

***Conditions for Return:
DHS Policy, the Juvenile Code and Case Law***

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Background

The Oregon Safety Model (OSM) was first rolled out in 2007 to provide a practice model for caseworkers that requires child safety assessment and management at all stages of Oregon child welfare cases. The Department of Human Services (DHS) is presently updating the OSM and is educating staff and community partners about these updates in the “OSM Refresh”. The OSM and the changes that have come with the “Refresh” are largely found in *Child Welfare Policies, Oregon Administrative Rules and Protocols*¹, the *DHS Staff Tools for Child Welfare – Safety Model Training*,² and the *DHS Child Welfare , Procedure Manual*.³ More recently, DHS is rolling out Differential Response (DR) in some Oregon Counties. DR focuses on pre-removal intervention with families and is designed to reduce removals.

Overall, the OSM, when correctly applied provides, in these authors’ opinions, a significant improvement in the guiding principles of Oregon child welfare practice by requiring improvements in information gathering about child welfare involved families and the application of a more rigorous, logical, sequential and systematic approach to the decisions that must be made in these cases. These rules and policies, while governing DHS casework practice, are also highly relevant to the decisions made by judges in juvenile dependency cases and the work of attorneys in advocating for specific outcomes for their clients.⁴ Gaining a working knowledge of the entire OSM and the interplay between the OSM and the statutes and case law to which the juvenile court must adhere is critical to zealous advocacy in these cases. This memorandum addresses the interplay of the OSM and the Oregon

dependency statutes in the context of “conditions for return”.⁵

I. Conditions for Return – Rule and Policy Overview

OAR 413-040-0005 (6) defines “Conditions for return” as a: “written statement of the specific behaviors, conditions, or circumstances that must exist within a child's home before a child can safely return and remain in the home with an in-home ongoing safety plan.” DHS develops the conditions for return during the creation of the ongoing safety plan for the child and documents the conditions for return in the case plan.⁶ Conditions for return should not be confused with expected outcomes, “Expected Outcomes” are the goals for change that demonstrate that the child will remain safe in the care of the parent and lead to termination of wardship and temporary commitment to DHS.⁷

The groundwork for the conditions for return is done prior to the completion of the case plan which is due 30 days after removal. The OSM not only details specific activities of the caseworker in determining the conditions for return, but also shifts the case planning focus from the incident(s) that brought the child into care to the individual characteristics of the child (child vulnerability) and the parents (protective capacities) in the context of the threats of danger in the family.

Once the conditions for return have been crafted, DHS must make reasonable efforts to reduce the stay of the child in substitute care, and reunify the child with the parents whenever possible.⁸ DHS is also responsible for contacting and communicating with each parent through monthly face-to-face meetings regarding the progress made toward reuniting them with their child through the least intrusive intervention possible.⁹

The OAR requires the following conditions to be met before DHS will recommend return of the child to her parents with a safety plan:

- The conditions for return in the case plan have been met;
- The identified safety threats can be managed with an ongoing

safety plan;

- The parents or guardians are willing and able to accept responsibility for the care of the child or young adult with an ongoing safety plan;
- The parents or guardians are willing and able to continue participating in case plan services;
- Service providers who are currently working with the child, young adult, parents or guardians, and other involved persons including the child or young adult's CASA and attorneys have been informed, in writing, of the plan to return the child or young adult with an in-home ongoing safety plan; and
- No safety concerns for the child or young adult are raised in the caseworker's review of criminal history records and child welfare protective services records of all persons currently residing in a parent or guardian's home.¹⁰

The OSM further explains that DHS must determine the conditions that must exist prior to the return of the child to the parents by taking the following steps:

1. Thinking about the identified safety threats to consider options;
2. Developing a detailed understanding as to why an in-home plan will not work at this time;
3. Determining what would manage child safety with an in-home safety plan;
4. Clearly communicating the conditions for return to everyone involved, most notably the child's parents;
5. Communicating Conditions for Return to the court, attorneys, CASA, Tribe(s), etc. through regular court reports, case plan reviews, discussions, and other forms of communication; and
6. Documenting information about the conditions for return in the Child Welfare Case Plan and describe the following:
 - a. The specific behaviors, conditions or circumstances that must exist before a child can return to parents' home with an in-home ongoing safety plan; and
 - b. The actions and time requirements of all participants in the in-home on-going safety plan.¹¹

The case plan and the conditions for return are not static and

inflexible, as the on-going case plan must always ensure the safety of the child by implementing the least intrusive means necessary.¹² When reviewing the case plan, DHS must document the elimination or management of identified safety threats, and an assessment of parents' progress toward the conditions for return.¹³ The OSM states that "safety threats do not have to be totally eradicated to manage the child's safety," and "parents do not necessarily have to demonstrate sustained change for children to return to the parents' home."¹⁴

These conditions for return can be overridden by a court as discussed in more detail below.¹⁵ If the court orders the return of the child to the parents' home, DHS must develop an in-home safety plan as soon as practicable, but no later than seven days following the court order.¹⁶

