

Salishan Coastal Lodge  
7760 US-101, Gleneden Beach, OR 97388

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## Conference Agenda

### Thursday, October 13

6:00 to 8:30 p.m.	<b>Registration Table Open</b>	<i>Council House</i>
6:00 to 9:00 p.m.	<b>Vendors Available</b>	<i>Council House</i>
7:00 to 9:00 p.m.	<b>Welcome Reception</b> <i>No Host Bar</i>	<i>Council House</i>
8:00 to Closing	<b>After Hours Gathering at The Attic Lounge</b> Kick-off the conference with your colleagues at The Attic Lounge	

### Friday, October 14

6:30 to 8:00 a.m.	<b>Lap Swimming Available</b>	<i>Pool</i>
7:00 to 10:00 a.m.	<b>Registration Table Open</b>	<i>Council House</i>
7:00 to 8:25 a.m.	<b>Vendors Available</b>	<i>Council House</i>
7:00 to 8:25 a.m.	<b>Breakfast Buffet Available</b>	<i>Council House</i>
7:00 to 8:00 a.m.	<b>Video Replay: Mandatory Abuse Reporting for Oregon Lawyers</b>	<i>Gallery Room</i>



#### Need help with registration or accessibility accommodations?

Call or email the OSB CLE Service Center:  
**(503) 431-6413 or (800) 452-8260, ext. 413**  
or [cle@osbar.org](mailto:cle@osbar.org).

*CLE registration support and services provided by OSB CLE Seminars*

## 2022 Family Law Section Annual Conference

Thursday through Saturday  
October 13-15, 2022

**IN-PERSON** at the  
Salishan Coastal Lodge in Gleneden Beach

**CLE Credits: 11.5 General** (*pending*)  
Plus add-on credits detailed below

### Register for the IN-PERSON EVENT

#### REGISTRATION RATES

- \$210 New Lawyers** (*admitted after 1/1/2020*)
- \$350 OSB Family Law Section Members**
- \$395 Regular Registration**

Use the coupon codes listed below at checkout to receive discounts on the following registrations:

- \$125 Students/Clerks/Legal Assistants/Paralegals** (*SFLF22LNG*)
- \$210 Legal Aid/Nonprofit/Government Attorneys** (*SFLF22SCLAP*)
- \$0 Judges** (*please call the OSB CLE Service Center at the phone numbers shown below to register*)

#### Add-ons available at checkout:

- \$20 Mandatory Abuse Reporting for Oregon Lawyers CLE Video Replay** 7 a.m.–8 a.m., Friday, Oct. 14, **1 Abuse Reporting credit**
- \$20 Attorney Well-Being Awareness CLE Video Replay**, 7 a.m.–8 a.m., Saturday, Oct. 15, **1 Mental Health/Substance Use credit**

**Please note:** The Oregon State Bar requires that all attendees at **IN-PERSON** events sign and return a **Vaccination Attestation Form** prior to attending the event. Please complete the form in advance of the event (an electronic signature will suffice) and email to Keri Smith at [smith@ringostuber.com](mailto:smith@ringostuber.com).

**Lodging:** To make your lodging reservation, contact Salishan Coastal Lodge through this link:  
**OSB Family Law 2022 Online Reservations**

**Cancellations:** Cancellations received by the CLE Service Center at least 72 hours prior to the event date will be refunded the registration fee minus a \$25 administrative fee; requests received after that time are granted at the discretion of the section.

General Sessions will be held in Long House with overflow in Gallery, Sitka, and Lincoln/Pine rooms.

## Friday, October 14 *continued*

8:00 to 9:00 a.m.	<b>Gender Affirming Care</b> <i>Fay Stetz-Waters</i>
9:00 - 10:00 a.m.	<b>FAPA in 2022: A Focus on Victim Reactions, the New Legal Standard, and Firearm Disposition</b> <i>Debra Dority and Honorable Maureen McKnight</i>
10:00 - 10:15 a.m.	<b>Hot Topic - Lauren Saucy</b>
10:15 to 10:30 a.m.	<b>Morning Break</b> <i>Beverages and Snacks</i>
10:30 to 11:30 a.m.	<b>Resist and Refuse: The Voice of the Child and the Role of the Court</b> <i>Sara Rich</i>
11:30 to 12:00 p.m.	<b>Special Immigrant Juvenile (SIJS) Visas and Vulnerable Youth Guardianships (VYG) Overview</b> <i>MariRuth Petzing</i>
12:00 to 1:15 p.m.	<b>Lunch</b> <i>Professionalism Award to be Presented</i>
1:15 to 2:15 p.m.	<b>Looking Behind the Curtain: How to request, analyze and evaluate the credibility of a custody evaluator's work-product, and prepare the narrative of your case</b> <i>Dr. Landon Poppleton</i>
2:15 to 3:00 p.m.	<b>Love and Appyness: How to Obtain Social Media, Financial, and Income Information from Common Apps</b> <i>Samantha Benton</i>
3:00 to 3:15 p.m.	<b>Afternoon Break</b> <i>Beverages and Snacks</i>
3:15 to 3:30 p.m.	<b>Hot Topic - Lauren Saucy</b>
3:30 to 4:15 p.m.	<b>What About the Children? – Silent Victims in Third Party Litigation</b> <i>Mark Kramer</i>
4:15 to 5:00 p.m.	<b>Employment Law Issues Every Family Lawyer Should be Aware of in Practice and for their Practice</b> <i>Sonia Montalbano</i>
5:00 to 5:20 p.m.	<b>Family Law Section Business Meeting</b> <i>Murray Petitt, Chair, Oregon State Bar Family Law Section</i>

Long House

5:30 to 7:00 p.m.	<b>Reception</b> <i>No Host Bar</i> <i>Immediately following the last presentation</i>
5:30 to 7:00 p.m.	<b>Vendors available</b> <i>Council House</i>

## Saturday, October 15

6:30 to 8:00 a.m.	<b>Lap Swimming Available</b> <i>Pool</i>
7:00 to 8:45 a.m.	<b>Registration Table Open</b> <i>Council House</i>
7:00 to 8:25 a.m.	<b>Vendors Available</b> <i>Council House</i>
7:00 to 8:25 a.m.	<b>Executive Committee Meeting</b> <i>Committee Members Only Please</i>
7:00 to 8:25 a.m.	<b>Breakfast Buffet Available</b> <i>Council House</i>
7:00 to 8:00 a.m.	<b>Video Replay: Attorney Well-Being Awareness</b> <i>Gallery Room</i>
8:00 to 9:30 a.m.	<b>Unbundled Family Law: Why Do It, What It Can Be, and How to Get It Right</b> <i>John Grant</i>
9:30 to 10:00 a.m.	<b>From Hotline Call to Founded Letter: Effective Strategies for Representing DHS-Involved Clients</b> <i>Molly Becker</i>
10:00 to 10:15 a.m.	<b>Morning Break</b> <i>Beverages and Snacks</i>
10:15 to 10:45 a.m.	<b>International Implications in Divorce and Custody Matters – Personal Jurisdiction Considerations</b> <i>Katelyn Skinner</i>
10:45 to 11:30 a.m.	<b>Legislative Updates – Then and Now: Tips to Ensure Your Practice is in Statutory Compliance</b> <i>Honorable Erin Fennerty and Ryan Carty</i>
11:30 to 12:30 p.m.	<b>Family Law Appellate Case Review</b> <i>Honorable Ramón Pagán</i>
12:30 p.m.	<b>Conference Adjourns</b>

### Conference Co-Chairs

*Keri Smith and Patrick Melendy*

### Conference Committee Members

*Kayla Steindorf, Annelisa Smith, Murray Petitt, Samantha Benton*

**Register for the IN-PERSON EVENT**



## FAY STETZ-WATERS

1162 Court Street  
Salem, OR 97301  
Phone: (971)304-4849  
Fay.Stetz-Waters@doj.state.or.us

### PROFESSIONAL PROFILE

*Director of Civil Rights and  
Social Justice*

*Sr. Assistant Attorney General*

*Circuit Court Judge*

*Administrative Law Judge*

*Hearings Officer*

*Poverty Law Lawyer*

*U. S Marine*

*Leader & Consensus Builder*

*Creative Problem Solver*

*Skilled Communicator*

*Mediator*

- ❑ **Civil Rights Director** - Leads the Oregon DOJ's Civil Rights Unit including the first in the nation.
- ❑ **Circuit Court Judge** - Ensures that litigants receive fair and impartial treatment by providing due process, protecting individual rights, and adhering to the rule of law.
- ❑ **Administrative Law Judge** - Experienced impartial decision maker. Holding up to 28 administrative hearings per week. Clear written opinion, with a low appeal rate, 92% affirm rate on appeal.
- ❑ **Hearings Officer, Parole Board** – Applied criminal law and protected public safety. Prevented recidivism by holding offenders accountable. Ensured due process and Constitutional protections for victims and offenders. Maintained fair, impartial hearings. Composed in the face of repeat offenders, child predators, and highly emotional and violent felons.
- ❑ **Effective communicator** with an excellent ability to communicate with diverse populations.

### PROFESSIONAL EXPERIENCE

#### OREGON DEPARTMENT OF JUSTICE

4/3/2019 - PRESENT

OFFICE OF THE ATTORNEY GENERAL  
DIRECTOR OF CIVIL RIGHTS AND SOCIAL JUSTICE

Provides legal and policy advice to the Oregon Attorney General on civil rights matters. Leads Oregon DOJ's Equity Think Tank. Coordinates multistate litigation on labor and civil rights. Upon Governor's request, conducts impartial workplace investigations of executive branch employees. Reviews and analyzes proposed legislation for equity impacts. Conducts outreach and education to community partners on a wide range of civil rights and equity issues. Collaborates with leadership from the American Constitution Society, Anti-Defamation League, and Western States Center on issues related to domestic terrorism. Advises the internationally recognized Oregon Bias Response Hotline. Advises the Sanctuary Promise Hotline. Supervises Special Appointed Attorneys General. Chairs Bias Crime and Incident Steering Committee and Sanctuary Promise Act Advisory Committee. Assists Governor's Council on Racial Justice, Law Enforcement Subcommittee. Assists Building Bridges Executive Committee. Contributes to State Attorneys General Taskforce on civil, education, and labor rights. Assists Oregon Youth Authority Equity Audit Committee. Member on Coalition Against Hate Crimes.

#### LINN COUNTY CIRCUIT COURT

11/15/2017 – 1/4/2019

LINN COUNTY, OREGON  
CIRCUIT COURT JUDGE

#### OREGON STATE UNIVERSITY

5/2016 – 11/2017

CORVALLIS, OREGON  
EQUITY ASSOCIATE

**BOARD OF PAROLE AND POST-PRISON SUPERVISION**  
SALEM, OREGON  
HEARINGS OFFICER

7/2013 – 5/2016

**OFFICE OF ADMINISTRATIVE HEARINGS**  
SALEM, OREGON  
ADMINISTRATIVE LAW JUDGE

9/2009 – 7/2013

**LEGAL AID SERVICES OF OREGON**  
ALBANY, OREGON  
ATTORNEY

9/2007 - 9/2009

**OREGON STATE BAR**  
LAKE OSWEGO, OREGON  
AFFIRMATIVE ACTION PROGRAM (AAP) ASSISTANT

6/2006 – 9/2007

**OREGON DEPARTMENT OF JUSTICE**  
PORTLAND, OREGON  
CERTIFIED LAW CLERK

11/2004 - 11/2005

**NATIONAL CRIME VICTIM LAW INSTITUTE**  
LEWIS AND CLARK LAW SCHOOL LAW  
LEGAL RESEARCHER

8/2005 – 12/2005

**WETHERSFIELD POLICE DEPARTMENT**  
WETHERSFIELD, CONNECTICUT  
911 DISPATCHER

11/1990 – 7/2001

**CONNECTICUT STATE POLICE**  
MERIDEN, CONNECTICUT  
TELECOMMUNICATIONS OPERATOR

2/1989 – 11/1990

**UNITED STATES MARINE CORPS**  
CHERRY POINT, NORTH CAROLINA  
FIELD RADIO/MARS OPERATOR

10/1984 – 10/1988

## EDUCATION

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**Bachelor of Arts *cum laude* History**  
TRINITY COLLEGE, 2001  
HARTFORD, CONNECTICUT

**Juris Doctorate**  
LEWIS AND CLARK LAW SCHOOL, 2005  
PORTLAND, OREGON

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## COMMUNITY INVOLVEMENT

Recipient of the OGALLA Award of Merit	10/2022
Recipient of the State of Oregon's Public Service Award for Courage	4/2022
Governor's Judicial Selection Committee for Lincoln County	3/2021
Magistrate Panel for the District of Oregon	4/2021
Corvallis-Albany NAACP's Calvin O Henry Leadership Award	12/2020
Governor's Judicial Selection Committee for Lane County	8/2020
Oregon's Bias Crime Law, Basic Rights Oregon Queer Town Hall	4/7/2020
Governor's District Attorney Selection Committee for Lincoln County	11/2019
Governor's Judicial Selection Committee for Lincoln County	11/2019
Governor's Judicial Selection Committee for Lake County	7/2019
Governor's Judicial Selection Committee for Benton County	4/2019
Linn County Family Law Advisory Committee	2018 to 1/2019
Linn County Dependency Workgroup	2018 to 1/2019
Rotary Club of Albany, Member	2018 to 2020
Marine Corps League, Member	2018 to Present
Woman Marines Association, Member	2018 to Present
American Legion, Post 10, Member	2017 to 2020
P.E.O. International, Member	2019 to Present
Linn-Benton Women Lawyers, Co-President	2007 to 2022
Center Against Rape and Domestic Violence, Board Member	2015 to 2016
Oregon State Bar Lawyers for Veterans Executive Steering Committee, Member	2012 to 2015
Oregon Mediation Association, Member	2015 to 2017
Neighbor 2 Neighbor Mediation, Member-Mediator	2015 to 2017
American Federation of State, County, Municipal Employees 75, Steward	2013 to 2013
Oregon Employment Department Labor-Management Committee, Member	2012 to 2013
Oregon State Bar Diversity Leadership Award, Recipient	2011
Oregon Minority Lawyers Association, Member	2005 to Present
Oregon Women Lawyers, Member	2007 to 2022
Oregon Trial Lawyers Association, Member	2017 to Present

## PRESENTATIONS

Oregon's Trauma Informed Response to Bias, Eradicate Hate Global Summit	9/2022
First Amendment and Responding to Hate, Tillamook Community College	8/2022
Expanding Victims Access to Justice, Conference for Western Attorneys General	6/2022
Victim Advocacy and Equity, African Youth Community Organization	4/2022
Oregon Bias Response, Ill. Legislative Assembly's Commission on Discrimination	4/2022

Oregon Bias Response and Safety, Oregon Department of Education	3/1/2022
Clackamas County Bias Statistics, Respond to Racism	2/7/2022
MLK's Life and Legacy and Civil Rights, Lewis & Clark Law School	1/25/2022
Oregon's Bias Response, Anti-Defamation League PNW	1/6/2022
Oregon's Bias Crimes and Incidents Law, Oregon District Attorneys Association	8/21/2021
Anti-AAPI Hate and Bias, Oregon Asian American, Pacific Islander Bar Association	3/24/2021
Civil Rights, Civil Disobedience, and Black Hair as a Battleground, LBCC	1/19/2021
Bias in the Time of COVID-19, OREHEAD Conference	1/13/2021
Oregon's Bias Response Laws, American Association of University Women	1/28/2021
Civil Rights and Veterans, Minority Veterans of America Emerging Leadership Conference	11/12/2020
Bias Crime Law and Bias Incident Law, Oregon Prosecutor's Academy	10/28/2020
Juneteenth Celebration, NAACP	6/18/2020
Black Women in the Suffragette Movement, LBCC	3/31/2020
Oregon Bias Laws, Anti-Defamation League Pacific Northwest Conference	5/2020
Trust, Safety, and Belonging, Oregon Association of Deans Conference	2/26/2020
Forward Together, Multnomah County Managers Conference	11/15/2019
Oregon Hate Crimes, Building Bridges Conference	10/24/2019
Can You Hear Me Now? Elder Law Conference	10/29/2019
Veterans Living History, Chemawa Indian School	11/5/2019
Implicit Bias: Transgender and the Law, OSB Family Law Conference	10/12/2019
Civil Rights and Justice, LGBTQ ACUTE and LERC Summit	5/21/2019
Breaking Barriers, Women's Leadership Oregon State University	4/22/2019
Who You? Statewide Oregon Diversity Conference	9/12/2018



## HONORABLE MAUREEN MCKNIGHT

**Maureen McKnight** is a Senior Judge, having retired in 2019 after stepping down as Chief Family Court Judge in Multnomah County. Her legal career, both before appointment to the bench and afterwards, has focused on systemic family law issues affecting low-income Oregonians, including operation of the state's child support program, access to justice issues such as self-representation, and the response of Oregon's communities to domestic violence. Judge McKnight remains a member of several State Family Law Advisory subcommittees as well as the Judicial Department's Standardized Forms Workgroup and its Strategic Planning Initiative Implementation Committee. She is the author of numerous CLE articles and presentations, and the recipient of awards from the Oregon State Bar, Oregon Women Lawyers, the Multnomah County Domestic Violence Coordinating Council, the Oregon Chief Justice, and the Oregon Child Support Program.

## **DEBRA DORITY**

Debra Dority is a State Support Unit (SSU) Attorney at the Oregon Law Center (OLC) and provides mentoring and technical assistance on family law and domestic violence to attorneys at the OLC and Legal Aid Services of Oregon (LASO). Before joining the SSU, Debra worked at the Pendleton LASO office and the Hillsboro OLC office. A graduate of the University of Cincinnati College of Law, she has been a legal aid lawyer since 2005. Throughout her legal career, Debra's practice focused on providing legal services to rural victims/survivors of domestic violence, sexual assault, and stalking in protective order and family law cases. She has also represented clients in a Title IX sexual discrimination case and an international abduction case. Debra's move to the SSU has allowed her work on a statewide policy issues related to domestic and sexual abuse and stalking. Debra is the Vice Chair of the State Family Law Advisory Committee, chairing its Domestic Violence Subcommittee, and is a member of the Oregon Judicial Department's Law and Policy Work Group. Debra is also a member of the Oregon Attorney General's Sexual Assault Task Force.

Updated May 2021

# *Sara Rich, LCSW, LCC*

*P.O. Box 51584, Eugene, OR 97405*

*Tel: 541-953-4071 Fax: 541-484-9781 [sararichlcsw@gmail.com](mailto:sararichlcsw@gmail.com)*

## **PROFESSIONAL EXPERIENCE**

### **Family Therapist, Private Practice, Eugene, Oregon**

**2000-Present**

Working with individuals and families with mental health and relationship issues. Supervising parenting time for parents who are mandated by the court system. Facilitate reintegration with children and non-custodial parents. Co-parent coaching supporting healthy families for children. Parent Coordination for families with histories of conflict.

### **Family Support Specialist, Contractor, Department of Human Services, Oregon**

**1999-2020**

Working with children and families on safety goals, implementing behavior modification plans, complete monthly case notes on clients, assess family, build social and work relationships, mentor families on daily living issues. Collaborating with and referring families to community service providers and the court system.

### **Adjunct Professor, Substance Abuse Prevention Program, University of Oregon.**

**2015-2017**

Teaching classes through the Substance Abuse Prevention Program. Alcohol and Drug Prevention, Interpersonal Violence, Case Management and Documentation, Healthy Relationships.

### **Therapist/ Group Leader, Sanctuary Project, Applegate, Oregon**

**2009**

Led healing and sanctuary retreats for women veterans. Created and implemented curriculum, facilitated large and small groups, individual and group therapy related to combat trauma and military sexual trauma.

### **Group Facilitator, Trauma Healing Project, Eugene, Oregon      2008-2009**

Facilitated trauma informed healing support groups for youth. These groups were supervised and educated by international trauma experts. Supervised Masters of Social Work students.

### **Activist and Educator, Eugene, Oregon**

**2006-2011**

Provided education and support to people in the military and their families on military sexual assault. Educate groups and communities about sexual assault in the military.

**Group Facilitator, Family Therapist, South Lane School District, Oregon.**

**2004-2011**

Facilitated groups in middle schools and elementary schools focused on healing grief and loss, behavior modification, social skills, divorce, and attachment. Provided in-home therapeutic work with families.

**Birth Doula, Private Practice, Eugene, Oregon**

**1990-Present**

Creating birth plans for expecting families, attend births and coach families through birth plan. Assist in nurturing attachment and bonding through the birth process.

**EDUCATION**

**2000 Portland State University, Portland Oregon**

**M.S.W.**

**1993 University of Oregon, Eugene, Oregon**

**B.A. , Theater Arts**

**LICENSURE**

**2018 Licensed Clinical Social Worker**

**VOLUNTEER HISTORY**

**Board Chapter President, Association of Families and Conciliatory Courts, Oregon Chapter**

**2019-2021**

**Board of Directors, Association of Families and Conciliatory Courts, Oregon Chapter**

**2015- Present**

**Management Team Member, Oregon Country Fair**

**2001- Present**

Teaching crisis intervention procedures, mediation and support managerial functions for the third largest one-week community in Oregon.

**Board of Directors, Trauma Healing Project**

**2007-2008**

Founding member, supervised projects and trainings involving healing professionals in Lane County.

**Board Member, Community Alliance of Lane County**

**2005-2007**

Activist based group addressing hate crimes and promoting healthy communities.



**Chaplain, Unity of the Valley****2003-2006**

Helped train chaplains to support their therapeutic counseling practices and community outreach to marginalized members of the faith community.

**NASW Nominating Committee Chair****2000-2002**

Coordinated communications with members, set up training and recruitment procedures

**Human Rights Commissioner, City of Eugene****1998-2005**

Served as chair for two years and co-chair for three; helped plan educational and honorary events supporting human rights advocacy in the city of Eugene and Lane County.

**Member of Mayor's Child Abuse Task Force****1997-1999**

Helped support and coordinate efforts to reduce child abuse in Springfield. Coordinated workshops, conferences and public education campaigns.

**Kidsports Basketball Coach****1996-2000**

Coached middle school girls basketball

**HONORS, AWARDS AND SCHOLARSHIPS**

**Awarded Portland State Child Welfare Partnership Scholarship 1997-2000**

**PRESENTATIONS AND LECTURES**

**\* "The Roadmap Back: Supporting Children's Reintegration with Estranged Parents" Oregon Family Law Conference 2017**

**\* " Perspectives Of Court-Ordered Supervised Parenting Time" National Conference, Association of Families and Conciliatory Court Conference, Seattle, WA 2016**

**\* "Working With Hard to Reach Families, Meeting Them Where They Are"" Oregon Parent Educators Conference, Corvallis, OR 2014**

**\* "Women and Sexual Assault in the Military" National NOW Conference, 2007**

**National Lecturer on Military Sexual Assault    2006-2014**

**Speaker for Human Rights Awards Events    1998-2005**

## **Lauren Saucy**

J.D. Willamette University College of Law, cum laude, Salem, Oregon, 2003

B.A. Colorado College, cum laude, Phi Beta Kappa, Colorado Springs, CO, 2000,

Major: History

Member of:

Oregon State Bar Family Law Section, past Chair, past Executive Committee Member

American Academy of Matrimonial Lawyers, Fellow

Marion County Bar Association, past Vice President

Oregon Academy of Family Law Practitioners, Board Member

Ms. Saucy has been an adjunct professor at Willamette University College of Law since 2009. She teaches Advanced Oregon Family Law.

Ms. Saucy has written numerous articles on domestic relations matters, including multiple chapters on Family Law Legislation for the Oregon State Bar's CLE Manual, the chapter on Dividing Marital Property in the Oregon State Bar's Family Law CLE Manual, and co-authored with Paul Saucy

Parenting Plans: Thinking Outside the Box - American Journal of Family Law, Vol. 19, No. 2 (Summer 2005).

EDUCATION

**Bar Admission:** Oregon, October 2013

**University of Washington School of Law**, Seattle, Washington

Juris Doctor, Public Service Concentration Track, June 2013

- Foreign Language Area Studies Fellowship in Arabic/Middle East Studies
- Pro Bono Honors Program

**Hendrix College**, Conway, Arkansas

Bachelor of Arts in History, *cum laude*, with distinction August 2006

- Hendrix- Lilly Scholar (for students called to service by faith)
- Study Abroad for two years in Santiago de Compostela, Spain and Le Mans, France

LEGAL  
EXPERIENCE

**Oregon Law Center**, Portland, Oregon

*Staff Attorney, February 3, 2020 - Present*

Provide legal information, advice, and representation to low-income communities in Oregon in civil matters that impact basic human rights and dignity. Provide education and support to facilitate the protection of immigrant communities through capacity building and legal advocacy.

**Immigration Counseling Service**, Hood River, Oregon

*Managing Attorney, May 16, 2016 – February 2, 2020*

Oversee the opening and expansion of a new office, represented clients in affirmative and defensive immigration cases, provided community education and advocacy leading to changes in local laws and policies.

**Northwest Immigrant Rights Project**, Wenatchee, Washington

*Staff Attorney, August 19, 2013 – July 1, 2016*

Represented over 200 clients in a variety of areas of immigration law, with special focus on survivors of domestic violence and people in removal proceedings.

**St. Andrew’s Refugee Services Resettlement Legal Aid Project**, Cairo, Egypt

*Legal Intern, May 27, 2012 – January 3, 2013*

Represented refugees from Africa and the Middle East before US DOS and UNHCR. Wrote declarations and memoranda of laws, researched country conditions.

**Resolutions Northwest**, Portland, Oregon

*Volunteer Community Mediator, July 2009 – April 2010*

Mediated in English and Spanish with special training in cross-cultural disputes.

LANGUAGES

Spanish – *Native-level fluency*



French – *Professional fluency*



American Sign Language – *Intermediate*



Arabic (Egyptian) – *Basic*



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## CURRICULUM VITAE

Landon E. Poppleton, PhD, JD

Psychologist

[landonp@nwfamilypsychology.com](mailto:landonp@nwfamilypsychology.com)

10121 SE Sunnyside Road, Suite 300  
Clackamas, OR 97015  
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(f) 503-214-8486

814 NE 87th Ave  
Vancouver, WA 98664  
(p) 360-910-1522  
(f) 360-326-1522

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## LICENSES

### **Oregon State**

Psychologist (No. 1999)

### **Washington State**

Psychologist (No. PY 60041144)

## EDUCATION

### **J.D., Law**

Northwestern School of Law of Lewis and Clark College; Portland, Oregon  
American Bar Association Approved Law School  
Graduated 2016

### **Ph.D., Clinical Psychology**

*Ph.D. Minor, Statistics*

Brigham Young University; Provo, Utah  
American Psychological Association approved program  
Graduated 2008

Dissertation: Mediators and Moderators of Cognitive Behavioral  
Telephone Treatment of Depression  
Emphasis: Child, Adolescent and Family & Clinical Research  
Internship: Portland VA Medical Center; Portland, Oregon  
American Psychological Association approved program

### **B.S., Psychology/B.A., Economics**

*B.A. Minor, Spanish*

Brigham Young University; Provo, Utah  
Graduated 2002



## CLINICAL

**NW Family Psychology; Portland, OR/Vancouver, WA** Jan 2009- Present

***Director/Psychologist***

Work with children, adolescents, adults, and families to overcome the negative effects of divorce and other life challenges. Primarily provide bilateral custody evaluations, psychological assessments, parenting risk assessment, parenting coordination services, work product review, consultation, psychotherapy, and reunification services.

**Virginia Garcia Memorial Health Center; Portland, OR** Feb 2009–June 2010

***Program Coordinator/Resident***

Coordinated and supervised the behavioral health program in four clinics while providing treatment and consultation in behavioral medicine. Developed programs for chronic pain management, management of depression, violence risk assessment, and management of drug seeking and other behaviorally disordered clients. Provided services in both English and Spanish. Was part of a team to develop standards of care and program evaluation protocol.

**Lifeworks NW; Portland OR**

Sept 2008 – Aug 2009

***Resident***

Provided psychological services to adults and families including individual adult psychotherapy, family psychotherapy, dialectical behavior group therapy for personality disorders, and group treatment for depression.

**Portland VA Medical Center; Portland, OR**

Apr 2008 – Aug 2008

***Internship***

Provided a combination of psychotherapy, group psychotherapy, psychological assessment, neuropsychological assessment, and consultation in mental health, substance abuse, and neuropsychology clinics. This included a rotation at Doernbecher Children's Hospital doing child/adolescent neuropsychological evaluations in oncology. Was a member of the Disruptive Behavior Committee that met monthly to review threats and acts of violence, assessed for future violence risk, and made recommendations for intervention. Provided disruptive behavior assessment and management training.

**Family Academy; Provo, UT**

Mar 2001 – Aug 2007

***Externship***

Worked with families of divorce in multiple capacities, including supervision, individual and conjoint psychotherapy, supervision training, and therapeutic reunification. Conducted psychological and parent time evaluations. Consulted family and juvenile courts, case managers, and parent coordinators/special masters on divorce cases.

**Jay P. Jensen, PhD; Provo UT**

Jan 2005 – Aug 2007

***Clerkship***

Conducted child custody evaluations.

**Assessment and Polygraph Associates; Draper, UT**

Sept 2006 – Aug 2007

***Externship***

Conducted psychological, risk, and psycho-sexual assessments on juvenile offenders. Provided consultation to probation officers regarding level of risk and treatment needs.

**Mountain Lands Community Health; Provo, UT**

July 2004 – Aug 2006

***Externship***

Worked in primary care providing psychological services to children, adolescents, adults, and families for a variety of mental health problems. Consulted primary care physicians about treatment planning. Treated patients in both English and Spanish.

**BYU Comprehensive Clinic; Provo, Utah**

Jan 2004 – Jun 2006

***Practicum***

Provided individual, family, group, and couples psychotherapy. Conducted neuro-psychological, developmental, and personality assessments on adults and children.

**Erin Bigler, PhD; Provo, Utah**

May 2005 – Aug 2005

***Practicum***

Child neuropsychological assessments.

**Utah State Prison; Salt Lake City, Utah**

Nov 2004

***Clerkship***

Evaluated inmates using a variety of methods (viz., record review, psychological testing, interviews, and collateral contacts) to determine malingering and/or treatment needs.

**Utah State Mental Hospital; Provo, Utah**

July 2004 – Aug 2004

***Clerkship***

Provided treatment in cognitive-remediation.

## RESEARCH AND PRESENTATIONS

### Manuscripts:

Tutty, S. Spangler, D., & **Poppleton, L. E.**, (2010). Treatment Outcomes of Cognitive Behavioral Telephone Treatment for Depression on a Rural Adult Population. *Journal of Clinical and Consulting Psychology*.

Layne, C. M., Saltzman, W. R., **Poppleton, L. E.**, Burlingame, G. M., Pa'Ali, A., Durakovic, E., Music, M., Campara, N., Apo, N., Arslanagic, B., Steinberg, A. M., & Pynoos, R. S. (2008). Effectiveness of School-Based Group Psychotherapy Program for War-Exposed Adolescents: A Randomized Controlled Trial. *Journal of the American Academy of Child and Adolescent Psychiatry*.

Harris, M., Lauritzen, M., **Poppleton, L.**, Bubb, R. R., and Brown, B. L. (2007). How many factors? A strategy for identifying latent structure in factor analysis. American Statistical Association 2007 Proceedings.

**Poppleton, L.**, Harris, M., Lauritzen, M., Bubb, R. R., and Brown, B. L. (2007). The central limit theorem and structural validity in factor analysis. American Statistical Association 2007 Proceedings.

Lauritzen, M., Hunsaker, N., **Poppleton, L.**, Harris, M., Bubb, R. R., and Brown, B. L. (2007). Measurement error in factor analysis: The question of structural validity. American Statistical Association 2007 Proceedings.

Bishop, M. J., Bybee, T. S., Lambert, M. J., Burlingame, G. M., Wells, G., & **Poppleton, L. E.** (2005). Accuracy of a Rationally Derived Method for Identifying Treatment Failure in Children and Adolescents. *Journal of Child and Family Studies*.

### Presentations:

***Current Issues in Custody and Parenting Time Evaluation (May 2017)***. Presented with Annelisa Smith

***Alienated Child: Theory and Interventions (October 2016)***. Presented to the Clark County Bar Association.

***Child Development and Parenting Plan Development (March 2016)***. Presented to the Clark County Family Law Section

***Parenting Coordination (April 2015)***. Presented to the Clark County Family Law Section

***Meaning of Child Custody (October 2014)***. Presented to the Oregon Bar Family Law Section annual conference.

***DSM-5 in Dependency Matters*** (December 2013). Presented to Vancouver, DSHS

***Prevention and Management of Disruptive Behavior*** (October 2013). Presented to Longview DSHS.

***Forensic Mental Health Assessment*** (June 2013). Presented to Clackamas DHS with Dr. Jeff Lee.

***Joint Parenting-Time Schedules*** (May 2013). Presented to the Clark County Bar Association.

***Dealing with Drug and Alcohol Affected Clients when Developing Parenting Plans*** (March 2013). Presented to The Oregon Academy of Family Law Practitioners.

***Assessing Violence Risk in Youth in Child Custody Evaluation*** (April 2012). Presenter at the Washington Chapter Association of Family and Conciliation Courts Conference. With Dr. Steve Tutty

***Utilizing and Critiquing Empirical Research in Custody Assessments*** (April 2012). Presenter at the Washington Chapter Association of Family and Conciliation Courts Conference. With Dr. Jeff Lee and Ms. Lyons, B.S.

***Parenting Coordination*** (April 2012). Presented as panel of attorneys and psychologists to the Clark County Bar Association, Vancouver WA as a follow-up to that presented in February 2011. Model order, forms, and procedures provided that resulted from a work group that formed out of the prior meeting.

***Fundamentals of Forensic Mental Health Evaluations in Child Dependency Cases*** (April, 2012). Presented to the Clark County DSHS.

***Managing Difficult Clients in Dependency Matters*** (March 2012). Presented to Clark County DSHS.

***Assessing Violence Risk in Youth in Child Custody Evaluation*** (October 2011). Workshop at the Regional Association of Family and Conciliation Courts Conference on Domestic Violence. Presented with Dr. Steve Tutty.

***Parent Coordination*** (October 2011). Panel Member at the Washington Chapter Association of Family and Conciliation Courts Conference.

***Managing Difficult Clients in Dependency Matters*** (September 2011). Clark County Bar.

***Fundamentals of Forensic Parenting Evaluations*** (Sept 2011). Clark County CASA

***Assessment of Parental Alienation*** (May, 2011). Presented to the Clark County Guardian Ad Litem group.



***Fundamentals of Parenting Coordination*** (Feb 2011). Presented with Dr. Harry Dudley to the Clark County Bar Association, Vancouver WA.

***Forensic Mental Health Evaluations and Child Development*** (Oct 2010). Presented to the Clark County CASA.

***Psychological Testing in Family Law Matters*** (June 2010). Presented with Dr. Daniel Rybicki and Dr. Kirk Johnson. WA State Bar Association Mid-Year Conference, Vancouver, WA.

***Integrating Behavioral Health in Primary Care***. (March, 2009). Oyemaya, J., Poppleton, L.E. First Annual Primary Care Convention, Portland, Oregon

***Parenting Behavior May Mediate the Link between Postwar Adversities and Adolescent Mental Health: Preliminary Evidence from Bosnian Youths*** (April, 2008). Packard, A., Poppleton, L. E., & Layne, C.M. Presented at the Rocky Mountain Psychological Association convention, Boise, Idaho.

***Interneecine Conflict and Recovery of War-Traumatized Adolescents in Bosnia-Herzegovina*** (February, 2008). In C. Maida (Chair), *Global Ecologies of Danger: Living Through Extreme Times*. Layne, C.M., Olsen, J., Land, A., Poppleton, L.E., Legerski, J.P., Isakson, B., Djapo, N., Saltzman, W.R., Burlingame, G.M., Pynoos, R.S. Symposium presented at the Annual Meeting of the American Academy for the Advancement of Science, Boston, Massachusetts.

***How Many Factors? A Strategy for Identifying Latent Structure in Factor Analysis*** (August 2007). Harris, M., Lauritzen, M., Poppleton, L., Bubb, R. R., & Brown, B. L. Paper presented at the Joint Statistical Meetings 2007: "Statistics: Harnessing the Power of Information" (American Statistical Association, International Biometric Society, Institute of Mathematical Statistics), Salt Lake City, Utah.

***The Central Limit Theorem and Structural Validity in Factor Analysis*** (August 2007). Poppleton, L., Harris, M., Lauritzen, M., Bubb, R. R., & Brown, B. L. Paper presented at the Joint Statistical Meetings 2007: "Statistics: Harnessing the Power of Information" (American Statistical Association, International Biometric Society, Institute of Mathematical Statistics), Salt Lake City, Utah.

***Measurement Error in Factor Analysis: The Question of Structural Validity*** (August 2007). Lauritzen, M., Poppleton, L., Harris, M., Hunsaker, N., Bubb, R. R., & Brown, B. L. Paper presented at the Joint Statistical Meetings 2007: "Statistics: Harnessing the Power of Information" (American Statistical Association, International Biometric Society, Institute of Mathematical Statistics), Salt Lake City, Utah.

***Building Bridges Among Resilience-Related Theory, Research, and Practice: War Exposed Youths and Their Families*** (August 2007). Layne, C. M., Poppleton, L. E., Packard, A., & Land, A. APA Convention, San Francisco, California.

***Links Between Childhood Physical Abuse and Psychosocial Adjustment in Adulthood*** (November 2005). Killpack, J. T., Poppleton, L. E., Layne, C. M., Cloitre, M., Gordon, T., & Rosenberg, A. Poster presented at the 21<sup>st</sup> Annual Meeting of the International Society for Traumatic Stress Studies, Toronto, Canada.

