

# MCLE FORM 1: Recordkeeping Form (Do Not Return This Form to the Bar)

**Instructions:**

Pursuant to MCLE Rule 7.2, every active member shall maintain records of participation in **accredited** CLE activities. You may wish to use this form to record your CLE activities, attaching it to a copy of the program brochure or other information regarding the CLE activity.

**Do not return this form to the Oregon State Bar. This is to be retained in your own MCLE file.**

Name:		Bar Number:	
Sponsor of CLE Activity:			
Title of CLE Activity:		Program Number:	
Date:	Location:		
<input type="checkbox"/> <i>Activity has been accredited by the Oregon State Bar for the following credit:</i>  <input type="checkbox"/> <b>General</b> <input type="checkbox"/> <b>Prof Resp-Ethics</b> <input type="checkbox"/> <b>Access to Justice</b> <input type="checkbox"/> <b>Abuse Reporting</b> <input type="checkbox"/> <b>Practical Skills</b> <input type="checkbox"/> <b>Pers. Mgmt/Bus. Dev.*</b>	<input type="checkbox"/> <b>Full Credit.</b> <i>I attended the entire program and the total of authorized credits are:</i>  <input type="checkbox"/> <b>General</b> <input type="checkbox"/> <b>Prof Resp-Ethics</b> <input type="checkbox"/> <b>Access to Justice</b> <input type="checkbox"/> <b>Abuse Reporting</b> <input type="checkbox"/> <b>Practical Skills</b> <input type="checkbox"/> <b>Pers. Mgmt/Bus. Dev.*</b>	<input type="checkbox"/> <b>Partial Credit.</b> <i>I attended _____ hours of the program and am entitled to the following credits*:</i>  <input type="checkbox"/> <b>General</b> <input type="checkbox"/> <b>Prof Resp-Ethics</b> <input type="checkbox"/> <b>Access to Justice</b> <input type="checkbox"/> <b>Abuse Reporting</b> <input type="checkbox"/> <b>Practical Skills</b> <input type="checkbox"/> <b>Pers. Mgmt/Bus. Dev.*</b>	

**\*Credit Calculation:**

One (1) MCLE credit may be claimed for each sixty (60) minutes of actual participation. Do not include registration, introductions, business meetings and programs less than 30 minutes. MCLE credits may not be claimed for any activity that has not been accredited by the MCLE Administrator. If the program has not been accredited by the MCLE Administrator, you must submit a Group CLE Activity Accreditation application (See MCLE Form 2.)

**Caveat:**

If the actual program length is less than the credit hours approved, Bar members are responsible for making the appropriate adjustments in their compliance reports. Adjustments must also be made for late arrival, early departure or other periods of absence or non-participation.

\*Personal Management Assistance/Business Development. See MCLE Rule 5.12 and Regulation 5.300 for additional information regarding Category III activities. Maximum credit that may be claimed for Category III activities is 6.0 in a three-year reporting period and 3.0 in a short reporting period.

**Family Law 101**  
 Everything I wish somebody had told me.  
 Oregon New Lawyers Division - June 22, 2019

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**About Tory**

- From the great state of Florida;
- Moved to Oregon to attend Willamette University – focus on environmental law;
- Worked for a mediation/consulting firm specializing in environmental issues;
- Moved over to family law because family law is FUN;
- Currently at Goldberg Jones PLLC
- Love dogs

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**About Hank**

- From the great state of Montana;
- Graduated from Loyola University College of Law;
- Moved to Oregon after law school;
- Worked in family law from beginning;
- Multnomah County Child Advocacy Project – child’s attorney;
- Currently at Goldberg Jones PLLC;
- Still plays pogs;

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### Oregon New Lawyer Mentor Program

- Highly recommend;
- I was paired with Mike McGrath, partner at Gearing, Rackner & McGrath – huge help for my never-ending list of questions; I still reach out to him from time to time, a great resource.
- If you have not yet been paired, do it, and specifically request a family law attorney.

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### The Basics

- Divorce
- Custody/Parenting Time/Child Support
- Paternity
- Grandparent's Rights – Emotional Ties statute 109.119

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### Divorce

- First question to ask – kids or no kids?
- Children are the most important component to any case – so spend time talking through custody and parenting time issues.
- Should you file for temporary relief? ORS 107.095
- Is there a status quo parenting arrangement in place? ORS 107.138
- Is this a spousal support case?
- Just & equitable distribution of marital assets/debts.
- Other minor details: who claims the child as a dependent? Is life insurance being requested for the duration of support? Did client take the parenting class and attempt mediation?
- Keep perspective: "divorce creates a problem, not a contest, and although contests require winners and losers, problems require solutions." Be a problem solver, not creator.

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### Initiating Pleadings Dissolution

- Petition;
- Notice of Confidential Information Form (CIF);
- CIF for Petitioner & Respondent;
- Certificate of Pending/Existing Child Support (if kids);
- Vital Statistics Form;
- Summons;
- Motion/Declaration/Order for Pre-judgment Status Quo (if applicable)
- Motion/Declaration/Order for Temporary Relief 107.138
- Acceptance of Service or personal service? Pros/Cons for each.