II. Return of Child – Statutory Provisions

Through-out the stages of the court process, the court must determine whether to return the child to her home. The juvenile court has exclusive original jurisdiction over children who come to the attention of the State and who meet jurisdictional criteria, including those whose "condition or circumstances are such as to endanger their welfare or the welfare of others."¹⁷ However, "[i]t is the policy of the State of Oregon...to offer appropriate reunification services to parents and guardians to allow them the opportunity to adjust their circumstances, conduct or condition to make it possible for the child to safely return home... [and] there is a strong preference that children live in their own homes with their families."¹⁸

A. The Pre-Jurisdictional Stage

Although conditions for return have not been required to be developed by DHS at the time of the initial removal and shelter hearing, they may well be available for subsequent shelter hearings or settlement hearings. The safety analysis that Child Protective Services (CPS) caseworkers perform in determining whether to remove a child forms the basis for the later development of the

conditions for return. While the safety analysis vocabulary differs from the vocabulary of the statutory provisions, the safety analysis can help provide information and analysis that the juvenile court needs to reach the decisions and findings it must make.

1. Statutory Provisions Pre-Jurisdiction

ORS 419B.150 (1) allows DHS to take a child into protective custody when the child's condition or surroundings reasonably appear to be such as to jeopardize the child's welfare, when the juvenile court has ordered that the child be taken into protective custody or when it reasonably appears that the child has run away from home. If an order is sought to take the child into custody, it must be based on an affidavit that describes the facts and circumstances, why protective custody is in the best interests of the child and the reasonable or active efforts made to eliminate the need for protective custody.¹⁹

A shelter hearing must be held within 24 hours.²⁰ At the initial shelter hearing and any subsequent review, the child and parents are entitled to an evidentiary hearing to determine whether the child "can be returned home without further danger of suffering physical injury or emotional harm, endangering or harming others or not remaining within the reach of the court process prior to adjudication."²¹ At this shelter hearing or subsequent review, the juvenile court must make written findings as to whether DHS has made reasonable or active efforts to prevent or eliminate the need for removal.²² In determining whether to remove the child, or continue the child out of home, the court, considering the child's health and safety as paramount, must determine whether removal is in the best interests of the child and whether provision of reasonable services can prevent or eliminate the need to separate the family.²³

In *State ex rel. SOSCF v. Frazier*²⁴, the Oregon Court of Appeals held that the type and sufficiency of efforts that DHS is required to make depends on the particular circumstances of the family and that the trial court must consider services provided before the state took custody of the child and services provided immediately after the removal of the child.²⁵ Further, the juvenile court must assess for

each parent, individually, the reasonableness of the efforts by DHS to prevent or eliminate the need for removal of the child from each parent's home.²⁶

2. The OSM Interplay Pre-Jurisdiction

Thus, in the pre-jurisdiction stage, the juvenile court is making decisions concerning return, best interests and reasonable efforts – all of which interplay with relevant OSM requirements.

a. The Return Decision – OSM Safety Analysis

Pursuant to the OSM, DHS must be able to articulate either a present danger safety threat, or an impending danger safety threat for a child to be removed from her family.²⁷ To determine that there is a present danger safety threat to the child, DHS must be able to conclude that the danger is immediate, significant, and clearly observable.²⁸ The OSM provides further guidance in defining the terms “immediate”, “significant”, and “clearly observable.” In short, these terms mean that the caseworker can see what is happening right before her eyes; that the behavior, condition or circumstance is onerous, vivid, impressive and notable; and that the behavior, conditions or circumstances are totally transparent; requiring no interpretation by the caseworker.²⁹ The OSM provides a non-exclusive list of present danger safety threats.³⁰

The OAR also requires the caseworker to apply the “safety threshold” criteria to determine whether an impending danger safety threat exists.³¹ Safety threshold is defined in OAR 413-015-0115(40) as “the point at which family behaviors, conditions, or circumstances are manifested in such a way that they are beyond being risk influences and have become an impending danger safety threat.” It further provides the following five criteria that the behaviors, conditions, or circumstances must meet: imminent, out of control, affect a vulnerable child, specific and observable, and have potential to cause severe harm to a child.

The OSM articulates 16 inclusive impending safety threats, one of which must be identified if a referral to the department is identified

as founded.³² If an impending danger safety threat is identified, DHS must analyze the information by describing the following:

- The length of time the family behaviors, conditions, or circumstances have posed a threat to child safety;
- The frequency with which the family behaviors, conditions, or circumstances pose a threat to child safety;
- The predictability of the family behaviors, conditions, or circumstances that pose a threat to child safety;
- Specific times (during the day or week), if any, that require special attention due to the way the family behaviors, conditions, or circumstances are occurring
- Identified individual or family behaviors, conditions, or circumstances that prevent a parent or caregiver from adequately functioning in their primary parenting role; and
- Anything else that is associated with, occurs at the same time as, or influences the family³³