***Treatment of Traumatic Bereavement in Adolescents: Conceptualization, Assessment, and Intervention Strategies*** (June 2005). Layne, C. M., Saltzman, W. S., Turner, S., Anderson, A., Harty, S., Killpack, J. T., Nelson, J., Miles, N., Brown, R., Lynes, L., Bylund, J., Bigham, M., Lambert, K., Anderton, K., Queiroz, A., & Poppleton, L. E. Workshop presented at the 2nd Annual West Coast Child & Adolescent Therapy Conference, Los Angeles, California.

**Grants:**

**Poppleton, L. E.,** Layne, C. M. (2007). Measuring Maladaptive Grief in Traumatically Bereaved Adolescents: Test Construction, Theory Building, Research Design, and Intervention. National Center for Child Traumatic Stress, University of California Los Angeles. \$8,000, Provo, Utah

**Poppleton, L. E.,** Layne, C. M. (2006). Evaluation of Formative Indicators of Traumatic Grief. National Center for Child Traumatic Stress, University of California Los Angeles. \$3,500, Provo, Utah

**Poppleton, L. E.,** Layne, C. M. (2006) Mechanisms of Change in a Randomized Control Trial of Bosnian Youth with Post-Traumatic Stress. National Center for Child Traumatic Stress, University of California Los Angeles. \$3,000, Provo, Utah

Killpack, J., Zenger, N., **Poppleton, L. E.,** Layne, C. M. (2006) Links Between Childhood Physical Abuse and Psychosocial Adjustment in Adulthood. Family Studies Center, Brigham Young University. \$5,000, Provo, Utah

**Poppleton, L. E.,** Carter, B., Layne, C. M. (2005) A Bosnian Treatment Evaluation Study. National Center for Child Traumatic Stress, University of California Los Angeles. \$5,000, Provo, Utah

**Poppleton, L. E.,** Spangler, D. (2004) Evaluation of Mediators and Moderators in Cognitive Behavioral Telephone Treatment of Depression. Office of Graduate Studies, Brigham Young University. \$1000, Provo, Utah

## TEACHING

<b>Pacific University; Hillsboro Campus, OR</b> <i>Course Instructor- Program Evaluation</i>	Sept 2012- Dec 2012
<b>Washington State University; Vancouver Campus, WA</b> <i>Course Instructor- Personality Theory</i>	Sept 2009- April 2010
<b>Brigham Young University; Provo, Utah</b> <i>Course Instructor- Measurement and Psychometrics</i> <i>Course Instructor- Statistics in Psychology</i>	Sept 2004 – Aug 2007 May 2007 – Jun 2007
<b>Brigham Young University; Provo, Utah</b> <i>Teaching Assistant- Research Measurement</i> <i>Teaching Assistant- Abnormal Psychology</i>	Jan 2005 – April 2005 Jan 2002 – April 2002

## RESEARCH CONSULTATION

<b>Co-Director</b> <b>Mensura Research Solutions, LLC</b> Research and statistical consultation.	Aug 2007 – Dec 2011
<b>Independent Consultant</b> <b>Research Consultation Pros</b> Provided statistical, research and editing consultation for myriad of research questions on dozens of projects.	Nov 2008 – Dec 2009

## COMMUNITY INVOLVEMENT

<b>Consortium Member</b> <b>Parent Coordination Clark County, WA</b> Part of a group of attorneys and psychologists to develop a standard parent coordination order to meet the needs of high conflict families of divorce/separation in Clark County	2011- 2012
<b>Consortium Member</b> <b>Alternative Dispute Resolution Clark County District Court, Vancouver, WA</b> Part of a group with the objective to develop a protocol to increase the utilization of alternative dispute resolution procedures in family law cases.	2010
<b>Consortium Member</b> <b>Fourth District Juvenile Court, Provo, UT</b> Provided consultation on risk assessment and program evaluation as a member of a multidisciplinary team with the aim to efficiently reunify children with their parents	July 2006 – Dec 2006

## **PROFESSIONAL MEMBERSHIPS**

**Association of Family and Conciliation Courts (Oregon and Washington Chapters)**

**Council on Contemporary Families** (past member)

**American Psychological Association** (past member)

**Washington State Psychological Association** (past member)

**American Statistical Association** (past member)

**American Group Psychological Association** (past member)

## **MARK KRAMER**

**Mark K. Kramer, an attorney since 1981, is a principal in the Portland law firm of Kramer and Associates, where his practice concentrates on family law and civil rights with cases ranging from representation of children endangered by their public custodians to contested custody matters, grandparent and psychological parent rights. He holds his B.A. degree, with distinction, from Cornell University (1978) and his J.D. degree from Northeastern University School of Law (1981). Mark is a member of the Oregon State Bar Family Law Section, the Oregon Trial Lawyers Association, the Oregon Academy of Family Law Practitioners and is a co-founder of the Multnomah County Family Law Group. Mark has previously served as a pro-tem judge in the Multnomah County Circuit Court.**

**In 1987, Mark was co-counsel to the Oregon Senate Judiciary Committee and assisted in the revision of ORS 109.119 to allow visitation rights to persons with an “ongoing personal relationship.” Since then Mark has regularly contributed to the ongoing modification of laws regarding grandparent and psychological parent rights. In 2001, he was a member of the work group that crafted legislation, (HB 2427, Chapter 873, Oregon Laws 2001) the “Troxel fix” that substantially revised ORS 109.119. Mark has prevailed before the Court of Appeals in three post-Troxel cases (*Harrington v. Daum*, and *Wilson and Wilson*, where he represented birth parents and *Wurtele v. Blevins*, where he represented grandparents.**

**Mark is the lead plaintiff in *Kramer v. Lake Oswego* (CV12100913), a case that has already established the public’s rights to use waterways subject to the Public Trust Doctrine and the State’s obligation to preserve and protect those rights.**

**Mark will be transitioning from litigation to mediation in 2023 and looks forward to working with Family Law Section members in his new role.**

## **SONIA MONTALBANO**

Since graduating from Lewis & Clark Law School almost 25 years ago, Sonia Montalbano has counseled individuals and companies of all sizes in the areas of employment and business law, with an emphasis on litigation in both state and federal courts, as well as at the appellate court level. She represents both employers and employees, which allows her to formulate strategies with the best chance of succeeding. She advises clients in a variety of areas, including wage and hour issues; handbook policies; contract negotiations; investigations into employee misconduct; non-competition agreements; severance packages; and compliance with leave laws. She has also litigated and testified as an expert witness on the issue of attorney fees in fee disputes and served as an arbitrator in numerous cases. Sonia is a co-author of a chapter in the OSB CLE Advocacy and Ethics in Oregon. She has been recognized as one of the Best Lawyers in America by U.S. News, and in 2019 obtained the 73<sup>rd</sup> largest jury verdict in the country. Because she will never give up on her original dream of being an actor, she has combined her communication skills with her desire to contribute to the community by performing as an auctioneer and emcee for non-profits, which has allowed her to help raise almost \$2 million for those organizations. Here to help is.....Sonia Montalbano! 😊

## **John E. Grant**

John E. Grant is an attorney and certified Kanban Management Professional. He founded Agile Attorney Consulting in 2014 to teach legal professionals how to harness the tools of modern entrepreneurship to build practices that are profitable, scalable, and sustainable for themselves and the communities they serve. John works with law firms and legal teams by facilitating strategy & leadership workshops, training team members in legal operations & efficiency practices, and consulting with leadership on product, pricing, and organizational strategy.

John served on the Oregon State Bar Board of Governors from 2018–2021, and co-chaired the Bar's Futures Task Force in 2016–2017. He currently sits on the State Family Law Advisory Committee's Futures and Data subcommittees, and serves as Board President for The Commons Law Center, a nonprofit law firm serving modest means clients throughout Oregon in Family Law, Estate Planning & Probate, and Tenant Law. John has been nationally awarded as a legal innovator by FastCase and the American Bar Association. You can reach him at [john@agileattorney.com](mailto:john@agileattorney.com).

# **MOLLY BECKER**

October 15, 2022

## **From Hotline Call to Founded Letter: Effective Strategies for Representing DHS-Involved Clients**

**Presented by: Molly Becker, Buckley Law P.C.**

Molly Becker (maiden name Gardiner) practices probate and trust litigation, contested guardianship and conservatorship matters, EPPDAPA (Elderly Persons and Persons with Disabilities Abuse Prevention Act) orders, elder abuse claims, and family law matters related to clients involved with DHS, including Founded reviews, foster parent representation, and helping families navigate CPS assessments.

She graduated from Portland State University with a B.A. in Psychology in 2011. She received her J.D. from Lewis & Clark Law in January 2021, where she was awarded Best Oral Advocate and Best Trial Team, and was an Associate Editor for Environmental Law Review.

As soon as she graduated from Portland State, Molly began her career in social work for the Department of Human Services, Child Welfare in Portland, Oregon. She worked for years, including during law school, as a child protective services caseworker investigating allegations of child abuse and neglect, assessing child safety, filing petitions for custody of children on behalf of DHS, testifying in court, collaborating with community partners, the Multnomah County District Attorney's Office, and local and federal law enforcement, and responding to emergencies on a near-daily basis. She has experience working on some of the most challenging cases involving child abuse images; child trafficking, exploitation, and fatalities; and cases involving the Indian Child Welfare Act and complex UCCJEA issues. During her time working for DHS, Molly was inspired to attend law school by her love of the courtroom and a commitment to advocate for vulnerable people.

Molly now works for Buckley Law under Katelyn Skinner. Buckley Law is a full-service law firm dedicated to providing comprehensive legal services with 25 attorneys practicing Business, Estate Planning and Administration, Employment, Real Estate, Family Law, and Civil Litigation. The firm is located in Lake Oswego.

Molly continues to use her knowledge base and skillset learned as a caseworker, in providing counsel to clients and striving to meet every client's unique needs, and enjoys interfacing with both Child Welfare and Adult Protective Services on a regular basis.



# KATELYN SKINNER

October 15, 2022

## **International Implications in Divorce and Custody Matters – Personal Jurisdiction Considerations**

**Presented by: Katelyn D. Skinner, Buckley Law P.C.**

Katelyn Skinner practices family law, including divorce, custody disputes, modification issues, international disputes, restraining and protective orders, trust and probate litigation, and contested guardianship/conservatorship matters.

She graduated from University of Oregon with a BA in Japanese in 2007, then from Willamette University College of Law in 2010.

Right out of law school, Katelyn started her legal career as a solo practitioner, where one of her very first cases involved representing a Japan-based, family-owned corporation whose granite mine had been illegally and fraudulently transferred to individuals associated with the Japanese mafia. The case involved allegations of fraud, theft, illegal dumping of radioactive waste, and suspiciously timed arson of a government building housing documents relating to the case. After enjoying seven years building her solo practice, Katelyn joined Buckley Law in 2017. Buckley Law is a full-service law firm dedicated to providing comprehensive legal services with 25 attorneys practicing Business, Estate Planning and Administration, Employment, Real Estate, Family Law, and Civil Litigation. The firm is located in Lake Oswego. Katelyn is a shareholder at Buckley Law and leads a team of 4 associates: Molly Becker, Alex Strong, Noah Morss, and Katrina Seipel, along with 3 paralegals, and a project assistant.

Katelyn has a long-time connection to Japan; first living in a small fishing town during a year-long exchange program for her junior year of high school. She spent another year attending Waseda University while living in Tokyo during college, and then spent a semester attending Temple University Law School Japan, the only ABA accredited law school in Japan. While attending law school in Japan, she worked for the Japanese Ministry of Justice on their translation of laws project, translating laws into English for the country's first large scale translation project. Katelyn is happy to talk with anyone and everyone about her love of Japan.

# Hon. Erin A. Fennerty

## Lane County Circuit Court

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### Bar Admissions:

State: Oregon, 2008  
Federal: U.S. District Court, District of Oregon, 2008  
U.S. Tax Court, 2008

### Work Experience:

*Oregon Circuit Court Judge*, 2022 - Present  
*Luvaas Cobb*, Eugene, Oregon,  
Shareholder, 2015 - 2021, Associate, 2008 - 2014  
*Judge Pro Tempore*, Lane County Circuit Court, 2017 - 2021)  
*Adjunct Professor*, Northwest Christian College (now Bushnell University), Education Law (Fall 2010, Spring 2014)

### Education:

George Mason University School of Law - 2007 *J.D.*  
Journal of Law, Economics & Policy  
University of Utah - 2001 *B.A. in Political Science*  
Magna Cum Laude

### Organizations:

American Bar Association (Family Law and Litigation Sections)  
Oregon State Bar (Family Law and Litigation Sections)  
Oregon Women Lawyers Association

### Boards, Committees, & Community:

Lane County Family Law Advisory Committee, Member (2014-Present)  
Oregon State Bar, Family Law Section Executive Committee, Member (2019 - Present)  
Chair-Elect: 2022-present; Secretary; 2021  
Lane County Bar Association, Board of Directors (2016-2021)  
President; 2020-2021; President-Elect: 2019-2020; Secretary-Treasurer: 2018-2019  
Oregon State Professional Responsibility Board, Member (2021)  
WomenSpace, Board of Directors (2014-2019)  
Secretary: 2016-2018  
Eugene Concert Choir, Board of Directors (2010-2014)

### Presentations:

“Legislative Update.” Lane County Bar Association, Family Law Section CLE, January 2020  
“What You Need To Know About Ex Parte.” Lane County Bar Association, Family Law Section CLE, April 2019  
“The Rocky Marriage of Family Law and Bankruptcy.” Co-Author and Presenter, Oregon State Bar CLE seminar, December 2018  
“When Family Law and Protective Proceedings Collide.” Lane County Family Law Advisory Committee CLE, September 2017  
“The Tax Implications of Divorce.” Eugene / Springfield Tax Association, February 2014

# RYAN CARTY

ryan@cartylawpc.com  
Phone: (503) 991-5142



CARTY LAW

## **Education**

- J.D., Willamette University College of Law, 2009
- Certificate: Sustainable Enterprise, Willamette University Graduate School of Management, 2009
- B.A., Willamette University, Salem, Oregon, 2004, Major: Theatre

## **Associations**

- *Member*, Oregon State Bar, Family Law Section
- *Member*, Oregon Academy of Family Law Practitioners
- *Court-Certified Civil Mediator* – Small Claims & FED, Marion Co. Circuit Court (2014-present)

## **Leadership** (selected)

- *Member*, State Family Law Advisory Committee, (2013-present; *Co-Chair*, Data Subcomm. 2018-Present; *Chair*, Futures Subcomm. 2021-present; *Chair*, Legis. Subcomm. 2012-present)
- *Co-Chair*, Boys & Girls Club, Teen Court Committee (2012-present)
- *Member*, Legislative Workgroup on Parental Relocation (2022-present)
- *Member*, Legislative Workgroup on Custody and Parenting Time (2016-19)
- *Member*, Oregon State Bar, OSB/OJD Task Force on Oregon eCourt Implementation (2013-15)
- *Member*, Oregon State Bar, Senate Bill 799 Task Force (2013-14)
- *Judges Panel*, American Bar Assn., Law Std. Div. Region 10 Negotiation Competition (2010, 2014)
- *President*, Board of Directors, Historic Elsinore Theatre (2014-2022; *Member* 2012-2022)
- *Board Member*, Theatre 33 (2022-present)
- *Board Member*, Rotary eClub of the Willamette Valley (2011-15, 2022)
- *Youth Sports Coach*, Capital FC Timbers, Boys & Girls Club, Salem-Keizer Ed. Fndn., YMCA (2012-present)

## **Awards**

- Super Lawyer (2022), Rising Star (2012-21), Super Lawyers Magazine
- Arno Denecke New Lawyer of the Year, Marion-Polk County Legal Aid (2010)

## **Publications**

- *Oregon Legislation Highlights (Domestic Relations)*, Oregon State Bar CLE publication (2011, 2013, 2015, 2019, 2021)

## **Speaking Engagements** (selected)

- *Crisis & Resiliency: Reimagining the Future of Family Law*, OJD & SFLAC Family Law Conf. (2021)
- *Legislative Update (Family Law)*, Oregon State Bar, Family Law Section CLE (2011, 2013, 2015, 2017, 2019, 2021)
- *Proposed Legislation and Family Law*, OJD & SFLAC Family Law Conf. (2017, 2019)
- *Depositions 101*, Oregon Family Law Practice, Willamette University College of Law (2017)
- *Advanced Child Support: Rebuttals*, Oregon State Bar, Family Law Section CLE (2014)
- *Family Law Practice Panel*, Willamette University College of Law (2011-14, 2016)

## **Judge Ramon Pagán**

Judge Pagán has had varied and extensive trial experience as a practitioner and circuit court judge. Before moving to Oregon, he practiced in New York City, appearing in federal and state courts throughout the metropolitan area. His practice included complex civil litigation in federal courts, high profile criminal defense matters in state and federal courts, and indigent defense matters in Bronx County as an 18b panel attorney.

When Judge Pagán moved to Oregon, he joined a prominent white collar defense firm with Janet Hoffman and Associates, appearing in state and federal courts on complex civil and criminal matters. After leaving the firm, he joined the Oregon Defense Attorney Consortium, where he had a contract with OPDS to accept a wide range of criminal defense appointments, including Measure 11 and Jessica's Law cases. Before being appointed to the bench, he joined the CJA panel in the District Court of Oregon.

After being appointed to the Washington County Circuit Court in 2016, he joined the domestic relations team. He was appointed as the team chief in 2018. In 2021, he joined the general trial rotation and handled a variety of criminal and civil jury trials.

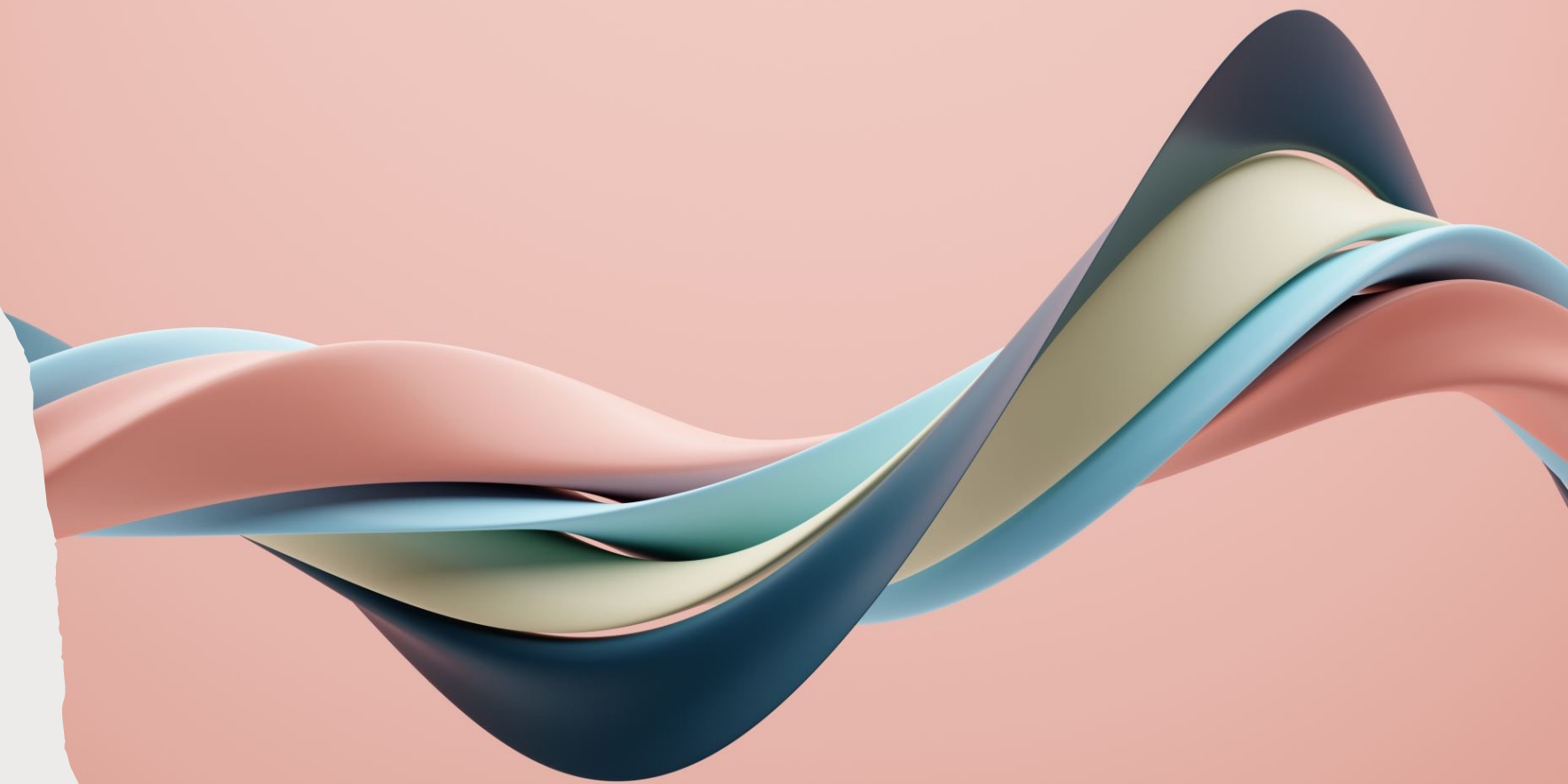
Judge Pagán received his B.A. in history from Arizona State University. He received his J.D. from Fordham University School of Law. Throughout his career, he has been an avid trial advocacy professor and coach. He helped establish the Brendan Moore Trial Advocacy Center at Fordham University, and continued to coach trial advocacy teams and teach trial advocacy at Lewis and Clark Law School when he came to Oregon.

# ***The State of Gender Affirming Care....Now***

# THE BATTLE FOR GENDER AFFIRMING CARE

Fay Stetz-Waters,

Director of Civil Rights and Social Justice in the Office of the  
Attorney General





# BOMBS, BATHROOMS, AND BANS



(AP Photo/Charles Krupa)

# GENDER AFFIRMING CARE IN THE HEADLINES

Woman arrested over **bomb threat** made against Boston Children's Hospital – ABC News

He came out as trans. Then Texas had him **investigate parents of trans kids** – Washington Post

Trans religious leaders say scripture should **inspire inclusive congregations** – NPR

Uproar in Tennessee over hospital's push for its **pediatric transgender profit center** – World Tribune

Employers Pressed Over **Health Plan Coverage** of Transgender Treatments for Minors – Ogletree Deakins

California Set to Become a **Refuge for Transgender Health Care** Under New Law – KQED

Medical groups call on DOJ to **investigate threats** targeting gender-affirming care – The Hill



**BUT FIRST**

LET'S GET ON THE SAME  
PAGE WITH LANGUAGE  
AND DEFINITIONS

## GENDER DYSPHORIA

Gender dysphoria refers to “a concept [and clinical diagnosis] designated in the DSM-5 as clinically significant distress or impairment related to a strong desire to be of another gender, which may include desire to change primary and/or secondary sex characteristics. Not all transgender or gender diverse people experience dysphoria.”

## **A TRANSGENDER PERSON**

Someone who is transgender has a gender identity different from that traditionally associated with sex assigned at birth.

## **GENDER IDENTITY**

Gender identity is one's internal sense of being male, female, some combination, or another gender. Gender identity may or may not align with sex or gender assigned at birth.

## **GENDER AFFIRMING CARE**

Gender-affirming care is a model of care which includes a spectrum of “social, psychological, behavioral or medical (including hormonal treatment or surgery) interventions designed to support and affirm an individual’s gender identity.

# **GENDER AFFIRMING CARE IS IMPORTANT CARE**

Gender-affirming care is:

- Age-appropriate
- Medically necessary
- Supported by all credible major medical organizations
- Made in consultation with medical and mental health professionals AND parents
- Not new and has been provided since the 1990's.

# **GENDER TRANSITION IS A PERSONAL PROCESS**

It can include social changes like changing clothes, names, and hairstyles to fit a person's gender identity.

It can include medication. Some people take medication, and some do not.

Some adults have surgeries, and others do not.

How someone transitions is their choice, to be made with their family and their doctor.

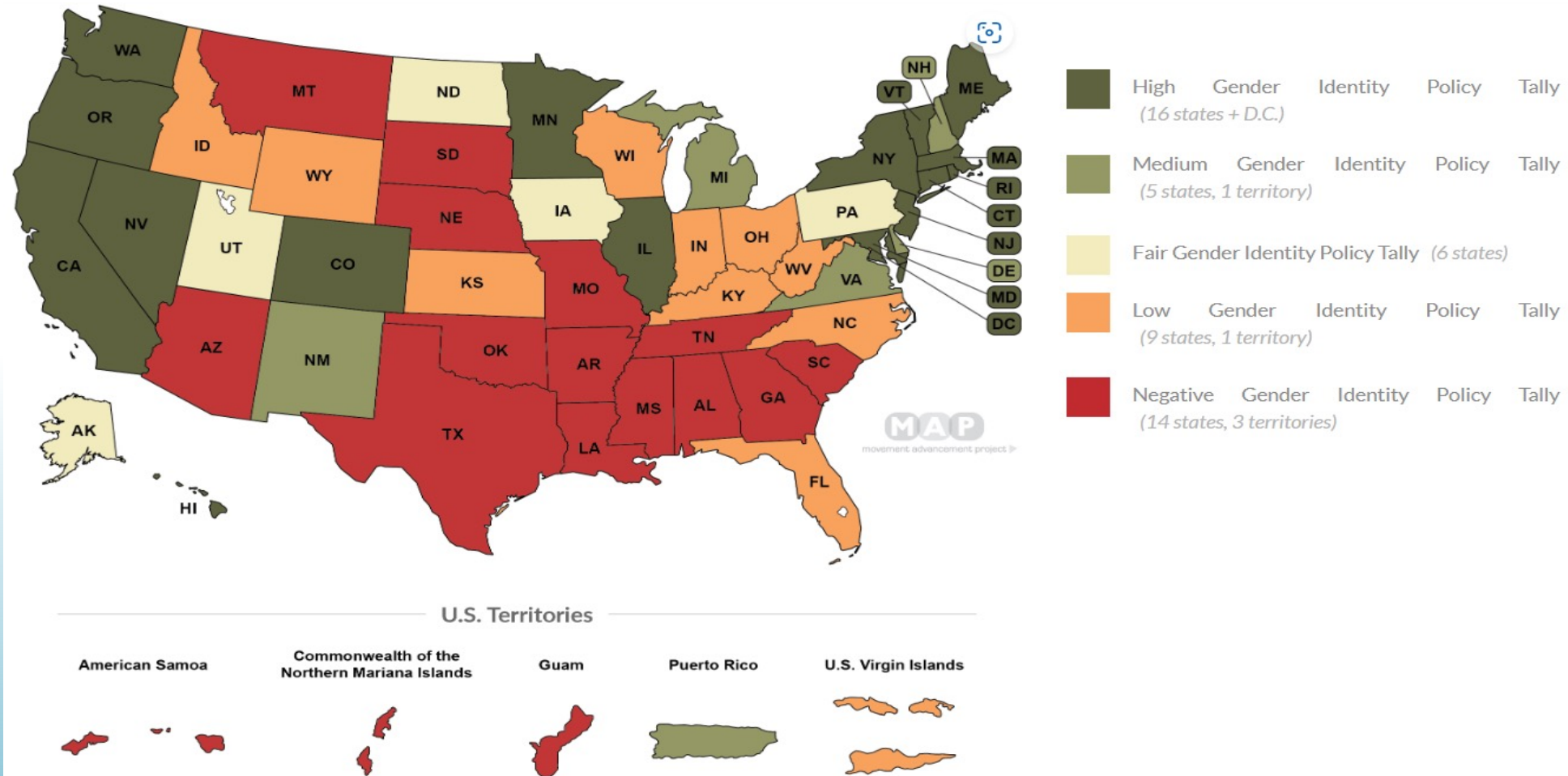
Therapists, parents, and health care providers work together to determine which changes to make at a given time that are in the best interest of the child.

**GRIMM V. GLOUCESTER COUNTY SCHOOL BOARD**  
**“ALL I WANT IS TO BE A NORMAL CHILD AND USE THE BATHROOM**  
**IN PEACE.” GAVIN GRIMM**

- Gavin came out to his school as a boy who is transgender.
- Then, his school board adopted a policy prohibiting boys and girls with “gender identity issues” from using the same common restrooms as other boys and girls.
- The new policy directed Gavin to an “alternative appropriate private facility” instead.
- Through the rest of his high school, he was forced to use separate restrooms that no other student was required to use.
- After graduating the school refused to provide him with a transcript identifying him as male.
- The ACLU represented Gavin in his civil rights lawsuit against the School Board.



# TRANSGENDER LAW CENTER'S MAP FOR GENDER IDENTITY POLICY



# TRANSGENDER LAW CENTER'S EQUALITY PROFILE FOR VIRGINIA

## Quick Facts About Virginia

Percent of Adults (18+)  
Who are LGBTQ

**3.9%**

*Gallup/Williams 2019*

Total LGBTQ  
Population (13+)

**308,000**

*Williams 2020*

Percent of Workforce  
That is LGBTQ

**4%**

*Census 2018; Williams 2020*

Total LGBTQ  
Workers

**197,000**

*Williams 2020*

Percent of LGBTQ  
Adults (25+) Raising  
Children

**26%**

*Gallup/Williams 2019*

## Virginia's LGBTQ Policy Tally



Sexual Orientation Policy Tally:

**11/20.5**

**MEDIUM**



Gender Identity Policy Tally:

**13.5/22**

**MEDIUM**



Overall Tally:

**24.5/42.5**

**MEDIUM**



 [VIEW METHODOLOGY/MORE INFORMATION](#)

See how Virginia compares to the rest of the country on the [Snapshot](#) page.

# TRANSGENDER LAW CENTER'S EQUALITY PROFILE FOR OREGON

## OREGON'S EQUALITY PROFILE

### Quick Facts About Oregon

Percent of Adults (18+)  
Who are LGBTQ

**5.6%**

*Gallup/Williams 2019*

Total LGBTQ  
Population (13+)

**207,000**

*Williams 2020*

Percent of Workforce  
That is LGBTQ

**6%**

*Census 2018; Williams 2020*

Total LGBTQ  
Workers

**129,000**

*Williams 2020*

Percent of LGBTQ  
Adults (25+) Raising  
Children

**23%**

*Gallup/Williams 2019*

### Oregon's LGBTQ Policy Tally



Sexual Orientation Policy Tally:

**17.5/20.5**

**HIGH**

Gender Identity Policy Tally:

**20/22**

**HIGH**

Overall Tally:

**37.5/42.5**

**HIGH**



# ANTI-TRANS MOVEMENT

Alabama, Arkansas, Texas, and Arizona recently enacted laws or policies restricting transgender youth access to gender affirming care or prohibitions on private insurance coverage and Medicaid, and other prohibitions, penalties, and schemes such as:

- Creating discriminatory sports bans and restrictions for transgender athletes;
- Creating a civil cause of action for athletes to sue people, schools, school districts and higher education institutions, athletes who felt unfairly harmed by a trans athlete's participation in a sport;
- Criminalizing healthcare practitioners who provide gender affirming healthcare;
- Denying Medicaid coverage or other public monies to be used for gender affirming care and services;
- Investigating parents who seek gender affirming care for their children as child abuse;
- Prohibiting private employers' healthcare plans from providing coverage from gender affirming care;
- Criminalizing teachers and school administrators who use gender affirming language;
- Defunding public libraries that retain LGBTQIA2S+ books on their shelves.

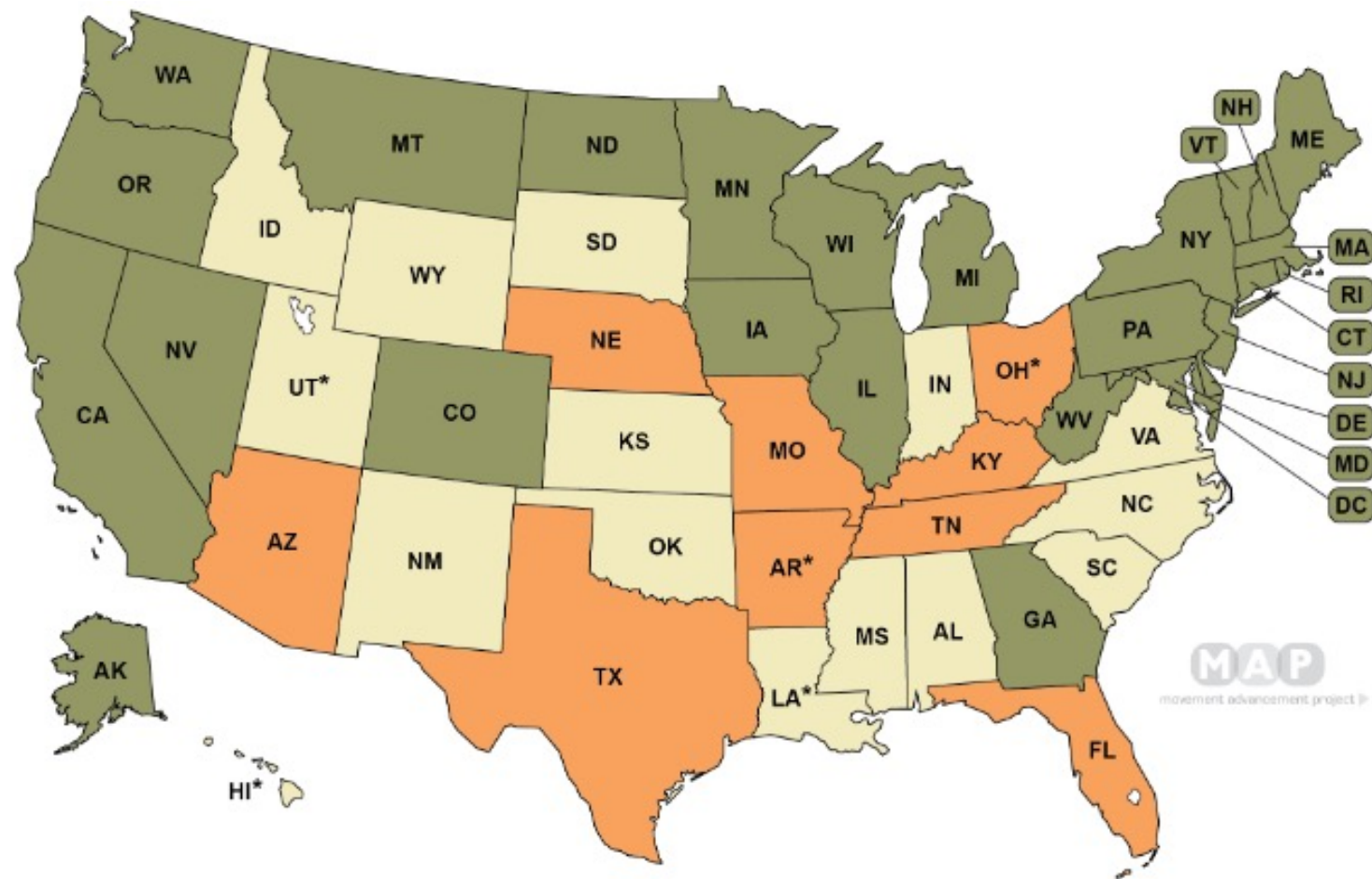
# **\$40 MILLION IN EMERGENCY RELIEF FUNDING FOR OU HOSPITAL THREATENED, SCHOOL BUDGETS REDUCED FOR NONCOMPLIANCE**

SB 3, passed by the Oklahoma legislature and signed into law by Gov. Stitt, threatens to withhold almost \$40 million in federal COVID relief dollars granted in President Biden's American Rescue Plan from OU Health if the medical facility continues to provide age-appropriate, medically necessary gender-affirming care.

OK also has a bathroom requiring Oklahoma schoolchildren to use only the bathroom of the sex listed on their birth certificate. Transgender youth in Oklahoma schools now face mandated discipline, possibly even suspension, simply for using the restroom and other facilities at school corresponding with who they are.

The law also requires the State Department of Education to penalize schools that do not comply with the new law with a 5% reduction in state funding.





- State Medicaid policy explicitly covers health care related to gender transition for transgender people (26 states, 1 territory + D.C.)
- State Medicaid has no explicit policy regarding transgender health coverage and care (15 states, 4 territories)
- State Medicaid policy explicitly excludes transgender health coverage and care (9 states)

 Citations & More Information

**MAP**  
movement advancement project

### U.S. Territories

American Samoa



Commonwealth of the Northern Mariana Islands



Guam



Puerto Rico



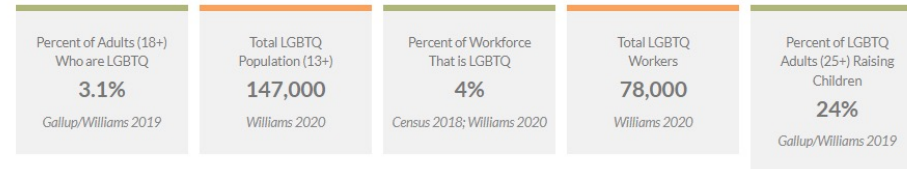
U.S. Virgin Islands



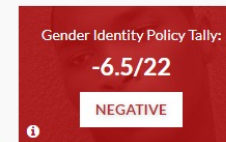
# TRANSGENDER LAW CENTER'S EQUALITY PROFILE FOR ALABAMA

## ALABAMA'S EQUALITY PROFILE

### Quick Facts About Alabama



### Alabama's LGBTQ Policy Tally



# ALABAMA'S RESTRICTION, STRICTEST IN THE NATION

Alabama became the first state in the nation to make it a felony to provide gender-affirming care to trans youth when Gov. Kay Ivey signed Senate Bill 184 into law only one day after it was passed by the state's legislature.

SB184 threatens doctors with up to 10 years in prison for providing gender-affirming care to anyone under the age of 19 and a fine up to \$15,000.

House Bill 322, forces trans students in public schools to use bathrooms and changing rooms in accordance with the sex listed on their original birth certificates while also banning classroom discussion of gender identity and sexual orientation from kindergarten through 5th grade.