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### Responding to Petition

- 30 days to respond; triggers trial date/mediation notices
- ORCP 69 Notice of Default; (side note: defaults *typically* get aside, especially if parties are pro se)
- I like to send a formal Request for Production with Response;
- If acquiring a case after a client has already filed a petition or response, go in to OECL to double check that petition/response.
- Often our clients fail to ask for things (e.g. attorney fees) when they are filling out pleadings themselves – you will almost always certainly have to amend their petition or response.

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### ORS 107.138 Status Quo

- Pre-judgment status quo allows a party to lock in residence of children and routine.
- Different judges have different views of what the statute requires. Some interpret ORS 107.138 to require that the parties have followed a parenting time routine for at least 90 days.
- The 90 day requirement comes from the language: "Child's usual place of residence" means the place where the child is living at the time the motion for the temporary order is filed and has lived continuously for a period of three consecutive months, excluding any periods of time during which the noncustodial parent did exercise, or would otherwise have exercised, parenting time.
- Room for interpretation on 90-day rule
- If pre-judgment, Order can be presented at ex parte. In Mult. Co. if service of petition has occurred, must schedule a hearing.
- Post-judgment SQ always require Show Cause Order.

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### ORS 107.095 Temporary Relief

- Temporary Relief statute (pendente lite) – for divorce and/or custody/parenting time cases
- Often when children are involved or when a spouse is financially dependent on another – a party will seek temporary relief.
- These hearings are incredibly important – you often are arguing the main custody, parenting time and/or spousal support points you would if it were the final trial. Mediation should be attempted prior to these hearings if possible.
- Types of temporary relief: custody, parenting time, child support, spousal support, exclusive use/possession of real or personal property – including payment of liens/encumbrances, suit money, attorney fees.

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### Custody factors 107.137

- Court looks at best interests and welfare of child when determining custody – considers 6 factors;
- 107.137(e) & (f) most often result in determination of which parent shall have custody. (primary parent preference & ability to facilitate close/continuing relationship with non-custodial parent);
- Is custody really that important? Often times client's confuse custody with parenting time and when they realize they might not have custody, but have equal parenting time – custody becomes less of an issue.
- When is custody important?
  - Whoever has custody makes decisions regarding a child's medical, educational and religious needs. This can take the form of: what school the child attends, if the child is in need of an IEP plan, whether child should take ADD medication, attending a certain church.
- When is joint custody appropriate?
  - Court cannot order joint custody, parties must agree to this.

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### Parenting Plans

- The court looks what is in the child's best interests when creating a parenting plan.
- For younger children, an equal parenting time plan may not be appropriate if a child is very attached to one parent and/or still breast feeding, needing frequent naps/meals.
- Courts generally want all children to have frequent ongoing contact with both parents. ORS 107.105(1)(b)
  - The court shall recognize the value of close contact with both parents and encourage, when practicable, joint responsibility for the welfare of such children and extensive contact between the minor children of the divided marriage and the parties.
- For young children (under age 4) this can take the form of blocks of hours for visitation with overnights commencing once the child is no longer breastfeeding. Again, every family/child is different. I've had cases where 2-5 year old spend 2-3 nights with non-custodial parent.
- Try to avoid ambiguous parenting plans, inevitably those parties will be back in court if the parenting plan is not structured and allows parties to determine the schedule.
- The point of a parenting plan is to provide parents and children with routine/consistency and avoid future conflict/disputes.

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### Which parenting plan to choose?

- Every family is different –there is no one size fits all parenting plan.
- When advising a client, you can refer the Birth through Three Guidelines prepared by Multnomah County when devising a parenting plan for a young child:  
<https://www.courts.oregon.gov/programs/family/children/Documents/BirthThroughThree.pdf>
- Some counties, like Marion County, recommend parenting plans in their SLRs. Always check the SLR to see what that county recommends. Marion County SLR 8.075
- Another great resource – Planning for Parenting Time- a guide from Arizona.  
<https://www.azcourts.gov/portals/31/parentingTime/PPWguidelines.pdf>

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### Child Support

- Sit down with client and review the Oregon Child Support Calculator.
- Guideline amount is based on many factors: gross income, overnights, childcare costs, healthcare costs, non-joint children, spousal support, union dues, disability/SS, etc.
- Amount is presumed correct, but parties can rebut guideline amount under OAR 137-050-0760 / ORS 25.280; burden on party requesting rebuttal to show finding is unjust/inappropriate.
- How is support paid? Typically through income withholding (ORS 25.378)– but parties can elect not to initiate wage withholding pursuant to ORS 25.396.

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### Spousal Support 107.105

- 3 types: Compensatory, Transitional, Maintenance.
- 107.105(1)(d)(A) transitional support as needed for a spouse to attain education/training to allow them to reenter job market.  
Factors:
  - The duration of the marriage;
  - A party's training and employment skills;
  - A party's work experience;
  - The financial needs and resources of each party;
  - The tax consequences to each party;
  - A party's custodial and child support responsibilities; and
  - Any other factors the court deems just and equitable.

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### Maintenance spousal support

- ORS 107.105(1)(d)(C) contribution by one spouse for support of the other for specific duration or indefinite period. Factors:
  - The duration of the marriage;
  - The age of the parties;
  - The health of the parties, including their physical, mental and emotional condition;
  - The standard of living established during the marriage;
  - The relative income and earning capacity of the parties, recognizing that the wage earner's continuing income may be a basis for support distinct from the income that the supported spouse may receive from the distribution of marital property;
  - A party's training and employment skills;
  - A party's work experience;
  - The financial needs and resources of each party;
  - The tax consequences to each party;
  - A party's custodial and child support responsibilities; and
  - Any other factors the court deems just and equitable.