If it is determined that a safety threat exists, DHS must next analyze whether the child is vulnerable,³⁴ and whether the parents have sufficient protective capacities to allow the child to safely remain in the home.³⁵ Then DHS develops a safety plan for the child.³⁶ An in-home safety plan can allow a child to remain in or be returned safely to the home.

b. Reasonable Efforts – Services

All of the activities and requirements of the OSM also interplay with the juvenile court’s reasonable efforts determination at the pre-jurisdiction stage. The OSM states that a “rigorous” application of the standards in the OSM is sufficient to comply with the reasonable efforts standard imposed by the ORS and the courts.³⁷ The juvenile court may question whether reasonable or active efforts have been made if the caseworker has failed to follow the policies and procedures of the OSM that apply to a particular family given who its members are and the condition and situation in which they find themselves. Thus, it is important for practitioners to examine the work done by the caseworker, applying the OSM, to

determine whether reasonable or active efforts have been made.

B. The Jurisdictional/Dispositional Stage

Considerably more activities are required by the OSM between the pre-jurisdiction stage and the initial disposition. These activities are relevant to the decisions the juvenile court must make at the initial disposition.

1. Statutory Provisions at the Jurisdictional/Dispositional Stage

A jurisdictional hearing must occur no later than 60 days after a petition is filed in the case.³⁸ The Oregon Supreme Court first considered what is required to establish juvenile court jurisdiction over a child whose condition or circumstances are such as to endanger the child's welfare in *State ex rel. Juv. Dept. of Lane County v. Smith*.³⁹ In *Smith*, the Supreme Court determined that after considering the totality of the circumstances, the juvenile court may take jurisdiction if the court finds "that there is a reasonable likelihood of harm to the welfare of [a] child."⁴⁰

In *Dept. of Human Services v. A.F.*⁴¹, the Oregon Court of Appeals further distinguished what is required for jurisdiction when a child's condition or circumstances are such as to endanger her welfare. The Court of Appeals held that "there must be evidence that the parent's [conduct] gives rise to a current threat of serious loss or injury to the child."⁴² The Oregon Court of Appeals held in *Dept. of Human Services v. D.M.*, that these "two formulations [of the rule] complement each other and correctly state the standard."⁴³

The type and extent of efforts the parent and DHS must make to effect reunification is determined by reference to the established bases for jurisdiction. *Dept. of Human Services v. N.T.*, 247 Or App 706, 715 (2012). But proven allegations of a jurisdictional petition can be viewed "synergistically" to create a whole that is more dangerous than the sum of its parts. *State ex rel Juv. Dept. v. N.W.*, 232 Or App 101, 111 (2009), *rev den*, 348 Or 291 (2010)

The dispositional phase of the case often occurs at the end of the jurisdictional hearing. If the court finds the child within the jurisdiction of the juvenile court because under the totality of the circumstances the child's welfare is endangered, pursuant to ORS 419B.100, the court may commit the ward to the custody of DHS if it is in the best interest and for the welfare of the child to do so.⁴⁴

If the court enters an order removing a child from their home or continuing the child in out of home placement, the court must again make a written finding as to whether reasonable or active efforts, considering the circumstances of the child and parent, have been made to prevent or eliminate the need for removal.⁴⁵ At the dispositional stage, the juvenile court must assess for each parent, individually, the reasonableness of DHS efforts to prevent or eliminate the need for removal of child from the home.⁴⁶ In *J.F.D.*, where mother and father were separated and kept separate residences, DHS made no effort to reunite the father with his child except to request a home study of father's home be completed by father's home state's agency.⁴⁷ The Court of Appeals held that even where there are extensive services provided to one parent, reasonable services must be provided to the other parent as well.⁴⁸

"The court may specify the particular type of care, supervision or services to be provided by [DHS] to wards placed in the department's custody and to the parents or guardians of the wards. . ."⁴⁹ In *State ex rel Juvenile Department v. G.L.*, 220 Or App 216 (2008), the Court of Appeals upheld the juvenile court's authority to order a parent to undergo psychological evaluation under the DHS case plan if psychological services have a rational connection with a basis for jurisdiction.

Once a juvenile court appoints DHS as a ward's legal custodian, ORS 419B.343 requires that DHS develop a case plan to ensure effective planning for the ward, taking into consideration recommendations and information provided by the juvenile court. The plan must bear a rational relationship to the jurisdictional findings and be designed to ameliorate those problems.⁵⁰ The plan must also incorporate "the perspective of the ward and the family and, whenever possible, allows the family to assist in designing its

own service programs, based on an assessment of the family's needs and the family's solutions and resources for change."⁵¹ Further, the case plan must include "appropriate services to allow the parent the opportunity to adjust [their] circumstances, conduct or conditions to make it possible for the ward to safely return home within a reasonable time."⁵²

2. The OSM Interplay at the Initial Disposition

Thus, at the initial disposition stage the juvenile court is again determining whether the child shall be removed from home or continued in out of home placement, and if so, whether the agency has made reasonable efforts to prevent or eliminate the need for removal. At this stage the court must also review the case plan for compliance with statutes.