School nurses, counselors, teachers, principals, and other administrative school officials SHALL NOT WITHHOLD from a minor's parents or guardian that their child's perception of his or her gender is inconsistent with the minor's sex assigned at birth and shall not encourage a minor to do so.

In May, a federal district court granted a preliminary injunction blocking enforcement of the law prohibiting puberty blockers and hormone therapy.



## ABOUT SB 184

- Governor Kay Ivey said, "If the Good Lord made you a boy, you are a boy, and if he made you a girl, you are a girl." "We should especially protect our children from these radical, life-altering drugs and surgeries when they are at such a vulnerable stage in life."
- 15-year-old H.W. said, "I know that I am a girl and I always have been. "“Even before I learned the word ‘transgender’ or met other trans people, I knew myself. I did not choose to experience bullying and discrimination because I am transgender. I chose to be proud of who I am.
- The possibility of losing access to my medical care because of this law causes me deep anxiety. I would not feel like myself anymore if this lifesaving medication was criminalized.”

# GENDER AFFIRMING CARE

## SUPPORT GENDER AFFIRMING CARE

---

- Denying medically necessary care harms teens' physically, emotionally, and psychologically and places them at greater risk for depression, anxiety, for sexual assault, and other physical violence including suicide.
- Ensures access to gender affirming healthcare, preventing direct economic, emotional, and health consequences from excluding individuals from necessary healthcare and it allows doctors to practice medicine consistent with well-accepted medical standards and anti-discrimination laws.
- Is consistent with application of longstanding anti-discrimination laws and policies and states' commitments to protecting the equality of all people. Removing discriminatory barriers to healthcare improves health outcomes for transgender youth.
- Parents, medical doctors, and patients are best situated to make individualized medical decisions for transgender youth.
- Ban violates Equal Protection

## AGAINST GENDER AFFIRMING CARE

---

- Compelling state interest and broad authority to regulate gender affirming care because "this area is fraught with medical uncertainties contrary to the evidence from the AAP and AMA."
- There is an "intensely boiling medical controversy." Physicians and researchers in Sweden, Finland, the United Kingdom, and France; and many in the United States agree the evidence about gender affirming care is inconclusive.
- Teenagers are too immature to make these decisions. We must protect them from themselves.
- Consensus statements do not matter because doctors are self interested and can't be trusted. Parents should decide medical decisions.

# **PRELIMINARY INJUNCTION GRANTED, IN PART**

In May, a federal district court granted a preliminary injunction blocking enforcement of the law prohibiting puberty blockers and hormone therapy.

The Court found that plaintiffs were substantially likely to succeed on their claim that sections of the law that prohibit puberty blockers and hormone therapy unconstitutionally violate parents' fundamental rights to autonomy under the 14<sup>th</sup> Amendment's due process clause by prohibiting parents from obtaining medical treatment for their children subject to medically accepted standards.

The Court found that plaintiffs were substantially likely to success on their claim that these sections are unconstitutional sex discrimination because the law denies medically necessary services only to transgender minors while allowing those services for cisgender minors.

The court also found that Plaintiffs were likely to suffer irreparable harm in the form of severe physical and or psychological harm and significant deterioration in their familial relationships and educational performance if the law was not blocked.

# IMPLICATIONS OF ALABAMA'S CATEGORICAL BAN

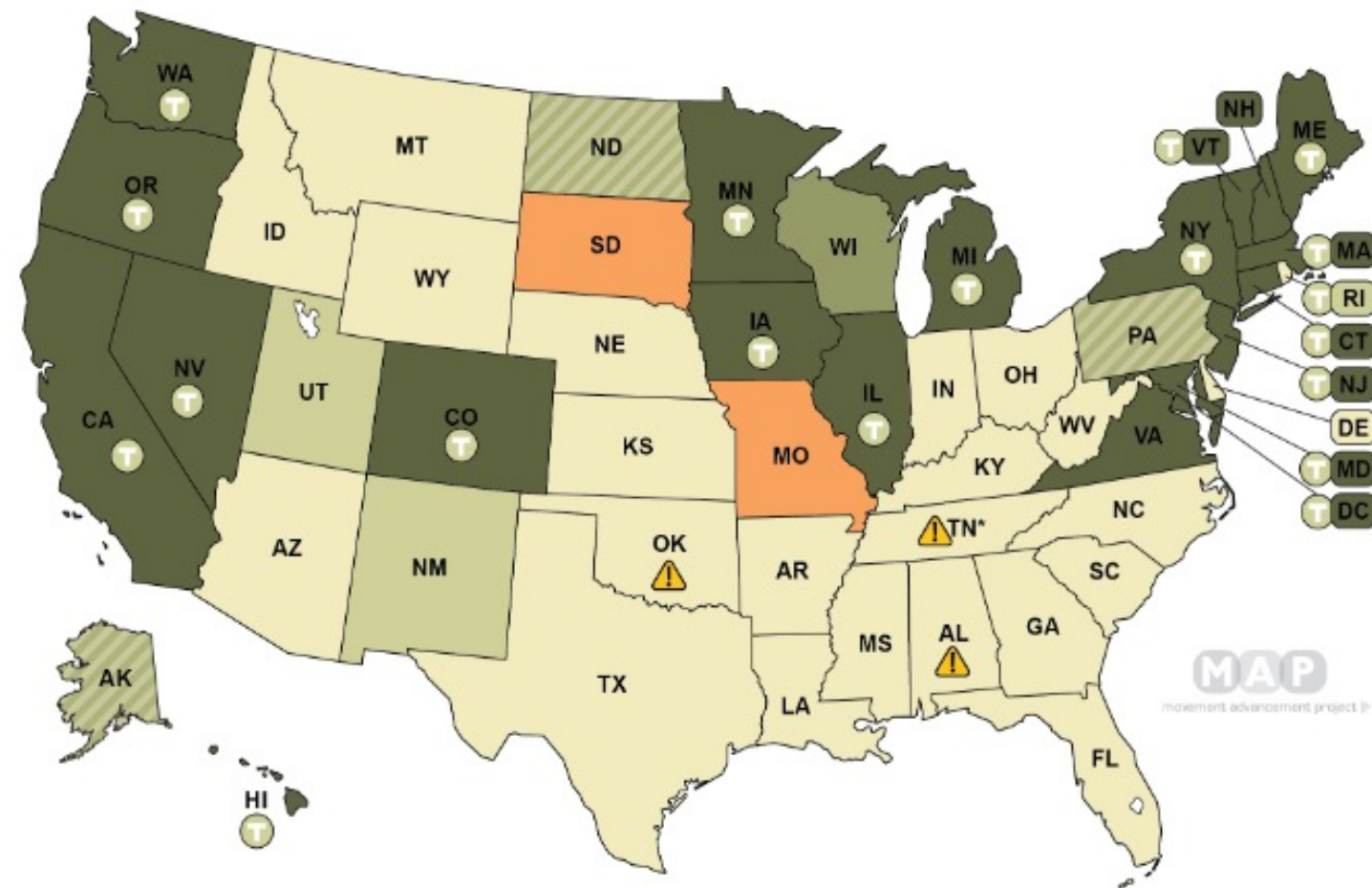
- Imagine, an Oregon transgender college student under the age of 19, who had been receiving GAC in Oregon, traveled to Alabama to compete, or to visit or whatever reason for visiting Alabama.
- The student's choices: would be to discontinue their prescribed medication while in Alabama causing themselves harm or
- If they continue their medications, their providers could face imprisonment for up to 10 years and fines up to \$15,000 and
- If they continue their medications, their parents, their coach, whoever aided them could face imprisonment for up to 10 years and fines up to \$15,000.
- This deterrent law places Oregon's transgender students, receiving gender affirming care at other risks of harm to their health and wellbeing by denying them medically necessary treatment.
- This law would subject Oregon transgender students who visit Alabama to discriminatory laws that violate their civil rights.

# **ANTI-TRANS HARASSMENT CAMPAIGN**

Anti-LGBTQ extremists have launched aggressive harassment campaigns against schools, libraries, and children's hospitals while publicly soliciting donations online to sustain this hate fueled momentum.

They label healthcare professionals as groomers, butchers, and sickos. Faced with surging threats and harassment, hospitals providing lifesaving medical care for trans people are now scrubbing their websites of valuable information to protect their patients and staff, but they are also creating barriers to access for individuals seeking gender-affirming care.

Anti-trans activists also created an online database to target real world LGBTQ community centers, gender-affirming care clinics, and nonprofits with harassment and violence. The database was taken down from Google Maps only following public outcry.



### U.S. Territories



- T** State has explicit guidance for the treatment and inclusion of transgender students (18 states, 2 territories + D.C.)
- Dark Green** State law prohibits discrimination in schools on the bases of sexual orientation and gender identity (19 states, 1 territory + D.C.)
- Light Green** State law prohibits discrimination in schools on the basis of sexual orientation only (1 state)
- Hatched** State explicitly interprets existing prohibition on sex discrimination to include sexual orientation and/or gender identity (see note) (3 states, 1 territory)
- Light Green** School regulation or teacher code prohibits discrimination on the basis of sexual orientation and/or gender identity (see note) (3 states, 1 territory)
- Yellow** No state law protecting LGBTQ students (24 states, 2 territories)
- Orange** State law prevents schools or districts from adding LGBTQ protections to nondiscrimination policies (2 states)
- Warning Triangle** State bans transgender students from using school facilities consistent with their gender identity (3 states)

**PAUL A. EKNES-TURNER, REV., ET AL.,  
V.  
GOVERNOR OF THE STATE OF ALABAMA**

The Act creates a sex-based classification that violates the Equal Protection Clause because the law prohibits transgender minors —and only transgender minors- from taking transitioning medications due to their gender nonconformity. The categorical prohibition places a special burden on transgender minors because their gender identity does not match their birth sex.

The District Court explained, that the classification cannot satisfy intermediate scrutiny because the State puts on no evidence to show that transitioning medications are experimental and because nothing in the record shows that medical providers are pushing transition medications on minors.

The Act fails under any standard of review. Categorically banning all gender affirming medications for all transgender minors, regardless of their individual circumstances and in defiance of well-established medical standards, is not rationally related to any legitimate government interest.

THE BATTLE IS FAR FROM OVER

WHERE ARE WE HEADED  
NEXT?



## WORKS CITED

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- [https://www.lgbtmap.org/equality-maps/safe\\_school\\_laws](https://www.lgbtmap.org/equality-maps/safe_school_laws)
- <https://www.kff.org/other/issue-brief/youth-access-to-gender-affirming-care-the-federal-and-state-policy-landscape/>
- <https://ago.nebraska.gov/sites/ago.nebraska.gov/files/doc/11th%20Cir%20Brief%20-%20Filemarked%5B92%5D.pdf>
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- <https://transgenderlawcenter.org/equalitymap>
- <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria>
- <https://legiscan.com/AL/bill/SB184/2022>
- <https://legiscan.com/AL/bill/HB322/2022>

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Jun 01, MaryBeth Musumeci Published: and 2022. “Youth Access to Gender Affirming Care: The Federal and State Policy Landscape.” *KFF*, 1 June 2022, <https://www.kff.org/other/issue-brief/youth-access-to-gender-affirming-care-the-federal-and-state-policy-landscape/>.

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Title: The State of Gender Affirming Care Now

For Further Reading: Works Consulted

[Association of Gender-Affirming Hormone Therapy With Depression, Thoughts of Suicide, and Attempted Suicide Among Transgender and Nonbinary Youth \(jahonline.org\)](#)

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[HHS Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy](#)


[Psychological Functioning in Transgender Adolescents Before and After Gender-Affirmative Care Compared With Cisgender General Population Peers - Journal of Adolescent Health \(jahonline.org\)](#)

[Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts, 2017 | MMWR \(cdc.gov\)](#)

***FAPA in 2022: A  
Focus on Victim  
Reactions, the New  
Legal Standard, and  
Firearm  
Dispossession***

# ***FAPA IN 2022:***

***A Focus on:***



**Victim Reactions,  
the New Legal Standard, &  
Firearm Dispossession**

**OSB Family Law Section Conference -- October 2022**

**Hon. Maureen McKnight (she/her), Senior Judge**

**Debra Dority (she/her), Oregon Law Center Support Unit Attorney**

# Domestic Violence: Dynamics & Trauma

A Review for Some, an Introduction for Others

D. Dority

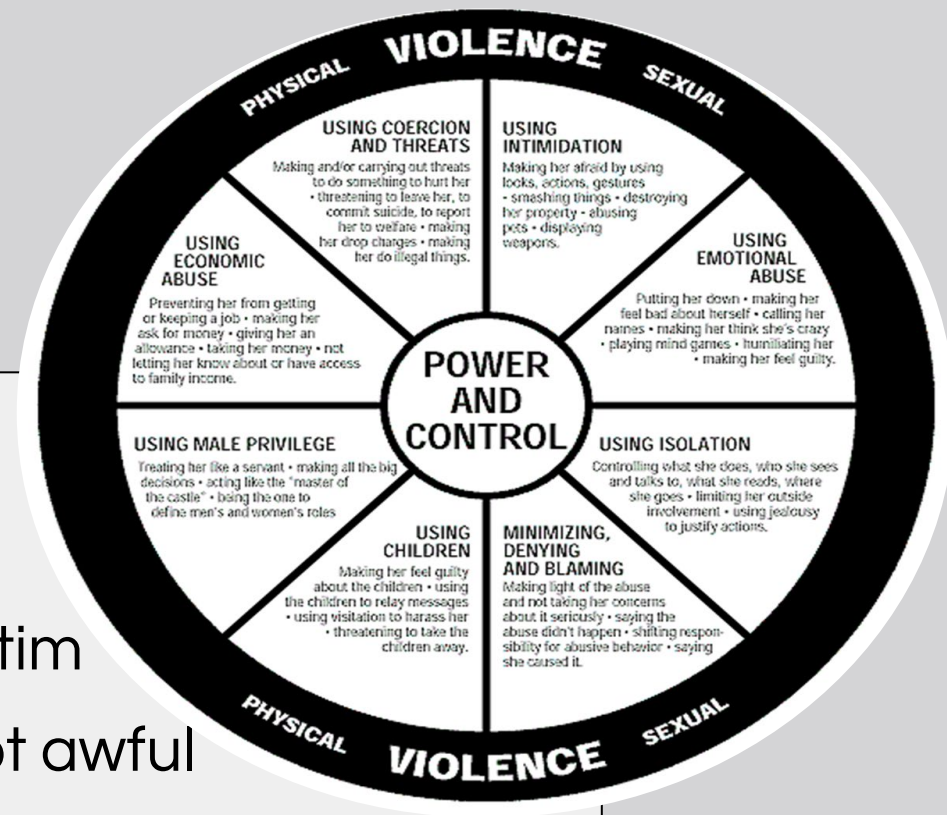
# DV Dynamics

## Domestic Violence:

- Power and Control is Central
- Tactics are tailored by the perpetrator for the victim
- There is often a cycle where the perpetrator is not awful

## IT IS NOT:

- A misunderstanding
- A one-time occurrence or something that 'got out of hand'
- An anger problem





# A SAMPLING OF ABUSE TACTICS

Physical	Economic	Sexual	Emotional
Hitting/kicking	Controlling income	Degradation	Put-downs
Pushing/shoving	Destroying credit	Humiliation	Isolation
Strangulation	Destroying rental history	Unwanted sexual contact	Threats to call ICE/ Threats to call DHS
Burning	Sabotaging employment	Controlling reproductive or sexual health	Threats of suicide
Using weapons			Threats of homicide
Restraining			Threats to "out" LGBTQIA+ person
Slammed/thrown against something			Gas lighting; minimizing; denying
Breaking objects			Sleep deprivation
Denying phone access			Relentlessness



# DOMESTIC VIOLENCE:

The public perception- *'it is not that common'*

About **1 in 4 women** and **1 in 10 men** experienced contact sexual violence, physical violence, and/or stalking by an intimate partner and reported an IPV-related impact during their lifetime.

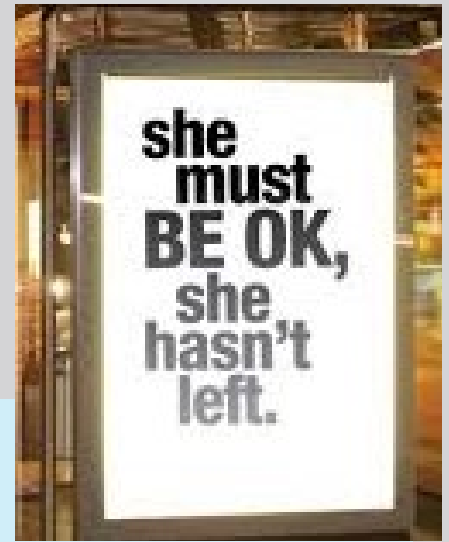


## 2015's US Transgender Survey Responses:

- 54% of transgender persons experienced IPV
- 24% experienced severe physical IPV

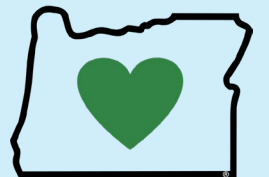
# DOMESTIC VIOLENCE:

The public perception- *'it is not that bad'*



## Reality:

- Domestic Violence is the single greatest cause of injury to women in the United States.
  - More than 30% of ER visits are abused women.
- 3 women are murdered each day in US by an intimate partner.
- In Oregon, every year between 2015- 2020 there have been between **24 to 60** Domestic Violence-related deaths.



# DOMESTIC VIOLENCE:

The public perception- '*the victim is also to blame*'

Or- '*the abuse is mutual*'



~~Domestic violence is a choice.. the first time you are a victim, but when you stay and don't leave you are an active participant and just as much to blame.~~

18w Like Reply

She provoked him.

Only women are abused. Real men fight back.





# DOMESTIC VIOLENCE:

The public perception-  
*'the victim is not credible'*



Space Cowboy

@romano\_santino



Follow

So you got drunk at a party and two people take advantage of you, that's not rape you're just a loose drunk slut #BiasedResults #Steubenville



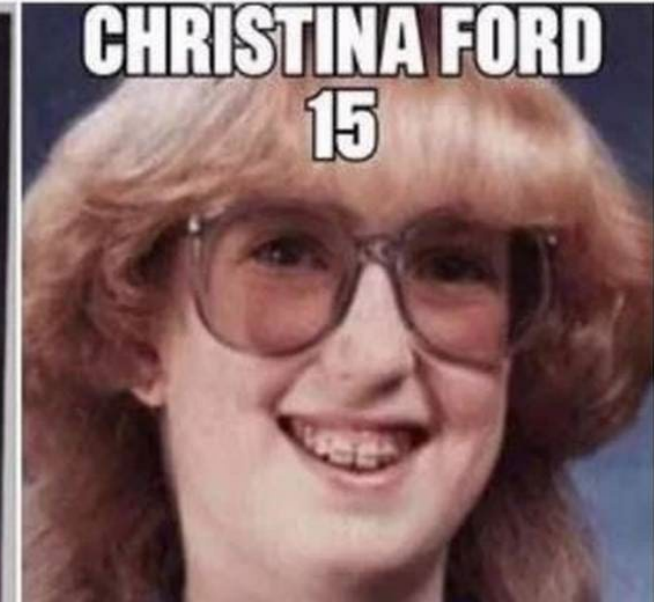
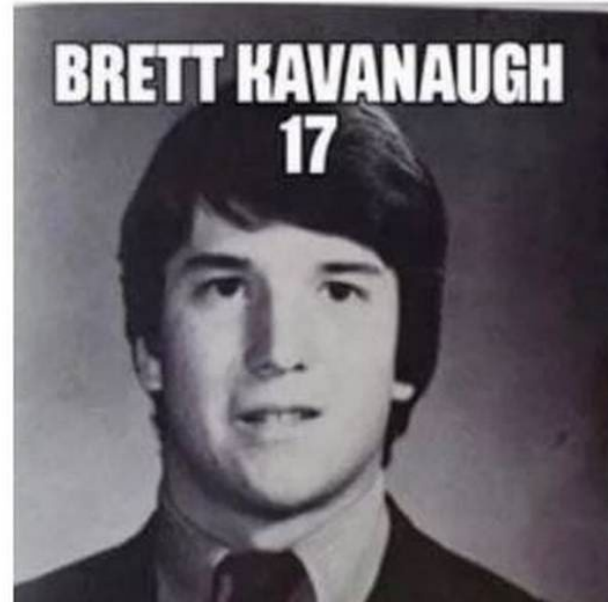
Shan Gogh;

@shandgaf

#MaybeHeDoesntHitYou but he uses your darkest secrets against you and manipulates you to do things against your will.



No offense to anyone, but let this sink in...be realistic, use logic...



Christine Blasey Ford in 1982. Proof positive Kavanaugh is innocent!

I'm pretty sure no one was banging this chick in 1982. #justsaying #christineblaseyford #kavanaugh #metoo

Christine Blasey Ford in 1982. She must have been fending off men with a stick. ???????

This was Christine Blasey Ford in 1982. There's NOT enough beer on the planet....

# DOMESTIC VIOLENCE:

The public perception- *'they would've spoken up earlier'*

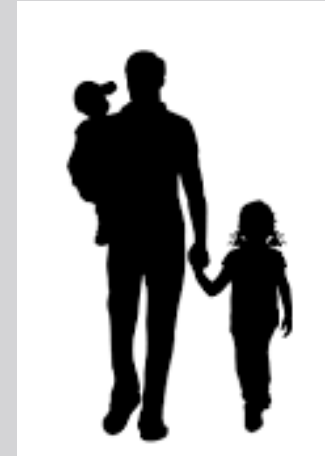


**Donald J. Trump** @realDonaldTrump · 2m

I have no doubt that, if the attack on Dr. Ford was as bad as she says, charges would have been immediately filed with local Law Enforcement Authorities by either her or her loving parents. I ask that she bring those filings forward so that we can learn date, time, and place!



## *Why now?*



**Victim behavior often seems  
counterintuitive...**



Until you understand DV and Trauma.



# New video shows Janay Rice nuzzling Ray Rice shortly after elevator fight

By Faith Karimi, CNN

Updated 7:30 AM ET, Sat December 20, 2014



More from CNN



Why doesn't she just leave?





<

Tweet



ajackson

@antitheistangle

Since I left, my son and I have been homeless twice.

#whyistayed

9/10/14




Lady Grim

@grim\_mandy

#whyistayed because he left my family and I had no one to start with

10:42 AM - 9 Sep 2014

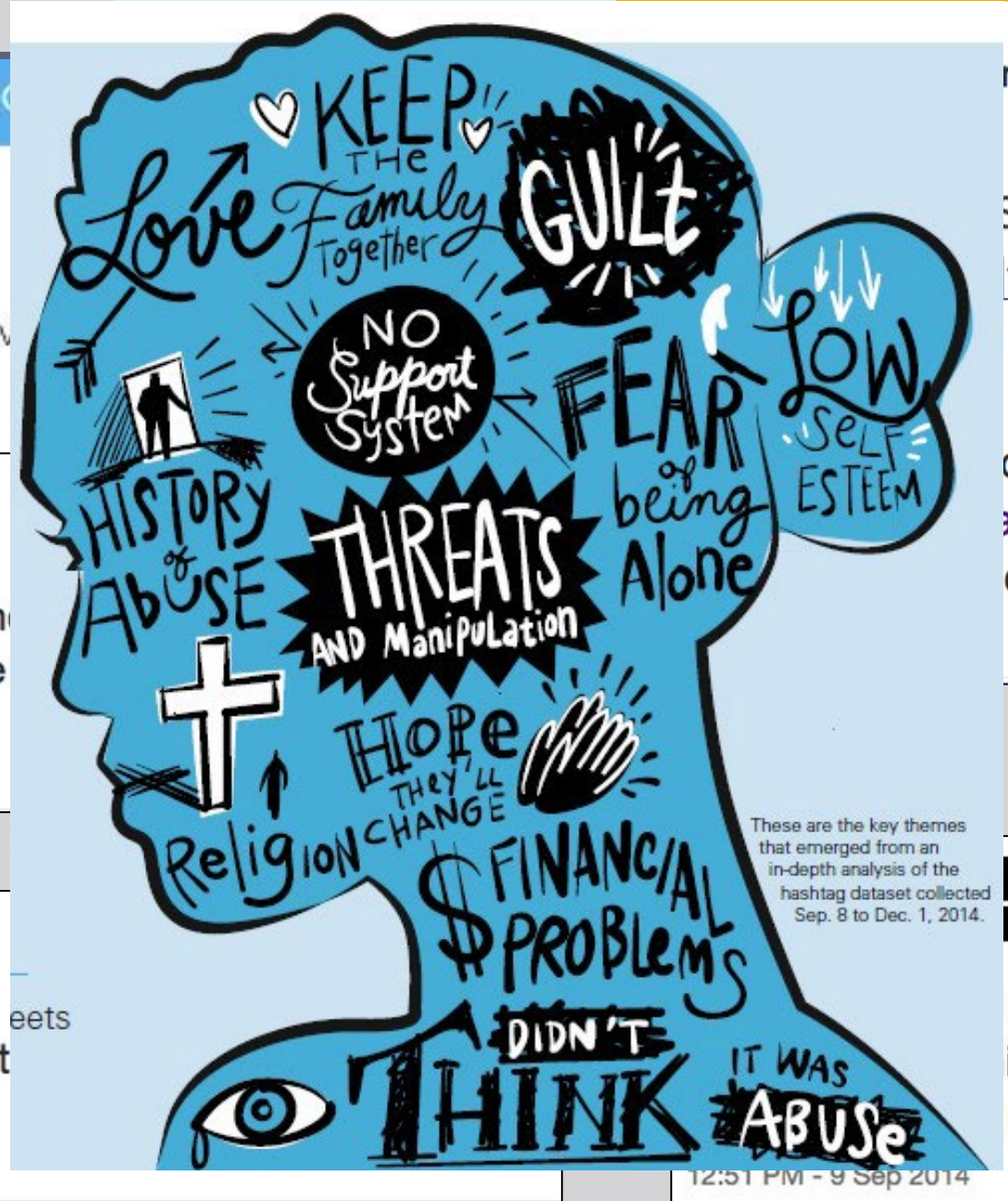


Samantha Vernon

@samanthajvernon

Because he called me and told me his head #WhyIStayed

12:49 PM - 9 Sep 2014



⚙

+ Follow

...se my pastor told me that God didn't cross my mind that

#WhyIStayed

+ Follow

...ou. You're not

ayed I was

cting.

+ Follow

...sole wage-earner most of my

ing was in his name. I had no credit

rent to me. #WhyIStayed

12:51 PM - 9 Sep 2014

# The Most Dangerous Time?

# SEPARATION



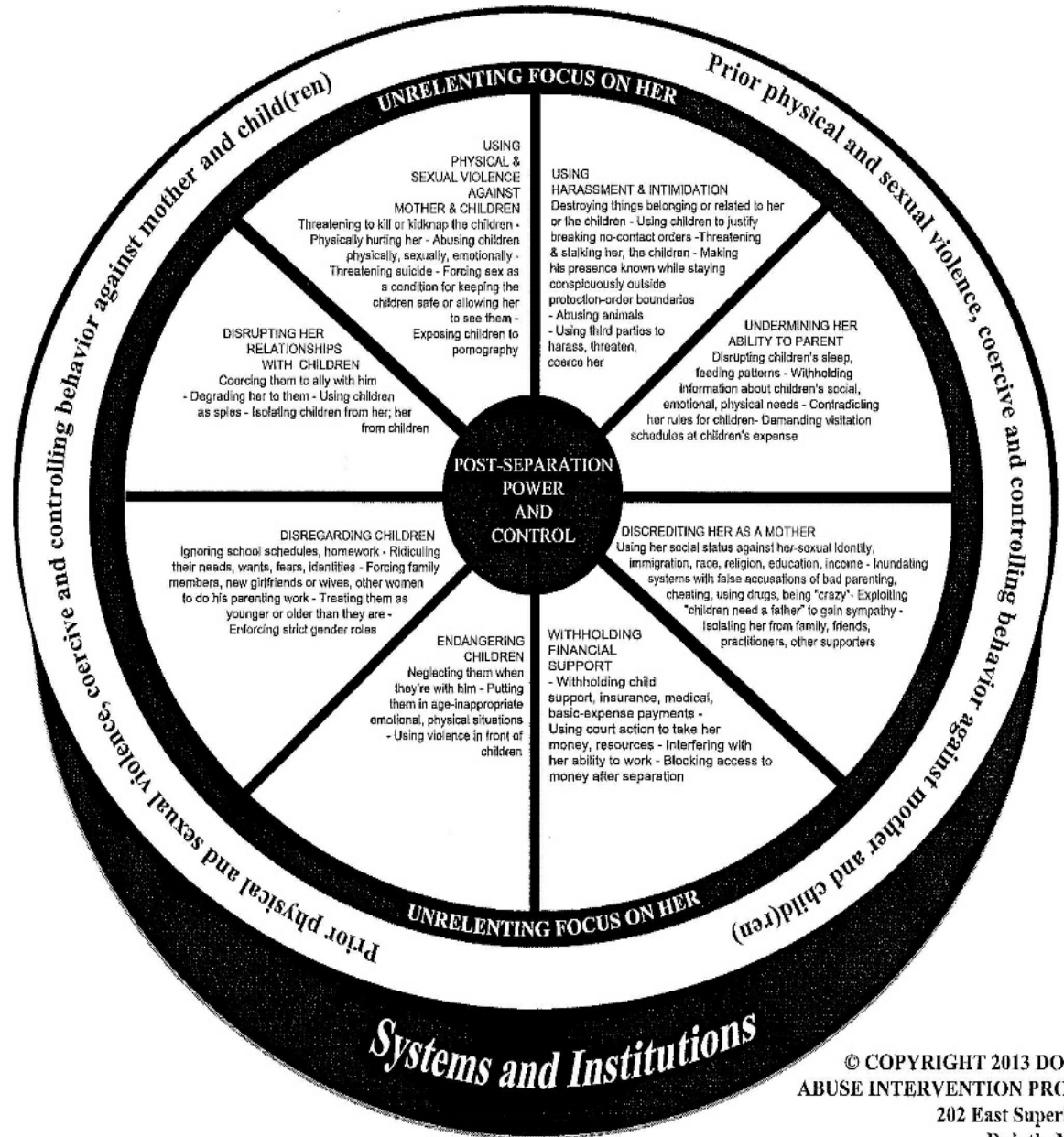
- Decision to finally leave . . .
- During or immediately after separation:
  - up to 75% of DV calls to police
  - 73% of emergency room visits re DV
- Of women killed by their abusers, 70% are killed during the process of trying to leave





The abuse often does not stop after separation

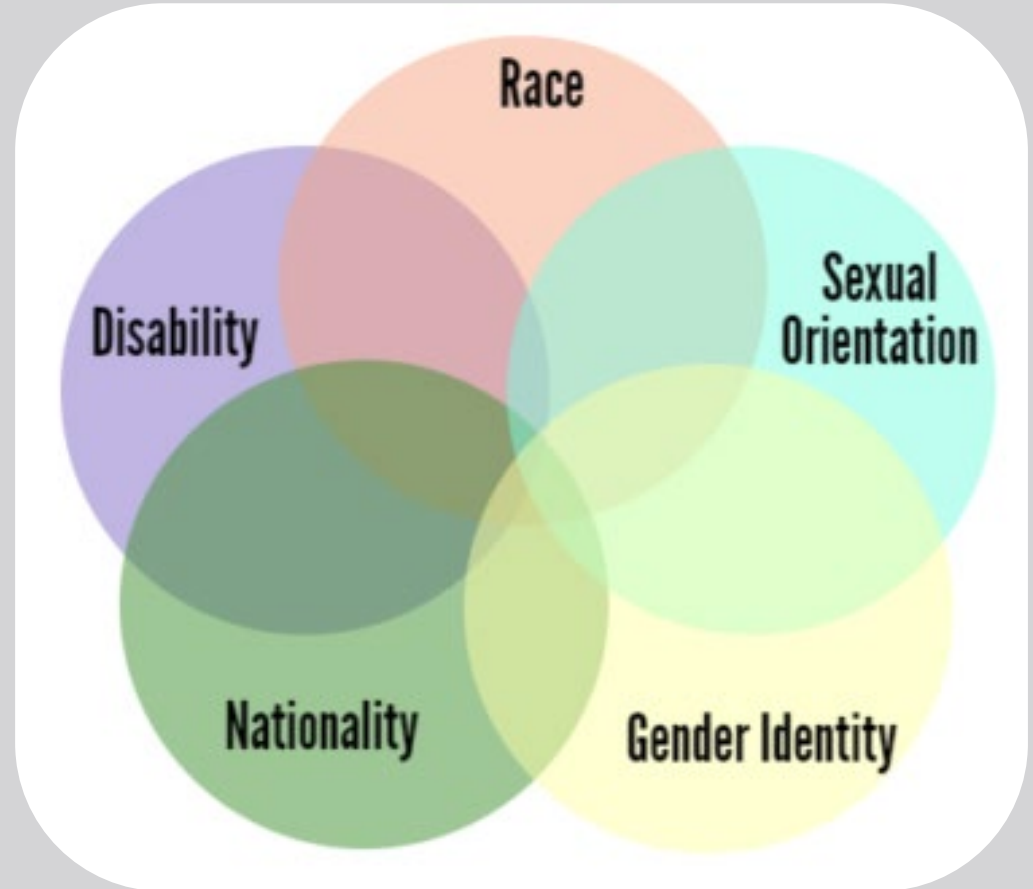
## Using Children Post-Separation: Power & Control Wheel



# DV, Identity, & Intersectionality

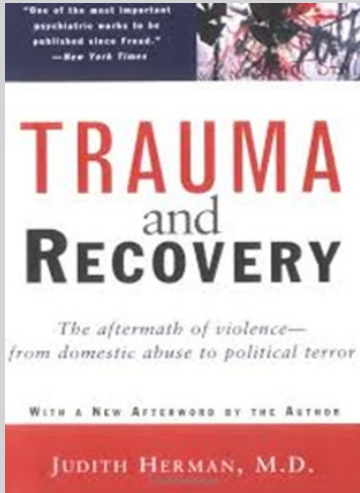
Those with historically marginalized identities experience:

- DV at higher rates
- additional abuse tactics
- additional reasons not to report or leave



Those who experience overlapping systems of discrimination endure even more

# The Neurobiology of TRAUMA



## Psychological TRAUMA:

An experience in which a person is overwhelmed  
by a fear of death  
or great physical harm  
+ **loss of control** (an inability to control what is  
happening to them.)

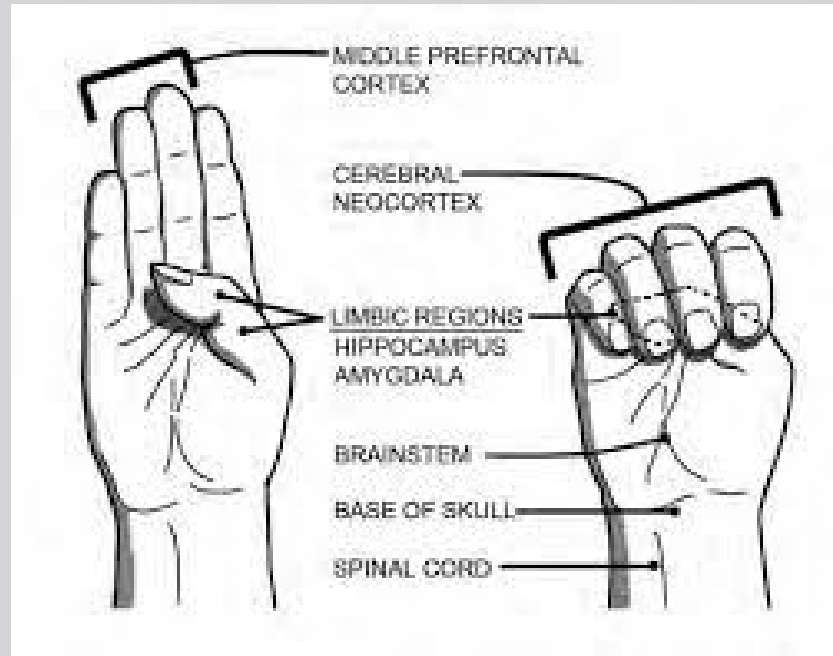
# Trauma Literacy: Why It's Important

**Oregon** women whose partners physically or sexually assault them are:

- **2 x** as likely to experience chronic depression
- **2 x** as likely to have considered suicide in the past year
- **3 x** as likely to have chronic anxiety
- **4 x** as likely to have PTSD

(Drach, 2005)

# Neurobiology of Trauma: What happens to the brain when a person experiences trauma



Freeze, Flight, Fight

- Hand brain- Dr. Dan Siegel

Chronic &/or Complex Trauma = UNBALANCED CENTRAL NERVOUS SYSTEM

*How does this “look” in clients/witnesses and in ourselves?*

# Culture/Identity and Trauma

## Culture influences/determines:

- whether we perceived certain events as traumatic
- how we interpret & assign meaning to trauma
- acceptable responses to trauma
- our expression of distress- behavior, emotions, & thoughts

Trauma that is culturally significant, or disrupts cultural practices has a greater impact





# THE IMPACT OF TRAUMA: Behavior

## Emotional Reactions

- Feelings – emotions, Regulation
- Alteration in consciousness
- Hypervigilance

Fight, Flight.....& Freeze  
Tend and Befriend (Taylor, et al)

## Psychological and Cognitive Reactions

- Concentration, slowed thinking, difficulty with decisions, blame

## Behavioral or physical

- Pain, sleep, illness, substance abuse,

## Beliefs

- Changes your sense of self, others, world
- Relational disturbance



*Think about how this impacts getting basic needs met, and how trauma survivors present*

# THE IMPACT OF TRAUMA: Memory

- Parts of the brain responsible for memory making and organizing go offline during a traumatic experience
- Anything NOT experienced as critical to the victim's survival is not given much attention—they are “**peripheral details.**”
- **REMEMBER**—this is the survivor's experience and not what WE think they should have been focused on/remember.