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### Compensatory spousal support

- ORS 107.105(1)(d)(B) significant financial contribution by one spouse to the education/training/vocational skills/career or earning capacity of the other spouse. (E.g., support spouse in med school); Factors:
  - The amount, duration and nature of the contribution;
  - The duration of the marriage;
  - The relative earning capacity of the parties;
  - The extent to which the marital estate has already benefited from the contribution;
  - The tax consequences to each party; and
  - Any other factors the court deems just and equitable.
- See case: In re: Marriage of Harris, 224P.3d801, 349 Or.393 (2010)

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### So, how do I calculate spousal support?

- That's what attorneys are for – the rule of thumb being 25% of the difference in incomes between the parties for half the length of marriage.
- I will note this was the rule of thumb prior to the change in the tax law. As of 2019, spousal support is no longer considered taxable income to the receiving party and IS taxable (ie cannot be deducted) to the party paying support. (Side note: child support is not considered taxable income to payee or deductible by payor.)
- This change in the law means those who are paying spousal support no longer receive the tax benefit of deducting alimony payments – therefore many attorneys argue that the ROT percentage should be less than 25%.
- Consider lump sum payouts of spousal support if a client is looking at paying support. This alleviates the concern of modifying it in the future.
- If child support/spousal support is contested – each party is required to file a Uniform Support Declaration UTCR 8.010(5) (filed 14 days before the hearing unless SLR states otherwise)

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### Asset/Debt division

- Just & Equitable standard for property/debt division.
  - Non-marital property excluded;
  - Student loan debt – how to factor in?
- UTCR 8.010(3) – each party required to file and serve on other party a statement listing all marital and other assets/liabilities, claimed value for each and proposed distribution
- See sample 8010
- Kunze and Kunze 337 Or. 122 (2004) – and rebutting presumption of equal contribution. When non-marital assets commingle with marital assets, classic example – inheritance used as down payment for marital home.

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### Custody, Parenting Time, Child Support

- Establishing custody, parenting time and child support for non-married parents.
- First question, is paternity established? 109.065/109.070
  - If not, proceed with filiation case.
- ORS 109.103 implicates 107.094-107.449; 107.755-107.795 for custody cases. Meaning, a party can request the same relief under those statutes in a custody case that they would in a divorce case, e.g. 107.095 temporary relief.
- Initiating pleadings are largely the same, you do not need to fill out a Vital Statistics Form, but are required to do a Petition for Custody, PT, CS, ClFs, Notice of ClF, Certificate of CS, & Summons
- Analysis from previous slides re: custody, pt and child support is the same.

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### Child Support Arrears

- Main question I see is – how much and how far back can child support go at the initiating phase?
- It is at the discretion of the court – 107.105(3)(c) – the court may provide for child support and the judgment may include an amount of support as requested in the petition filed under ORS 107.095, or ORS 107.095 for which a limited judgment was not entered, payment of which commences no earlier than the date of the petition or motion being served on the non-requesting party.
  - Typically if a party is served in the middle of the month, the earliest child support can commence is the first of the following month.
  - Parties can defer child support arrears issue in limited judgment
  - I've had judges decline back child support dating back to service for the reason they do not like to burden a party with excessive debt – other judges have stated that the other party should have been paying some support during this time.
  - Tip: I advise parties to contribute financially to the child while the case is pending to illustrate to the court they are taking financial responsibility for the child.
- Start date of arrears is different in filiation cases.
- Does legal doctrine of laches apply?
- Post-judgment: ORS 18.180(c) states: Judgment remedies for the child support award portion of a judgment, and any lump sum support award for child support, expire 35 years after the entry of the judgment that first establishes the support obligation.

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### Filiation Proceedings— aka Paternity

- ORS 109.124-109.124
- Paternity means: legally establishing a person not married to the mother of a child at time of child's birth as the legal father of that child.
- Ways paternity is established: ORS 109.065
  - Child born during marriage;
  - Child born 300 days after termination of marriage by death, annulment, divorce, legal separation;
  - Voluntary Acknowledgement of Paternity – amending birth certificate;
  - If no agreement between parties – father or Oregon can establish paternity through court proceedings;
- Filiation proceedings – in filiation proceedings party can request child support for “past and present support” – meaning the father could potentially pay child support dating back to birth.
- Once paternity is established – under ORS 109.375 legal custody goes to the parent with physical custody at the time of filing the petition – at the time the court later determines who has custody, neither parent has burden of change of circumstances.
  - Filiation statute does not specifically discuss parenting time – only legal custody and child support, under ORC 109.355(a) the court can determine appropriate relief after paternity established – as a possible way to order a parenting plan.