At this stage, the court will have DHS's on-going safety assessment and the protective capacity assessment available to examine. When developing an ongoing safety plan, DHS must determine whether an in-home or out-of-home plan is most appropriate. This requires the DHS worker to understand the way in which the impending danger safety threat is occurring so that the least intrusive safety plan can be implemented.⁵³ An in-home safety plan is required when the following conditions are met:

- There is a home-like setting where the parent and child live
- The home is calm enough to allow safety service providers access and activities to occur;
- At least one parent is willing to cooperate with the plan; and
- The necessary safety activities and resources are available to implement the plan.⁵⁴

The OAR also states that an out-of-home ongoing safety plan is required when any of the above criteria are not met.⁵⁵ However, the OSM states that for an out-of-home safety plan to be implemented, DHS must conclude that it is not possible for the child's safety to be managed in the child's home.⁵⁶ The OSM goes on to state that for an out-of-home ongoing safety plan to be implemented, one of the following must be occurring:

- Impending danger safety threats as analyzed are occurring within the family in such a way as to prevent in-home safety management;
- The nature of the home environment is chaotic, unpredictable or dangers so as to prevent in-home safety management;
- The parent or caregiver is unwilling to accept an in-home option for the initial safety plan;
- The parent or caregiver is unwilling to accept people, resources or safety services necessary to implement an in-home initial safety plan; or
- The parent or caregiver's ability and capacity to accept an in-home option for the initial safety plan cannot be confirmed or relied upon.⁵⁷

The OSM also provides greater detail regarding what must be included in, and the format of, ongoing safety plans, including:

- Assuring the plan focuses on and controls the identified impending danger safety threat;
- Be a written document;
- Provides a detailed description of the impending danger threat;
- Explains how the plan uses the least intrusive means that can manage the impending danger safety threat that exists within the family; and
- Includes the conditions for return when an out-of-home ongoing safety plan is used.⁵⁸

In developing the case plan and conditions for return, extensive information about the family needs to be gathered by DHS. The OSM requires that family members be assessed by compiling a thorough narrative about their functioning upon which to base rational conclusions. A key activity at this stage is the protective capacity assessment. The caseworker must meet individually or in meetings to obtain information from parents and other family members for the purpose of identifying and understanding the needs, concerns, strengths, and limitations associated with the parents' protective capacities and assessing the impact on the child's safety. If the

case plan and conditions for return are not based on the information and activities required by the rule, practitioners may seek a “no reasonable efforts” finding or ask the court to disregard the conditions for return and return the child.⁵⁹

C. The Review and Permanency Stage

1. Statutory Provisions at the Review and Permanency Stage

The juvenile court may conduct a hearing to review a child’s condition and circumstance and to determine whether the court should continue jurisdiction.⁶⁰ A review must be conducted if requested by the child or parents. At a review hearing the court may order modifications in the care, placement and supervision of the child.⁶¹ If the court continues the child in substitute care, findings of the court must specify why continued care is necessary as opposed to returning the child home or securing another permanent placement, and the expected timetable for achieving one of these ends.⁶²

If a child is placed in the parents’ home at a review hearing, the court’s findings must specifically state why it is necessary and in the best interests of the child for the child to remain in the legal custody of DHS, and the expected timetable for dismissal of DHS’s custody.⁶³ A review hearing is typically required for the court to enter an order terminating wardship, where the juvenile court must “determine if the court should continue jurisdiction and wardship or order modifications in the care, placement and supervision of the child or ward.”⁶⁴ At that review hearing, “a wardship cannot continue if the jurisdictional facts on which it is based have ceased to exist...The evidence [presented at that hearing] is limited to whether the conditions that were originally found to endanger a child persist.”⁶⁵

In *Dept. of Human Services v. J.M.*, 260 Or App 261, 268 (2013), the court discussed the facts and inferences that DHS is entitled to rely on in continuing wardship and temporary commitment:

“The primary fact on which DHS relies is that, according to Miller and Stokes, father’s failure to internalize the social norms against inappropriate corporal punishment implies that he is unlikely to conform to those norms. We reject that implication. The dispositive question in this case is not what father believes, bu what he – at the time of the hearing is likely to do. “

In a permanency hearing, if the plan remains reunification, the juvenile court determines whether reasonable or active efforts have been made to allow the child to be safely returned home.⁶⁶ The Oregon Court of Appeals has held that even in situations where a parent is incarcerated or other serious impediments to reunification exist, DHS is required to inquire about, and arrange for services available under those circumstances.⁶⁷

Most recently, in *In re N.S.*, the Oregon Court of Appeals held that DHS, as the proponent of continuing jurisdiction, has the burden to prove by a preponderance of the evidence that the factual bases for jurisdiction continued to a degree that the conditions or circumstances of the child pose a current threat of serious loss or injury that is reasonably likely to be realized.⁶⁸

2. The OSM Interplay at the Review and Permanency Stage

At this stage, the court must again determine whether the child can be returned to her parents or should continue in an out-of-home placement. In making that decision the court examines whether the agency has made reasonable efforts to reunite the family in conjunction with whether the parents have made sufficient progress to ensure the safety of the child.⁶⁹ If the child has been returned to or remains in the home at the review stage, the court must also determine whether wardship and temporary commitment to DHS should continue.