*Think about how this impacts getting basic needs met, and how trauma survivors present*



## Research psychologist in the school of medicine

When Senator Leahy asked Dr. Blasey Ford what her strongest memory of the assault was, she replied, "Indelible in the hippocampus is the laughter, the laugh — the uproarious laughter between the two, and their having fun at my expense."

- Indelible= not able to be forgotten, like ink marks that cannot be removed



# Trauma-Informed Care (TIC)

- A program, organization, or system that is **trauma-informed**
- realizes the **widespread impact of trauma** and understands the potential paths for recovery
  - **recognizes the signs and symptoms** of trauma in clients, families, staff, and others involved with the system; and
  - responds by **fully integrating knowledge** about trauma into policies, procedures, and practices, and
  - seeks to actively **resist re-traumatization**

*(SAMHSA's Concept of Trauma and guidance for a Trauma-Informed Approach, 2014  
<http://store.samhsa.gov/shin/content/SMA14-4884/SMA14-4884.pdf>)*



# “BUT I’M A LAWYER NOT A SOCIAL WORKER...”

It **doesn’t** mean permitting or excusing/justifying unacceptable behavior

- Supports accountability, responsibility & boundaries

It **doesn’t** mean just being nicer

- Compassionate and empathetic- yes, but not touchy-feely

It **does** mean using some trauma-informed skills

- Be transparent & concrete; explain roles & limitations
- Ask questions & gather info in the right way
- Use scripts for difficult topics or situations

*See Handout: TI Considerations & Tips*

# WHEN SURVIVORS FEEL THEY CAN TRUST YOU

- Survivors will be less afraid of being humiliated, blamed, or rejected by friends, family, and community, and more willing to access services.
- Survivors will be more likely to disclose the true nature of abuse or assault to allow:
  - more effective representation
  - better case outcome (ex. safe/appropriate parenting plans)
  - appropriate safety planning and responses/referrals



If your loved one was being victimized, which attorney do you want them to have?



# FAPA: the New(ish) Legal Standard

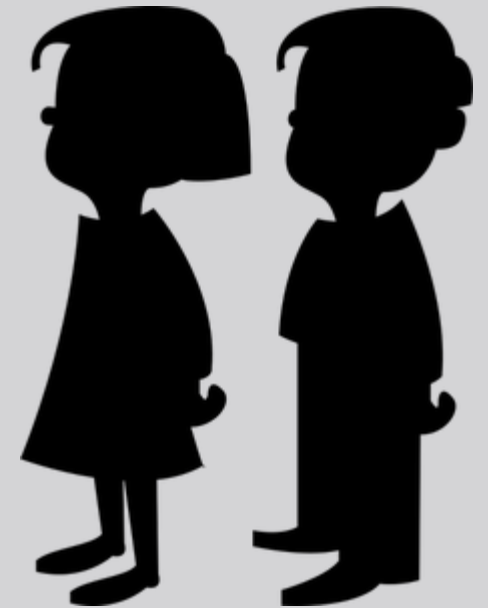
A spotlight on statutory change

Sr. Judge McKnight



## Background data: 2018 through 2021

- New FAPA filings each year
  - approx. 9900/year
- % of new FAPA filings contested
  - approx. 80%
- % of FAPAs involving minor children of the parties
  - approx. 33%



## % of parties at contested FAPAs having counsel:

8% -- only Petitioner has attorney

13% -- only Respondent has attorney

12% -- both sides are represented

68% -- both sides are self-represented



## Required Showing

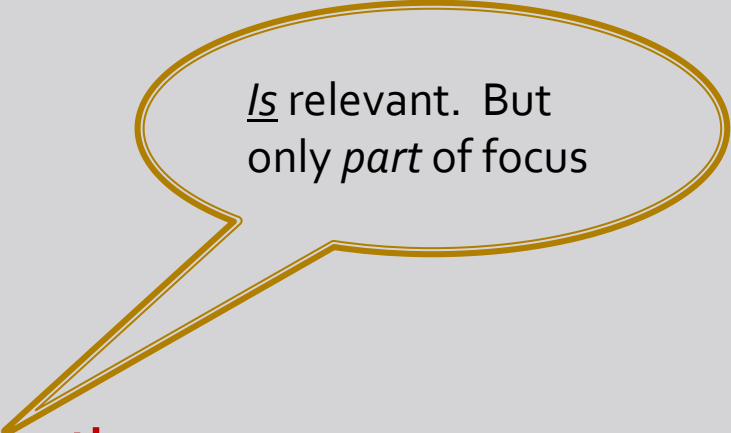
in addition to standing (required relationship)

	Ex Parte	Contested Hearing
Prior to 5/22/19	<ul style="list-style-type: none"><li>--“abuse” w/in last 6 months</li><li>-- imminent danger of further abuse</li><li>-- credible threat to physical safety of Petnr or Petnr’s child</li></ul>	 Same
As of 5/22/19	<p>Same </p> <ul style="list-style-type: none"><li>--“abuse” w/in last 6 months</li><li>-- imminent danger of further abuse</li><li>-- credible threat to physical safety of Petnr or Petnr’s child</li></ul>	<ul style="list-style-type: none"><li>--“abuse” w/in last 6 months</li><li>-- <b>Petitioner’s reasonable fear for Petitioner’s safety</b></li><li>-- credible threat to physical safety of Petnr or Petnr’s child</li></ul>

# Why the legislative change in 2019?

*M.A.B. v. Buell*, 296 Or App 380 (Decided March 2019)

- Abuse\* did occur
- But **no imminent danger of further abuse**:
  - **Significant focus on nature of the interactions of the parties after separation**
  - Interactions were not volatile or physical but involved parenting plan
- *Contrasted cases*:  
repetitive pattern of conduct continues (imminent danger) vs.  
volatility ends and social interactions occur without concern after cohabitation stops (no imminent danger)



Is relevant. But  
only *part* of focus

\* Abuse in predicate period in *Buell*:

- During cohabitation, **sexually assaulted** the Petitioner (additional rape 1 month earlier)
- During cohabitation, **threatened to kill her and take their child if she left him**, and
- After separation, **intimidated Petitioner by words and body language** in mediation to point mediator intervened.

# What was the problem with Buell I?

Discounts *other* reasons for compliant behavior post-separation or post-service of restraining order

“Compliant” behavior – for any given period -- *could* be an indication of Respondent’s:

- (1) **awareness of legal consequences** or . .
- (2) **ability to partition noncompliant behavior**: pro-social in work and other contexts (even involving family members) *not* involving the Petitioner or Petitioner’s presence or
- (3) **the cyclical nature of power & control** -- includes periods of contrition and affection punctuated by noncompliant behavior prompted by perceived loss of control

“Neither separation, delay, nor affability *necessarily* evidences a reduction in danger. Domestic violence dynamics are complex and relationships differ. Judges need to assess risk . . without being tied to the assumption that recent compliant conduct = no danger. “

# Advocates told Legislature *Buell* sent unfortunate message to DV survivors:

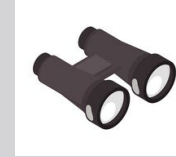


- **"Society wants you to leave"**
- **"Society wants you to seek protection"**
  - ORS 107.710(3): right to FAPA relief not affected by fact person has left residence or household to avoid abuse
  - ORS 107.718(5): "Imminent danger" *not* limited to situations of recent threats of bodily harm
- **"BUT . . . it will be difficult to keep a restraining order if the Respondent displays recent compliant conduct"**

# Under 2019 ORS change:

## ■ Focus at *ex parte* stage: emergency situation:

- Is the Petitioner in imminent danger?  
(such that Petitioner needs an order right now)
- + Is Respondent a credible threat to physical safety of Petitioner or Petitioner's child.



Imminent  
danger

## ■ Focus at contested hearing: *broad*er than imminent/emergent risk of abuse:

- Does Petitioner have a reasonable fear for Petitioner's physical safety  
(such that a restraining order for a 1-year period is appropriate)
- + Is Respondent a credible threat to physical safety of Petitioner or Petitioner's child.





Imminent  
danger

Reasonable

fear of  
danger

This language is  
due to federal  
firearms law.  
*More later.*

## Buell overturned by Oregon Sup Crt --- Buell II (Jan 2020)

- **“CoA interpreted statute correctly”:**
  - “imminent danger of further abuse” *does* have a temporal focus – “in the near future”
  - *Can* consider (1) **move-out** in totality of circumstances, and (2) **whether pattern of conduct** exists, but cannot base imminency-of-danger decision solely on either factor
- **BUT noted separation can be risk mitigation . . .**   
**. . .or risk enhancement** 



“Although there might be cases where the parties' separation necessarily represents a change in circumstances that **mitigates the risk** of further abuse, there are also likely to be many cases where a trial court would be entitled to conclude that the **parties' separation could be the impetus for further abuse.**” . . . In those cases, the parties' separation might heighten the risk of further abuse.

Based on the trial court's findings, this is clearly one of those cases. Respondent threatened to kill petitioner *if she left him*. And the parties were no longer living together because *petitioner left respondent*. As a result, the trial court was entitled to weigh the **fact of the parties' separation in favor** of **granting the protective order.**”

**Conclusion:**

**Ample evidence supported the reasonable inferences of the Trial Judge re risk.**

# Buell II (on remand to CoA) addressed only the “credible threat” prong

- Likened *credible threat to physical safety* prong to *imminent danger of further abuse* prong as “closely related”
- Acknowledged **duality of inferences Trial Judge could have drawn** re evidence of **separation** insofar as assessing credible threat to physical safety  
**Risk mitigation . . . or risk enhancement**

Same re evidence of **emotional/volatile behavior after separation**

- Found sufficient evidence for Credible Threat

# Case law evolving in light of changed showing

- March 2019 -- *Buell I* -- significant focus on post-separation interactions
- May 2019 – Legislature amends showing at contested hearing – not “imminent danger” but “reasonable fear”
  - *Seagall* (10/9/19) – notes law change applies only to petitions filed on/after 5/22/19. Continues to use “imminent danger” std at contested hearing
  - *Solis* (4/1/20) – involves order issued in 2018. Correctly applies “imminent danger” std
- June 2020 – *Buell II* at Oregon Supremes – overruled *Buell I*
  - *Hess* (8/12/20) – Involves 2018 order. Notes new ORS standard does not apply and correctly applies “imminent danger” std
  - *Tippery* (9/16/20) -- involves June 2019 order but **incorrectly applies old/“imminent danger” standard**
- December 2020 – *Buell III* back at CoA, addresses credible threat prong
  - *Lucarelli* (4/21/21) – involves 2020 order but **incorrectly applies old/“imminent danger” standard**
  - *Croft* (5/19/21) – correctly applies new standard
  - *Jessee* (6/3/21) – correctly applies new standard
  - *Khalidi* (11/17/21) – correctly applies new standard with FN1 acknowledging that 2019 ORS law change “relaxed” requirements at contested hearing due to *Buell 1*



*Takeaway:*



**Wider temporal window** at contested hearing in which to assess likelihood of risk to physical safety



# Firearm Dispossession

It's complicated . . . but important

Debra Dority & Sr. Judge McKnight

# The Link between DV and Firearms

LOW incidence *but* HIGH lethality

- Although firearm involvement in DV incidents overall is small,



Firearm involvement in **lethal** DV incidents is substantial

- Abuser's **access to firearms** ➡  
**5x higher risk of death** in intimate partner context
- Abuser's **prior threat/assault with firearm** ➡  
**20x higher risk of death** in intimate partner context
- **But order of protection exists with a firearms ban** ➡  
**13% lower female intimate partner deaths** than w/o ban  
(Vigdor & Mercy 2006)

18. ☐ **Immediate Firearms Prohibition** 18. \_\_\_\_\_  
Respondent is immediately prohibited from **purchasing or possessing any firearms or ammunition (Event: FQOR)**

19. **Firearms Surrender (applies to all granted orders)**  
Respondent is ordered to surrender all firearms and ammunition according to the attached **Firearms Surrender and Return Terms**, which are incorporated and made part of this **Order**

19A. Respondent is ordered to file a **Declaration of Firearms Surrender** with any required attachments according to the **Firearms Surrender and Return Terms**

**FIREARMS NOTIFICATION**  
If Section 18 is initiated by the judge, you are immediately prohibited from purchasing or

# Factors correlated to DV lethality

*(other than prior physical abuse, found in 70% of dv homicides)*

## W/in PRECEDING 2years

- High control + Separation
- Access to firearms
- Unemployment
- Threats with weapon
- Any threat to kill
- Victim has non-jt child in home

## At Time of Incident

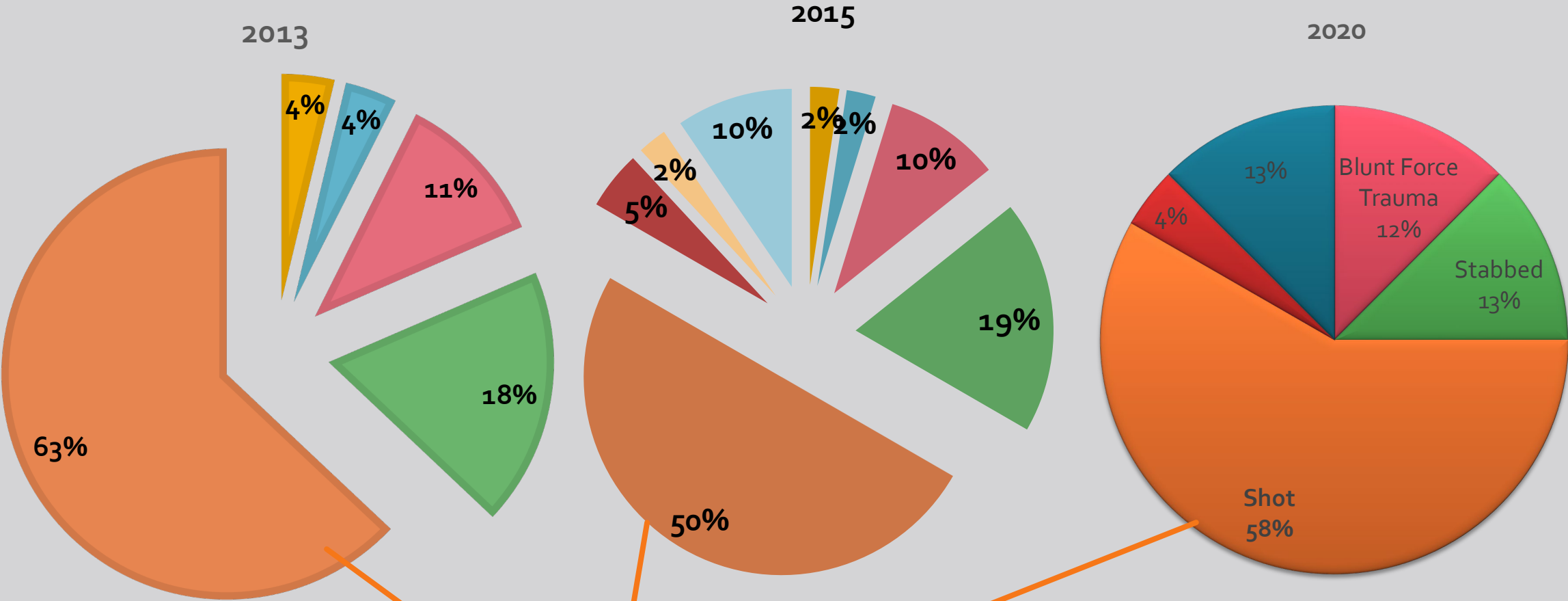
- Access to firearms
- New relationship by Victim
- Unemployment
- Threats with weapon
- Prior threat with weapon or Victim separating from Def
- High control + Separation

### Protective Factors in each

- Never cohabited
- Prior arrests for DV



# OREGON DOMESTIC VIOLENCE DEATHS -- CAUSATION



Another preliminary but fundamental point:

## Two ORS sources of authority exist for Firearms Ban in FAPA

	FAPA statute: ORS 107.718(1)(h)	Criminal Code: Unlawful Poss'n of Firearm (UPF) -- ORS 166.255; 166.250
Source	"other relief the court considers necessary to provide for the safety and welfare of the Petitioner and children in Petitioner's custody"	"...unlawful to knowingly possess firearm if [under a Protection Order] covering [certain relationships] and prohibiting [certain conduct] + has [credible threat finding]"
When effective?	Ex Parte order or in order from contested hearing	Order Continuing after contested hearing (even if Resp w/draws request or doesn't appear) or Lapse of 30 days post-service. --- EVEN IF NO HEARING IS REQUESTED
Depends on	Facts of case	Application of law- ORS 166.255 & 166.250
Enforceable	as Contempt of Court	As Crime – "A" Misdemeanor
Model OJD Court form	Paragraph 18, page 7	Firearms Notification box, page 7
Surrender	Paragraph 19 , page 7	Paragraph 19, page 7

Other  
“relief  
necessary”  
(FAPA)

Criminal code  
for Unlawful  
Poss’n of  
Firearm (UPF)

**18. ☐ Immediate Firearms Prohibition**

**18.** \_\_\_\_\_

Respondent is immediately prohibited from **purchasing or possessing any firearms or ammunition** (*Event: FQOR*)

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**FIREARMS NOTIFICATION**

If Section 18 is initialed by the judge, you are immediately prohibited from purchasing or possessing any FIREARM, including a rifle, pistol, or revolver, and AMMUNITION (ORS 107.718(1)(h)).

**Whether or not Section 18 is initialed**, you will be prohibited from purchasing or possessing any firearms or ammunition under ORS 166.255 if:

- You request a hearing to contest this **Order** and the **Order** is not dismissed
  - You request a hearing to contest this **Order** but then withdraw your request
  - You request a hearing to contest this **Order** but do not attend the hearing
- or
- 30 days pass after you were served with this **Order** and you do not request a hearing to contest this **Order**

Talk to a lawyer if you have questions about this

Respondents ordered *ex parte* not to have guns will be under the “**Surrender & Return Terms**” directives required by criminal/UPF laws because of the OJD form *unless that attachment in your county addresses ex parte dispossession differently*

## *Quick statutory history re firearms laws affecting FAPA*

- **Federal Law (1994)** – qualifying protective orders impose **federal criminal liability** for possession of firearms or ammunition. 18 USC §922(g)(8)
- **Oregon Law** –
  - **1995** OSB FLS's HB 1053-- adds to FAPA relief: "**other relief the court considers necessary** to provide for the safety & welfare of the petitioner or children in petitioner's custody"
  - **2015** SB 525 – **Creates state criminal liability after noticed hearing**, mirrors feds
  - **2018** HB 4145 – **Expands qualifying orders for criminal liability (and added stalking to convictions); fills "intimate partner" (fka 'boyfriend') gap"**
  - **2019** HB 2013 – **Expands criminal liability for >30 days post-service (even if no noticed hrg); requires notification + dispossession order and specifies surrender procedures** for qualifying protection orders and certain misdemeanors



FAPA orders are **qualifying protection orders** that expose Respondent to Oregon/**state criminal liability** for UPF (ORS 166.255)

because FAPAs have:



Covered relationship	Type of Order Covered, Notice-wise	w/ Required prohibition	& required finding
<ul style="list-style-type: none"><li>-- Current/former Spouse</li><li>-- Adult related by blood or marriage.</li><li>-- Current/past Cohabitant</li><li>-- Have been involved in a Sexually Intimate Rel'ship.</li><li>-- Unmarried Parents of a minor child.</li></ul>	<ul style="list-style-type: none"><li>- FAPA order was <u>continued by order</u> after noticed hearing where Resp had opp'ty to be heard (date of order) <i>(even if Resp did not appear at the hearing)</i></li><li>or</li><li>-- FAPA order <u>continues by its own ex parte terms</u> when Resp w/draws request for hrg (date of withdrawal)</li><li>or</li><li>- <b>Time to request hearing lapsed</b> (30 days post-service)</li></ul>	Cannot "menace, intimidate, or molest" [or stalk]	"Respondent is a credible threat to the physical safety of Petitioner, or Petitioner's Child, or Respondent's Child"

Federal criminal liability is much narrower than Oregon's criminal liability in that federal law criminalizes possession only for orders issued after a noticed hearing



## When is firearm ban **effective**?

Ban Ordered under FAPA statute  
as “other relief necessary for  
physical safety:”

**Upon issuance, ex parte or otherwise.**

But not enforceable against Resp until  
Respondent has *knowledge* of the order, usually  
through service if it's the ex parte order that  
**imposes the ban** or **notifies the Resp of the  
imminent UPF ban**

## Ban imposed by criminal/UPF law:

***Earliest*** of:

- **An order continues the FAPA order** and  
was issued at/from noticed hearing  
where Resp had the opp'ty to be heard  
*Even if the Resp did not appear at the hearing*

- **Resp withdraws the hearing request**,  
such that the ex parte order terms re  
duration of order continue

or

- **30 days from service** when no hrg is  
requested

Under **federal** law:

- If no noticed hearing is held,  
no criminal exposure

Under 2019 **state** law:

- If no noticed hearing is  
requested or held, *still*  
criminal exposure after 30  
days from service



Not requesting hearing to challenge the FAPA order no longer avoids  
firearm ban UNDER STATE LAW.

Criminal exposure for UPF arises 30 days after service  
if no noticed hearing is requested.



So if your client has – or is subject to – a **qualifying order under the criminal code**, what are the **requirements** under the UPF statute?

for Judge:



for Respondent:



for Law Enforcement:





## Requirements for Judge:



- **Notify Resp in order** that "guns and ammo are prohibited under state criminal ORS" when deadline passes
- **Include additional written terms** requiring:
  - **Transfer (surrender) terms** detailed in ORS
  - **Filing of Declaration** w/transfer details
- *If the Respondent is present:*  
Inform Respondent **ORALLY & IN WRITING** of Transfer & Declaration requirements

FAPA order  
does this

FAPA order  
does this

Getting copy of  
FAPA order does  
the latter

**18. ☐ Immediate Firearms Prohibition**

**18.** \_\_\_\_\_

Respondent is immediately prohibited from **purchasing or possessing any firearms or ammunition** (*Event: FQOR*)

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**Whether or not Section 18 is initialed**, you will be prohibited from purchasing or possessing any firearms or ammunition under ORS 166.255 if:

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  - You request a hearing to contest this *Order* but then withdraw your request
  - You request a hearing to contest this *Order* but do not attend the hearing
- or
- 30 days pass after you were served with this *Order* and you do not request a hearing to contest this *Order*

Talk to a lawyer if you have questions about this

## Requirements for Respondent:



- **READ THE ORDER !  
and ATTACHMENT!** (not in statute but . . .)

- **SURRENDER FIREARMS to:**
  - Law Enforcement agency
  - Authorized Gun Dealer
  - Third party non-resident with Resp**w/in 24 hours** of ban effectiveness,  
& **get Proof of Transfer** (receipt)

Remember:

Misdemeanor if in  
possession after ban

- **FILE DECLARATION w/court & DA**  
**w/in 48 court business hours**

Remember:

Contempt for failure to  
file

## Requirements for Respondent:



- **READ**
- **TRANSFER**
- **DECLARE**

# TRANSFER

must occur w/in 24 hours of ban becoming effective:

- to LEA (does FAPA attachment give agencies & hours?)
- gun dealer, or
- 3<sup>rd</sup> party (who does not live with Respondent)  
in front of dealer + background check



- ↓
- Even if transfer is to ex/spouse, domestic partner, step/parent, step/child, sibling, grandparent, grandchild, aunt/uncle, 1<sup>st</sup> cousin, niece/nephew. ORS 166.435.

# TRANSFER



## Proof of Firearms Transfer

- Filled out by person receiving the firearms
- Receipts must include:
  - Name of transferee
  - Date of transfer
  - **Serial #/make/model** of each transferred firearm
- **To Law Enforcement or Gun Dealer:**
  - Often have their own receipts or forms
  - But can use OJD form
    - Is attachment to *Resp's* Declaration form
  - Do own OSP background check (fee)
  - Dealer may charge for storage

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF \_\_\_\_\_

### **PROOF OF FIREARMS TRANSFER**

*Complete this form if you have received firearms and ammunition  
from the respondent/defendant named below<sup>1</sup>*

Name of person surrendering firearms: \_\_\_\_\_

Case #: \_\_\_\_\_

Date of transfer: \_\_\_\_\_

#### RECIPIENT'S INFORMATION:

I, (full name) \_\_\_\_\_ received firearms and/or  
ammunition from the Respondent/Defendant named above

I am a: ☐ third party who does not live with Respondent/Defendant\*

\*OSP background check number: \_\_\_\_\_ (required for third parties)

☐ licensed gun dealer

☐ law enforcement agency representative (agency name): \_\_\_\_\_

☐ Ammunition was surrendered to me

☐ The following firearms were surrendered to me:

Serial Number	Make and Model (or description, if make/model unavailable)

☐ Additional page attached

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of recipient

\_\_\_\_\_  
Name (printed)

<sup>1</sup> Law enforcement and gun dealers may have their own proof of transfer or receipt forms. If so, attach that document to the Respondent's/Defendant's Declaration of Firearms Surrender.



# TRANSFER



## Proof of Firearms Transfer to 3<sup>rd</sup> Parties

OJD has 2 forms 3<sup>rd</sup> parties must sign -- and initial

- **"Declaration of Receipt"**
  - Has required acknowledgment of own criminal liability for allowing Resp access
  - Has space for OSP background check # (through dealer)
- **"Proof of Firearms Transfer"** (shown on prior slide, 56)
  - Lists & describes specific firearms
  - Found on OJD website as attachment to *Respondent's Declaration* to be filed
  - OJD → Forms → Family Law/Abuse/Domestic Violence → FAPA → Firearms Surrender Declarations

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF \_\_\_\_\_

Case No: \_\_\_\_\_

\_\_\_\_\_  
Petitioner/Plaintiff

v.

\_\_\_\_\_  
Respondent/Defendant

**THIRD PARTY RECIPIENT'S  
DECLARATION OF  
FIREARMS RECEIPT**

**NOTICE TO RECIPIENT**

You are subject to criminal and/or civil penalties if:

- You allow Respondent/Defendant access to firearms or ammunition during the time they are prohibited from possession
- You are subject to any court order prohibiting you from possessing firearms or ammunition

**Declaration**

I, (full name) \_\_\_\_\_ received firearms and/or ammunition surrendered by Respondent/Defendant

By my initials here → \_\_\_\_\_ I swear to the court that all the following statements are true

- I am aware that Respondent/Defendant is subject to a court order to surrender all firearms and ammunition and prohibited from possessing firearms or ammunition
- I am not a law enforcement officer or gun dealer or not acting in my official capacity as a law enforcement officer or gun dealer
- I do not live with Respondent/Defendant
- I completed a Proof of Transfer listing the firearms and/or ammunition Respondent/Defendant surrendered to me
- I passed a background check by a law enforcement agency or gun dealer (required)

The OSP background check number is: \_\_\_\_\_

I hereby declare that the above statements are true to the best of my knowledge and belief. I understand they are made for use as evidence in court and I am subject to penalty for perjury.

Date \_\_\_\_\_ Signature of Recipient \_\_\_\_\_

Name (printed) \_\_\_\_\_

Address \_\_\_\_\_ City, State, ZIP \_\_\_\_\_ Phone \_\_\_\_\_

Declaration of Firearms Surrender to Third Party  
Page 1 of 1

**OJD OFFICIAL**  
(Feb 2022)

# DECLARATION

Resp fills out & files w/court, & copy to DA, **w/in 2 court days** of ban's effective date

- ☐ I had **no firearms** in my possession at the time of the court's order. I do not currently possess any firearms.
- ☐ All firearms and ammunition in my possession **have been transferred** to:
- ☐ a law enforcement agency (name): \_\_\_\_\_
- ☐ a gun dealer (name): \_\_\_\_\_
- ☐ a third party who does not live with me (name): \_\_\_\_\_
- ☐ A proof of transfer or receipt is attached (required)
- ☐ I am asserting my constitutional right against self-incrimination. **I decline to make** any statement about firearms.
- ☐ I HAVE FILED COPIES OF THIS **DECLARATION** (AND THE **DECLARATION** FROM THIRD PARTY RECIPIENTS, IF ANY) WITH THE DISTRICT ATTORNEY (required)

**Attach the Proof of Transfer** signed by LEA, Dealer, or 3<sup>rd</sup> party (& list of surrendered guns, if separate)

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF \_\_\_\_\_

\_\_\_\_\_  
Petitioner/Plaintiff

v.

\_\_\_\_\_  
Respondent/Defendant

Case No: \_\_\_\_\_

**RESPONDENT'S/DEFENDANT'S  
DECLARATION OF  
FIREARMS SURRENDER**

**Declaration**

I am the Respondent/Defendant in this case. I am subject to a court order to surrender firearms.

Check one:

- ☐ I had no firearms in my possession at the time of the court's order. I do not currently possess any firearms.
- ☐ All firearms and ammunition in my possession have been transferred to:
- ☐ a law enforcement agency (name): \_\_\_\_\_
- ☐ a gun dealer (name): \_\_\_\_\_
- ☐ a third party who does not live with me (name): \_\_\_\_\_
- ☐ A proof of transfer or receipt is attached (required)
- ☐ I am asserting my constitutional right against self-incrimination. I decline to make any statement about firearms.
- ☐ I HAVE FILED COPIES OF THIS **DECLARATION** (AND THE **DECLARATION** FROM THIRD PARTY RECIPIENTS, IF ANY) WITH THE DISTRICT ATTORNEY (required)

**I hereby declare that the above statements are true to the best of my knowledge and belief. I understand they are made for use as evidence in court and I am subject to penalty for perjury.**

Submitted by Respondent/Defendant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Respondent/Defendant

\_\_\_\_\_  
Name (printed)



# Exception to Resp's criminal liability when FAPA gun ban is imposed by *criminal code*

- A person **cannot be prosecuted** under ORS 166.250 (UPF) if:
  - Person is in possession of a court order for dispossession issued (or became effective) **within the previous 24 hours**;
  - The firearm is **unloaded**; and
  - The person **is transporting** the firearm or ammunition to a LE agency, gun dealer or 3<sup>rd</sup> party for transfer in accordance with the statutory requirements

ORS166.256(6)



**NOTE: This exception doesn't exist in statute for dispossession under ORS 107.718/FAPA or in federal statute**

## Note re “public use” exception:

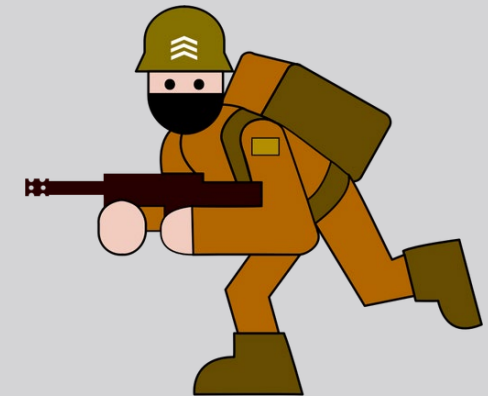
Federal law (needs noticed hearing to trigger federal criminal liability)

- Respondents who are **Law enforcement officers** and **Military personnel** are **permitted to use service weapons** in connection with that governmental service. 18 USC §925(a)(1).
  - No *private-use* firearms



## State Law

- **Similar import** at ORS 166.255(2) for ban imposed by criminal/UPF law after noticed hearing, hearing request withdrawal, or 30 days



**No public-use exception for ban  
ordered under ORS 107.718**

# Requirements for Law Enforcement



- *may store* surrendered firearms/ammo
- must **Return** stored firearms/ammo when FAPA order ends, on request
  - First, *notify the petitioner* of the return request
  - *Hold request for 72 hours*
  - *Confirm Resp's ownership* or possessory right
  - Do **background check** ← Dealers and 3<sup>rd</sup> parties must do, too, before return

**Do Sheriff & DA know when UPF ban is triggered  
by Service + 30 Days + No Hearing Request (or withdrawn)?**

**Aside from individual case search in Odyssey,  
may depend on local collaboration among  
LE, Courts, DA, Defense . . .**



# Court report available --

- lists **non-compliant Respondents** required to file the Declaration but who have not

Can be localized for specific county/counties

-- available to prosecutor? Defense contractor? Probation office?

Report:  
Firearm Surrender and  
Restriction Order

CASE - Firearm Surrender and Restriction Order

Reporting Period Start Dt	Reporting Period End Dt	Court	Case Type	Case Nbr	Case Name	Respondent	Order	Order Date	Date Order Entered
8/1/2021	8/7/2021	Washington	Protective Order - FAPA				Firearms Restrictions Ordered	3/25/2021	8/5/2021
8/1/2021	8/7/2021	Washington	Protective Order - FAPA				Order - Abuse Prevention Restraining	4/20/2021	4/20/2021
8/1/2021	8/7/2021	Washington	Protective Order - FAPA				Order - Abuse Prevention Restraining	6/18/2021	6/18/2021
8/1/2021	8/7/2021	Washington	Protective Order - FAPA				Order - Abuse Prevention Restraining	6/30/2021	7/1/2021
8/1/2021	8/7/2021	Washington	Protective Order - FAPA				Order - Abuse Prevention Restraining	7/2/2021	7/6/2021
8/1/2021	8/7/2021	Washington	Protective Order - FAPA				Order - Abuse Prevention Restraining	7/2/2021	7/2/2021
8/1/2021	8/7/2021	Washington	Protective Order - FAPA				Order - Abuse Prevention Restraining	7/2/2021	7/2/2021
8/1/2021	8/7/2021	Washington	Protective Order - FAPA				Order - Abuse Prevention Restraining	7/2/2021	7/6/2021
8/1/2021	8/7/2021	Washington	Protective Order - FAPA				Order - Abuse Prevention Restraining	7/7/2021	7/7/2021

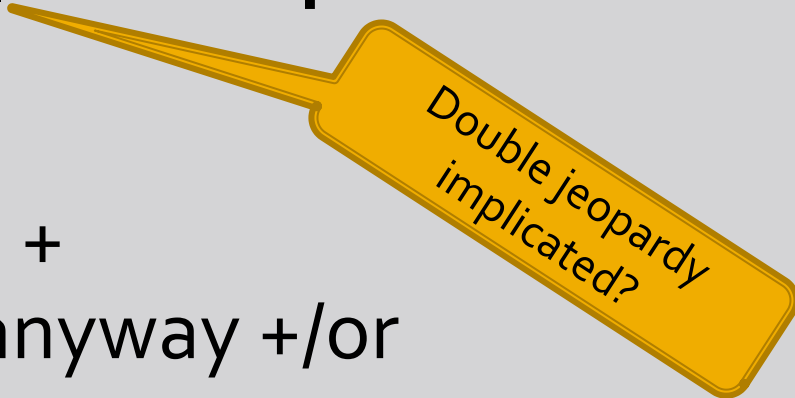
## *Note re liability:*

Some Respondents could face **both contempt & criminal liability** for violating firearms ban:

A – because *a Judge ordered* the ban +

B – because the *law imposed* a ban anyway +/-or

C – because they **failed to file the declaration.**



Double jeopardy implicated?

Plus, (remember) many Resps may also be under federal criminal liability for firearms when under a protection order, but only after noticed hearings

# Takeaways on Firearms:

1. Firearms in a DV situation are a major lethality indicator.
2. Have your client READ the order, regardless of party status, including the *Firearms Surrender & Return Terms* incorporated.  
Do the incorporated UPF protocols (surrender + file declaration processes) *also* apply to *ex parte* firearm dispossession in your county?
3. Make sure Resp files the Declaration, even if no firearms.  
Attach receipts if guns were surrendered
4. Not requesting a FAPA hearing no longer avoids a firearm ban
5. Transporting *unloaded* gun & ammo w/in 24 hrs of gun ban's effectiveness to implement transfer will likely avoid criminal liability for that possession.  
(Have Resp carry the order)
6. Family members storing guns may have liability (legal possessor themselves? background check done prior to return?)  
Safety for Petnr with family storage?
7. If guns were surrendered to LEA, Resp probably need to *request* return when FAPA order ends. Petnr needs to maintain contact address to receive good notice.

# Resources

Some you may not know about?

