-judicial settlement conference involving attorneys, DHS and clients at 30 days (highly recommended). Set at time just prior to 30-day pretrial conference so court can put admit /deny / dispo on the record if settlement reached.
30. Set a pretrial conference at 30 days (aka *status, pre-hearing, trial readiness*).
31. Set a *very firm* adjudication/disposition date within 60 days of filing. Rarely, if ever, grant continuances for “good cause” under ORS 419B.305 (1). A pending criminal case is generally not considered sufficient cause.
32. The Citizen Review Board (CRB) will set a review at 6 months

Questions?

Contact the Juvenile Court Improvement Program, 503.986.6403

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