Once the conditions for return have been crafted, OAR 413-040-0013 requires DHS to make reasonable efforts to reduce the

stay of children in substitute care, and reunify children with parents whenever possible.⁷⁰ DHS is required to file reports with the court every six-month period that a child is in DHS's care. The report must include, amongst other details, a description of DHS's efforts to return the child or ward to the parents' home.⁷¹ DHS will not recommend return of a child to her parents unless the conditions enumerated in OAR 413-040-0017, and discussed in detail in section I, are met. Further, DHS must follow the procedure outlined in section I to determine whether it is safe for the child to be returned to her parents' home safely.

Conclusion

In performing the duty to assure that DHS offers "appropriate reunification services to parents and guardians to allow them the opportunity to adjust their circumstances, conduct or conditions to make it possible for the child to safely return home..., [with] a strong preference that children live in their own homes with their families,"⁷² the juvenile court and its practitioners can benefit by looking to the analysis and detail of the OSM.

¹ The Child Welfare Policies, Oregon Administrative Rules and Protocols can be accessed at:
http://www.dhs.state.or.us/policy/childwelfare/cross_index.htm

² The Staff Tools for Child Welfare – Safety Model Training can be accessed at:
http://www.dhs.state.or.us/caf/safety_model/index.html

³ http://www.dhs.state.or.us/caf/safety_model/procedure_manual/index.html

⁴ The change to a safety model approach by child welfare agencies throughout the country has been recognized by the American Bar Association as an opportunity for judges and attorneys to also improve outcomes for court-involved families through integration with the judicial process. See, Theresa Roe Lund & Jennifer Renne, *Child Safety: A Guide for Judges and Attorneys* (American Bar Association 2009). This Guide is very helpful to attorneys and can be downloaded for free at: http://nrccps.org/wp-content/uploads/2010/11/The_Guide.pdf

⁵ Although time does not permit a complete examination of the interplay between the entire OSM and related statutes and case law, practitioners should obtain training and familiarize themselves with the entirety of the OSM and be aware of the stages in juvenile dependency cases to which the various parts of the OSM are relevant.

⁶ OAR 413-040-0006 Requirements for the Conditions for Return and the Protective Capacity Assessment.

- (1) The caseworker must determine conditions for return during the development of the ongoing safety plan.
- (2) The conditions for return are documented in the ongoing safety plan and the case plan, and must describe:
 - (a) The specific behaviors, conditions, or circumstances that must exist before the Department may develop an in-home ongoing safety plan that assures a child's safety, as described in OAR 413-015-0450(2)(b)(A)(i)-(iii); and
 - (b) The actions, services, and time requirements of all participants in the in-home ongoing safety plan.
- (3) The Department uses the protective capacity assessment to engage the child's parents or guardians in a collaborative process to:
 - (a) Examine and understand the behaviors, conditions, or circumstances that made the child unsafe and the parent or guardian's strengths that build protective capacity;
 - (b) Examine and understand how the behavioral, cognitive and emotional characteristics of the parents or

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- guardians that will increase protective capacity and reduce or eliminate the identified safety threat; and
 - (c) Determine the changes (expected outcomes) in the behaviors, conditions, or circumstances of the parents or guardians that will increase protective capacity and reduce or eliminate the identified safety threat; and
 - (d) Identify services or activities that are likely to achieve the expected outcomes.
- (4) Whenever possible, the Department and the parents or guardians come to agreement on expected outcomes and the actions, services, and activities to achieve the expected outcomes.

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⁷ OAR 413-040-0005 (8) defines “expected outcome” as meaning “an observable, sustained change in a parent or guardian’s behavior, condition, or circumstance that, when accomplished, will increase a parent or guardian’s protective capacity and reduce or eliminate an identified safety threat, and which, when accomplished, will no longer require Child Welfare intervention to manage a child’s safety. It is a desired end result and takes effort to achieve.”

⁸ OAR 413-040-0013

⁹ *Id.*

¹⁰ OAR 413-040-0017

¹¹ Oregon Department of Human Services, DHS Child Welfare Procedure Manual, http://www.dhs.state.or.us/caf/safety_model/procedure_manual/ch03/ch3-section5.pdf (accessed Sept. 24, 2014)

¹² Oregon Department of Human Services, DHS Child Welfare Procedure Manual, http://www.dhs.state.or.us/caf/safety_model/procedure_manual/ch03/ch3-section13.pdf (accessed Sept. 24, 2014).

¹³ Oregon Department of Human Services, DHS Child Welfare Procedure Manual, http://www.dhs.state.or.us/caf/safety_model/procedure_manual/ch03/ch3-section10.pdf (accessed Sept. 24, 2014).