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### Third Party/ Grandparents' Rights

- Oregon law presumes that legal parents act in the best interests of their child/ren. 109.119(2)
  - Findings of Fact require rebutting presumption
- Any person (grandparents, stepparents, or relative by blood of marriage) must overcome the presumption.
- ORS 109.119 – rights of person who establishes emotional ties creating child-parent relationship or ongoing personal relationship
- To establish custody as a TP/grandparent, show the “child-parent relationship”
- To establish visitation as a TP/grandparent, show the “ongoing personal relationship” exists with the child
- Petition under ORS 109.119 or motion for intervention (ORCP 33) to be filed

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### Child-parent relationship ORS 109.119

- ORS 109.119 states that to establish child-parent relationship, the individual had **physical custody** of the child for **6 months** prior to filing and the child **resided in the same house**, made food, clothing, shelter and necessities available to the child and provided the child with care, education and discipline...fulfilling the child's **psychological needs for a parent as well as physical needs**.
- Elements to prove a request for third party custody and child parent relationship:
  - Legal parent is unwilling or unable to care adequately for the child;
  - Petitioner or intervenor is or recently has been the child's primary caretaker;
  - Circumstances detrimental to the child exist if relief is denied;
  - The legal parent has fostered, encouraged or consented to the relationship between the child and petitioner/intervenor; or
  - The legal parent unreasonably denied or limited contact between the child and the petitioner/intervenor

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1. Time

2. Place

3. Acts

1. -> a relationship that exists or did exist, in whole or in part, within the six months preceding the filing of an action

- which relationship continued on a day-to-day basis
- **Entire six months? Or part of six months?**

2. -> a person having physical custody of a child or residing in the same household as the child

3. -> • supplied, or otherwise made available to the child, food, clothing, shelter and incidental necessities

- provided the child with necessary care, education and discipline
- through interaction, companionship, interplay and mutuality, that fulfilled the child's psychological needs for a parent as well as the child's physical needs

NOT

- Unrelated foster parent for less than 12 months
- Providing child care while parent works. *Jensen v. Bevard, 215 Or, App 215, 218,(2007)*

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Ongoing personal relationship

- 109.119(10)(e) – "means a relationship with substantial continuity for at least one year, through interaction, companionship, interplay and mutuality."
- Troxel v. Granville – WA law struck down at SC level allowing third party to petition court for visitation rights over objections of parents.
  - Special weight given to a fit parent's decision to deny non-parent visitation
  - Any person may petition for visitation at any time, not limited to custody proceedings – the court may order visitation for any person when it is in the child's best interests whether or not there has been a change in circumstances

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ORS 109.119(2) – The Hurdle

- **The Presumption:** "[T]here is a presumption that the legal parent acts in the best interests of the child."
- **Findings of Fact Required:** "[T]he court shall include findings of fact supporting the rebuttal of the presumption . . ."

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ORS 109.119(2) & - (3)  
How to Obtain Visitation Rights

- Child-Parent Relationship**
- Rebut presumption by preponderance of the evidence
  - ("greater weight of the evidence")
  - Visitation in child's best interests
- Ongoing personal relationship**
- Rebut presumption by clear and convincing evidence (the facts are "highly probable")
  - Visitation in child's best interests

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ORS 109.119: Comparison of Rebuttal Factors in Visitation and Custody Cases – Non Exclusive Factors/Totality of the Evidence

Factor	Visitation ORS 109.119(2)(3)	Custody ORS 109.119(3)(3)
The petitioner/interlocutor is or recently has been the child's primary caregiver	X	X
The legal parent is unwilling or unable to care adequately for the child		X
Circumstances detrimental to the child exist if relief is denied (psychological, emotional or physical harm)	X	X
The legal parent has fostered, encouraged or consented to the relationship between the child and the petitioner/interlocutor	X	X
Granting relief would not substantially interfere with the established relationship	X	
The legal parent has intentionally denied or limited contact between the child and the petitioner/interlocutor	X	X
The legal parent has fostered, encouraged or consented to the relationship between the child and the petitioner/interlocutor	X	X

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ORS 109.119: Procedural Considerations

- Existing Case?**
- Motion to Intervene
  - ORCP 33 governs
- No Existing Case?**
- Petition for visitation or custody

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Modification Proceedings: Epler & Epler & Graunitz

- Court of Appeals issued this *en banc* plurality decision on September 11, 2013
- **HELD:** ORS 109.119 only applies in an original action for third party custody. If a parent seeks custody of the child in a modification action, ORCP 71C provides the authority to modify, there is no presumption that a fit parent acts in the child's best interests, and the parent must show there has been a substantial and unanticipated change in circumstances related to the parties' capacity to care for the child.
- **PRACTICE TIP:** When crafting a judgment awarding custody to a third party on behalf of a parent, include provisions automatically triggering a change in custody. The provision should state that the triggering provision constitutes a substantial and unanticipated change in circumstances.

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Precedent & Further Reading

1. *O'Donnell-Lamont and Lamont*, 337 Or 86, 91 P3d 721 (2004), cert. den., 199 Or App 90 (2005), 125 S Ct 867 (2005), CA A112960.
2. *Meador v. Meador*, 194 Or App 31 (2004), CA A120628.
3. *Van Driesche and Van Driesche*, 194 Or App 475 (2004), CA A118214. [This was the first post - *Lamont* (Supreme Court) case.]
4. *Sears v. Sears & Boswell*, 198 Or App 377 (2005), CA A117631.
5. *Dennis and Dennis*, 199 Or App 90 (2005), CA A121938.
6. *Nguyen and Nguyen*, 226 Or App 183 (2009), CA A138531.