Debra Dority





# Resources

<https://oregonlawhelp.org/resource/restraining-order-comparison-chart>

## Comparison Chart of Protective Orders in Oregon *Current as of September 2021*

FAPA	EPPDAPA	SAPO	SPO	ERPO	EPO
Family Abuse Prevention Act Restraining Order, ORS §107.700 – 735	Elderly Persons and Persons with Disabilities Abuse Prevention Act Restraining Order, ORS §124.005 – 040	Sexual Abuse Protective Order, ORS §163.760 – 777	Stalking Protective Order, ORS §163.730 – 755 (criminal and civil citation route) & ORS §30.866 (civil petition route)	Extreme Risk Protection Order, ORS §166.525 – 543	Emergency Protective Order, ORS §133.035

## FEDERAL AND STATE FIREARM PROHIBITIONS – PROTECTION ORDER OREGON BENCH SHEET *Updated 12/20/2021*

**COMING SOON:  
Updated FAPA  
Benchbook**

<https://www.courts.oregon.gov/programs/family/domestic-violence>

“Resources for the Legal Community”

## Stalking Law Benchbook

Final April 2021 by the Domestic Violence Subcommittee  
of the State Family Law Advisory Committee

# Resources: DV and Family Law

- Attorney DV Screening tool:  
<https://www.courts.oregon.gov/programs/family/sflac/ParentalInvolvementMaterials/Domestic-Abuse-Information-Practitioners.pdf>
- NCJFCJ : Family Violence and Domestic Relations: <https://www.ncjfcj.org/family-violence-and-domestic-relations/>
- National Judicial Institute on Domestic Violence: <https://njudv.org/>
  - A Judicial Guide to Child Safety in Custody Cases; Assessing Risk of Parental Child Homicides in the Context of DV; UCCJEA guide for Court Personnel and Judges
- ABA Commission on Domestic & Sexual Violence:  
[https://www.americanbar.org/groups/domestic\\_violence/](https://www.americanbar.org/groups/domestic_violence/)
- National Center on Domestic Violence, Trauma & Mental Health:  
<http://www.nationalcenterdvtraumamh.org/>
- BWJP Practice Guides For Family Court Decision-making In Domestic Abuse-related Child Custody Matters (screening guide & interview guide);  
<https://www.bwjp.org/assets/compiled-practice-guides-may-2018.pdf>

# Resources: Serving Marginalized Survivors

- **Forge:** [forge-forward.org/](https://forge-forward.org/)
  - [Practical Tips](#) for Working With Transgender Survivors of Sexual Violence; Self-Assessment Tool: “Is Your Agency [Ready to Serve](#) Transgender and Non-Binary Clients?”
- **Anti-Violence Project:** [avp.org/](https://avp.org/)
  - [Tips](#) For Creating Dialogue With Potential LGBTQ Clients:
- **National Network to End DV (NNEDV):** [nnedv.org/](https://nnedv.org/)
  - Building Our Capacity to Serve Black Survivors; Serving Survivors with Disabilities;
- **Asian Pacific Institute on Gender Based Violence (AIP-GBV):** [www.api-gbv.org](https://www.api-gbv.org)
  - [Guide for ... Attorneys](#) on Interpretation Services for DV Victims ; [Trauma Informed Interviewing of Immigrant](#) Sexual Assault Survivors: For Law Enforcement, Advocates and **Family Law Attorneys**

# THANK YOU!



Debra Dority – [ddority@oregonlawcenter.org](mailto:ddority@oregonlawcenter.org)

Maureen McKnight – [maureen.mcknight@ojd.state.or.us](mailto:maureen.mcknight@ojd.state.or.us)

# Family Law Section Conference 2022

## FAPA in 2022: A Focus on Victim Reactions, the New Legal Standard, & Firearm Dispossession Resources & Tips

<https://oregonlawhelp.org/resource/restraining-order-comparison-chart>

Comparison Chart of Protective Orders in Oregon  
Current as of September 2021

	FAPA	EPPDAPA	SAPO	SPO	ERPO	EPO
	Family Abuse Prevention Act Restraining Order, ORS §107.700 – 735	Elderly Persons and Persons with Disabilities Abuse Prevention Act Restraining Order, ORS §124.005 – 040	Sexual Abuse Protective Order, ORS §163.760 – 777	Stalking Protective Order, ORS §163.730 – 755 (criminal and civil citation route) & ORS §30.866 (civil petition route)	Extreme Risk Protection Order, ORS §166.525 – 543	Emergency Protective Order, ORS §133.035

<https://www.courts.oregon.gov/programs/family/domestic-violence>  
(under “Resources for the Legal Community”)

**FEDERAL AND STATE FIREARM PROHIBITIONS – PROTECTION ORDER  
OREGON BENCH SHEET**  
*Updated 12/20/2021*

**COMING SOON:  
Updated FAPA  
Benchbook**

### Stalking Law Benchbook

Final April 2021 by the Domestic Violence Subcommittee  
of the State Family Law Advisory Committee

**SFLAC 2021 Conference:** Protection Orders and Firearms Implications (1.5 hrs):  
Agenda links to recorded sessions

<https://www.courts.oregon.gov/programs/family/sflac/Pages/conference.aspx>



## Considerations for Trauma-Informed Attorney/Client Meetings:

**Pre-meeting information collection & expectations:** What information is collected and how? Is there a call before the meeting to go over the information and prepare client? Is client told whether they can bring anyone with them or if they are expected to bring anything with them?

**Space / Place / Time of meeting:** Who chooses? What does the space/place look like? What options are given in terms of seating/accommodations? What about water/tea/coffee? Comfort items?

**Meeting:** If referring to documents or taking notes, be transparent with client about what and why. Listen (including between the lines). Follow up on answers; do not just follow a script. If the meeting is scheduled for a finite period of time and has to end promptly, explain that to the client ahead of time, offer another appointment and explain that no decisions have to be made today. Be prepared with resources. Know the advocacy agencies in your community that can offer assistance and contact those agencies to request training and information on safety planning to at least know the basics.

**Follow up:** Be aware of safety concerns in terms of how you contact the Client. Does the Client want you to contact them, or will the Client initiate contact?

## Trauma Literate Tips for Engaging With Victims and Survivors<sup>1</sup>

- LISTEN to hear, not just reply
- Together with the person, identify a comfortable / convenient space to meet
- Be respectful of the client's time
- Offer choices
- Anticipate triggers and make a plan for how to handle the reaction if it happens
- Position yourself at the same or lower power level as the client — e.g., sit down to introduce yourself, your role, and your goals (you might have to do this a few times)
- Be direct and informative — what are you doing? Why? What is next?
- Explain everything in normal language (court dates, processes); don't use legalese
- Thank the client for sharing their experience
- Make (soft) eye contact — but take the cues!
- Be prepared
- Turn off your phone
- Allow space for silence and movement, but do so intentionally
- No "power play"
- Be transparent—are you taking notes? Recording? Who will have access?
- Be honest (about what you do/don't know)
- If there is bad news, don't sit on it
- Provide expectations
- Keep the client updated
- Prevent the spread of misinformation
- Enlist support people that the client can trust
- Collaborate with community partners to provide resources
- Validate the person's feelings
- Don't take a person's reaction personally and be aware of your own responses
- If the person appears shut down, this could be a sign that they are triggered and/or overwhelmed
- Provide frequent breaks if client needs them
- Have materials ready to help the client — something they can hold / feel
- Support a client's understanding of domestic and sexual violence
- Thank the client for sharing their experience

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<sup>1</sup> Thank you to Erin Greenawald, Greenawald Law; Meg Garvin, Executive Director of the National Crime Victims Law Institute; Mandy Davis, Portland State University and Trauma-Informed Oregon; and the Trauma Center at Justice Resource Institute and Project Reach for their contributions to this list.

***Hot Topic***

***Making Trial  
Exhibits Useful***



# Making Trial Exhibits Useful



# The Good Lawyers Make Difficult Cases Simple By:

- ❖ Presenting a theme that ties together the evidence
- ❖ Providing a memo of fact and law
- ❖ Making exhibits easy to understand and persuasive
- ❖ Creating charts for variety and clarity
- ❖ Providing Proposed Written Findings

# Human Nature

- ❖ Humans retain only 15% of information received from audible sources.
- ❖ Retention, however, climbs to 65% when the information is also delivered visually.
- ❖ Judges are humans

# Benefits of Demonstrative Evidence

- ❖ Demonstrative evidence makes a presentation more memorable.
- ❖ In addition to simply making the subject matter more interesting, showing the judge a diagram, chart, or photograph lends credibility to what is said by the lawyer or witness.
- ❖ Humans are simply more likely to believe something they see with their own eyes instead of that which is said to be true by a lawyer or a witness.
- ❖ Use this knowledge when creating exhibits to make your material more persuasive

# Make The Exhibit List Itself Helpful

Ex 11 Chase checking account statements

dated Sept-Dec 2021 ..... ☐ ☐ ☐

**BORING**

Ex 11 Chase checking statements showing Wife's unauthorized  
withdrawal of \$92,000 cash ..... ☐ ☐ ☐

Ex 11 Chase checking statements showing average spending by  
Husband on alcohol while children are in his care..... ☐ ☐ ☐

**Informative!**



# Mark Up the Exhibit to Explain What it Shows

- ❖ Yes. Yes you can do this.
- ❖ It is your client's testimony about the importance of various items in the written documents, your client can talk about each annotation. The written marks are just for courtroom efficiency.
- ❖ (Have a back up clean copy just in case)
- ❖ Technical Requirements: Adobe. That's it.

# Bank Statements Are Boring





Use the  
bank  
statements  
to tell a  
story

2011-07-18-2011	POS Purchase 07/15 22:05 HAZELDEN-SPRINGBROOK 5035544364 OR 040013 HAZELDEN-SP	39.95	239.00
2011-07-18-2011	POS Purchase 07/17 17:01 HAZELDEN-SPRINGBROOK 5035544364 OR 060008 HAZELDEN-SP		
2011-07-19-	POS Purchase 07/18 16:35 HAZELDEN-SPRINGBROOK 5035544364 R 070001 HAZELDEN-SP		
	Deposit (Regular)	200.00	
	POS Purchase 07/24 15:06 HAZELDEN-SPRINGBROOK 5035544364 R 010002 HAZELDEN-SP		
	POS Purchase 07/25 16:54 HAZELDEN-SPRINGBROOK 5035544364 R 020003 HAZELDEN-SP	23.60	335.77
	POS Purchase 07/26 16:35 HAZELDEN-SPRINGBROOK 5035544364 R 030002 HAZELDEN-SP	30.00	305.77
	POS Purchase 07/27 18:26 HAZELDEN-SPRINGBROOK 5035544364 R 040009 HAZELDEN-SP	14.95	290.82
	POS Purchase 07/28 15:41 BOONES FERRY CHIROPRACTI WILSONVILLE OR 040006 BOONES	15.00	275.82
	Pinned Purchase 07/29 18:05 FRED MEYERFRED MEYER 220 NEWBERG OR 533628 FRED ME	10.68	265.14
	POS Purchase 07/30 13:43 BOONES FERRY CHIROPRACTI WILSONVILLE OR 060002 BOONES	15.00	250.14
	Pinned Purchase 07/29 19:04 FRED MEYERFRED MEYER 220 NEWBERG OR 010001 FRED ME	78.27	171.87
2011-08-05-2011	POS Purchase 08/04 18:12 BOONES FERRY CHIROPRACTI WILSONVILLE OR 000012 BOONES	30.00	141.87
2011-08-08-2011	Internet Transfer from VIP INTEREST on8/07 at 10:14	200.00	341.87
2011-08-08-2011	Pinned Purchase 08/05 19:00 FRED MEYERFRED MEYER 220 NEWBERG OR 007048 FRED ME	97.96	243.91
2011-08-10-2011	ATM ACTIVITY CHARGE Withdrawal	2.00	241.91
2011-08-10-2011	ATM Withdrawal 08/10 11:07 WOODBURN-EAST WOODBURN OR 864662 Wells Fargo 6011 96	103.00	138.91
2011-08-10-2011	Pinned Purchase 08/10 14:31 PILOT #0386BROOKS OR 855657 PILOT #0386 5541 9606	10.78	128.13
2011-08-10-2011	POS Purchase 08/09 17:50 HAZELDEN-SPRINGBROOK 5035544364 OR 030007 HAZELDEN-SP	25.96	102.17
2011-08-11-2011	Internet Transfer from VIP INTEREST on8/10 at 21:11	500.00	602.17
2011-08-11-2011	ATM Withdrawal 08/11 12:09 3500 PORTLAND ROAD NEWBERG OR 009415 WEST COAST 6011	100.00	502.17
2011-08-11-2011	POS Purchase 08/10 16:34 PILOT 00003863BROOKS OR 048854 PILOT 5814 9606	6.25	495.92
2011-08-11-2011	Pinned Purchase 08/10 21:47 OR LIQUOR 1519 N PACIFIC WOODBURN OR 524853 OR LIQU	6.75	489.17

Wife is in  
residential alcohol  
treatment/rehab  
for six weeks

Wife gets out  
of alcohol  
rehab 8/10

CHASE

\$5,000 into Wells Fargo business checking #6964 on June 3 (line 83), \$5,000 into Wells Fargo savings #3612 (line 70) on June 3, \$6,900 retained in cash (counted in line 51)

May 26, 2017  
Account Number

Back up your spreadsheet figures and reference them directly

**TRANSACTION DETAIL** (continued)

DATE	DESCRIPTION			
06/01	Recurring Card Purchase 05/31 Amazon Prime*2R3Wg97 Amzn.Com/Bill WA Card 2131			
06/01	Card Purchase 06/01 Sprint *Wireless 800-639-6111 KS Card 2131	-643.88	112,703.89	
06/01	06/01 Withdrawal	-16,900.00	95,803.89	
06/01	Non-Chase ATM Fee-With	-2.50	95,801.39	
06/02	Online Transfer From Chk #8019 Transaction#: 1 [REDACTED]	7,000.00	102,801.39	
06/02	Deposit	5,500.00	108,301.39	
06/02	Deposit	511.82	108,813.21	
06/02	06/02 Withdrawal	-92,000.00	16,813.21	
06/03	06/03 Withdrawal	-16,813.21	0.00	
Ending Balance			\$0.00	

\$5,500 deposits matches \$5,500 withdrawal from Line 48 (account #8019), which was Husband's personal account that he had temporarily been using as a business account to protect money but Wife made withdrawal on June 1, so funds transferred here for further protection

RONIC FUNDS TRANSFERS: Call us at 1-866-564-2262 or write us at the  
fact sust  
the state  
30 days a

Withdrawal of \$92,000 by Husband: \$72,000 deposited to Wells Fargo savings #3612 (counted in asset stmt line 70), \$20,000 deposited to Wells Fargo checking (line 68)

Opened Wells Fargo #7351 on June 3 (Counted in asset stmt line 52)

accounts) to do this, we will credit your account for the amount you think is  
us to complete our investigation.

**IN CASE OF ERRORS OR QUESTIONS ABOUT NON-ELECTRONIC TR**  
incorrect or if you need more information about any non-electronic transacti  
you must notify the bank in writing no later than 30 days after the statement  
Account Rules and Regulations or other applicable account agreement that  
JPMorgan Chase Bank, N.A. Member FDIC

you need more informa  
s (or 20 business day  
of the money during the time it takes

nk immediately if your statement is  
statement. If any such error appears,  
more complete details, see the  
products and services are offered by

an Chase Bank, N.A. Member FDIC



Pay Date:

06/30/2022

Filing Status: Single/Married filing separately

Exemptions/Allowances:

Federal: Standard Withholding Table

Make the  
paystub  
USEFUL

Earnings	rate	salary/hours	this period	year to date
Regular	15185.64	157.33	13,783.86	86,507.72
Holiday	87.6112	8.00	700.89	5,406.86
Ltd Tax Fringe			23.15	159.11
Mobile Stipend			50.00	350.00
Vacation Lv	87.6112	8.00	700.89	8,076.92
Award Leave				1,401.78
Co Incentive				1,720.83
Ind Incentive				10,324.97
Personal Lv				1,401.78
Sick Self Lv				1,335.03
<b>Gross Pay</b>			<b>\$15,258.79</b>	<b>116,685.00</b>

Deductions	Statutory	this period	year to date
Federal Income Tax		-2,445.90	16,997.18
Social Security Tax		-928.18	7,106.06
Medicare Tax		-217.07	1,661.90
OR State Income Tax		-1,165.95	8,307.56
OR Transit Tax		-13.43	103.85
Oregon Wbf Tax		-1.73	11.07
<b>Other</b>			
Child Life		-1.00	7.00
<b>Dc Emp</b>		<b>-1,540.00*</b>	<b>10,780.00</b>
Health Care		-229.17*	1,604.19
Health Miles Pr		-5.00	35.00
Ltd Tax Fringe		-23.15	159.11
Prov Med		-60.00*	420.00
Spouse Life		-10.00	70.00

Voluntary  
withholding for  
deferred  
compensation  
of over \$1,500

**saifcorporation**  
PO BOX 988 SALEM, OREGON 97308

Other	this period	year to date
Vision	-18.85*	131.95
Vol Ad&D	-10.00	70.00
Vol Ee Life	-100.00	700.00
<b>Net Pay</b>	<b>\$8,489.36</b>	
Checking Acct	-8,489.36	
<b>Net Check</b>	<b>\$0.00</b>	

\* Excluded from  
Your federal tax:  
\$13,410.77

\$116,685 / 6 months =  
\$19,447.50 per month  
**GROSS INCOME**

Other Benefits and Information	this period	total to date
Er. Dental	155.19	1,086.33
Er. Medical	1,232.61	8,628.27
Er. Pers	1,769.79	13,575.27
Er. Pers 6%	911.48	6,991.56
Er. Persbond	850.72	6,525.46
Er. Std. Life	17.38	119.11
Er. Vision		139.44
Ermtch Gl		8,628.27
Group Term		134.98
Health Care		9,048.27
Ltd Tax Fr		159.11
Pers Salary		131,082.74
Short Term		110.25

Tax withdrawals  
total \$34,187.62  
\$116,685-  
\$34,187.62 =  
\$82,495.38 NET  
through June.

\$82,495.38 / 6 months =  
\$13,749.23 per month NET  
**INCOME**

Advice number: 0000231010

Pay date: 06/30/2022

# Package the Exhibits in Useful Fashion

04/30	04/30 Online Transfer To Chk	3608 Transaction#: 11681592873	9,360.00
<b>Total Electronic Withdrawals</b>			<b>\$160,871.06</b>
<b>OTHER WITHDRAWALS</b>			
DATE	DESCRIPTION		AMOUNT
04/23	04/23 Withdrawal		\$10,000.00
04/28	04/28 Withdrawal		20,000.00
<b>Total Other Withdrawals</b>			<b>\$30,000.00</b>
<b>FEES</b>			
DATE	DESCRIPTION		AMOUNT
04/05	Domestic Wire Fee		\$35.00
04/07	Domestic Incoming Wire Fee		15.00

Exhibit page 1

6/7/2021

Withdrawal Details - chase.com

**CHASE** for BUSINESS

Printed from Chase for Business

\$20,000.00

Apr 28, 2021

Total

Post date

Exhibit page 2  
(same exhibit –  
labeled “Cash  
taken by Wife”)

**CHASE** **WITHDRAWAL**

Today's Date: 4/28 Customer Sign: [Redacted]

By Purchasing a Cashier's Check Provide: [Redacted]

1/3281 On (Per 10/15) 10/15/15 10/15

WITHDRAWAL

AMOUNT: 20000.00

TOTAL \$ 20000.00

10797610

# Benefits of Marking Up Exhibits

- ❖ Judge can follow along with you
- ❖ Easy for your client to follow exhibit during testimony
- ❖ Gives your witness testimony more credibility
- ❖ If the judge ever looks at the exhibits again while the matter is under advisement, the exhibits argue the case without you there

# Make the Asset Statement Useful. Use Comments To Argue and Link to Exhibit Evidence

1	Assets & Liabilities	Husband's Value	Husband's Distribution		Notes	Wife's Value
2			Husband	Wife		
28						
29	2017 Ford, VIN [REDACTED]	37,035			Ex 112	37,035
30	Selco Community CU loan #3326	(10,955)			Ex 113	(10,955)
31	Net Value	26,080	26,080			26,080
32						
33	2005 Honda, VIN [REDACTED]	6,486		X	Post Separation gift Ex 114	
34						
45	Chase checking #1967	Value counted in asset statement lines 57, 58, and 59		X	Ex 116	90,045
46	Chase checking #7221	Withdrawals by Wife of \$4000, rest to line 51 and distributed	X	4,000	Ex 117	1,975
47	Chase checking #7262	0	192	2,500	Wife withdrew \$2000 cash 4/27 and \$500 5/5; H closed account with \$192 Ex 118	245
70	Wells Fargo savings ending 3612	77,000	77,000		initial deposit post separation - Wife double counting this money AND money from line 51 Ex 129	86,000
71						



# If Using a Deposition, Use the Parts That Matter as Individual Exhibits

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
2 FOR THE COUNTY OF LINN  
3 IN THE MATTER OF  
4 [REDACTED]  
5 Petitioner,  
6 and Case No. 2 [REDACTED]  
7 [REDACTED]  
8 Respondent.  
9 and  
10 [REDACTED]  
11 A Child, ORS 107.108  
12 -----  
13 DEPOSITION OF [REDACTED]  
14  
15 Taken on behalf of Respondent, with all parties appear  
16 via Zoom Videoconference, Salem, Oregon, commencing at  
17 9:30 a.m., on Tuesday, November 2, 2021.  
18  
19

1 A. In a bank and at home.  
2 Q. Okay. Where at home are you keeping it?  
3 A. Makes me feel very unsafe.  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 Q. BY MS. SAUCY: How much cash do you have in your  
9 house?  
10 A. Again, that makes me feel very -- I already feel  
11 unsafe in my house.  
12 Q. How much cash she has available, Counsel.  
13 A. How much cash do I have available? Is that what  
14 you said?  
15 Q. I want to know how much cash you have access to.  
16 A. Total, probably around -- I don't -- probably  
17 around -- does this include what's in the bank?  
18 Q. No. Anything that is not on bank statements  
19 that you provided me.  
20 A. Probably between 7 and 10,000.  
21 Q. Okay. Do you have cash being held by any third  
22 party for you?  
23 A. No.  
24 Q. How much cash was in the family safe when you  
25 and [REDACTED] separated?

1 A. 23,000, which I tried to give him half of.  
2 Q. But he didn't take half, and so you had access  
3 to that whole \$23,000?  
4 A. Yeah, he said he didn't need that money.  
5 Q. Okay. So you took all the cash in the safe,  
6 correct, the full 23?  
7 A. Take is -- but yeah.  
8 Q. You withdrew \$20,000 from an account on May 28,  
9 2021; is that right?  
10 A. May 28?  
11 Q. Uh-huh.  
12 A. Was it May that I took 20,000 out?  
13 Q. Uh-huh. Unless there is another time you think  
14 you took 20,000. Or was it in April?  
15 A. It could have been April. I think it was in  
16 April.  
17 Q. You took \$20,000 in April?  
18 A. I did.  
19 Q. And you took another \$10,000 from a different  
20 account in April?  
21 A. Yes, I did that because my husband was closing  
22 or moving money out of the accounts.  
23 Q. Okay. Did you deposit that \$30,000 you took in  
24 April into any of the bank accounts that we have records  
25 for?

Ex \_\_\_\_ - Wife's  
deposition testimony  
admitting she has  
access to \$23,000  
cash from the safe

# Summary Exhibits Defined

- ❖ “The contents of voluminous writings, recordings or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary or calculation.” (ORCP 1006)

# Summary Exhibits allow you to:

- ❖ take voluminous material and present it in focused format
- ❖ keep exhibits manageable
- ❖ simplify expert testimony
- ❖ facilitate lay testimony




# Make a Specific Valuation Date or Average Seem to be the MOST Reasonable

Gross/Adjusted Gross Income 2002-2020

<b>2013</b>	<b>107,758</b>
<b>2014</b>	175,587
<b>2015</b>	245,260
<b>2016</b>	329,100
<b>2017</b>	369,318
<b>2018</b>	449,243
<b>2019</b>	527,190
<b>2020</b>	401,814

((Ignore those two big years))



((My average is so reasonable!))



Most recent year taxes have been filed: \$401,814

Average of last 5 years income: \$415,333

Average of last 6 years income: \$400,960

# Make a Specific Valuation Date or Average Seem to be the MOST Reasonable

## Comparison of Husband and Wife Deferred Compensation Account Balances over 2022

	12/31/2021	2/2/2022	3/1/2022	3/31/2022	5/13/2022
Husband Deferred Comp	\$249,717	\$334,250	\$351,925	\$287,773	\$207,534
Wife Deferred Comp	\$179,232	\$175,147	\$172,647	\$175,075	\$158,338
Difference in value	\$70,485	\$159,103	\$179,278	\$112,698	\$49,196

Last Quarterly Statement Date



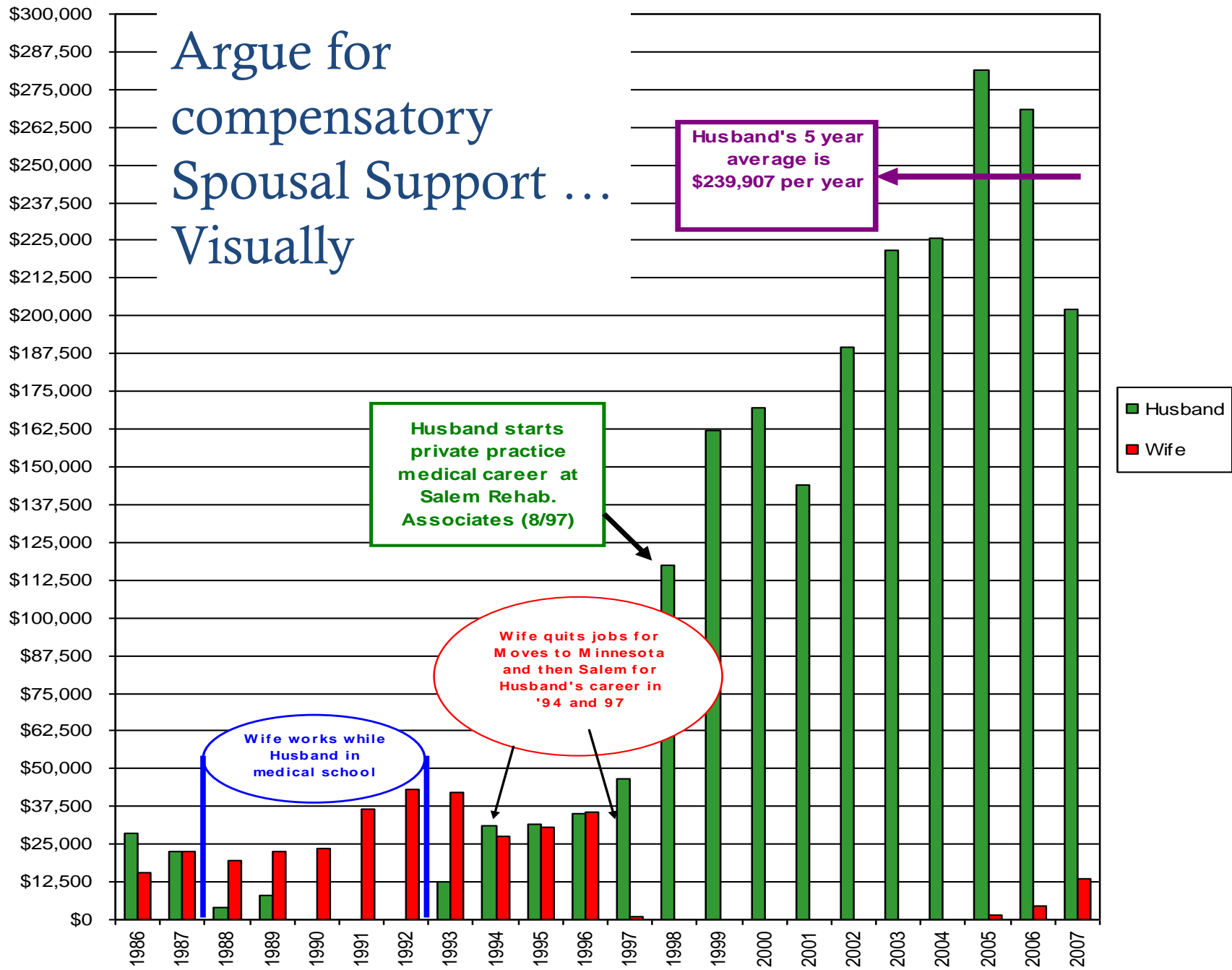
# Make a Specific Valuation Date or Average Seem to be the MOST Reasonable

	1986	1987	1988	1989	1990	1991	1992	1993
Husband	\$28,758	\$22,630	\$3,883	\$7,967	\$0	\$0	\$0	\$12,340
Wife	\$15,572	\$22,392	\$19,356	\$22,526	\$23,692	\$36,759	\$42,896	\$42,227
	1994	1995	1996	1997	1998	1999	2000	2001
Husband	\$31,185	\$31,376	\$35,243	\$46,723	\$117,223	\$162,085	\$169,657	\$144,021
Wife	\$27,574	\$30,377	\$35,490	\$858	\$0	\$0	\$0	\$0
	2002	2003	2004	2005	2006	2007		
Husband	\$189,790	\$221,790	\$225,704	\$281,341	\$268,443	\$202,258		
Wife	\$0	\$0	\$0	\$1,412	\$4,753	\$13,783		
	<b>5 year average ----&gt;&gt;&gt;&gt;</b>			<b>\$239,907</b>				
	<b>4 year average ----&gt;&gt;&gt;&gt;</b>			<b>\$244,437</b>				
	<b>3 year average ----&gt;&gt;&gt;&gt;</b>			<b>\$250,681</b>				
	<b>2 year average ----&gt;&gt;&gt;&gt;</b>			<b>\$235,351</b>				

# Charts

- ❖ Grab the Attention of the Judge
- ❖ Appeal to the Visual Senses
- ❖ Are Understood by the “number averse”
- ❖ Can be Introduced through stipulation, a lay witness, an expert or even your assistant (with proper foundation)
- ❖ A picture really is worth a Thousand Words (or a \$100,000)

# Argue for compensatory Spousal Support ... Visually



# Argue Spousal Support Visually: What Disposable Income Will Each Party Be Left With?

			Paystub Figures - Wife's Starting Net	Paystub Figures Husband's Starting Net
<b>Variance to Net Income</b>	\$4,763		\$4,240	\$9,003
Spousal Support as a Percent of the Variance in Net Income	Support Award		Wife's Adjusted Net Income	Husband's Adjusted Net Income
10.00%	\$476		\$4,716	\$8,527
15.00%	\$715		\$4,954	\$8,288
18.00%	\$857		\$5,097	\$8,146
Husband's Proposal: 22.5%	\$1,072		\$5,311	\$7,931
25.00%	\$1,191		\$5,430	\$7,812
30.00%	\$1,429		\$5,669	\$7,574
Wife's 's Request Leaves Wife with More Net Income				
83.97%	\$4,000		\$8,240	\$5,003
73.48%	\$3,500		\$7,740	\$5,503
62.98%	\$3,000		\$7,240	\$6,003



# Joint Exhibits Allow You to:

- ❖ Reduce confusion over conflicting positions
- ❖ Compel uncooperative counsel to follow your lead
- ❖ Focus the Judge on the issues needing a decision



# Use Colors to Compare Positions

**2.6 Writing and Telephoning.** Each parent has the right to correspond with the children during reasonable hours, with reasonable frequency, without monitoring by the other parent or anyone else. The correspondence may take the form of letters, email, video-conferences, text messaging or telephone calls.

2.6.1 Unless the court has ordered otherwise, each parent shall provide their physical home and mailing address, home and cellular telephone numbers, and a contact email address to the other parent.

2.6.2 Unless otherwise agreed, there shall be no more than one telephone call per day from a parent to the children. The calls shall take place after 4:00 p.m. not last past 8:00 p.m.

2.6.2 Unless otherwise agreed, telephone calls and video chats shall not last past 8:00 p.m. on school nights and 9:00 p.m. if the children do not have school the next day. Telephone calls and video chats shall be for a reasonable duration of time (approximately 15 minutes).

**2.7 Changes to the Parenting Schedule.** The parents are encouraged to be flexible and work together to agree to changes to this plan as their children get older or family circumstances change. Agreed upon changes will be temporary and will not be enforced by the court unless the change is written down, dated, signed by both parents and submitted to the court to make the stipulation a part of the court's file. The requirement of ORS 107.174 that the parents' signatures on the stipulation be declared under penalty of perjury or made under oath or affirmation is hereby waived.

# Text Messages, And Why We Want Them

- ❖ Useful admissions.
- ❖ To affirm statements opposing party now denies.
- ❖ To verify one party did provide notice of important information.
- ❖ Prove improper information was transmitted to children/third parties.
- ❖ Prove violations of restraining order.
- ❖ Give the court a feeling for who the parties truly are.

To [REDACTED]

Date : 07/ 9/2012 02:37:55  
PM

I just gave her some  
medication.

To YOU

Date : 07/09/2012 02:44:04  
PM

Stop texting lies to me about  
my daughter, you batch. Hey  
batch you can make up all  
the f[REDACTED]g lies stores in this  
world that u can but you will  
not suc

# The Problems

- ❖ Handing the Judge a phone makes Judges frustrated
  - ❖ Cannot preserve your record
- ❖ One message per page of exhibit = a 100 page exhibit
  - ❖ No one reads all of that
- ❖ Need proper foundation for admissibility



"DO YOU SWEAR TO SHOW THE TRUTH,  
THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH?"

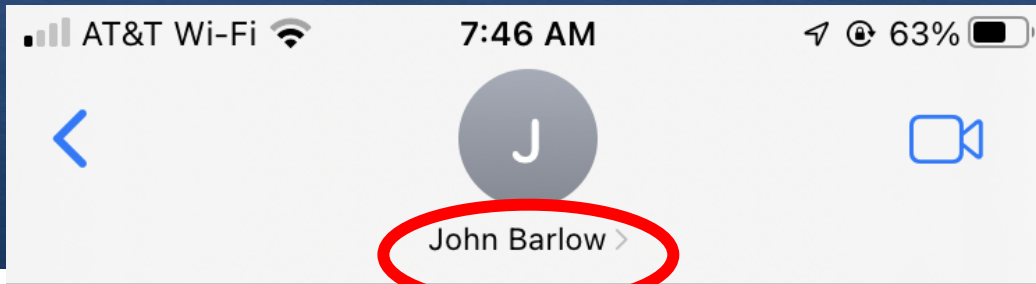
# What Information Should Be Included For Admissibility

- ❖ The date and time of the messages.
- ❖ The true contact information for the other party or parties in the text message conversation.
  - ❖ For SMS this is a phone number.
  - ❖ For MMS or iMessages this is either a phone number or an email address.



# Screen Shot – Pros and Cons

- ❖ Easy
- ❖ Free
- ❖ Time consuming – for client or for staff
- ❖ Likely a one screen per page exhibit
- ❖ Does not show time/date
- ❖ Does not confirm recipient/sender information
- ❖ Can be altered



iMessage  
Yesterday 11:33 AM

Wow! I am really looking forward to your presentation this year, they are always amazing!

Thank you. That is kind of you!

Delivered

If it were up to me, the section would have you present every year.



## Instead ...

- ❖ Have your client download a program designed to export text messages to their computer.
- ❖ Make sure the text message exhibit has the necessary foundational information to be admitted into evidence

Conversation between lauren's iPhone (+15035516209) and John Barlow (5035803326)

9/29/2022 11:33 AM

John Barlow (5035803326)

Wow! I am really looking forward to your presentation this year, they are always amazing!

9/29/2022 11:33 AM

lauren's iPhone (+15035516209)

Thank you. That is kind of you!

9/29/2022 11:34 AM

John Barlow (5035803326)

If it were up to me, the section would have you present every year.

# Things to Know

- ❖ The software typically has a free trial period, and then costs \$30 - \$40 if your client decides to keep it.
- ❖ The software saves the text messages locally on the computer, so it is less likely to be accessed by savvy opposing parties.
- ❖ You do not always need to have the phone to save the data. The software can often access texts from phone backups.
- ❖ YOU CAN SELECT THE TIMEPERIODS YOU WANT AND EXCLUDE OTHERS

# Use the Timeframes that are Helpful

Messages exported from: iPhone (+1 (541) [REDACTED])

With: [REDACTED] (54122 [REDACTED])

4/6/2022 11:38 AM to 4/6/2022 11:38 AM

PDF created with Decipher TextMessage (deciphertools.com)

4/6/2022 11:38 AM (Viewed 4/6/2022 11:39 AM)

Jordan (54 [REDACTED])

[REDACTED] I made some stupid terrible decisions and choices! I can never take those back. I was selfish, manipulative, stubborn and a completely idiot for never stepping up and treating you and beau the way you deserved to be treat! I [REDACTED] up big time! I wish I could go back in time to fix everything but I can. All I ask is for a chance to fix it with [REDACTED] I am so sorry for what I did to the both of you and I will never forgive myself for it. I truly am sorry, and would do absolutely anything to fix it.

1 total message and 0 total images.

VS.

Don't call him your son, that is something you have to earn and you never did.

4/6/2022 11:38 AM (Viewed 4/6/2022 11:39 AM)

[REDACTED] (5412 [REDACTED])

[REDACTED] I made some stupid terrible decisions and choices! I can never take those back. I was selfish, manipulative, stubborn and a completely idiot for never stepping up and treating you and beau the way you deserved to be treat! I [REDACTED] up big time! I wish I could go back in time to fix everything but I can. All I ask is for a chance to fix it with [REDACTED] I am so sorry for what I did to the both of you and I will never forgive myself for it. I truly am sorry, and would do absolutely anything to fix it.

# Don't Forget to Annotate Texts Too

Offering Husband  
to spend time with  
children

thinking I will soon. I am really sorry we've ended up here. I am sad we can't make this work. Most of all I am sad for our daughters and I think we need to focus on what is best for them from here on out. They are my priority and I know they are yours.

6/30/21, 11:13 AM

s iPhone (+15039

Would you like to spend time with the girls tonight? I can drop them at the house and you can spend time with them this evening then I can come back later tonight

6/30/21, 11:39 AM (Viewed 6/30/21, 11:43 AM)

(5039

I don't think it would be a good idea, I packed up last night... bags of clothes my personal belongings.

6/30/21, 11:40 AM (Viewed 6/30/21, 11:43 AM)

(50393

They will notice and freak out.

6/30/21, 11:42 AM (Viewed 6/30/21, 11:43 AM)

(5039

Would love to see them but your still missing the point. So you stayed the night with Vaccinated people.

6/30/21, 11:43 AM

(503

That's called the hornets nest in my opinion.

6/30/21, 11:45 AM (Viewed 6/30/21, 11:49 AM)

(503

I could be wrong 100% but to me it's not worth the risk health wise and livelihood. Do you even get where I'm coming from.

Husband won't  
spend time with  
children because  
they spent the  
night at a house  
with vaccinated  
people



# Options

- ❖ iPhone:

- ❖ Decipher TextMessage

- ❖ <http://deciphertools.com>

- ❖ PhoneView (this program does not require a backup to iTunes).