¹⁴ Oregon Department of Human Services, DHS Child Welfare Procedure Manual, http://www.dhs.state.or.us/caf/safety_model/procedure_manual/ch03/ch3-section14.pdf (accessed Sept. 24, 2014).

¹⁵ ORS 419B.349

¹⁶ Oregon Department of Human Services, DHS Child Welfare Procedure Manual, http://www.dhs.state.or.us/caf/safety_model/procedure_manual/ch03/ch3-section15.pdf (accessed Sept. 24, 2014).

¹⁷ ORS 419B.100.

¹⁸ ORS 419B.090

¹⁹ ORS 419B.150 (2).

²⁰ ORS 419B.183.

²¹ ORS 419B.185 (1).

²² ORS 419B.185(1)(a).

²³ ORS 419B.185 (1)(b)(c)(d).

²⁴ *Frazier*, 152 Or App 568 (1998)

²⁵ *Id.* at 582

²⁶ *Dept. of Human Services v. J.F.D.*, 255 Or App 742, 749 (2013)

²⁷ OAR 413-015-0425 Determine if there is a Present Danger Safety Threat or Impending Danger Safety Threat

- (1) Present Danger Safety Threat. At initial contact and at any time during the CPS assessment the CPS worker must determine if a present danger safety threat is occurring. To determine there is a present danger safety threat, the CPS worker must conclude the danger is immediate, significant, and clearly observable.
- (2) Impending Danger Safety Threat. Throughout the CPS assessment as new information is gathered and also at the conclusion of the CPS assessment when all information is gathered, the CPS worker must apply the following safety threshold criteria to determine if an impending danger safety threat is present. When the CPS worker concludes all the criteria to the family behaviors, conditions, or circumstances, an impending danger safety threat is present.
 - (a) Imminent. The family behavior, condition, or circumstance is likely to occur in the immediate to near future.
 - (b) Observable. The family behavior, condition, or circumstance is observable and can be clearly described and articulated.
 - (c) Vulnerable Child. The child’s vulnerability is determined by considering the child’s physical and

emotional development, ability to communicate needs, mobility, size and dependence, and the child's personal characteristics in relation to the family behaviors, condition, or circumstance.

- (d) Out of Control. A family behavior, condition, or circumstance that can affect a child's safety is unrestrained, unmanaged, without limits or monitoring, not subject to influence or manipulation within the control of the family, resulting in an unpredictable and chaotic family environment. The CPS worker must determine whether a parent or caregiver can or cannot and will or will not protect the child from the family behavior, condition or circumstance.
- (e) Severity. A family behavior, condition, or circumstance is likely to result in severe harm to a child.
- (3) When the CPS worker determines a child is unsafe due to a present danger safety threat or impending danger safety threat the CPS worker must:
- (a) If the CPS worker determines a child is unsafe due to a present danger safety threat, establish a protective action plan as outlined in OAR 413-015-0435, "Develop a Protective Action Plan," and continue the activities required to sufficiently complete the CPS assessment.
- (b) If the CPS worker determines a child is unsafe due to an impending danger safety threat, establish:
- (A) An initial safety plan as outlined in OAR 413-015-0437, "Develop an Initial Safety Plan," and continue the activities required to sufficiently complete the CPS assessment when the determination is made prior to the conclusion of the CPS assessment.
- (B) When the CPS worker determines a child is unsafe due to an impending danger safety threat at the conclusion of the CPS assessment, the CPS worker must establish an ongoing safety plan as outlined in OAR 413-015-0450, "Develop an Ongoing Safety Plan."

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²⁸ *Id.*

²⁹ *Id.*

³⁰ The list includes:

- Hitting, beating, severely depriving now
- Injuries to the face and head
- Premeditated abuse or neglect
- Life-threatening living arrangements
- Bizarre cruelty toward a child
- Bizarre/extreme viewpoint of a child
- Vulnerable children who are unsupervised or alone now
- Child extremely afraid of home situation
- Child needing immediate medical care
- caregiver unable to provide basic care

Oregon Department of Human Services, *DHS Child Welfare Procedure Manual*,

http://www.dhs.state.or.us/caf/safety_model/procedure_manual/ch02/ch2-assessment-section5.pdf (accessed Sept. 24, 2014).

³¹ *Supra* note 27

³² *Supra* note 3

- (1) "The family situation is such that no adult in the home is routinely performing duties and responsibilities that ensure child safety;
- (2) One or both parents' or caregivers' behavior is violent and/or they are acting (behaving) dangerously;
- (3) One or both parents' or caregivers' behavior is impulsive or they will not/cannot control their behavior;
- (4) Parents' or caregivers' perceptions of a child are extremely negative;
- (5) A family situation or behavior is such that the family does not have or use resources necessary to ensure a child's safety;
- (6) One or both parents' or caregivers' attitudes, emotions and behavior are such that they are threatening to severely harm a child or are fearful they will abuse or neglect the child and/or request placement;
- (7) One or both parents' or caregivers' attitudes or emotions are such that they intend(ed) to seriously hurt the child;
- (8) A situation, attitudes and/or behavior is such that one or both parents or caregivers lack parenting knowledge, skills and motivation necessary to ensure a child's safety;