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# Juvenile Dependency 101

Presented by:  
**Yvana Mols,**  
 Hillsboro Law Group, PC  
 and  
**Mae Lee Browning,**  
 Cohen and Browning, PC

ONLD SuperSaturday  
 June 22, 2019

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**Juvenile Law =  
Dependency and Delinquency**

- Dependency - Language in the petition that specifies the conditions and circumstances that justify the court taking jurisdiction of the child. Most often in a dependency petition this will detail the abuse or neglect the child has suffered or the situation or condition of the parent that is causing the abuse or neglect and that needs to be changed.
- Delinquency - In a delinquency petition the allegations are the acts the youth is accused of that would be a crime if committed by an adult.

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**Juvenile Dependency in context**

- Not criminal law (though can overlap in cases of criminal mistreatment, sex abuse, etc.)
  - Warrants are not issued for parties' failure to appear, DHS just gets what they want (custody of child)
  - Burden of proof on the state, but lower (skewed toward protecting children)
  - Relaxed rules of evidence
- Not civil law (though can overlap with domestic relations cases, parenting time, custody)
- Federal law dictates timelines, standards of proof, jurisdiction
  - Adoption and Safe Families Act (ASFA) adopted in every state so state agencies receive federal funding—imposes 15/22 mo in care timeline on permanency plan
  - Indian Child Welfare Act (ICWA) imposes heightened BOP for cases involving "Indian Children" (clear and convincing evidence), as well as additional requirements on agency (must make active efforts to reunite family)
  - Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) indicates which state should have jurisdiction (ORS 109.701 et seq.)

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### DHS CWS CPS ABCDEFG

- Department of Human Services (DHS) is a state agency with 6 divisions.
- Child Welfare Services (CWS) is one of those divisions.
- The program within CWS that focuses on investigation of child abuse and neglect is Child Protective Services (CPS).
- CPS means a specialized social service program that Child Welfare provides on behalf of children or, when applicable, young adults who may be unsafe after a report of abuse is received. OAR 413-015-0115(6).
- ORS 418.005 grants to DHS in connection with child welfare the power to make all necessary rules and regulations for administering child welfare services. DHS CPS rules are found in OAR 413-015-0100 through 413-015-1230.

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### DHS CWS – Some numbers

- Child Welfare receives about 80,000 hotline calls per year.
  - Of those 80,000, DHS knocks on doors in about 35,000 to 40,000 of those cases.
    - Of those 35,000 to 40,000 door knocks, DHS will find that “abuse” occurred in about 7,000 of those cases.
      - Of those 7,000 cases, about 30% of children in those cases are removed from the home.

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### DHS Hotline Calls and Follow-up

- If the report is made to DHS (commonly referred to as “the hotline” or a “hotline call”), the call is received by a screener affiliated with CPS.
- The screener makes a decision about whether the call merits follow-up.
  - If it does, whether it needs an immediate response or a five-day response.
  - All calls to CPS are documented and the initial determinations by the screener about how to proceed will be reflected in a screening report usually a couple pages in length.
  - If the screener determines that a case needs an immediate response or five-day response, then the matter is assigned to a CPS unit and a CPS worker is put in charge of the assessment subject to the supervision of a unit supervisor.

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### DHS and LE Cross-reporting

- LE = Law enforcement
- Mandatory reporters of child abuse and neglect must report to DHS or to a law enforcement agency. 419B.015(1)(a).
- Child Welfare and LE agencies are required by ORS 419B.015 to notify each other when a report of abuse, as defined in ORS 419B.005 or Oregon Laws 2017, chapter 733, is received. This process is known as cross reporting, and the notification is called a cross report. OAR 413-015-0300 to 413-015-0310 explain when and how a report of abuse received by Child Welfare or a law enforcement agency is cross reported. Information is not cross reported until it is received. OAR 413-015-0300. See OAR 413-015-0305(1)(a) and (b).

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### Child Abuse – Some definitions

PHYSICAL ABUSE - Any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be in variance with the explanation provided.

MENTAL INJURY - Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function, caused by cruelty to the child; with due regard to the culture of the child.

SEXUAL ABUSE - Sexual abuse, including but not limited to rape, sodomy, sexual abuse, sexual penetration with a foreign object and incest.

SEXUAL EXPLOITATION - Sexual exploitation, including but not limited to contributing to the sexual delinquency of a minor, involving the child in pornography, allowing, encouraging or hiring a child to engage in prostitution.

NEGLECT - Negligent treatment or maltreatment of a child, including but not limited to the failure to provide adequate food, clothing, shelter or medical care.

THREAT OF HARM - Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.