- ❖ Android:

- ❖ SMS Backup (requires a gmail account)

- ❖ iMazing

- ❖ <http://imazing.com>

# If Playing With or Marking Up Exhibits, Always Bring Your 100% Admissible Copy as Backup

001149992

This is the actual, unaltered bank statement

Note amount

CHECKING SUMMARY		Chase Total Checking
	AMOUNT	
Beginning Balance	\$5,985.25	
Deposits and Additions	410,532.53	
Checks Paid	- 61.00	
ATM & Debit Card Withdrawals	- 332.47	
Electronic Withdrawals	- 205,362.93	
Fees and Other Withdrawals	- 200,135.00	
Ending Balance	\$10,626.38	

Note Husband amount altered the statement to remove \$200,000

Marked up  
exhibit

CHECKING SUMMARY		Chase Total Checking
	AMOUNT	
Beginning Balance	\$5,985.25	
Deposits and Additions	410,532.53	
Checks Paid	- 61.00	
ATM & Debit Card Withdrawals	- 332.47	
Electronic Withdrawals	- 205,362.93	
Fees and Other Withdrawals	- 200,135.00	
Ending Balance	\$10,626.38	

Back up  
exhibit – clean  
copy



# Thank you!

❖ Additional examples are in your materials!



JPMorgan Chase Bank, N.A.  
P O Box 659754  
San Antonio, TX 78265 - 9754

February 09, 2011 through March 08, 2011

Account Number: [REDACTED]



00011489 DRE 702 219 06811 - NNNNNNNNNN 1 000000000 06 0000



#### CUSTOMER SERVICE INFORMATION

Web site: Chase.com  
Service Center: 1-888-262-4273  
Hearing Impaired: 1-800-242-7383  
International Calls: 1-713-262-1679

This document was  
provided to Wife in  
discovery



#### CHECKING SUMMARY

Chase Total Checking

	AMOUNT
Beginning Balance	\$5,985.25
Deposits and Additions	210,532.53
Checks Paid	- 61.00
ATM & Debit Card Withdrawals	- 332.47
Electronic Withdrawals	- 205,362.93
Fees and Other Withdrawals	- 135.00
Ending Balance	\$10,626.38

Note amount

Note amount

#### CHECKS PAID

CHECK NUMBER	DATE PAID	AMOUNT
500 ^	03/08	\$11.00
1120 * ^	02/14	50.00
Total Checks Paid		\$61.00

If you see a check description in the Transaction Detail section, it means your check has already been converted for electronic payment. Because of this, we're not able to return the check to you or show you an image on Chase.com.

\* All of your recent checks may not be on this statement, either because they haven't cleared yet or they were listed on one of your previous statements.

^ An image of this check may be available for you to view on Chase.com.



February 09, 20  
Account Number: [REDACTED]

Note the lack of  
transactions on  
February 22

### TRANSACTION DETAIL

DATE	DESCRIPTION	AMOUNT	BALANCE
	<b>Beginning Balance</b>		<b>\$5,985.25</b>
02/09	OR Child Support Cs Payment PPD ID: 9300013727	327.69	6,312.94
02/09	Ods Companies Health Ins PPD ID: 6930438772	- 236.00	6,076.94
02/10	JPMorgan Chase Loan Pymt PPD ID: 9008102401	- 549.19	5,527.75
02/11	Card Purchase W/Cash 02/11 Winco Foods Tigard OR Card 1017 Purchase \$165.90 Cash Back \$30.00	- 195.90	5,331.85
02/14	Deposit 849347332	820.00	6,151.85
02/14	Check # 1120	- 50.00	6,101.85
02/16	Fed Wire Credit Via: Wells Fargo Bank/121000248 B/O: Fidelity National Title Woodland CA 95695-2977 Ref: Chase Nyc/Ctr/Bnf=Brent W Lam OR Zorayda V Lam Newberg, OR 971326685/Ac-000000009503 Rfb=000362002 Obi=Brent Lam Acct# 0950336224 Snt Bimad: 021611B7031R013939 Trn: 2376109047Ff	196,431.08	202,532.93
02/16	02/16 Online Transfer To Mma Xxxxxx2824 Transaction#: 2005482591	- 196,431.08	6,101.85
02/16	Incoming Domestic Wire Fee	- 15.00	6,086.85
02/18	<del>Vander Houwen &amp; Payroll PPD ID: 9000691557</del>	<del>3,872.90</del>	<del>9,959.65</del>
02/22	Deposit 849347138	2,209.14	12,168.79
02/22	02/21 Online Transfer To Sav Xxxxxx0163 Transaction#: 2008014288	- 84.00	12,084.79
02/23	02/23 Withdrawal	- 120.00	11,964.79
02/23	Capital One Crcardpmt PPD ID: 9541719018	- 1,036.22	10,928.57
02/25	OR Child Support Cs Payment PPD ID: 9300013727	327.69	11,256.26
02/25	P.G.E. Webpay Elec-2020-Faakz Web ID: 2930256820	- 233.65	11,022.61
02/28	Deposit 814663655	120.00	11,142.61
03/01	Deposit 771002792	750.00	11,892.61
03/01	Bank of America Trial Dep PPD ID: 9128866005	0.08	11,892.69
03/01	Bank of America Trial Dep PPD ID: 9128866005	0.03	11,892.72
03/01	Bank of America Trial Dep PPD ID: 9128866005	- 0.11	11,892.61
03/02	Card Purchase W/Cash 03/02 Winco Foods Tigard OR Card 1017 Purchase \$25.38 Cash Back \$30.00	- 55.38	11,837.23
03/02	Wf Home Mtg Auto Pay PPD ID: W952318940	- 1,254.88	10,582.35
03/03	Deposit 808566266	500.00	11,082.35
03/04	Vander Houwen & Payroll PPD ID: 9000691557	3,284.02	14,366.37
03/04	Oregon Comm CU A2A.Tranfr PPD ID: 9000008033	1,890.00	16,256.37
03/04	Bank of America Mortgage 229476207 Web ID: 8055205100	- 5,537.80	10,718.57
03/07	Card Purchase With Pin 03/06 Winco Foods McMinnville OR Card 1017	- 70.20	10,648.37
03/08	Card Purchase 03/07 Walgreens #6664 Qps Newberg OR Card 1017	- 10.99	10,637.38
03/08	Check # 500	- 11.00	10,626.38
	<b>Ending Balance</b>		<b>\$10,626.38</b>





JPMorgan Chase Bank, N.A.  
P O Box 659754  
San Antonio, TX 78265 -9754

February 09, 2011 through March 08, 2011

Account Number: [REDACTED]

### CUSTOMER SERVICE INFORMATION

Web site: Chase.com  
Service Center: 1-888-262-4273  
Hearing Impaired: 1-800-242-7383  
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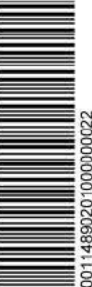


00011489 DRE 702 219 06811 - NNNNNNNNNN 1 000000000 06 0000



NEWBERG OR 97132-6685

This is the actual,  
unaltered bank  
statement



00114890201000000022

### CHECKING SUMMARY

Chase Total Checking

	AMOUNT
Beginning Balance	\$5,985.25
Deposits and Additions	410,532.53
Checks Paid	- 61.00
ATM & Debit Card Withdrawals	- 332.47
Electronic Withdrawals	- 205,362.93
Fees and Other Withdrawals	- 200,135.00
Ending Balance	\$10,626.38

Note amount

Note Husband  
amount altered the  
statement to  
remove \$200,000

### CHECKS PAID

CHECK NUMBER	DATE PAID	AMOUNT
500	03/08	\$11.00
1120 *	02/14	50.00
Total Checks Paid		\$61.00

If you see a check description in the Transaction Detail section, it means your check has already been converted for electronic payment. Because of this, we're not able to return the check to you or show you an image on Chase.com.

\* All of your recent checks may not be on this statement, either because they haven't cleared yet or they were listed on one of your previous statements.

^ An image of this check may be available for you to view on Chase.com.





Note transactions  
on February 22

February 09, 2011 through March 06, 2011

## TRANSACTION DETAIL

DATE	DESCRIPTION	AMOUNT	BALANCE
	<b>Beginning Balance</b>		<b>\$5,985.25</b>
02/09	OR Child Support Cs Payment PPD ID: 9300013727	<b>327.69</b>	6,312.94
02/09	Ods Companies Health Ins PPD ID: 6930438772	- 236.00	6,076.94
02/10	JPMorgan Chase Loan Pymt PPD ID: 9008102401	- 549.19	5,527.75
02/11	Card Purchase W/Cash 02/11 Winco Foods Tigard OR Card 1017 Purchase \$165.90 Cash Back \$30.00	- 195.90	5,331.85
02/14	Deposit 849347332	<b>820.00</b>	6,151.85
02/14	Check # 1120	- 50.00	6,101.85
02/16	Fed Wire Credit Via: Wells Fargo Bank/121000248 B/O: Fidelity National Title Woodland CA 95695-2977 Ref: Chase Nyc/Ctr/Bnf=Brent W Lam OR Zorayda V Lam Newberg, OR 971326685/Ac-000000009503 Rfb=000362002 Obi=Brent Lam Acct# 0950336224 Snt Bimad: 02161B7031R013939 Trn: 2376109047Ff	<b>196,431.08</b>	202,532.93
02/16	02/16 Online Transfer To Mma Xxxxxx2824 Transaction#: 2005482591	- 196,431.08	6,101.85
02/16	Incoming Domestic Wire Fee	- 15.00	6,086.85
02/18	Vander Houwen & Payroll PPD ID: 9000691557	<b>3,872.80</b>	9,959.65
02/22	Deposit 849347138	<b>2,200.14</b>	12,160.79
02/22	Online Transfer From Mma Xxxxxx2824 Transaction#: 2007975880	<b>200,000.00</b>	212,168.79
02/22	02/21 Online Transfer To Sav Xxxxxx0163 Transaction#: 2008014288	- 84.00	212,084.79
02/22	02/22 Phone Funds Transfer Withdrawal	- 200,000.00	12,084.79
02/23	02/23 Withdrawal	- 120.00	11,964.79
02/23	Capital One Crcardpmt PPD ID: 9541719018	- 1,036.22	10,928.57
02/25	OR Child Support Cs Payment PPD ID: 9300013727	<b>327.69</b>	11,256.26
02/25	P.G.E. Webpay Elec-2020-Faakz Web ID: 2930256820	- 233.65	11,022.61
02/28	Deposit 814663655	<b>120.00</b>	11,142.61
03/01	Deposit 771002792	<b>750.00</b>	11,892.61
03/01	Bank of America Trial Dep PPD ID: 9128866005	<b>0.08</b>	11,892.69
03/01	Bank of America Trial Dep PPD ID: 9128866005	<b>0.03</b>	11,892.72
03/01	Bank of America Trial Dep PPD ID: 9128866005	- 0.11	11,892.61
03/02	Card Purchase W/Cash 03/02 Winco Foods Tigard OR Card 1017 Purchase \$25.38 Cash Back \$30.00	- 55.38	11,837.23
03/02	Wf Home Mtg Auto Pay PPD ID: W952318940	- 1,254.88	10,582.35
03/03	Deposit 808566266	<b>500.00</b>	11,082.35
03/04	Vander Houwen & Payroll PPD ID: 9000691557	<b>3,284.02</b>	14,366.37
03/04	Oregon Comm CU A2A.Tranfr PPD ID: 9000008033	<b>1,890.00</b>	16,256.37
03/04	Bank of America Mortgage 229476207 Web ID: 8055205100	- 5,537.80	10,718.57
03/07	Card Purchase With Pin 03/06 Winco Foods McMinnville OR Card 1017	- 70.20	10,648.37
03/08	Card Purchase 03/07 Walgreens #6664 Qps Newberg OR Card 1017	- 10.99	10,637.38
03/08	Check # 500	- 11.00	10,626.38
	<b>Ending Balance</b>		<b>\$10,626.38</b>



February 17, 2011 through March 16, 2011

Primary Account: [REDACTED]

## CHASE BETTER BANKING CHECKING

Account Number: [REDACTED]

### CHECKING SUMMARY

	AMOUNT
Beginning Balance	\$200.00
Ending Balance	\$200.00

Good News. Your monthly service fee was waived because you kept at least \$1,500 in your Chase Better Banking Checking account or a combined average balance of \$5,000 in qualifying checking, savings, credit, securities and mortgage loan accounts.

This message confirms that you have overdraft protection on your checking account.

## CHASE PLUS SAVINGS

Account Number: [REDACTED]

### SAVINGS SUMMARY

	AMOUNT
Beginning Balance	\$247,490.02
Deposits and Additions	5,022.65
Electronic Withdrawals	- 200,000.00
Ending Balance	\$52,512.67
Annual Percentage Yield Earned This Period	0.35%
Interest Earned This Period	\$22.65
Interest Paid Year-to-Date	\$55.20

Interest paid in 2010 for account 000005746252824 was \$191.46.

You could earn an even higher interest rate on your Chase Plus Savings account if you link it to a qualifying checking account. Visit any of our branches for details or call us at the telephone number on your statement.

### TRANSACTION DETAIL

DATE	DESCRIPTION	AMOUNT	BALANCE
	Beginning Balance		\$247,490.02
02/22	02/21 Online Transfer To Chk Xxxxx6224 Transaction#: 2007975880	- 200,000.00	47,490.02
03/10	Online Transfer From Chk Xxxxx6224 Transaction#: 2020702856	5,000.00	52,490.02
03/16	Interest Payment	22.65	52,512.67
	Ending Balance		\$52,512.67



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

In the Matter of the Marriage of)

)

██████████, ██████████, Petitioner, )

)

and

) Case No. 0 [REDACTED]

)

██████████, Respondent. )

)

DEPOSITION OF [REDACTED] [REDACTED] [REDACTED]

BE IT REMEMBERED that the deposition of [REDACTED]

██████████ was taken on Thursday, December 15th,

2011 before Kelly D. Antrim, Shorthand Court

Reporter and Notary Public for the State of Oregon

beginning at the hour of 8:32 a.m. at the offices of

██████████, P.C., ██████████

**[REDACTED] [REDACTED] [REDACTED] Oregon.**



(Exhibit Nos. 101-130 were  
marked for identification.)

Having been first duly sworn to tell the truth,  
the whole truth, and nothing but the truth, was  
deposed and said as follows:

EXAMINATION

BY MR. SAUCY:

Q Mr. Braun?

A Yes?

Q You've just sworn to tell the truth. Do  
you understand that?

A Yes.

Q Are you a liar?

A No.

Q Have you lied during this proceeding?

A I'm -- what was the question?

Q Have you lied during this proceeding?

A Today?

Q At any time.

A Ah, yes.

Q What have you lied about?

1           A     I lied about not having the Quicken and  
2     QuickBooks.

3           Q     Why did you do that?

4           A     Because the records were inaccurate and I  
5     thought they would just add confusion. And, um,  
6     also I wasn't able to copy them. I'd tried during  
7     the divorce, um, case and the disks that I made for  
8     some reason they weren't, um, able to be opened or  
9     whatever. I don't know.

10          Q     You know that I asked for backup disks for  
11     both Quicken and QuickBooks. Is that correct?

12          A     Yes.

13          Q     Take a look at Exhibit 103 if you would in  
14     your book. In response to my August 8, 2001 request  
15     that you provide me a register generated by Quicken  
16     or any similar program you replied as you did on  
17     number 7 in Exhibit 103, correct?

18          A     Yes.

19          Q     Would you read that for me please?

20          A     "I do not have access to canceled checks.  
21     No software records exist." (As read.)

22          Q     That in fact software records exist.

23          A     Yes.

24          Q     Take a look at Exhibit 104. This is your  
25     response to me dated September the 30th, 2011; is it

1 not?

2 A Yes.

3 Q And would you read what you wrote in  
4 response to number 11 about software.

5 A "I have not used any software for [REDACTED]  
6 [REDACTED] for several years and have no past records."

7 Q In fact, not only do you have records for  
8 [REDACTED] [REDACTED], they are up to date, aren't they.

9 A Yes.

10 Q So not only did you lie when you said that  
11 you didn't have records, ah, but you lied when you  
12 said you haven't used it.

13 A Yes.

14 Q So how did you feel when we're standing in  
15 front of Judge Williams and I'm asking to go out to  
16 your place to see if you really have those records  
17 on your computer?

18 A Well, I guess I felt, ah, ashamed that,  
19 um, I had lied.

20 Q Why didn't you say something then?

21 A I don't know.

22 Q You knew you were going to be found out,  
23 right?

24 A I -- yeah, I guess I did.

25 Q In fact, those records for [REDACTED] [REDACTED]

1 are up to date, aren't they.

2 A Well they're up to date in the sense that  
3 there are records in there that are correct, but  
4 there's also records that aren't.

5 Q Okay. I was very impressed by both your  
6 Quicken and QuickBook records. Because you really  
7 break down the detail in a significant way, don't  
8 you.

9 A I -- I don't know. I don't have  
10 experience in that. I just do it the way I think it  
11 should be done.

12 Q Well you set up categories for different  
13 types of expenses.

14 A No, those weren't set up by me. Those  
15 were set up by an accountant years ago.

16 Q Okay. So an accountant set you up on your  
17 records with various categories for expenses.

18 A Mm-hmm.

19 Q You have to answer out loud.

20 A Yes.

21 Q And you've used that since then; have you  
22 not?

23 A Yes.

24 Q And in fact, when you have credit card  
25 payments, your credit card, your Quicken credit card

1 do -- make this kind of a chart from your program?

2 A No.

3 Q What bank account does your Quicken  
4 program reflect activity in?

5 A I don't understand the question.

6 Q Well this is a check, essentially a  
7 checkbook register for -- is it for all of your  
8 accounts? Or is it just for one bank account?

9 A Quicken in general? Or --

10 Q Yes.

11 A Well it, yeah, it has all my accounts in  
12 it.

13 Q So your -- the entries that you put into  
14 the Quicken program reflect all of your bank  
15 accounts then.

16 A Yes.

17 Q Okay. One of the categories you have  
18 are -- it says "FROM Checking C[REDACTED]." I assume  
19 that's OSU Federal Credit Union.

20 A Mm-hmm.

21 Q What account is that checking account at  
22 OSU [REDACTED] [REDACTED] [REDACTED]?

23 A I don't -- I'm not sure I know, um, what  
24 this represents. Um, you know, my [REDACTED] [REDACTED] [REDACTED]  
25 has a savings account, a checking account. I mean,

Tracy Horn  
[REDACTED]

Paul Saucy  
475 Cottage Street NE, Suite 120  
Salem, OR 97301

Re: [REDACTED]  
Petitioner's Response to Respondent's Request for Production

**Petitioner responds to Respondent's Request For Production as follows:**

1. Tax Returns. Included are all tax returns for 2008, 2009, and 2010. Personal and Jackson Creek Farms.
2. Income Records. Income tax returns for 2010 were filed and are included with #1.
3. Year-to-Date Income Records. Income records for 2011 are included.
4. Financial Statements. No such documents exist.
5. Insurance Policies. Insurance policy through the City of Corvallis, however a copy has not been provided to me.
6. Securities. Fidelity account documents are included.
7. Bank and Credit Union Accounts. Included are all account statements for 2010 and 2011 to date. **Do not have access to canceled checks. No software records exist.**
8. Reimbursements. No documents exist.
9. Pension Benefits and Profit Sharing. PERS estimate of benefits included. TIAA-CREF statements included. Nationwide 457(b) statements included.
10. IRA. Dreyfus statements included. See #6, Fidelity statements for IRA.
11. Firms and Financial Interests. Bank and credit card statements are included for Jackson Creek Farms. See #1 for income tax returns for Jackson Creek Farms.

Page 1 of 2

Deposition  
Exhibit 103

12. Trusts and Estates. I own my home at 4880 NW Crescent Valley Drive, Corvallis, Oregon.

13. Uniform Support Declaration. A draft of this document is included.

14. Employment Records. I was employed by the City of Corvallis from November, 1989 till my retirement on June 30, 2011. Employment documents covering that period are not in my possession.

Dated this 9<sup>th</sup> day of September, 2011.

[REDACTED]

CERTIFICATE OF SERVICE

I certify that I served the foregoing Petitioner's Response To Respondent's Request For Production upon Attorney for Respondent, by placing a true, full and exact copy thereof, duly certified to be such by me, in a sealed envelope, postage prepaid, and depositing the same in the United States post office at Corvallis, Oregon, on September 9, 2011, addressed to:

Paul Saucy  
475 Cottage Street NE, Suite 120  
Salem, OR 97301

[REDACTED]

Page 2 of 2

[REDACTED]

Deposition  
Exhibit 103



September 30, 2011

Husband sent this letter to the court, sending me a copy of it

Paul Saucy  
475 Cottage Street NE, Suite 120  
Salem, OR 97301

Re: [REDACTED]

Mr. Saucy:

Regarding your letter of September 29, 2011.

3. Year-to-date income records. Self-employment income was electronically transferred from the [REDACTED] account at OSU Federal Credit Union into my account at OSU Federal Credit Union. The only records that exist are included in the monthly statements which have been provided to you.
4. Financial statements. I applied for the boat loan and the home equity line of credit on behalf of my son. He makes all the payments for both loans. I do not have documentation of the loans. I will contact my son and the OSUFCU to try to obtain the requested documentation.
5. Insurance policies. The only life insurance policy I have is through the City of Corvallis. I do not have a copy of the policy but I will contact the City to try to obtain one.
6. Securities. I hold \$12,000 worth of I-Bonds.
7. Bank and credit union accounts. I do not have copies of account statements older than already provided, but I will try to obtain them through the OSUFCU. Cancelled checks can be provided at your expense. **I do not keep checkbook registers for any accounts.**
8. Reimbursements. My son is making all the payments on the boat loan and the home equity line of credit. The payments are reflected on the monthly account statements provided. I have no other records.
11. Firms and financial interests. **I have not used any software [REDACTED] Jackson [REDACTED] for several years and have no past records.** I collect payments from my boarders monthly and then deposit them into the [REDACTED] account at OSUFCU. I use my bank and credit card statements to keep track of income and expenses. I don't use receipts.
12. Trusts and estates. I have no interest in any property in Eugene.
13. **Uniform support declaration.** I used my bank and credit card monthly statements to prepare the uniform support declaration. **I have no other documentation.**

Regarding the family photographs, I never would have said that I had no interest in the family photographs. I specifically remember Louise agreeing to make copies of the photographs rather than going through the box, photograph by photograph. To

Page 1 of 2

Deposition  
Exhibit 104

resolve this issue, I propose that Louise bring the box of photographs with her when she comes to trial and we can divide the photographs at that time.

Regarding the art prints, Louise actually gave those prints to me. I only offered them in exchange for the family photographs to show good will. Since she has chosen to try to withhold my legal right to the family photographs, I withdraw my offer to give the prints back to her.

A black rectangular box redacting the signature of the petitioner.

Petitioner

Page 2 of 2

Two lines of text redacted with black boxes.

Deposition  
Exhibit 104

STATE OF OREGON )

COUNTY OF LINN )

I, KELLY D. ANTRIM, Shorthand Court Reporter  
and Notary Public for Oregon, do hereby certify that  
[REDACTED] [REDACTED] [REDACTED] personally appeared before me at  
the time and place set forth in the caption hereof;  
that at said time and place I reported in stenotype  
all testimony adduced and other oral proceedings had  
in the foregoing matter;

That thereafter my notes were reduced to typewriting; and that the foregoing transcript, pages 1 through 142 inclusive, contains a full, true and correct record of all such testimony adduced and oral proceedings had, and the whole thereof; and signature was thereto not requested;

That I am not counsel to nor related to any of the parties involved herein; nor am I otherwise interested in the outcome of these proceedings.

WITNESS my hand at Albany, Linn County, Oregon  
this 16th day of January, 2012.

Kelly D. Antrim, Shorthand Court Reporter  
Notary Public-Oregon  
Commission No. 427532  
My Commission Expires May 3, 2012

PAUL SAUCY  
LAUREN SAUCY  
SHANNON SNOW



**Saucy & Snow**  
ATTORNEYS AT LAW

1665 LIBERTY STREET SE  
SALEM, OREGON 97302  
T 503-362-9330  
WWW.YOURATTY.COM

---

September 29, 2022

**VIA EMAIL ONLY**

Mother Darling

Dear Ms. Darling:

The contents of text messages may be an issue in your case. If that is true, it is important that you make sure they are not lost or accidentally deleted. In fact, it is important to do more than just save the texts; they need to be saved in a format that makes them a good trial exhibit. Experience has shown me that the judge will not be interested in looking through your phone in the courtroom. Instead, your evidence will be much more effective if we can present a clear, accurate, and verifiable timeline for the exchange of texts. I have had many clients in similar situations and have found that the best way to present this evidence is to download either a computer program or mobile app that does the work for you.

I understand that you can take (and probably have) screenshots of portions of text exchanges. Screenshots can be problematic because they might not reflect the date (instead referencing "today"), and we cannot truly verify the contact name you assigned to the phone number. That information can be changed even after a message is received.

There are programs on the market that quickly and effectively download all texts to and from a specific party within a selected date range. You can then export them to your computer in a .PDF or other usable format. I have no particular preference as to which program you should choose, but you need to ensure that it clearly identifies the contact phone number (not just contact information you assigned), date, and time of the text exchange.

Many of the available programs cost \$30 to \$40. They often have a free trial period so you can test the program and decide whether or not you want to keep it for future use.

If you would like suggestions, I have effectively used the following programs with success:

For iPhone: *DecipherTextMessage*, which you can find at  
<https://deciphertools.com/decipher-textmessage.html>

For iPhone: *PhoneView*, which you can find at <http://www.ecamm.com/mac/phoneview/>

For Android: *SMS Backup+* (a free app available through the Google Play Store).

Mother Darling  
September 29, 2022  
Page 2

The programs require the phone to be backed up on a computer. For that reason, it is important that you use your own personal computer or another secure device to download the texts because you will be downloading a great deal of additional information at the same time. Remember to back up your computer so the texts will not be lost if your computer crashes.

I look forward to receiving a copy of any text exchanges that you think might be helpful to your case. Emailing them to me in a .PDF format or providing them on a disk or flashdrive is the most efficient way of providing them to me.

As always, please let me know if you have any questions about this issue or how I am proceeding on your behalf.

Very truly yours,

Lauren Saucy

***Resist and Refuse: The  
Voice of the Child and  
the Role of the Court***



# **Resist and Refuse:**

**The Voice of the Child and the Role of the Court**

**Sara Rich, LCSW. Oregon State Bar Family Law Conference Fall 2022**



# Overview

All in 50 minutes.....

The Children

The Dynamic

The Court

The Orders

The Work

The Outcomes

Questions?



# The Children





- Voices not Choices
- Cultural Norms
- Resiliency
- Capacity
- Age
- Traumas
- Support



# The Dynamics

- Resist and Refuse vs. Parental Alienation
- High Conflict Impact on Children
- Adverse Childhood Experience Study
- The Polarized Child
- Loyalty Binds



"CHILDREN SWIM  
IN THEIR PARENTS'  
UNCONSCIOUS  
LIKE FISH SWIM  
IN THE SEA.  
IT IS GOOD TO  
MAKE SURE  
THAT THE WATER  
STAYS CLEAR."

GABOR MATÉ (SCATTERED MINDS)









# The Court

## Supporting the Family

- Trauma Lens
- Therapeutic Intervention
- Court Supervision
- Sanctions when Appropriate
- Children Testimony
- SFLAC Work PIOS







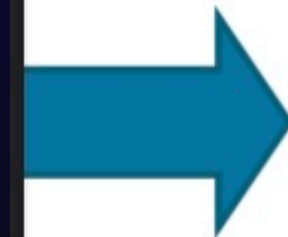
# Resist/Refuse in Family Law Cases

A Guide for Oregon Judges

## INTRODUCTION

The family system approach to addressing resist/refuse dynamics has been gaining in popularity to replace more fault-based analysis that have been ineffective in restoring parent/child relationships. Underlying this approach is the assumption that family reunification is the near-term goal, and that the genesis of the resist/refuse dynamic is bilateral parental behavior. This analytical approach may be inadequate in those cases in which there is an established history of issues implicating child and parent safety that underlie resist/refuse dynamics, such as mental health issues, substance abuse, child abuse and neglect and domestic violence. In those situations, great care must be taken and expert input on safety should be considered.

This handout includes a glossary of common terms used in cases involving the resist/refuse dynamic as well as information about common dynamics, interventions and treatments, and suggestions for judicial case management in such cases.



**CAUTION:** In families impacted by a history of child abuse or domestic violence, a primary consideration must be child and parent safety. In these cases, great care must be taken when considering reunification or family therapy. Well-informed, expert input is often needed.

- GLOSSARY OF TERMS
- COMMON FAMILY DYNAMICS
- INTERVENTION AND TREATMENT
- JUDICIAL CASE MANAGEMENT
- RESOURCES



# The Orders

- \* Hold the whole family accountable
- \* Time lines
- \* Sanctions for non compliance if Therapeutic Interventionist reports the need



# The Work

## Or The Process

Intakes and Screening

Scope of Work

Coordination

Court Check Ins

Step Up

Step Back

Time



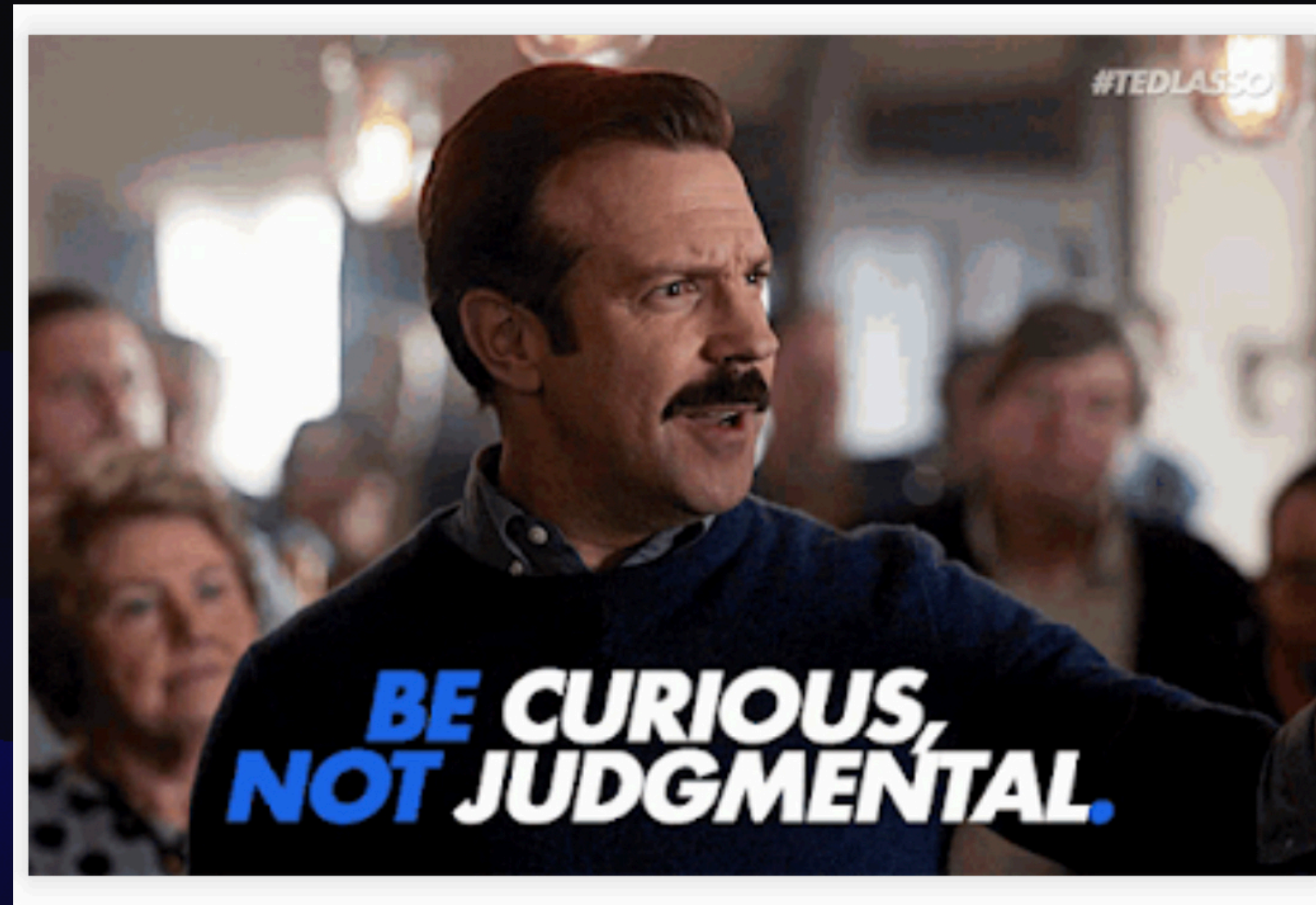
# Outcomes

## Optimistic vs. Realistic

- Reunification/Reintergration
- Parenting Time Phobia
- Limited Contact
- No Contact
- Extended Therapy
- Breaks
- Barriers







Questions?



# Sources:

- \* **Don't Alienate The Kids, Bill Eddy**
- \* **Overcoming the Co-Parenting Trap, John Moran, Tyler Sullivan & Matthew Sullivan**
- \* **Overcoming Parent-Child Contact Problems, Abigail M. Judge & Robin Deutsch**
- \* **Evidence- Informed Interventions For Court-Involved Families, Lyn R. Greenberg, Barbara J. Fidler & Michael A. Saini**
- \* **Mending Fences: A Collaborative, Cognitive-Behavioral Reunification Protocol, Benjamin D. Garner PhD**
- \* **When a Child Rejects a Parent: Working With the Intractable Resist/Refuse Dynamic**  
[Marjorie Gans Walters](#), [Steven Friedlander](#) AFCC Family Court Review
- \* **AFCC Webinars:**
  - \* **Trauma Informed Interventions in Parent-Child Contact Cases, Deutsch, Drozd & Ajoku**  
6/4/2020



***Special Immigrant  
Juvenile (SIJS)  
Visas and Vulnerable  
Youth Guardianships  
(VYG) Overview***

MariRuth Petzing  
Oregon Law Center  
[mpetzing@oregonlawcenter.org](mailto:mpetzing@oregonlawcenter.org)

# VULNERABLE YOUTH GUARDIANSHIPS

# AGENDA

- Special Immigrant Juvenile Status (SIJS)
- Who Are Vulnerable Youth?
- SB 572:Vulnerable Youth Guardianship Law
- How to File a VYG Case
- Examples
- Help and Support



Photo by Amir Hosseini on Unsplash





## SPECIAL IMMIGRANT JUVENILE STATUS

- **SIJS** was created through the Immigration Act of 1990 and subsequently amended by the **William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)**.
- **Designed to allow undocumented children who have been abused, abandoned or neglected by one or both parents to remain lawfully in the U.S. when it is not in the best interest of the child to return to his/her/their home country**
- **Unique process that requires both state court action and federal agency adjudication.**

# ROLE OF THE STATE COURT ORDER/JUDGMENT

- An order from a state court empowered to make determinations about the care and custody of juveniles is a required element for SIJS eligibility.
- The order should show that some form of custody over the youth has been given to someone, such as through a guardianship.
- The order should be signed by a judge, filed with the court, and currently in effect.
- The order should make the following findings/conclusions:
  - Youth is under 21 years and remains unmarried;
  - Reunification with one or both of the youth's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law; and
  - It is not in the best interest of the youth to be returned to their previous country.
- The order should include findings of fact to support these conclusions.
- The order does NOT confer immigration benefits in itself.

## VULNERABLE YOUTH ARE:

---

Unaccompanied minors who came to the U.S. before age 18 without an adult and were released to a sponsor

---

Asylum seekers who came to the US either aged 18-21 or as minors accompanied by a parent or guardian

---

DREAMers who came to the US as young children with a parent or guardian who abused, abandoned, or neglected them

Immigrant youth who have experienced abuse, abandonment, or neglect are an **especially vulnerable population.**

“The migration experience then means the **loss of the familiar**: home, language, belongings, cultural milieu, social networks and social status — without the support of an intact family to buffer against these losses”

Derluyn & Broekaert, 2008

<https://www.apa.org/pi/families/resources/newsletter/2016/06/immigrant-minors>



Photo by Barbara Zandoval on Unsplash





“Pre-migration exposure to violence is consistently linked to worse mental health outcomes in the new country, whereas the ability to integrate into the new society while maintaining connections to the home culture is thought to be protective.”

- Dorothy L. McLeod 2017

<https://ecommons.luc.edu/cgi/viewcontent.cgi?article=1011&context=chrc>

81st OREGON LEGISLATIVE ASSEMBLY--2021 Regular Session

**Enrolled**  
**Senate Bill 572**

Sponsored by Senator WAGNER, Representative ALONSO LEON; Representatives DEXTER, HUDSON, MEEK, RUIZ, WILDE (Presession filed.)

CHAPTER .....

AN ACT

Relating to vulnerable youth; amending ORS 125.005, 125.025, 125.055, 125.060, 125.065, 125.080, 125.085, 125.090, 125.150, 125.300, 125.305, 125.320, 125.325 and 125.730; and prescribing an effective date.

## SB 572

Aligns Oregon law with federal law

- 8 USC § 1101(b)(1) defines child as **“an unmarried person under twenty-one years of age”**

Allows state court jurisdiction to extend to “vulnerable youth” up to age 21

Effective date 09/25/2021

## ORS 125.005(12) “Vulnerable Youth” means a person who:

- (a) Is at least 18 years of age but has not attained 21 years of age;
- (b) Is eligible for classification under 8 U.S.C. 1101(a)(27)(J); and
- (c) Cannot be reunified with one or more of the person’s parents due to abuse, neglect or abandonment, that occurred when the person was a minor.

# THE VYG SERVES TWO PURPOSES

## PROTECT AND PROVIDE STABILITY AND SUPPORT

- Traumatic immigration experience
- Delayed education attainment and potential development delays
- Aspires to provide the youth with a stable home with a dependable adult to support them in their transition to a new country and towards their own independence

## PROSPECTIVE PROTECTION SO YOUTH MAY REMAIN IN THE US

- Vulnerable youth are undocumented and at risk of deportation
- A VYG order with the appropriate findings of fact may make a youth eligible to apply for Special Immigrant Juvenile Status (SIJS)



## Statute's safeguards that ensure maximum independence to the protected person:

protected person. A guardianship for an adult person must be designed to encourage the development of maximum self-reliance and independence of the protected person and may be ordered only to the extent necessitated by the person's actual mental and physical limitations.