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- (9) Parents' or caregivers' attitudes and behavior result in overtly rejecting CPS intervention, refusing access to child, and/or there is some indication the caregivers will flee;
 - (10) Parents' or caregivers' attitude, behavior or perception result in the refusal and/or failure to meet a child's exceptional needs that affect his/her safety;
 - (11) The family situation is such that living arrangements seriously endanger the child's physical health;
 - (12) The situation is such that a child has serious physical injuries or serious physical symptoms from abuse or neglect
 - (13) The situation is such that a child shows serious emotional symptoms and/or lacks behavior control that result in provoking dangerous reactions in caregivers or self-destructive behavior;
 - (14) The situation is such that a child is fearful of the home situation or people within the home;
 - (15) Because of perception, attitude or emotion, parents or caregivers cannot, will not or do not explain a child's injuries or threatening family conditions; and
 - (16) One or both parents or caregivers has a child out of his/her care due to child abuse or neglect, or has lost a child due to termination of parental rights"

³³ Oregon Department of Human Services, *DHS Child Welfare Procedure Manual*, http://www.dhs.state.or.us/caf/safety_model/procedure_manual/ch02/ch2-assessment-section6.pdf (accessed Sept. 24, 2014).

³⁴ OAR 413-015-0115 defines a vulnerable child as meaning: "a child who is unable to protect him or herself. This includes a child who is dependent on others for sustenance and protection."

³⁵ OAR 413-40-0005 (17) defines protective capacity as meaning: "behavioral, cognitive, and emotional characteristics that can specifically and directly be associated with a person's ability and willingness to care for and keep a child safe".

³⁶ OAR 413-015-0432 Develop Safety Plans. (1) When a present danger safety threat or impending safety danger threat is identified, a CPS worker must put a safety plan in place to manage the threat. There are three types of safety plans: the protective action plan which manages present danger safety threats, and the initial safety plan and the ongoing safety plan, which manage impending danger safety threats

(2) Shared requirements for a protective action plan, initial safety plan, or ongoing safety plan:

(a) When developing a protective action plan, initial safety plan, or ongoing safety plan, the CPS worker must:

(A) Assure the plan focuses on and controls the identified present danger safety threat or impending danger safety threat;

...

(D) Involve the child's parent or caregiver;

(b) The protective action plan, initial safety plan, or ongoing safety plan, whether in-home or out-of-home, must:

(A) Be a written document between the parent or caregiver and the Department;

(B) Provide a detailed description of the present danger safety threats or impending danger safety threat;

(C) Describe how identified present danger safety threats or impending danger safety threats will be managed, including:

...

(D) Explain how the plan is the least intrusive means that can effectively manage the identified threat occurring within the particular family;

(E) Identify the safety service providers and the safety services necessary to implement the plan;

(F) Establish the time commitments and availability of those involved in the plan; and

(G) Include conditions for return when an out-of-home initial safety plan or out-of-home ongoing safety plan is developed.

(c) The CPS worker must determine whether the impending danger safety threat will be managed with an in-home or out-of-home initial safety plan or ongoing safety plan by determining how the impending danger safety threat is occurring and applying the in-home safety plan criteria.

...

(B) An in-home initial safety plan or in-home ongoing safety plan is required when all of the following in-home safety plan criteria are met:

(i) There is a home-like setting where the parent and child live.

(ii) The home is calm enough to allow safety service providers access and activities to occur.

(iii) At least one parent is willing to cooperate with the plan.

(iv) The necessary safety activities and resources are available to implement the plan.

³⁷ *Supra* note 3

³⁸ ORS 419B.305 When hearing must be held; continuation; priority. (1) Except as otherwise provided in this section, no later than 60 days after a petition alleging that a child is within the jurisdiction of the court under ORS 419B.100 has been filed, the court shall hold a hearing on the petition and enter an order under ORS 419B.325(1). Upon written order supported by factual findings of good cause, the court may continue a petition beyond 60 days.

...

(3) When a person denies allegations in the petition, the court shall set the case for a hearing within the time limits prescribed by subsection (1) of this section. Upon written order supported by factual findings of good cause, the court may continue the hearing beyond the 60-day limit.

...

³⁹ *Smith*, 316 Or 646 (1993)

⁴⁰ *Id.* at 653

⁴¹ *A.F.*, 243 Or App 379 (2011)

⁴² *Id.* at 387

⁴³ *D.M.*, 248 Or App 683, 686 (2012).

⁴⁴ ORS 419B.337(1).

...

⁴⁵ ORS 419 B.337 (1) (b); ORS 419B.340.

⁴⁶ *Department of Human Services v. JFD*, 255 Or App 742 (2013).

⁴⁷ *Id.* at 748

⁴⁸ *Id.* at 750

⁴⁹ ORS 419B.337 (2).

⁵⁰ ORS 419B.343 (1) (a); *Dept. of Human Services v. S.M.*, 355 Or. 241, 246 (2014).