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### Resources

- Benchbook
  - <https://web.courts.oregon.gov/JuvenileBenchBook.nsf?OpenDatabase>
  - A guide for juvenile court judges and referees.
- Bar Book
  - Juvenile Law: Dependency (2017 edition)
  - Oregon Trial Objections (2009 edition)
- JCIP (Juvenile Court Improvement Project) Forms
  - <https://www.courts.oregon.gov/programs/jcip/ModelCourtForms/Pages/default.aspx>
- DHS CW Procedure Manual
  - [http://www.dhs.state.or.us/cwf/safetv\\_model/procedure\\_manual/Child-Welfare-Procedure-Manual-2019-v8.pdf](http://www.dhs.state.or.us/cwf/safetv_model/procedure_manual/Child-Welfare-Procedure-Manual-2019-v8.pdf)
- DHS OARs
  - [http://www.dhs.state.or.us/policy/childwelfare/cross\\_index.htm](http://www.dhs.state.or.us/policy/childwelfare/cross_index.htm)

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## Resources – ORS and OARs

- [ORS Chapter 40](#) Evidence Code
- [ORS Chapter 109](#) Parent and Child Rights and Relationships
- [ORS Chapter 418](#) Child Welfare Services
- [ORS Chapter 419A](#) Juvenile Code: General Provisions and Definitions
- [ORS Chapter 419B](#) Juvenile Code: Dependency
- Child Welfare Administrative Rule Index
  - [http://www.dhs.state.or.us/policy/childwelfare/cross\\_index.htm](http://www.dhs.state.or.us/policy/childwelfare/cross_index.htm)

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## Resources - Federal Laws and Regulations Generally

- [Social Security Act, Title IV-E](#) (See Part E - Federal Payments for Foster Care and Adoption Assistance)
- [45 CFR Chapter XIII, Subchapter G-](#) The Administration on Children, Youth and Families, Foster Care Maintenance Payments, Adoption Assistance, and Child and Family Services (Code of Federal Regulations Implementing Title IV-E)
- [Indian Child Welfare Act](#)
- Bureau of Indian Affairs, [Guidelines for State Courts](#); Indian Child Custody Proceedings
- [Children's Bureau Child Welfare Policy Manual](#)

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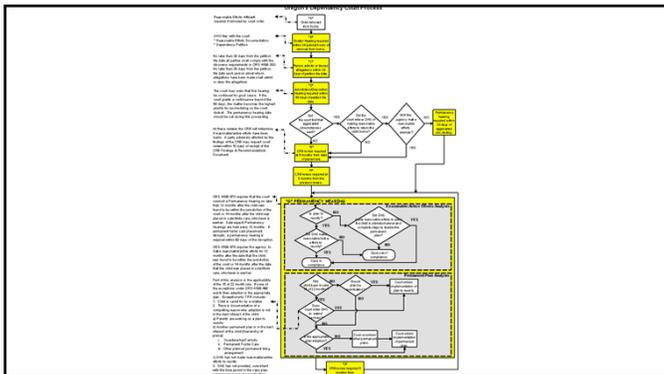
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### But I'm the Kid's attorney

- Visit Visit Visit
  - Visit with child in home every 3 months, and as soon as possible after a change in placement
- Ascertain child's goals
  - For older children, they may be able to articulate what they want. Advocate for THAT (no substituted judgment about what YOU think is best)
  - For younger children, some assumptions are required—that they want to be with parents if safe and sustainable, otherwise with family—similar assumptions that court will make.

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### Dependency Cases – The Stages

- Shelter Hearing
- Settlement & Admit/Deny
- Jurisdiction
- Disposition
- Permanency
- Review Hearings
- (Motion to Dismiss)
- TPR (Termination of Parental Rights)

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### Burdens of Proof

“PROBABLE CAUSE” - Some reason to believe that an allegation is true; the amount of proof necessary to prevent dismissal of a petition prior to trial.

“PREPONDERANCE OF THE EVIDENCE” - More likely true than not true; the amount of proof necessary to establish jurisdiction or to establish a fact as proven in a review hearing in a non-Indian Child Welfare Act Case.

“CLEAR AND CONVINCING EVIDENCE” - Between “preponderance” and “beyond reasonable doubt;” the amount of evidence necessary to establish jurisdiction in an Indian Child Welfare Act case or to terminate parental rights in a non-Indian Child Welfare Act Case.

“BEYOND A REASONABLE DOUBT” - The highest burden of proof; the amount of evidence necessary to terminate parental rights in an Indian Child Welfare case and to find a youth within the jurisdiction of the court on a delinquency petition.

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### The Shelter Hearing – What is it?

- Must happen within 24 hours (next business day) of removal of child from the home.
- Rules of evidence do not apply. The court can consider anything that is relevant to the determinations and findings in ORS 419B.185 with the exception of privileged communicaitons. ORS 419B.185(g).
- Attorneys are notified with very short notice—typically by 11 am for a 1:30 hearing time, and very little information—a petition with the allegations, a protective custody report, and any supplemental information (police reports, prior DHS cases, treatment records)
- At a shelter hearing, the three big questions are: 1. Can the child go home that day? 2. If not, is the out of home placement the best temporary placement? and 3. What is the visitation plan and why?

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### The Shelter Hearing – DHS and State’s Burdens

- BOP: preponderance of the evidence unless if ICWA, then clear and convincing
- DHS is required to present written documentation to the court outlining:
  - Efforts made to prevent removal and enable the child to return home. ORS 419B.185(2)(a).
  - Efforts to place the child, with relatives and other persons with whom the child has a caregiver relationship, pursuant to ORS 419B.192. ORS 419B.185(2)(b).
  - Why protective custody is in the child’s “best interest”. ORS 419B.185(2)(c).