**(b) A guardian may be appointed for an adult person if there is clear and convincing evidence that the person is a vulnerable youth. A guardianship for a vulnerable youth must be designed to encourage the development of maximum self-reliance and independence of the vulnerable youth and may be ordered only to the extent that the vulnerable youth consents**

The Vulnerable Youth Guardianship requires the young person's consent. ORS 125.055(3)(c)(B).

The protected youth can move the court to end the guardianship at any time. ORS 125.090(2)(f).



# CASE STEPS

## **Initial Filing** (ORS 125.055):

- Petition
- Prospective guardian's declaration
- Vulnerable Youth's declaration

## **Notice** (ORS 125.060 - 125.070):

- Notice of Petition
- Certification of Service of Notice

## **Order** (ORS 125.030):

- Proposed Limited Judgment Appointing Guardian
- Supporting Legal Memoranda

## **Notice of Appointment** (ORS 125.082):

- Notice given to any protected person over 16
- Consulate too!
- File proof of service within 30 days of appointment

## SPECIFIC FINDINGS OF FACT IN JUDGMENT

### Required SIJS Findings

- Placed into custody (guardianship)
- Under 21 and Unmarried
- **Reunification with one or both parents is unviable due to abuse, abandonment, neglect, or similar basis under Oregon law**
- **Not in respondent's best interest to return to home country**

### Required Factual Basis

- Specific facts of abuse, neglect, or abandonment
- Facts relied upon to determine best interests
- **BE SPECIFIC!!**



## BALANCE CONFIDENTIALITY WITH SIJS REQUIREMENTS

Generally, dates of birth are not included in public documents.

However, the Vulnerable Youth Guardianship order **MUST** include a finding of the youth's age and **SHOULD** include a date certain for the expiration of the guardianship, typically the youth's 21st birthday.





# A QUICK WORD ABOUT SERVICE

Miguel is 19 years old. He is from Honduras and came to the US as an unaccompanied minor at age 16 to be reunited with his father who immigrated when Miguel was five. He had lived in Honduras with his mother who would hit him with various objects and deprive him of food to discipline him. At age 15, Miguel started to be targeted by gang members in his neighborhood because he refused to join the gang. Miguel stopped going to school to avoid gang members who then came to his home. His mother said that he was attracting a bad element and putting her and his siblings at risk and kicked him out of the house.

Miguel traveled to the US and was detained by immigration authorities for two months. After he was released to his father, he started attending high school and is now a junior.







Angeline is 20 years old and originally from Haiti. Angeline's father began raping her when she was 13. At age 14 she became pregnant and gave birth to her daughter who is now five. When Angeline's mother learned of the abuse, she separated from Angeline's father and became a single parent of five children, plus Angeline's daughter. Angeline's mother struggled to provide for her family, and the family often went hungry. Then their home was badly damaged in a hurricane. Now living in a shelter made of tarps and pieces of metal and without sufficient food, Angeline came to the US to try to find work and help support her family.

She is living with her aunt who is helping her learn how to navigate life in the US and translating for Angeline. Angeline is working as a housecleaner and is involved in her aunt's church where she attends a women's group.



Armando is 18 years old and from Mexico. When Armando was 6, his family came to the United States illegally. Armando's family is very religious. When Armando was 13, his mother found him kissing another boy. Over the next several years, his parents severely restricted his social life and would not let him see friends. They arranged for prayer therapy through their church to stop Armando from being gay. When he was again caught at age 17 with a boy from his high school, his father beat him. His parents stated that they were going to send Armando to live with a relative in Mexico. Armando left home and stopped attending school at 17. He started couchsurfing with friends and people he met on dating apps.

He is now living with a "tio" he met online and working in the kitchen at a restaurant. He was arrested for a DUI and minor in possession of marijuana.



# OREGON LAW CENTER CAN HELP!



Contact us for templates!



Ask us questions!



MariRuth Petzing:  
[mpetzing@oregonlawcenter.org](mailto:mpetzing@oregonlawcenter.org)



Mark Bowers:  
[mbowers@oregonlawcenter.org](mailto:mbowers@oregonlawcenter.org)

## WHO GETS NOTICE?

ORS 125.060

- Parent(s) of vulnerable youth.
- Spouse? (Not eligible for SIJS if married).
- Adult Children? (Probably not).
- No parents? Person most closely related to vulnerable youth.
- Cohabiting with someone?
- Someone interested in affairs and well-being of vulnerable youth?
- Fiduciary? Trustee? Attorney in Fact?
- Still a minor? Person with principal responsibility over last 60 days.
- Parents dead and still a minor? Any written instrument assigning responsibility over vulnerable youth?
- Receiving public assistance? OHA? ODHS?
- Consulate

### Takeaway!

Make sure the following get notice:

- Parents
- Consulate
- Anyone w/ interest in wellbeing of youth

## MANNER OF SERVICE

ORS 125.065

Is the respondent still under eighteen?

- Yes – Personal service on parent(s).
- Service by mail on everyone else or every other entity.

Start Here

Do you know where the person to be served resides?

**NO**

Can you find out through reasonable diligence?

(Check with respondent, petitioner, family members, FaceBook, ORR release paperwork)

**NO**

Service by publication

ORS 125.065(2)

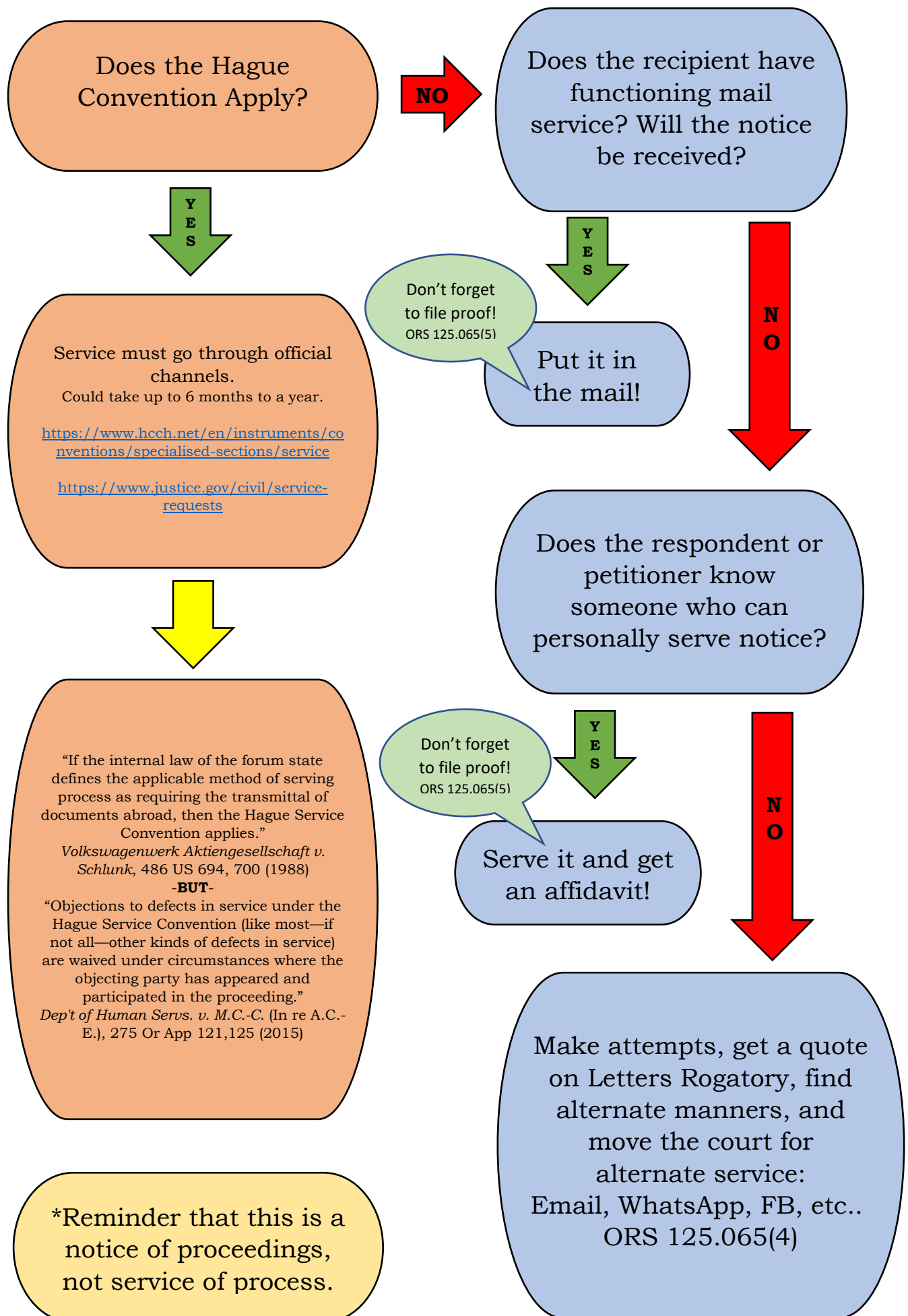
\*Note: Hague Convention on Service does not apply (see Article 1)

**YES**

**YES**

If a foreign country, has that country ratified the Hague Convention on Service **and** objected to Article 10 (service by mail)?

Goto: <https://www.hcch.net/en/instruments/conventions/status-table/?cid=17>





1  
2  
3  
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF  
6

7 In the Matter of:

8 NAME OF PROPOSED GUARDIAN,

9 Petitioner,

10 and,

11 NAME OF VULNERABLE YOUTH,

12 Respondent.

Case No.:

PETITION FOR APPOINTMENT  
OF A GUARDIAN FOR A VULNERABLE  
YOUTH

No Filing fee per ORS 125.730(2)

13  
14 COMES NOW, NAME OF PROPOSED GUARDIAN, by and through their attorney,  
15 ATTORNEY NAME, to petition the Court for an order appointing them as the Guardian of  
16 NAME OF VULNERABLE YOUTH and presents the following information to the Court:

17 1.

18 RESPONDENTS' information:

19 Name:

Age:

County:

20 2.

21 The Petitioner and proposed GUARDIAN:

22 Name:

Age:

County:

23 3.

24 The proposed guardian is Respondent's RELATIONSHIP TO YOUTH. The proposed  
25 guardian is not a public or private agency that provides services to Respondent and is not an

1 employee of such an agency. The proposed guardian has not filed for bankruptcy protection, has  
2 not been convicted of any crimes, and has not had a license authorizing the practice of a  
3 profession or occupation cancelled or revoked in any state.

4 4.

5 The proposed guardian is willing and able to serve as Respondent's guardian.

6 5.

7 The proposed guardian does not intend to place Respondent in a residential facility.

8 6.

9 The guardian will not exercise any control over the estate of the Respondent. Respondent  
10 has no funds or assets that require management. Petitioner currently provides all necessities and  
11 financial support for Respondent.

12 7.

13 Respondent has not named any fiduciaries.

14 8.

15 Venue and jurisdiction are proper because Respondent currently resides in County,  
16 Oregon, with Petitioner.

17 9.

18 Respondent is not currently under the treatment of a physician.

19 10.

20 The respondent is a vulnerable youth, and the appointment of a guardian is  
21 therefore appropriate. The factual information that supports this allegation and Petition for the  
22 Appointment of a Guardian is as follows:

23 (INCLUDE FACTS)

24 a) Respondent is at least 18 years of age but has not attained 21 years of age. See  
25 Respondent's Declaration, attached and labeled as "Exhibit 2".

b) (FACTS re: non-reunification with one or both parents because of abuse, abandonment, or neglect while minor.)

c) (FACTS re: not in best interest to be returned to home country)

d) (FACTS guardianship least restrictive option to ensure development of maximum self-reliance and independence)

e) (FACTS)

f) Respondent consents to the appointment of NAME OF PROPOSED GUARDIAN as his guardian. See Declaration of Respondent, attached and labeled as "Exhibit 2"

11.

The names, addresses, and relationship to Respondent of persons, other than Respondent, entitled to notice of this petition are:

a) Respondent's parents:

Mother: NAME AND ADDRESS IF AVAILABLE.

Father: NAME AND ADDRESS IF AVAILABLE.

b) Other persons entitled to notice under ORS 125.060(2):

NAME AND ADDRESS OF COO CONSULATE.

Any other interested parties requiring notice?

12.

Petitioner is requesting that they be authorized to make medical, health care, education, and residential decisions for Respondent.

13.

Pursuant to ORS 125.055(3)(c)(B), this Court may appoint a visitor at its discretion.

**WHEREFORE**, Petitioner prays this court to review and investigate the circumstances concerning Respondent and make such order or orders as are appropriate, including the following:

- 1) Finding that reunification of Respondent with one or both parents is not viable, due to child abuse, neglect and/or abandonment, (*or similar basis*) that occurred when respondent was a minor. (*FACT SPECIFIC*);
- 2) Finding that is established by clear and convincing evidence that Respondent is a VULNERABLE YOUTH;
- 3) Appointing PETITIONERS, as GUARDIAN for the VULNERABLE YOUTH, to serve without bond;
- 4) Directing that Letters of Guardianship issue to PETITIONERS;
- 5) Finding that it is not in Respondent's best interest to be returned to his country of nationality or to his parents in Guatemala, and that Respondent should remain under the guardianship of Petitioners;
- 6) Waiving the appointment of a visitor; and
- 7) For any other relief that the court finds appropriate.

I HEREBY DECLARE THAT THE ABOVE STATEMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

RESPECTFULLY SUBMITTED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
NAME OF PROPOSED GUARDIAN  
Petitioner

Submitted by:  
LAW FIRM



1 ATTORNEY, OSB xxxxxx  
2 attorney@emailaddress.org  
3 Attorney for Petitioner  
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***Looking Behind the  
Curtain: How to  
request, analyze and  
evaluate the  
credibility of a  
custody evaluator's  
work-product, and  
prepare the narrative  
of your case***



# Vetting a Child Custody Evaluation Report

Presented by Landon Poppleton, PhD, JD

## Training and Experience

Does the expert have the requisite training and experience to address the issue before the court?

This is typically established by way of normative reference to one's peers in order to determine competency. The most robust outline of education, training, and competency is found in the AFCC Guidelines.

See:

- *Guidelines for Parenting Plan Evaluations in Family Law Cases (AFCC, 2022), Section 1.*

## Methodology

How consistent was the expert in following prevailing standards and guidelines in his or her methods?

Examples from the AFCC guidelines include: Scope, factors to assess, use of diverse methods, reliability and validity of methods, and others. But even deeper there is an underlying philosophy of science and logic to consider, which includes principles related to relevant construct testing and the approach to such testing.

See:

- *Guidelines for Parenting Plan Evaluations in Family Law Cases (AFCC, 2022)*

- *Guidelines for Examining Intimate Partner Violence (AFCC, 2016)*

- *Guidelines for the Use of Social Science Research in Family Law (AFCC, 2018)*

## Findings / Conclusions

Is there an empirical and logical connection between the methods employed and the conclusions related to the constructs of interest?

Data is linked to conclusions through the mechanism of interpretation, analysis, and synthesis using social science research as a guide. The tie between data and conclusions should be reasonable clear.

A consideration of alternative rival hypotheses, applicable research, clinical opinion vs. forensic findings, base rates, and ultimately the case formulation all relate to this level of analysis of a report.

## Proffered Opinion

Does the expert tie their conclusions to applicable legal standards?

There is a relationship between law and psychology that is considered at this level of analysis.

See:

- *AFCC, Knowledge of Law, Section 2.*





# **Association of Family and Conciliation Courts**

## **Guidelines for Examining Intimate Partner Violence:**

**A Supplement to the AFCC Model  
Standards of Practice for Child  
Custody Evaluation**



# **Association of Family and Conciliation Courts**

## **Guidelines for Intimate Partner Violence: A Supplement to the AFCC Model Standards of Practice for Child Custody Evaluation**

**Approved by the AFCC Board of Directors  
April 9, 2016**

# **Guidelines for Examining Intimate Partner Violence:**

A Supplement to the AFCC Model Standards of Practice for Child Custody Evaluation

## **Introduction**

The Model Standards of Practice for Child Custody Evaluation (Model Standards)<sup>1</sup> were adopted by the Association of Family and Conciliation Courts (AFCC) in 2006. These Guidelines for Examining Intimate Partner Violence (Guidelines) supplement the Model Standards with respect to the evaluation of child custody and access cases where intimate partner violence may be an issue.<sup>2</sup>

Allegations of intimate partner violence are common among custody-litigating families, and custody evaluators face special challenges when conducting evaluations in this context. Model Standard 5.11 states that evaluations involving allegations of domestic violence require specialized knowledge and training as well as the use of a “generally recognized systematic approach to assessment of such issues as domestic violence...”<sup>3</sup> These Guidelines help custody evaluators identify intimate partner violence and examine the possible effects on children, parenting, and co-parenting.

An evaluator using a systematic approach formulates multiple hypotheses that are informed by research and arise from the facts of the case. The evaluator independently investigates and analyzes each hypothesis. These Guidelines only address hypotheses related to intimate partner violence. They do not alter or diminish the need to form, investigate, and analyze other hypotheses. At the end of the custody evaluation process, the evaluator combines and synthesizes information on all of the hypotheses to form an integrated picture of the family.

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<sup>1</sup> Task force for Model Standards of Practice for Child Custody Evaluation, *Model Standards of Practice for Child Custody Evaluation*, 45 FAM. CT. REV. 70 (2007). See also David A. Martindale, *Reporter’s Foreword to the Association of Family and Conciliation Court’s Model Standards of Practice for Child Custody Evaluation*, 45 FAM. CT. REV. 61 (2007). The child custody evaluation process is defined in Model Standard P.1. as: “the compilation of information and the formulation of opinions pertaining to the custody or parenting of a child and the dissemination of that information and those opinions to the court, to the litigants, and to the litigants’ attorneys.”

<sup>2</sup> The drafting task force is sponsored by the Association of Family and Conciliation Courts (AFCC) in collaboration with the National Council of Juvenile and Family Court Judges (NCJFCJ) and in consultation with the Battered Women’s Justice Project (BWJP). Task force members are: Nancy Ver Steegh, Reporter, Mitchell Hamline School of Law; Hon. Dale Koch, (Ret.), Co-chair; Hon. Gail Perlman (Ret.) Co-chair; William G. Austin, Private Practice; Firoza Chic Dabby-Chinoy, Asian Pacific Institute on Gender-Based Violence; Gabrielle Davis, Battered Women’s Justice Project; Robin M. Deutsch, Center of Excellence for Children, Families and the Law, William James College; Leslie M. Drozd, Private Practice; Kathryn Kuehnle (deceased), Private Practice; Loretta Frederick, Battered Women’s Justice Project; Amy Holtzworth-Munroe, Indiana University; and Arnold T. Shienvold, Riegler Shienvold & Associates. Participating staff members are: Eryn Branch, National Council of Juvenile and Family Court Judges; Peter Salem, Association of Family and Conciliation Courts; and Maureen Sheeran, National Council of Juvenile and Family Court Judges.

<sup>3</sup> Model Standard 5.11. (“Special issues such as allegations of domestic violence, substance abuse, alienating behaviors, sexual abuse; relocation requests; and, sexual orientation issues require specialized knowledge and training. Evaluators shall only conduct assessments in areas in which they are competent.”)

The Guidelines describe and recommend systematic practices for evaluation but they do not endorse specific tools, protocols, or models. An evaluator may exercise judgment about whether existing tools, protocols, and models are consistent with the approach taken in the Guidelines. The Guidelines do not constitute a training curriculum on intimate partner violence. Consequently, an evaluator is advised to seek additional intimate partner violence-specific training or supervision. The Guidelines reflect aspirational goals for child custody evaluators rather than mandatory thresholds.

### **Guiding Principles**

The Guidelines encourage an evaluator to effectuate the following principles:

***Prioritize the safety and wellbeing of children and parents.*** The overarching goal of the evaluation process is to achieve the best possible outcomes for families. An evaluator plays a key role in preserving, protecting, and promoting safe, healthy, and functional relationships and living arrangements during and following separation.

***Ensure an informed, fair, and accountable process.*** An evaluator plays a key role in informing the parties about the nature and purpose of the evaluation process, including how information will be used and to whom it will be disclosed. The evaluator establishes a fair and accountable process culminating in a written report that describes the information collected on intimate partner violence, explains how the information was analyzed and synthesized, and directly links the information to recommendations.

***Focus on the individual family.*** Another goal of evaluation is to respond to the particular needs and circumstances of individual families, without any preconceived ideas about whether or not intimate partner violence exists and if so, who has done what to whom, or what the implications of intimate partner violence might be for children, parenting, and co-parenting. An evaluator plays a key role in screening for, and where appropriate, investigating, analyzing, and synthesizing information related to intimate partner violence on a case-by-case basis.

### **Overview**

The Guidelines incorporate a broad view of intimate partner violence that includes physically, sexually, economically, psychologically, and coercively controlling aggressive behaviors.

- **Physically aggressive behaviors** involve the intentional use of physical force with the potential for causing injury, harm, disability, or death.
- **Sexually aggressive behaviors** involve unwanted sexual activity that occurs without consent through the use of force, threats, deception, or exploitation.

- **Economically aggressive behaviors** involve the use of financial means to intentionally diminish or deprive another of economic security, stability, standing, or self-sufficiency.
- **Psychologically aggressive behaviors** involve intentional harm to emotional safety, security, or wellbeing.
- **Coercively controlling behaviors** involve harmful conduct that subordinates the will of another through violence, intimidation, intrusiveness, isolation, and/or control.

These behaviors may occur alone or in combination. They vary from family to family in terms of:

- Frequency
- Recency
- Severity
- Directionality
- Pattern
- Intention
- Circumstance, and
- Consequence

These variables combine to explain the context within which intimate partner violence occurs.

The context within which intimate partner violence occurs differs from case to case. For example, in some relationships disagreements escalate into physical violence as the result of poor impulse control or poor conflict management skills. In other instances, violence is associated with substance abuse and/or mental illness. Sometimes, violence can be a reaction to the stress of separation or divorce without any history of violence or propensity for future violence. In some cases, violence is used to prevent or protect against real or perceived threats or risk of harm. In other relationships one partner exercises power to intimidate, isolate, denigrate, control and subordinate the other partner, frequently resulting in significant fear, trauma, disempowerment, and/or entrapment. Other permutations are also possible.

The impact of intimate partner violence on children and parenting also differs from case to case. Children have unique experiences of and reactions to intimate partner violence, and it affects them in different ways. Parents similarly have unique experiences and reactions to intimate partner violence that have differing effects on the way they parent and their capacity to co-parent.

Consequently, the presence or absence of a particular form or context of aggression does not, in and of itself, dictate a particular parenting outcome. A deeper individualized analysis is required to determine the impact of the aggression and its



context on children, parenting, and co-parenting. These Guidelines describe the contours of that analysis.

### **Prioritize the Safety and Wellbeing of Children and Parents**

#### **1. Safety First. A child custody evaluator should make the safety of the child, the parties, and other involved individuals the highest priority in the evaluation process.**

Families, the court, and the community rely on the knowledge and judgment of an evaluator regarding the safety of those involved in an evaluation. Some persons who have committed intimate partner violence pose a continuing risk that may be heightened by the scrutiny and stress inherent in the information collection and evaluation process.

***Prior to undertaking an evaluation***, and in keeping with the Model Standards, a custody evaluator should be familiar with applicable professional ethical requirements, codes of conduct, state laws and regulations, and local procedures governing responses to and reporting of suspected danger. An evaluator maintains awareness of relevant community resources for family members experiencing or exposed to intimate partner violence.

An evaluator strives to become familiar with known indicators of risk, danger, and potential lethality. The presence of the following risk factors does not conclusively establish that harm will occur in the future; nor does their absence guarantee that future harm from domestic abuse will not occur:

- (a) High levels of violence, injury, and increases in violence, such as: increases in frequency and/or severity, attempted strangulation, forced sex, and/or assault during pregnancy;
- (b) Threats, willingness, and means for lethal violence, such as: threat to kill, threatened or attempted suicide, threat to harm children, threat of or harm to pets, belief in capacity to kill, fear and perception of danger by a parent who is the target of abuse, access to firearms, and/or use or threat to use a lethal weapon;
- (c) Excessive control, jealousy, or obsession, such as: control of daily activities, isolation, stalking and/or obsessive monitoring or tracking, and/or violent or constant jealousy;
- (d) Unwillingness to accept responsibility and/or willingness to evade the law, such as: avoidance of arrest for domestic violence or violation of a protection order;
- (e) Psychological and substance problems, such as: alcohol misuse, illegal drug use, and/or major mental illness; and/or
- (f) Other factors predicting risk and lethality, such as: recent separation, unemployment, and/or the presence of children in the home who are not biologically related to a partner who uses intimate partner violence.

***At the beginning of the evaluation process***, an evaluator endeavors to manage and attempt to enhance safety by informing the parties and collateral witnesses orally and in writing about the evaluator's likely response, pursuant to the evaluator's professional ethical requirements, to safety concerns that may arise during the course of the evaluation.

***During the evaluation,*** an evaluator monitors and remains attuned to suspected safety issues that may be present or arise. This obligation is necessarily family-specific, and a range of responses could be necessary and appropriate. For example, in some cases an evaluator will be legally mandated to report concerns. In other situations, an evaluator might, without affirming or disaffirming allegations, take more or less assertive steps to enhance safety.

Whenever safety could be an issue, an evaluator should be mindful of professional and legal obligations, seek supervision and consultation when he or she deems it appropriate, and consider the extent to which various responses and alterations in processes and procedures may increase or decrease danger. An evaluator aspires to prioritize safety while also maintaining neutrality.

The collection of information could be compromised if the parties and/or collateral witnesses are fearful, intimidated, or concerned about retaliation, child protection, or criminal repercussions. In such cases, an evaluator aspires to specifically address and account for missing and incomplete information in the final report. An evaluator avoids making a recommendation when the information collected is not sufficient to support it.

***When the evaluation has been written,*** a custody evaluator strives to anticipate and plan for heightened risk resulting from communication of the information collected and the evaluator's analysis, synthesis, and recommendations. Consequently, an evaluator works with the court and other involved professionals to plan the method of communication to the parties to minimize the potential for violence, retribution, child abduction, suicide, and/or other harm. For example, an evaluator may need to contact the court for guidance, provide advance notice of communication, assure that a safety plan is in place, and/or explain the limitations of the evaluation process, findings, and recommendations.

## **2. Universal and Ongoing Screening. A child custody evaluator follows an intimate partner violence screening protocol in every case, including those where no allegations or judicial findings of intimate partner violence have been made.**

An evaluator may not assume that intimate partner violence is present or absent in a case. The purpose of screening is to identify information, behaviors, or disclosures indicating that intimate partner violence is or may be an issue.<sup>4</sup> Screening is an ongoing process rather than a one-time event.

If intimate partner violence is alleged or detected, the evaluator's role is to investigate any indications of intimate partner violence pursuant to Guidelines 7, 8, 9, and 10. An evaluator remains alert to indications of intimate partner violence during the remainder of the evaluation and, if signs of intimate partner violence emerge, proceeds with Guidelines 7, 8, 9, and 10.

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<sup>4</sup> Sometimes an evaluator is aware that intimate partner violence is an issue before implementing a screening protocol. For example, lawyers and other family law professionals also have an obligation to screen for intimate partner violence and allegations of intimate partner violence may appear in pleadings and other documents. In some cases, an evaluator may be specifically appointed to make parenting recommendations in light of intimate partner violence.

An evaluator strives to remain alert for potential intimate partner violence carried out by a parent or a new partner of a parent, or through an extended family member, child, sibling, or other third party. An evaluator may screen both parents and any other individuals (such as step-parents, partners, grandparents, extended family members, et al.) who have significant contact with the child.

An effective screening protocol is structured to promote safe and informed disclosures. An evaluator inquires about specific behaviors, multiple forms of abuse across time, and the existence of risk factors.

- An evaluator structures screening to promote **safe and informed disclosure** of intimate partner violence. An evaluator conducts individual and private face-to-face interviews when feasible. An evaluator endeavors to provide persons being screened with the information detailed in Guideline 6 (below) so they can make informed and voluntary decisions about whether to disclose intimate partner violence and to what extent.
- An evaluator aspires to make **behaviorally specific inquiries** about concrete acts (like hitting, pushing, or strangling) and patterns of behaviors (like interfering with social connections, appropriating or denying access to resources, and undermining personal autonomy) as opposed to making inquiries about abstract concepts (like domestic violence, abuse or conflict).
- An evaluator seeks information on **multiple forms of intimate partner violence** including physical, sexual, economic, psychological, and coercive controlling behaviors of adults and children as well as threats and actions based on immigration status.
- An evaluator strives to remain attuned to **ongoing and past intimate partner violence**. Without understanding the dynamics and context of past intimate partner violence, an evaluator is less likely to comprehend the nature and level of present and future risk for family members. Past violence is a significant risk factor for future violence. Furthermore, the form, frequency, and severity of intimate partner violence may change over time.

### **Ensure an Informed, Fair, and Accountable Process**

#### **3. Knowledge and Skills. A child custody evaluator needs in-depth knowledge of the nature, dynamics, and impact of intimate partner violence.**

Because intimate partner violence frequently occurs in custody-litigating families and because it may be unidentified and difficult to detect, a custody evaluator will inevitably be involved in cases where intimate partner violence is or becomes an issue. Consequently, every child custody evaluator should endeavor to:

- (a) Understand the jurisdiction's intimate partner violence-related law;
- (b) Interview adults and children regarding intimate partner violence using interview strategies that are consistent with published research addressing adult and children interviewing techniques and children's responses to various forms of questions;

- (c) Identify any intimate partner violence that is occurring and understand its nature and context;
- (d) Identify risk and lethality factors and undertake an assessment of present and future risk in cases in which intimate partner violence is detected;
- (e) Understand the overlap of intimate partner violence with child maltreatment, including physical abuse, sexual abuse, emotional abuse, and neglect;
- (f) Analyze the impact, if any, on the best interests of children, of any intimate partner violence that is detected;
- (g) Determine the impact, if any, on the parenting of each parent, of any intimate partner violence that is detected;
- (h) Link the dynamics and impact of any intimate partner violence that is detected to custody and access arrangements; and
- (i) Use understanding of cultural differences to improve intimate partner violence-related interventions and recommendations.

If an evaluator determines that his or her knowledge is deficient in any of the foregoing areas, the evaluator should seek relevant training, supervision, and/or professional consultation.

**4. Systematic Approach. A child custody evaluator adopts and aspires to consistently follow a systematic approach to evaluation whenever intimate partner violence could be involved.**

Employing a systematic approach to evaluation of intimate partner violence enhances quality and accountability, and ultimately renders an evaluator's report more useful to the parties and the court. Adopting such an approach can prevent the imposition of an evaluator's personal assumptions, biases, and beliefs, and make more apparent any misapplication of dominant cultural norms and values related to intimate partner violence.

An evaluator attempts to distinguish the purpose and function of screening (Guideline 2) from that of assessment (Guidelines 7, 8, 9, 10, 11, and 12). If screening or other information indicates that intimate partner violence could be an issue, the evaluator endeavors to perform an assessment that separates the tasks of information collection, analysis, and synthesis. An evaluator strives to make recommendations that explicitly link and account for the effect of intimate partner violence, if any, on children, parenting, and co-parenting.

An evaluator using a systematic approach performs a direct, independent analysis of intimate partner violence that is separate and distinct from the assessment and/or influence of other allegations raised in the evaluation, including claims about mental health, substance abuse, alienation, and/or parental gatekeeping. An evaluator focuses on the context of the intimate partner violence and the ramifications for safety, parenting, co-parenting, and child wellbeing (as opposed to exclusive examination of specific incidents of physical violence).



**5. Mitigation of Bias. A child custody evaluator strives to recognize his or her gender, cultural, and other biases related to intimate partner violence, and take active steps to alleviate the influence of bias on the evaluation process.**

An evaluator endeavors to be alert to and avoid:

- (a) Imposition of personal assumptions, biases, and beliefs about intimate partner violence and parenting and co-parenting;
- (b) Misapplication of dominant cultural norms and values related to intimate partner violence which include biases based on race, class, socioeconomic status, sexual orientation, religion, ethnicity, English proficiency, and/or immigration status of the parties;
- (c) Application of gender-based stereotypes and role expectations that can normalize abuse and discrimination;
- (d) Consideration of hypotheses that are not informed by existing research data on intimate partner violence; and
- (e) Use and/or misapplication of 'cultural explanations' offered by parties to justify (i) maternal and/or paternal inequality and devaluation, (ii) attitudes to divorce that stigmatize parents, and/or (iii) roles and practices that elevate or diminish the authority and social connections of either parent.

An evaluator's efforts to limit the impact of bias may include, but are not limited to: self-assessment, continued collection of information, updating central hypotheses, and seeking professional consultation.

**6. Explanations and Disclosures. A child custody evaluator enhances safety by informing parents and collateral witnesses that the information they share about intimate partner violence may be disclosed to the court and the parties by the evaluator.**

An evaluator endeavors to explain the following in an effort to promote informed decision making by parents and witnesses about whether and what to disclose to an evaluator:

- (a) The evaluator's role and function;
- (b) The purpose and importance of inquiring about intimate partner violence;
- (c) How disclosed information about intimate partner violence will be used;
- (d) With whom, at what time, and in what form disclosed information about intimate partner violence will be shared;
- (e) The scope and limits of confidentiality as determined by relevant law and the evaluator's respective professional standards and guidelines, including any mandatory reporting requirements related to child maltreatment, vulnerable adult maltreatment, or the threat of harm to self or others;
- (f) The scope and limits of confidentiality if sign or spoken language interpreters are used for parties who are deaf or hard of hearing, or have limited English proficiency; and
- (g) Who will receive copies of the written evaluation.

**Focus on the Individual Family:**  
**Information Collection, Investigation, Analysis, and Synthesis**

**7. Information Collection: Challenges.** A child custody evaluator employs a rigorous multi-method and multi-source protocol that anticipates challenges associated with investigating the effects of intimate partner violence on children, parenting, and co-parenting.

An evaluator may expect to invest substantial time and energy conducting a vigilant and thorough investigation of the impact of intimate partner violence on children and parenting. Evaluators may encounter challenges associated with information collection about intimate partner violence.

***A person who uses intimate partner violence may deny or minimize it.*** A parent or partner who commits intimate partner violence may seek to avoid criminal and child custody-related repercussions. Such a person may feel entitled to employ intimate partner violence and/or may not view behavior as abusive.

***A person subjected to intimate partner violence may minimize or fail to disclose intimate partner violence even when long-standing and severe.*** Reasons for this vary, but may include:

- (a) Fear that a partner who has used intimate partner violence will retaliate for disclosures;
- (b) Fear that a partner who has used intimate partner violence will carry out threats to harm children;
- (c) Concern about loss of custody to the other parent or the child welfare system;
- (d) Reticence to discuss sexual coercion and assault;
- (e) Fear of not being believed;
- (f) Not viewing oneself as the subject of intimate partner violence or not believing that it rises to a level of concern;
- (g) Fear that use of violence and other protective actions in response to a pattern of coercive-controlling behaviors will be viewed out of context;
- (h) Isolation from financial, social, and other resources (including barriers created by culture, geography, and language);
- (i) Fear of system involvement due to immigration status or previous experience with the justice system;
- (j) Fear that, particularly in a same-sex relationship, an evaluator will not differentiate a partner subjected to intimate partner violence from a partner who commits it;
- (k) Previous experience disclosing intimate partner violence or other trauma which was met with blame, disbelief, or punishment;
- (l) Concern about being faulted or stigmatized by friends, family, employers, or community;
- (m) Cultural norms regarding shame and public disclosure, preservation of family honor, and marriage norms that do not recognize marital rape;
- (n) Advice from attorneys, friends, and advocates that disclosing intimate partner violence in the context of custody proceedings will be perceived as manipulative;

- (o) Not appreciating the relevance of intimate partner violence to a custody evaluation; and/or
- (p) Fear that disclosure will escalate conflict, extend the litigation, and increase cost.

***Delayed disclosure of intimate partner violence does not indicate lack of credibility.*** As discussed above, parties have many reasons to delay disclosure.

***A traumatized party may react or respond unexpectedly to evaluator inquiry.*** A party traumatized by abuse may experience short- and long-term effects of abuse that include memory loss, processing difficulties, and atypical presentation of affect.

***Intimate partner violence may not be documented in photos, medical records, police reports, protective orders, or through eyewitnesses.*** Intimate partner violence is often hidden from view and those subjected to it may believe that preserving evidence, seeking medical attention, calling the police, or seeking a protective order may increase risk. An evaluator should, nevertheless, seek information from sources such as, but not limited to: collateral observers; police reports; criminal records; driving records; records regarding possession of weapons; child protective services reports; medical and dental reports; mental health reports, including psychological testing; previous investigative reports; and school records.

***Coercive controlling behaviors may exist in the absence of past or recent physical violence.*** Coercive controlling behaviors may involve a variety of tactics such as threats, intimidation, economic abuse, manipulation of children, sexual coercion, etc., used for the purpose of subjugating the person targeted. A person using coercive controlling behaviors may not need to resort to physical violence to achieve this.

***A child may deny or minimize or react in ways not anticipated by an evaluator.*** Thorough investigation, as discussed in Guideline 9, is needed to understand children's reactions.

***A parent subjected to intimate partner violence may engage in protective parenting that is only understood in the context of the intimate partner violence.*** Investigation and analysis of parenting is explored in Guidelines 10 and 11.

***Standard psychological testing is not useful for the purpose of identifying whether intimate partner violence has occurred and/or whether a given parent has committed or been subjected to intimate partner violence.***<sup>5</sup>

**8. Information Collection: Intimate Partner Violence.** To obtain a full understanding of the events and circumstances, an evaluator strives to investigate and collect information concerning: (a) the nature of aggression; (b) the frequency, severity, and context of intimate partner violence; (c) whether one or both parties are responsible for the aggression; and (d) various risk factors for lethality, future violence, stalking, and abduction.

