

Shelter Hearings

Draft Model Court Team Protocol

This protocol is designed to serve as a guide for local jurisdictions to establish a shelter hearing process which improves efficiency and promotes procedural fairness for parents and children.

Scheduling: Identify a consistent time for shelter hearings.

Although shelter hearings may not occur daily, a set time of day should be identified for shelter hearings so attorneys and caseworkers can plan accordingly. Model court teams should discuss possible systems and appropriate timing to ensure adequate communication and scheduling protocols are in place. For example, a set time of day in the afternoon allows time for discovery to occur, transportation to court, early assignment of attorneys, and time to meet with clients prior to the hearing.

- Orientation and verification: Parents should be required to appear in advance of the shelter hearing so that they can complete eligibility paperwork, meet with their trial attorney, and participate in a local parent orientation if one is available.

Discovery: Establish a schedule, process and priority list.

In order to make shelter hearings efficient, attorneys must have an opportunity to review the petition, protective custody affidavit and related discovery before the hearing.

- Discovery deadline and priority list of documents. The court should establish a reasonable deadline for providing discovery so that attorneys have time for meaningful review and client consultation prior to the hearing. Given the expedited nature of shelter hearings, it can be difficult for DHS to provide all information relevant to the case. However, DHS must disclose all information which will be offered in the shelter hearing. A priority list should be considered. For example:
 - Priority 1: petition and affidavit,
 - Priority 2: documents related to the current removal, and
 - Priority 3: documents related to prior agency involvement.

Timely notice of hearing.

DHS should provide notification of the time and place of the hearing to the parents,

guardians or other person responsible for the child with as much advance notice as practicable in accordance with ORS 419B.160.

Pre-hearing: Encourage parent and child engagement.

- Consultation: Attorneys for parents and children should meet with their clients, when present, in advance of the shelter hearing. These attorneys should plan to be present at least 30 minutes before the shelter hearing.
- Appointment (provisional): Attorneys for parents and children should be provisionally appointed prior to the shelter hearing for the purpose of pre-hearing consultation.
- Child's contact information. The assigned DHS caseworker or state/agency attorney should provide the contact information for the child to the child's attorney.
- Client appointments. Attorneys for parents and children should make a first appointment with their clients.

Shelter Hearing and Order:

- Scope. The parties can maximize court time by focusing on the findings required by ORS 419B.185. The court is not required to determine whether or not the child should have been removed from the home except to the extent that this question is relevant to whether DHS made reasonable or active efforts to prevent the child's removal and whether the provision of reasonable services can prevent the need to separate the family. The court's primary focus is on whether the child can be safely maintained at home pending adjudication of the petition.
- Visitation. Providing a visit soon after removal reduces the trauma of removal. The time to reunification is reduced by frequent, high-quality visits that are tailored to the child's attachment needs. The initial temporary visit and contact plan should be developed and presented by DHS at the time of the shelter hearing. OAR 413-070-0860. Best practice is for the first visit to occur within 48 hours of removal. After hearing from the parties, the court should consider placing the date, time, and location of the first visit in the order.
- Jurisdictional hearing. The court should set the date and time of the jurisdictional hearing to occur within 60 days to ensure the case is heard within the statutory time frame. ORS 419B.305(1).
- Preparation and distribution of order. Best practice is to prepare the order at the hearing and distribute it to the parties before they leave the courthouse.