⁵¹ *Id.*

⁵² ORS 419B.343 Recommendations of committing court; case planning; plan contents. (1) To ensure effective planning for wards, the Department of Human Services shall take into consideration recommendations and information provided by the committing court before placement in any facility. The department shall ensure that the case planning in any case:

- (a) For the reunification of the family bears a rational relationship to the jurisdictional findings that brought the ward within the court's jurisdiction under ORS 419B.100;
- (b) Incorporates the perspective of the ward and the family and, whenever possible, allows the family to assist in designing its own service programs, based on an assessment of the family's needs and the family's solutions and resources for change; and
- (c) Is integrated with other agencies in cooperation with the caseworkers.

(2) Except in cases when the plan is something other than to reunify the family, the department shall include in the case plan:

- (a) Appropriate services to allow the parent the opportunity to adjust the parent's circumstances, conduct or conditions in such a way as to make it possible for the ward to safely return home within a reasonable time.

...

⁵³ ORS 419B.337

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Oregon Department of Human Services, *DHS Child Welfare Procedure Manual*, http://www.dhs.state.or.us/caf/safety_model/procedure_manual/ch03/ch3-section2.pdf (accessed Sept. 24, 2014).

⁵⁷ Oregon Department of Human Services, *DHS Child Welfare Procedure Manual*, http://www.dhs.state.or.us/caf/safety_model/procedure_manual/ch02/ch2-assessment-section7.pdf (accessed Sept. 24, 2014).

⁵⁸ *Id.*

⁵⁹ (b) Complete the following activities:

(A) Conduct reasonable inquiries for the purpose of identifying individuals who may contribute to the caseworker's understanding of the protective capacity of the parents or guardians and the safety of the child. Such individuals may include parents or guardians, grandparents, extended family, an Indian child's tribe, and any other family members, persons with significant attachments to the child, other professionals, substitute caregivers, neighbors, and friends of

the family. . . .

(B) Gather information from these individuals through individual interviews or meetings for the purpose of identifying and understanding the needs, concerns, strengths, and limitations associated with the protective capacity of parents or guardians and assessing the impact on the child's safety.

(C) Evaluate the relationship between:

- (i) The existing protective capacities of parents or guardians that contribute to child safety;
- (ii) The diminished protective capacities of parents or guardians that must change for the parents or guardians to care for and keep the child safe; and
- (iii) The parents' or guardians' readiness to change.

(D) Whenever possible, collaboratively identify with the parents or guardians:

- (i) Other family members, persons with significant attachments to the child, community members, and members of an Indian child's tribe who will contribute to meeting the conditions for return and actively participate in an ongoing safety plan or enhancing the protective capacity of the parents or guardians; and
- (ii) Actions and services that will reduce or eliminate identified safety threats or enhance the protective capacity of the parents or guardians.

(E) Inform the parents or guardians of the Department's actions and decisions regarding identified safety threats, conditions for return, protective capacity, and the ongoing safety plan. . . .

(6) The caseworker must include the findings of the protective capacity assessment and the conditions for return in the case plan.

⁶⁰ ORS 419B.449 (1).

⁶¹ *Id.*

⁶² ORS 419B.449 (2).

⁶³ ORS 419B.449 (4).

⁶⁴ ORS 419B.449 Review hearing by court; findings. (1) Upon receiving any report required by ORS 419B.440, the court may hold a hearing to review the child or ward's condition and circumstances and to determine if the court should continue jurisdiction and wardship or order modifications in the care, placement and supervision of the child or ward. The court shall hold a hearing:

- (a) In all cases under ORS 419B.440(2)(b) when the parents' rights have been terminated;
- (b) If requested by the child or ward, the attorney for the child or ward, if any, the parents or the public or private agency having guardianship or legal custody of the child or ward within 30 days of receipt of the notice provided in ORS 419B.452;
- (c) Not later than six months after receipt of a report made under ORS 419B.440(1) on a ward who is in the legal custody of the Department of Human Services pursuant to ORS 419B.337 but who is placed in the physical custody of a parent or a person who was appointed the ward's legal guardian prior to placement of the ward in the legal custody of the department; or
- (d) Within 30 days after receipt of a report made under ORS 419B.440(2)(c).

⁶⁵ *Dept. of Human Services v. D.M.*, 248 Or App 683 (2012)(quoting *State ex rel. Juv. Dept. v. Gates*, 96 Or App 365, 372 (1989); *Dept. of Human Services v. A.F.*, 243 Or App 379, 386 (2011).

⁶⁶ *Supra* note 13; ORS 419B.476 (2)(a).

⁶⁷ *Dept. of Human Services v. H.S.C.*, 218 Or App 415 (2009)

⁶⁸ *In re N.S.*, 258 Or App 624, 635 (2013)

⁶⁹ ORS 419B.476 (2)(a)-(b)

⁷⁰ OAR 413-040-0013 (1)(a)

⁷¹ ORS 419B.443(g)

⁷² *Supra* note 2