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### The Shelter Hearing – DHS’s efforts

- DHS has to make diligent efforts to place the child with relatives and to place siblings together.
- The foster placement has to be the least restrictive and most family-like.
- If the child or children is placed in a foster placement not with relatives or family friends at the first shelter hearing, you can ask for a second shelter hearing and ask the court to order DHS to investigate those relatives or family friends your client suggested (and you approved of).
- A second shelter hearing is usually set a few days to a week after the first shelter hearing.

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### The Shelter Hearing – Placement options

- DHS can ask to/for:
  - take temporary custody of the child and place the child with the parents
  - insist that one parent move out of the residence
  - place the child in substitute care with relatives, place the child in substitute care with foster parents, or
  - place the child in a treatment setting.

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### The Shelter Hearing – Visitation

- Depending on the situation, sometimes supervised visitation between your client and the child will be ordered by the court.
- DHS can provide supervision, but they usually do so only once a week in the DHS office, which is not an ideal location for the child and the parent.
- Children, parents, and siblings have the right to visit each other as often as reasonably necessary to develop and enhance their attachment to each other, so that is something you might want to advocate for.
- DHS's lack of resources is not a good enough reason to limit visits.
- The court can order DHS to provide a certain number of supervised and unsupervised visits weekly.

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### The Shelter Hearing – The Parents

- Parents appear at hearing totally overwhelmed, unsure what is happening, and in the midst of the worst day of their lives.
- Parents can stipulate to shelter (placement of child) without admitting the allegations or proceed to contested shelter hearing.
- Court can order in-home placement of child.

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### Settlement & Admit/Deny

- Differs from county to county
- Pre-trial conference where parties meet to discuss possible resolutions to the case and then the settlement conference where parties go on the record before the judge. (PTC/SLC)
- Things discussed:
  - What allegations will DHS pursue or drop?
  - Negotiation of language of the specific allegations.
  - What services will DHS seek?
- Parents can resolve their case in one of three ways:
  - Make admissions to allegations in the petition
  - Propose revised language to allegations in the petition
  - Deny allegation (triggering trial on that allegation if State is unwilling to dismiss)

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### What's going on with DHS during this time?

- DHS will submit reports to the court.
- Between 60 to 90 days after DHS received custody of the child and initiation of a juvenile court case, primary responsibilities for supervision of the case will switch from the CPS worker to an ongoing services worker or permanency worker.
- In some complex cases where it is more than two or three months to adjudication or contested hearing, a CPS worker will remain on a case for the adjudicative aspects and an ongoing services or permanency worker for the case management aspect.

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### Jurisdiction - Procedure

- Required within 60 days of the date the Petition was filed.
  - Court may continue the case upon written order of "factual findings of good cause." ORS 419B.305(4).
- BOP: preponderance of the evidence unless if ICWA, then clear and convincing
- Rules of evidence apply.
- If the court finds that the allegations in the Petition are true, then the child is within the jurisdiction of the court and becomes a "ward" of the court. ORS 419B.328; ORS 419A.004(33).
- Jurisdiction attaches at the initiation of the proceeding so a court can still have jurisdiction over the child even if the child turns 18 before wardship is established.

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**Jurisdiction – What is it about?**

- Purpose of the jurisdictional hearing is to resolve the Petition alleging that the child is within the jurisdiction of the juvenile court under ORS 419B.100.
- Jurisdiction can be based on the child being beyond control of the parents, the parents having failed to provide the care, guidance, and protection necessary for the physical, mental, or emotional well-being of the child, or subjecting the child to cruelty, depravity, or unexplained injury.
- The most common jurisdictional basis under ORS 419B.100(1) is that the child’s behavior, conditions, or circumstances are such as to endanger the child’s welfare the welfare of others.

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**Jurisdiction – What must the State show?**

- The State must show that there is a current threat of serious loss or injury to the child, that there is a nexus between the allegedly risk causing conduct and harm to the child, and that the risk is present at the time of the hearing.

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**Disposition**

- Once jurisdiction is established, the court can order the parents into appropriate services that will allow them to work towards reunification.
- Rules of evidence do not apply.
- Any service or condition required in order for the child to be returned home must bear a “rational relationship” to the basis of jurisdiction. ORS 419B343(1)(a) and (2)(a).
- At disposition, the court determines the child’s placement, legal custody, and guardianship; services for the parents; services for the child; visitation with parents and siblings; and appropriateness of the concurrent plan. ORS 419B.325 to .352.

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### Disposition: Ordering DHS Action Agreements

DHS is prepared with action agreements for parties: asking court to order services related to the allegations in the petition

- Substance Abuse: participate in ART (Addiction Recovery Team) or FIT screen, do substance abuse treatment at level recommended
- Mental Health: Psych Eval, mental health treatment
- Domestic Violence: DV assessment, Batterers/Victim classes
- Standard: Parenting Classes, Visitation, Participate with caseworker, Safe/appropriate housing

**PRACTICE NOTE:** They will ALWAYS ask for a psych eval. They should only GET one if there is a Mental Health allegation admitted/proved OR a "failure of previously ordered services"

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### After Disposition...

- Next hearings/meeting/reviews:
  - Review Hearing (at juvenile court): 6 months following shelter hearing
  - Family Decision Meeting (at DHS): 1 month following jurisdiction, additional as needed
  - Citizen Review Board (at DHS): 6 months following removal of child from home (if child remains in out of home placement)
  - Permanency Hearing (at juvenile court): 12 months following shelter hearing, and every 3-6 months thereafter until permanency is achieved
- Working the case
  - Assist in client communication with DHS, if needed
  - Encourage client participation in action agreement

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### Review Hearings

- Rules of evidence do not apply
- Any party can move for a review hearing. If the child moves for one, it must be granted.
- Some action require a review hearing:
  - Removal from trial home visit or permanent placement
  - Removal resulting in change of school
  - Removal resulting in child being sent out of state

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### Citizen Review Board (CRB)

- CRB is a local board of trained volunteers who reviews the progress of cases of children who are in substitute care. The board is appointed by the Chief Justice of the Oregon Supreme Court, upon recommendation by the local presiding judge. The board reviews dependency and delinquency cases if a child found within the jurisdiction of the court is placed out of their home in a non-secure setting. The findings and recommendations of the CRB are forwarded to the court.
- CRB hearing is scheduled at the six-month mark.
- CRB will determine if the agency has made reasonable efforts.
- A party adversely affected by the findings of the CRB may request court review within 10 days of receipt of the CRB findings and recommendations document.

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### Permanency

- Required no later than 12 months after the child was found to be within the jurisdiction of the court or 14 months after the child was placed in substitute care, whichever is earlier. ORS 419B.470.
- Subsequent permanency hearings are scheduled every 12 months unless the foster care placement is disrupted, then a permanency hearing is required within 90 days of that foster care disruption.
- Rules of evidence do not apply.
- The state should have a best interest evaluation.

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### Permanency

- The permanency plan for the child at the time of the first dispositional hearing is reunification.
- If the child is in substitute care, DHS is required to develop a concurrent plan in case the parent is not able to adjust their conditions or circumstances to make it safe for the child to return home within a reasonable time. ORS 419B.343(2)(b); OAR 413-040-005(5); 413-040-0010. Most commonly, DHS will state that the concurrent plan is adoption.
- If State moves to change plan from reunification, parents can stipulate or object. If parents object, then contested perm hearing.

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### Case is a year old—what’s next?

- Parent/parents doing great—completed or nearly completed services
  - Only need one parent who is ready
  - Get children transitioned home, with court order if DHS is dragging
- Check to make sure parent(s) can continue to access housing/services without DHS
- Ask for dismissal (by motion upon agreement by all parties, or at court)—domestic relations order not required, but preferred if one parent is still not safe

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### Motion to Dismiss

- Rules of evidence apply.
- If a party moves to dismiss the Petition, the state has the burden to show that the basis for jurisdiction previously established continues to present a non-speculative, imminent threat of harm to the child as of the date the MTD is heard.

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### Case is a year old—what’s next?

- Parents aren’t engaging
  - ASFA timelines kick in: If kid has been in care 15 of last 22 months, need permanency. If kid isn’t close to return home, court will push change of plan
  - Plan may be Adoption (youngest kids), Guardianship (Durable or Permanent, for older kids, or kids with relatives), APPLA—Another Planned Permanent Living Arrangement (teens who are likely to age out of foster care)
  - If plan is changed to Adoption or Permanent Guardianship, AG must file Termination of Parental Rights petition within 30 days

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**TPR (Termination of Parental Rights)**

- Purpose is to terminate the legal rights of parent(s) over a child within the jurisdiction of the juvenile court “for the purpose of freeing the ward for adoption.” ORS 419B.500.
- A TPR petition may not be filed until the court has held a permanency hearing and determined the permanency plan for the ward should be adoption.
- Parental rights may only be terminated upon a petition filed by the state or the child, if the court finds that sufficient statutory grounds for termination exist and that it is in the best interest of the child. ORS 419B.500. If an Indian child is involved, termination of parental rights must be in compliance with the Indian Child Welfare Act.

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**TPR (Termination of Parental Rights)**

- Rules of evidence apply.
- Options to avoid TPR are relinquishment, guardianship.

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**TPR - Statutory Grounds**

- The court is authorized to order termination of a parent’s rights to a child only if: (1) a petitioner proves the independent statutory grounds for termination *and* (2) the court finds termination is in the best interests of the ward. ORS 419B.500. The independent statutory grounds are:
  - Extreme Conduct. ORS 419B.502
  - **Unfitness. ORS 419B.504 (most common)**
  - Neglect. ORS 419B.506
  - Abandonment. ORS 419B.508
  - Child conceived as a result of rape. ORS 419B.510.

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**TPR – Unfitness. ORS 419B.504.**

• The court must find:

- (1) the parent has engaged in some conduct or is characterized by some conditions; and
- (2) the conduct or condition is “seriously detrimental” to the child.
- (3) If the parent has met the foregoing criteria, the court must find that the integration of the child into the home is improbable within a reasonable time due to conduct or conditions not likely to change.

• Examples:

- Emotional or mental illness rendering the parent incapable of providing proper care for the child over an extended time.
- Conduct that is abusive, cruel, or sexual toward any child.
- Abuse of alcohol or controlled substances to that extent that parental ability is impaired.
- Physical neglect of the child.
- Parent’s lack of effort, or failure to effect a lasting effort, after reasonable efforts by available social agencies to adjust circumstances to make it possible for the child to return home within reasonable time.
- Criminal conduct impairing the parent’s ability to adequately care for the child.

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