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<sup>5</sup> Psychological testing cannot be used to determine the presence or absence of intimate partner violence.

***The “nature of aggression”*** refers to physical, sexual, economical, and/or psychological aggression; coercive control; and/or abuse related to vulnerable immigration status.

***The “frequency, severity, and context of intimate partner violence”*** concerns who is doing what to whom, for what purpose, and to what effect, including the function (e.g., control) and the consequences (e.g., injury, fear of partner) of the violence.

***The “person or persons primarily responsible for the aggression”*** refers to the source of the threat, danger, or harm. The “person or persons primarily responsible for the aggression” may or may not be the first partner to use violence in an incident or in the relationship, but is the person or persons who use aggression offensively or instrumentally, as opposed to defensively or reactively. Distinguishing instrumental from defensive aggression requires careful consideration of the full context of the violence, rather than examining specific acts in isolation.

***“Various risk factors for lethality, future violence, stalking, and abduction”*** include but are not limited to those identified in Guideline 1 and listed below for the purpose of investigation:

- (a) High levels of violence, injury, and increases in violence, such as: increases in frequency and/or severity, attempted strangulation, forced sex, and/or assault during pregnancy;
- (b) Threats, willingness, and means for lethal violence, such as: threat to kill, threatened or attempted suicide, threat to harm children, threat of or harm to pets, belief in capacity to kill, fear and perception of danger by a parent who is the target of abuse, access to firearms, and/or use or threat to use lethal weapon;
- (c) Excessive control, jealousy, or obsession, such as: control of daily activities, isolation, stalking and/or obsessive monitoring or tracking, and/or violent or constant jealousy;
- (d) Unwillingness to accept responsibility and/or willingness to evade the law, such as: avoidance of arrest for domestic violence or violation of a protection order;
- (e) Psychological and substance problems, such as: alcohol misuse, illegal drug use, and/or major mental illness; and/or
- (f) Other factors predicting risk and lethality, such as: recent separation, unemployment, and/or the presence of children in the home who are not biologically related to a partner who uses intimate partner violence.

**9. Information Collection: The Child.** A child custody evaluator collects information concerning: (a) the child’s experience(s) of past and current intimate partner violence, if any; and (b) if the child has had such experience(s), the possible impact of intimate partner violence on the child’s health, safety, and wellbeing.

***Child’s Exposure.*** An evaluator endeavors to collect information concerning a child’s past and continuing exposure to intimate partner violence by a parent or caregiver, including the extent of each child’s:



- (a) Exposure to intimate partner violence during pregnancy (developing fetus experiences intimate partner violence in utero);
- (b) Direct observation of intimate partner violence (eyewitness to violence, domination, denigration);
- (c) Indirect observation of intimate partner violence (ear-witness to abuse);
- (d) Direct intervention to stop intimate partner violence (calling for help, protecting a targeted parent);
- (e) Direct harm from intimate partner violence (physical, sexual, economic, emotional, and/or coercive control);
- (f) Direct participation in intimate partner violence (child joins in abuse and blaming of a targeted parent);
- (g) Exposure to abuse of a sibling;
- (h) Acting to protect a vulnerable sibling;
- (i) Witnessing effects of intimate partner violence (injuries, police and ambulance response, arrest, damaged property);
- (j) Experience of aftermath of intimate partner violence (life changes including relocation, separation, economic instability);
- (k) Forced separation from a targeted parent by an abusive parent and/or extended family;
- (l) Retreat from intimate partner violence (running away, hiding, pretending nothing is wrong);
- (m) Attempts to pacify the abusing parent by rejecting the other parent;
- (n) Knowledge of intimate partner violence obtained from other people; and/or
- (o) Awareness or seeming lack of awareness of intimate partner violence.

***Child's Reactions.*** An evaluator investigates and collects information concerning the child's reactions, if any, to intimate partner violence, which could include a wide variety of feelings and behavioral problems, and the longer-term impact on a child's psychological, behavioral, social, and academic functioning.

Possible reactions and problems resulting from exposure to violence may include developmental, behavioral, emotional, cognitive, and/or health-related reactions as well as issues in relationships, academic problems, and/or economic problems.

Children who have been exposed to intimate partner violence may identify with and show affection toward the abusive parent. Some children may show no obvious reactions while still struggling with exposure to intimate partner violence. Some resilient children may be minimally or not affected by their exposure.

Because children experience and react to intimate partner violence differently and because childhood symptoms may result from multiple stressors, an evaluator aspires to avoid drawing premature conclusions and focuses on collecting information about behaviors and events that pertain to each individual child.

**10. Information Collection: Parenting and Co-Parenting.** A child custody evaluator collects information related to the potential impact of intimate partner violence on each parent's capacity to parent and/or co-parent.

An evaluator strives to ascertain whether and how intimate partner violence influences each parent's capacity to parent and/or co-parent.

***Both Parents.*** An evaluator aspires to collect information related to each parent's capacity, including that parent's past, present, and future willingness and ability to:

- (a) Sustain an emotionally close relationship with the child, share positive experiences with the child, and enjoy age appropriate activities together;
- (b) Remain attuned to the child and the child's separate and individual needs, apart from the parent's own needs;
- (c) Nurture the child physically, emotionally, culturally, and spiritually;
- (d) Protect and support the child's physical safety and emotional wellbeing, and meet the child's economic needs;
- (e) Assist the child in regulating behavior, thoughts, and feelings;
- (f) Provide age appropriate positive discipline and behavior management (e.g., monitoring of the child's activities and whereabouts, setting appropriate limits, using non-harsh, non-corporal punishment);
- (g) Respect, encourage, and facilitate the child's individuality, resilience, independence, and social development; and
- (h) Model appropriate behavior and communication.

***A parent who has used intimate partner violence.*** An evaluator endeavors to collect information concerning the extent to which a parent who has committed intimate partner violence has and/or is likely to engage in the following problematic parenting behaviors:

- (a) Physical, sexual, emotional, and/or economic abuse;
- (b) Neglect;
- (c) Using a child as a tool of abuse;
- (d) Denying responsibility for the impact of abuse;
- (e) Ignoring a child's separate needs;
- (f) Undermining the other parent's ability to parent and the other parent's relationship with a child; and
- (g) Ongoing harassment of the other parent or child, including the use of court processes as a tool for harassment.

An evaluator seeks information about the extent to which a parent who has used intimate partner violence acknowledges the abuse, understands its consequences, remedies resulting harm, and demonstrates willingness and capacity to change.

***A parent against whom intimate partner violence has been used.*** An evaluator collects information regarding the extent to which the parenting capacity of a parent who has been subject to intimate partner violence has been and/or is currently impacted or constrained as a result of the abuse, including whether that parent:

- (a) Bears heightened responsibility for protection of the child (monitoring and appeasing the other parent, shielding the child, intervening when the child is abused, regulating the child's behavior to avoid abuse, leaving with the child);

- (b) Bears heightened responsibility for care of the child (supplements inadequate care by the other parent, surreptitiously meets the child's needs); and
- (c) Experiences loss of control over his/her own parenting (navigating around the other parent's control, managing safety, being subject to scrutiny by the court, its designees, and agencies such as child protection, law enforcement, public housing, and social service providers, among others).

**Co-parenting.** An evaluator collects information about factors associated with safe and healthy co-parenting including the extent to which the parents have in the past and/or currently exhibit capacity for:

- (a) Safe involvement between parents, free from violence, threats of violence, and coercive control;
- (b) Healthy parent-child relationships, in which parents recognize and support the child's needs; the child feels safe, secure, and supported by both parents; and the child is able to give and receive love freely from both parents and their extended families;
- (c) Direct, constructive communication between the parents that is focused on the child;
- (d) Clear boundaries between the parents' role as parent and their role as partner; and
- (e) Learning healthier methods of co-parenting.

An evaluator aspires to also collect the above information concerning any individual who may play a caregiving role in a parenting plan.

Because intimate partner violence may impact parenting and co-parenting in different ways and under different circumstances, an evaluator aspires to avoid drawing premature conclusions and focuses on collecting information about behaviors and events related to parenting and co-parenting in each individual case.

**11. Analysis of Information. A child custody evaluator strives to organize, summarize, and analyze the information collected and assess its sufficiency for determining the implications of intimate partner violence for children and parenting.**

During the process of analysis, the evaluator compiles and scrutinizes the intimate partner violence-related information that has been collected and begins to generate inferences. The evaluator uses a systematic process that includes the following steps:

1. List the information collected;
2. Summarize the information;
3. Identify and seek any information described in Guidelines 8, 9, and 10 that is missing or incomplete;
4. Describe and evaluate the accuracy, completeness, and relevance of the information collected;
5. Formulate and assess the plausibility of alternative hypotheses that are central to the case;
6. Review any assumptions made;

7. Review how information regarding intimate partner violence was gathered and weighed; and
8. Consult as needed with peers and/or experts on intimate partner violence and/or cultural issues.

An evaluator who implements a systematic and transparent process reduces the likelihood of bias and error and enhances the ability of the parties and the court to assess the sufficiency and reliability of the information collected and the reasonableness of an evaluator's analysis.

**12. Synthesis of Information. A child custody evaluator endeavors to explicitly link intimate partner violence-related information with parenting recommendations concerning decision making and child access.**

After analyzing the information collected, an evaluator determines its meaning, significance, and implications for children and parents. Given that issues, interactions, and dynamics in every family are unique, complex, and may occur in combination, it is important that evaluators consider the potential interactions of intimate partner violence, family dynamics, and other issues in the case.

***Synthesis Process.*** During the synthesis process, an evaluator aspires to:

- (a) Combine and organize information related to intimate partner violence into themes corresponding to the questions to be addressed and the hypotheses formulated and analyzed;
- (b) Draw inferences about the meaning of intimate partner violence for the questions explored during the evaluation;
- (c) Connect the implications of intimate partner violence with recommendations regarding a parenting plan and any interventions; and
- (d) Include specific recommendations regarding monitoring and enforceability when compliance may be an issue.

***Goals for Recommendations.*** An evaluator strives to make access and decision making recommendations that are consistent with the following goals:

- Prioritize the physical and emotional safety, and the economic security of children and parents subjected to intimate partner violence;
- Minimize opportunities for and risk of ongoing, intrusive post-separation abuse tactics;
- Support the autonomy of parents subjected to intimate partner violence; and
- Acknowledge and address the cause and consequential harm of intimate partner violence.

***Linking Intimate Partner Violence with Parenting Recommendations.*** The evaluator strives to determine what, if any, parenting arrangements would address the specific problems identified, consistent with goals discussed above. Because this determination is necessarily family-specific, the particular terms of parenting recommendations cannot be prescribed in



advance. The following are *examples* of recommendations that might promote these goals.

To prioritize the physical and emotional safety and economic security of children and parents subjected to intimate partner violence, an evaluator could recommend that a court:

- Limit decision making authority;
- Allocate areas of decision making authority;
- Establish a structure for communication;
- Limit physical access;
- Require neutral exchanges;
- Establish supervised parenting time;
- Require supervised exchanges;
- Suspend access;
- Structure payment for child-related expenses; and/or
- Strengthen a child's support system.

To minimize opportunities for and risk of ongoing, intrusive post-separation abuse tactics, an evaluator could recommend that a court:

- Structure the frequency, content, duration, and type of communication;
- Structure parent-child contact to minimize contact between parents;
- Establish neutral exchanges;
- Limit or carefully structure information sharing;
- Appoint a parenting coach with well-defined goals; and/or
- Appoint a neutral third party intervener with well-defined goals.

To support the autonomy of parents subjected to intimate partner violence, an evaluator could recommend that a court:

- Allocate areas of decision making authority;
- Minimize contact between parents;
- Discourage right of first refusal for intermittent child care;
- Structure information sharing;
- Structure communication;
- Define geographical locations for exercise of parenting time; and/or
- Limit access to sensitive information.

To acknowledge and address the cause and consequential harm of intimate partner violence, an evaluator could recommend that a court:

- Define initial goals for specific professional interventions and measures of compliance;
- Specify conditions for potential changes in the parenting plan;
- Minimize contact between parents;
- Allocate decision making authority;
- Structure the frequency, content, duration, and type of communication;
- Establish expectations for behavior (e.g. non-violence, alcohol and drug use, availability of weapons, etc.);
- Monitor compliance with court directives and recommended interventions;

- Require participation in intimate partner violence–specific education and/or a batterer intervention program; and/or
- Build skills with respect to communication, decision making, problem solving, and self-regulation.

***Conditions for Co-parenting.*** When considering the extent to which parents might share decision making and/or physical child custody, an evaluator endeavors to examine the implications, if any, of intimate partner violence including its effects on the following conditions for successful co-parenting.

- Safe Involvement Between Parents* is free from violence, threats of violence, and/or coercive control; stable and predictable; and focused on and responsive to the needs of the child.
- Healthy Parent-Child Relationships* are free from violence, threats of violence, and/or coercive control; age and developmentally appropriate; focused on and supportive of the child; based on mastery of basic parenting skills and parental decision making; and consistent with established rules and expectations.
- Cooperation Between Parents* requires mutual responsibility and shared authority; absence of violence, threats of violence, exploitation, and/or coercion; willingness to consider alternate viewpoints; capacity to recognize and respond to others' needs (emotional maturity); and ability to compromise and reach agreement on important issues. If other family caregivers are involved in parenting plans, these considerations would apply to them as well.
- Effective Communication Between Parents* is open and direct, civil and bi-directional, constructive (not harmful or damaging, and more than the mere sharing of information), and focused on the children.
- Clear Boundaries Between Partner and Parental Roles* means that parents are able to separate their role as parents from their role as partners; limits between partner and parental roles are clear and unambiguous.



# **Association of Family and Conciliation Courts**

## **Guidelines for Parenting Plan Evaluations in Family Law Cases**



# Guidelines for Parenting Plan Evaluations in Family Law Cases

Prepared by the AFCC Task Force for the Revisions of the Model Standards for the Practice of Child Custody Evaluation

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## Foreword

These *Guidelines for Parenting Plan Evaluations in Family Law Cases (Guidelines)* are the product of the Association of Family and Conciliation Courts (AFCC) Task Force for the Revisions of the *Model Standards of Practice for Child Custody Evaluation (Model Standards)*. In July 2019, then AFCC president, Matthew Sullivan, PhD, appointed a multidisciplinary task force to revise the *Model Standards* which were published in 2006.

The Task Force began its work at the AFCC Fall Conference in Pittsburgh, Pennsylvania in November 2019, and proceeded to focus on two broad tasks: 1) establishing a set of values and principles to guide the practice of parenting plan evaluations, and 2) gathering information to guide the revision process, including conducting an extensive survey of mental health and legal professionals, judges, and others. Subcommittees then examined sections of the *Model Standards* and proposed revisions, including new guidelines for virtual evaluations. The Task Force met online two dozen times for half-day meetings, and in person at the AFCC Fall Conference in Cincinnati, Ohio in November 2021. AFCC membership provided feedback during open forum meetings at both the Pittsburgh and Cincinnati conferences. AFCC posted a draft of the *Guidelines* for public comment February 1-March 1, 2022. The Task Force thoroughly considered and discussed the comments before making final revisions and presenting the *Guidelines* to the AFCC Board of Directors in May 2022.

Most of the 2006 *Model Standards* have stood the test of time and remain important and necessary. Building on those *Model Standards*, the Task Force made significant revisions, updates, and expansions. First, the *Model Standards* have been renamed *Guidelines*, highlighting that AFCC does not intend them to define mandatory practice or to be used to create rules or standards of liability. Rather, these *Guidelines* offer clear, specific, and detailed guidance for the competent and responsible practice of conducting parenting plan evaluations. Jurisdictional laws and rules dictate mandatory aspects of parenting plan evaluations; these *Guidelines* provide guidance for practice.

The term *Child Custody Evaluations* has been replaced with *Parenting Plan Evaluations*. This reflects an important shift away from the term “child custody,” which connotes possession and control of children rather than responsibility for their care. *Child Custody Evaluations*, *Parental Responsibilities Evaluations*, *Best Interest Evaluations*, *Custody and Access Evaluations*, *Parenting Time Evaluations*, or similar terms are used in various jurisdictions. These *Guidelines for Parenting Plan Evaluations in Family Law Cases* refer to evaluations that address parenting time, parental decision-making, and related issues, regardless of what they may be called in a particular jurisdiction. These *Guidelines* use the term “parent” throughout, but recognize that in some settings, it will include non-parents acting in parenting roles.

The Task Force has added a section on guiding principles and values; expanded and clarified evaluator education and training; expanded and clarified recommendations about evaluators’ legal knowledge; revised the guidelines on interim recommendations to address situations involving safety and special circumstances; expanded the section on team evaluations to include various models of training; embedded cultural and diversity considerations throughout, and added a



section on guidelines for virtual evaluations. These revisions expressly recognize that evaluations do not take place in a vacuum, and address, where appropriate, the roles of courts, attorneys, and others in the conduct and use of parenting plan evaluations in the family court setting.

Consistent with renaming the *Model Standards* as *Guidelines*, the term “shall” has been replaced with “should.” The term “should” means that the guideline is highly desirable, strongly recommended, and should be followed unless the evaluator can articulate good reasons for deviating from the guideline.

The *Guidelines for Examining Intimate Practice Violence: A Supplement to the AFCC Model Standards of Practice for Child Custody Evaluation* becomes a supplement to these *Guidelines* as they replace the *Model Standards*. The *AFCC Guidelines for the Use of Social Science Research in Family Law* provide guidance for the use of social science in family law-related practices, including parenting plan evaluations. The *AFCC Guidelines for Brief Focused Assessments* provide guidance for narrowly defined, issue-specific, descriptive assessments in family court cases, which are distinct from comprehensive parenting plan evaluations.

These *Guidelines* have been developed at a time when serious systemic issues are affecting the practice of parenting plan evaluations. These issues include the growing unaffordability of evaluations, dwindling numbers of qualified evaluators, and rising concern about professional risk and personal safety among evaluators. Amid these vexing problems, there remains a constant and critical need for competent practice. Competent practice minimizes professional risk, reduces cost, and serves consumers of parenting plan evaluations. While there is a trend toward briefer and settlement-focused models, the need for comprehensive parenting plan evaluations endures, especially in cases involving numerous and complex issues in highly conflicted legal disputes. These *Guidelines* provide important practice guidance for this specialized type of forensic evaluation.

These *Guidelines* are based upon the guiding principles and values articulated below, years of accumulated research and professional literature, other professional guidelines and ethical codes, and the *Model Standards* of 2006. They are built upon the wisdom and experience of all who have participated in current and past task forces, commented on drafts, and contributed to the process.

# Introduction

## I.1 Purpose

AFCC developed and adopted these *Guidelines for Parenting Plan Evaluations in Family Law Cases* to promote competent practice of parenting evaluations in the family court setting, provide information to those who use parenting evaluations, and increase public confidence in parenting evaluations.

## I.2 Enforcement

AFCC encourages members to conform their practices to these *Guidelines*; however, AFCC does not have an enforcement mechanism and membership in AFCC does not compel them to do so. These *Guidelines* may communicate expectations that exceed those established by law or regulatory bodies, and where they do, AFCC encourages members to conform their practices to these *Guidelines*. In other cases, established law or regulatory bodies may have expectations that exceed or conflict with these *Guidelines*. Where conflict exists, laws, rules of the court, regulatory requirements, or agency requirements supersede these *Guidelines*.

## I.3 Scope

These *Guidelines for Parenting Plan Evaluations in Family Law Cases* address the processes by which mental health professionals gather and evaluate relevant information about the family and formulate and communicate opinions that relate to the task of developing parenting plans and related court orders. These *Guidelines* are directed at evaluations performed by family court services, public agencies, and by mental health professionals in private practice appointed by the court or jointly engaged by parents. They also may be broadly applicable to other neutral practitioners who offer an opinion for use in developing parenting plans and related orders in the family court setting.

These *Guidelines* are not intended for evaluation models that are collectively referred to as briefer models, such as issue-focused evaluations and early neutral evaluations, nor do they fully apply to hybrid evaluations that are specifically designed to incorporate a settlement component. Furthermore, these *Guidelines* do not apply to investigations and evaluations in child protection, adoption, or probate guardianship proceedings.

AFCC recognizes that it may not be possible to fully adhere to these *Guidelines* in jurisdictions where the laws, regulations, or policies of the jurisdiction conflict with these *Guidelines*. For example, in jurisdictions where there is a paucity of mental health professionals, and resources are severely limited, the guidelines for qualifications and training may not be possible to fully meet. In those cases, evaluators are urged to comply with these *Guidelines* to the extent they are able, recognizing that the adequacy and sufficiency of their reports may be judged accordingly. Similarly, some jurisdictions permit each side to hire their own evaluators who are free to have

one-sided communications with the attorneys who hired them. While this approach conflicts with these guidelines, evaluators in such jurisdictions are encouraged to comply with the *Guidelines* to the extent they are able within the confines of their jurisdictional rules.

## **I.4 Forensic Evaluation**

Parenting plan evaluations are forensic evaluations for use in developing court orders rather than clinical evaluations. Forensic evaluations involve the application of knowledge and skills from the mental health professions to the resolution of legal matters, whereas clinical evaluations aid in the diagnosis of psychological disorders for mental health treatment. In some jurisdictions, parenting plan evaluations may be mistakenly referred to as a “clinical” evaluation in orders of appointment. This is problematic because, unlike clinical evaluations, forensic evaluations are performed for the express purpose of assisting the parties and courts in reaching legal determinations that affect the rights and liberties of individuals. The admissibility, weight, and sufficiency of the information gathered and opinions expressed in forensic evaluations depends on compliance with legal standards and are subject to legal scrutiny. Even when evaluations are used for settlement purposes, it must be kept in mind that the parties are affected by the weight they expect the judicial officer would give to the evaluation, and therefore, adherence to legal standards and practice guidelines remains necessary.

This emphasis on the forensic nature of parenting plan evaluations is meant to encourage evaluators to adopt a forensic mindset about this area of practice. This mindset involves remaining aware that although every evaluation has its shortcomings and limitations, evaluations can significantly affect the lives of families, and should reflect the highest standards of practice, including recognition that scrutiny of the admissibility, weight, and sufficiency of the evaluator’s work is an inherent part of the process.

## **Guiding Principles and Values**

These guiding principles and values identify the philosophical foundations for these *Guidelines*. They highlight issues of particular importance when conducting parenting evaluations and serve as an anchor for ethical practice and a lens through which the rationale and interpretation of each guideline should be viewed.

### **A. Informed Practice**

Evaluations are informed by the governing legal standards and public policies of the relevant jurisdiction and the best available social science.

### **B. Objectivity**

Evaluations are independent, impartial, free of material conflicts of interest, fact-based, methodologically balanced, and culturally informed.

## **C. Just and Equitable Processes**

Evaluation methods are sensitive to and avoid worsening societal inequities, including, but not limited to, those related to social status, ethnicity, religion, race, language, gender, gender identity, sexual orientation, ability status, age, education, and wealth disparities.

## **D. Transparency and Accountability**

Evaluations are conducted using transparent procedures, contain sufficiently relevant case information, and clearly articulate the reasoning for how conclusions and opinions were reached to allow full review by courts, attorneys, other professionals, and parties.

## **E. Respect for Scope and Boundaries**

Evaluations are conducted within the confines of the appointment. The evaluator, as an extension of the court, respects the rights and interests of the family members, and avoids unnecessary intrusion into family life.

## **F. Balancing Thoroughness with Avoidance of Unintended Harm**

Evaluations are conducted, written, and used in a manner that balances the amount of information gathered, and duration of the process, with unintended stressors on the family, including prolonged conflict, scrutiny, uncertainty of outcome, and demands on economic resources of the family and legal system.

# **Section 1: Education, Training, and Competence**

## **1.1 Evaluation as a Specialization**

- (a) Evaluators should have both broad education and training as well as specialized knowledge and training in a wide range of topics related to child development, family systems, parenting, parent-child relationships, and family law.
- (b) Evaluators should engage in regular ongoing education, training, and self-study to stay abreast of ever-evolving research in the field and to maintain competence.

## **1.2 Education and Training**

- (a) Evaluators should have a minimum of a master's degree, or a regionally recognized equivalent, in a mental health field.
- (b) Because of the many complex issues that arise in family law cases, evaluators should have education and training in the following foundational areas:



- (1) child development, including physical, cognitive, emotional, language, and social development, gender identity, sexual orientation, and the impact of parenting practices and other influences on children's development;
  - (2) family systems, including parent-child relationships, sibling relationships, extended family relationships, stepfamilies, and diverse family structures;
  - (3) culture and diversity and their significance in the lives of adults, children, and families;
  - (4) effects of racism, sexism, poverty, and other socio-cultural issues in the lives of adults, children, and families;
  - (5) impact of parental separation, divorce, family restructuring, and interparent conflict on children, adults, and families;
  - (6) impact of relocation on children, adults, and families;
  - (7) family violence patterns and coercive controlling behaviors, the connection between intimate partner violence and child maltreatment, and the effects of exposure to family violence and coercively controlling behaviors on children;
  - (8) child maltreatment, including child neglect and physical, psychological, and sexual child abuse; the connection between child maltreatment and other adverse childhood experiences, and factors associated with resiliency from trauma and adversity;
  - (9) parent-child contact problems and resist-refuse dynamics, including possible underlying causes such as parental alienating behaviors, compromised parenting, child maltreatment, and exposure to intimate partner violence, among other causes;
  - (10) child and adult psychopathology, including mental health disorders, learning disorders, and developmental disorders;
  - (11) developmentally appropriate and empirically informed parenting plans, long distance parenting plans, methods of facilitating transitions between homes, and communication and information exchange;
  - (12) evaluation of the effectiveness and appropriateness of interventions to address parenting, coparenting, children's adjustment, strained parent-child relationships, and parent-child contact problems;
  - (13) evaluation of risk and protective factors for children with moderate to severe special needs conditions; and
  - (14) applicable legal and ethical requirements of evaluators.
- (c) In addition to the foundational areas of training, evaluators should gain additional training in the following areas:
- (1) investigation of allegations of child abuse and intimate partner violence;
  - (2) evaluation and treatment of problems in parent-child relationships;

- (3) children's best interests in the context of a relocation request;
- (4) evaluation and treatment of substance misuse and mental health issues;
- (5) forensic interviewing of children;
- (6) evaluation of diversity, equity, and inclusion issues;
- (d) Evaluators should also have education and training in forensic evaluation methods, including:
  - (1) evidence-informed methods for interviewing adults and children, observing parent-child interactions, applying balanced procedures, maintaining objectivity, and interpreting data
  - (2) recognizing the limits of reliability and validity of various sources of information;
  - (3) report writing for the court; and
  - (4) preparing for and giving testimony at deposition or trial.

### **1.3 Competence**

- (a) When beginning to conduct evaluations, evaluators should obtain consultation, supervision, or other forms of guidance, and continue supervision until they have met any supervision requirements in their jurisdiction and achieved a level of competence sufficient to work independently.
- (b) Evaluators should use supervisors, consultants, and mentors who meet the education, training, and competence requirements of this section.
- (c) When evaluators lack specialized expertise and experience about a significant issue in the case, they should obtain supervision or consultation from professionals who have specialized expertise and experience, and briefly describe that person's role in the evaluative process.

## **Section 2: Knowledge of the Law**

### **2.1 Sufficient Legal Knowledge**

- (a) Evaluators should have sufficient working knowledge to function effectively within the legal system. They are not expected to have the same degree and depth of legal knowledge as lawyers and judges. As statutes, court rules, and case law change, evaluators should keep their legal knowledge current.
- (b) Evaluators should have a working knowledge of the governing laws, regulations, and procedures in their jurisdictions and understand the legal standards regarding the central issues in the evaluation.

- (c) Evaluators should understand the legal criteria for original determination of a parenting plan, criteria for modifications of a parenting plan, use of parenting plan evaluations, jurisdictional requirements concerning qualifications of evaluators, and legal requirements governing the evaluation process in the jurisdiction in which they work.
- (d) Evaluators should have a fundamental and reasonable level of knowledge and understanding of the legal rights of those whom they are evaluating and others who may be affected by the evaluative process or work product.

## **2.2 Working within Legal Parameters**

Evaluators should seek consultation when necessary to understand governing legal parameters. If formal clarification from the court is necessary, evaluators should ensure that all parties or their attorneys are included in the request for clarification. Courts, judicial officers, and lawyers help ensure that evaluators work within those parameters by framing the purpose and scope of provisions of appointment orders or agreements to include information about the governing legal standards, and by detailing requirements for the evaluation process in the appointment order or agreement.

## **2.3 Law, Legal System, and Family Court**

Evaluators should have a working understanding of the law, legal system, and family court as outlined in Appendix A.

# **Section 3: Multiple Relationships and Role Conflicts**

## **3.1 Definitions**

- (a) “Multiple relationships” refers to past, current, and anticipated familial, social, fiscal, or professional relationships between an evaluator and the parties, children, attorneys, or judicial officer involved in a case. Multiple relationships can occur between the evaluator and those being evaluated, or between the evaluator and those representing or making decisions about the family.
- (b) “Multiple roles” refers to performing multiple different professional functions in the same case.
- (c) “Conflicts of Interests” refer only to multiple relationships that could compromise an evaluator’s independence, objectivity, competence, and effectiveness.
- (d) “Role conflicts” refer to the same professional performing incompatible roles in the same case, such as moving from providing therapy for a family member, or the entire family, to serving as an evaluator.

### **3.2 Avoiding Multiple Relationships and Roles**

- (a) Evaluator independence, objectivity, competence, and effectiveness may be compromised when they currently have, have had, or expect to have another relationship with those involved in the litigation. Evaluators should be attentive to, and carefully assess the potential for those roles to impair their ability to be sufficiently impartial. Some additional roles may be judged, after careful consideration, to be unlikely to impair impartiality or to be unavoidable. Evaluators should decline cases where there is a significant conflict of interest arising from multiple relationships.
- (b) In some geographic areas, particularly rural areas, evaluators may be unable to avoid multiple roles due to a shortage of qualified professionals. When avoiding multiple relationships is not feasible, evaluators should be alert to the ways in which their independence, objectivity, competence, and effectiveness may be affected. Evaluators should consider that, in most situations, they have the right to refuse to be involved in an evaluation when multiple roles are involved.

### **3.3 Disclosures of Potential Conflicts of Interests or Role Conflicts**

- (a) Evaluators should disclose any role conflicts or potential role conflicts with the parties, attorneys or judicial officers involved in the proceeding prior to beginning the evaluation or as soon as the role conflict arises. Relationships between an evaluator and the parties, children, attorneys, and judicial officers are relevant when the nature of the relationship has the potential to be viewed as compromising the evaluator's impartiality and objectivity.
- (b) Prior to accepting an appointment involving multiple relationships, evaluators should provide a reasonably detailed written disclosure of current, prior, or anticipated relationships and obtain a written waiver of specific potential conflicts of interests or role shifts before proceeding. Disclosures should be made before the evaluation begins. If conflicts arise during the evaluation, the evaluator should immediately disclose them to the parties and their attorneys.

### **3.4 Avoidance of Therapeutic Intervention During Evaluation**

Evaluators should refrain from offering therapeutic advice or intervention during an evaluation until the analyses have been completed, unless there is credible risk of imminent physical or emotional harm to the parties, children, or others involved in the evaluative process.

## **Section 4: Communication Between Evaluators, Parties, Attorneys, and Courts**

### **4.1 Appointment Orders and Agreements**

- (a) Evaluations should begin with a written court order appointing an identified professional as the evaluator in jurisdictions where such orders may be obtained. Where an appointment order is not feasible, evaluations should begin with a written agreement jointly engaging the evaluator.
- (b) The appointment order should designate the name of the evaluator as the court's neutral expert. It should define the court's expectations and the obligations of the evaluator, parties, and attorneys, including the purpose and scope of the evaluation, and use of the evaluator's report, records, and testimony.
- (c) Evaluators should not begin substantive work until they have received a valid appointment order or engagement agreement.
- (d) Evaluators should seek clarification when the appointment order is not specific enough or when a modification is necessary due to the presence of directives with which the evaluator cannot comply, such as an order to simultaneously evaluate and treat.

### **4.2 Written Information to the Parties and Attorneys**

- (a) Evaluators should provide detailed written information to the parties and their attorneys concerning evaluator policies, procedures, and fees. Evaluators should recognize that the existence of a court order does not eliminate this responsibility. Evaluators should ensure that the content of the written information is consistent with the appointment order. Information should be written in plain language and provided in the parties' native language if not English-speaking, if possible, or through an interpreter.
- (b) The written information should specify the intended uses of information obtained during the evaluation, to whom the evaluator will release their report and records, and the process by which the report and the evaluator's records will be released.
- (c) This written information should be provided to the parties and to their attorneys in advance of the first scheduled session so that the parties may obtain advice of counsel and be able to examine the written information in an unhurried manner and in an atmosphere free of potentially coercive influences. When the parties are not represented by counsel, the written information should be given to them prior to initially meeting each party.



### **4.3 Reviewing of Policies and Procedures**

- (a) At the first meeting with each of the parties, evaluators should review key elements of the appointment order, their policies, and procedures, respond to any questions, and seek assurance that the policies and procedures are understood.
- (b) Evaluators should inform children of the limits of confidentiality using language that is developmentally appropriate.

### **4.4 Ex Parte and One-sided Communications**

- (a) Ex parte communication refers to communication between an evaluator and a judicial officer without including the parties or their attorneys in the communication.
- (b) Evaluators should refrain from ex parte communication with the court unless the appointment order or local rules contain provisions for emergency ex parte communication with the court, such as to request an emergency hearing.
- (c) Evaluators and attorneys representing the parties should avoid one-sided communication about the substance of a case unless a circumstance arises involving the imminent safety of the parties or children and contemporaneous involvement of all attorneys is not feasible.
- (d) If an attorney initiates one-sided communication with an evaluator, the evaluator should take all reasonable steps to limit the communication to administrative or procedural matters and avoid discussion of any substantive issues. Evaluators should inform the attorney for the other party of the one-sided communication as soon as it is reasonably possible to do so in writing.
- (e) Evaluators should memorialize any one-sided communications in their record.
- (f) Evaluators should adhere to local rules or court orders with respect to one-sided communication with attorneys and others representing children or their interests.

### **4.5 Interim Recommendations**

- (a) An interim recommendation is any recommendation made by an evaluator to the parties, attorneys, or the court during an evaluation.
- (b) To maintain objectivity, evaluators should refrain from offering interim recommendations, and decline requests from the parties, attorneys, and the court to make interim recommendations, except as follows:
  - (1) the evaluator deems it necessary to recommend or refer to services to ensure the emotional or physical safety of the parties or the children; and

- (2) the evaluator determines the evaluation needs to be postponed for reasons such as to allow time for an intervention or specialized assessment to occur, or to allow time for the immediate impact of an unexpected significant event to pass.
- (c) When an interim recommendation is made, evaluators should inform the parties, the attorneys, and the court as soon as it is safe and reasonably possible to do so. Evaluators provide an explanation of their reasons for providing the recommendation and possible consequences on the evaluation procedures and evaluator's objectivity.
- (d) In lieu of an interim recommendation, evaluators may provide descriptive information about a child, parent, or family functioning to assist the court in making decisions during an evaluation.
- (e) Evaluators should refrain from negotiating settlements with the parties or their attorneys unless an evaluation model has been formally agreed upon or ordered prior to beginning the evaluation that includes a settlement component.

## **Section 5: Record-keeping and Release of Records**

### **5.1 The Record**

- (a) The term "record" includes, but is not limited to:
  - (1) reports, letters, affidavits, and declarations;
  - (2) notes, recordings, and transcriptions that were created before, during, or after interactions with persons in connection with the evaluation;
  - (3) fully or partially completed assessment instruments;
  - (4) scored and unscored raw test data, scoring reports, and interpretations;
  - (5) billing, expense, and income records pertaining to the services provided;
  - (6) physical or electronic print, film, photocopy, tape, audio, video, or photographic records; and
  - (7) all other notes, records, copies, and communications in any form that were created, received, or sent in connection with the evaluation.
- (b) Records may be stored electronically and do not have to be maintained as a hard copy or in its original state.
- (c) Evaluators should not make separate files meant for their own review and not available for inspection by those with the legal authority to inspect or possess copies of their records. Any notes made by the evaluator are part of the record and should be made available to those legally entitled to them.

## **5.2 Record-keeping Obligations**

- (a) Evaluators should create, maintain, and retain records in a manner that is consistent with their jurisdictional laws, rules, and regulations and safeguard privacy, confidentiality, and legal privilege.
- (b) Evaluators should take reasonable care to prevent the loss or destruction of their records.
- (c) Evaluators should expeditiously note all aspects of the evaluation in their records and record their notes legibly and in reasonable detail. Evaluators should consider the potential advantages and disadvantages of recording their interviews with parties, children, and collaterals.
- (d) Evaluators should retain copies of information or items submitted during the evaluation.
- (e) Evaluators should store records in a manner that makes prompt production possible.
- (f) Evaluators should have knowledge of their jurisdiction's regulations regarding record destruction. It is recommended that evaluators retain records at least until the youngest child has reached the age of majority.
- (g) If the policies of private agencies and evaluators conflict with the requirements of law, rules of the court, directives from the court, or rules set by regulatory bodies, the role of private agency policies are subordinate.

## **5.3 Release of Records**

- (a) Evaluators should have knowledge of the most recent and applicable judicial decisions on the release of test materials and respond to requests for test materials in a manner that is consistent with those decisions.
- (b) To maintain the security of tests administered during the evaluation, before releasing materials, an evaluator may need to seek an order for confidentiality, protective order, or other jurisdictionally based order that prevents the dissemination of test materials outside of the immediate case while allowing for proper examination of the information within the immediate litigation.

# **Section 6: Data Gathering**

## **6.1 Gathering Relevant Information**

- (a) Evaluators should determine what information to gather based upon the issues and questions identified in the appointment order, factors defined by jurisdictional statutes and case law, and factors extrapolated from peer-reviewed published literature that are pertinent to the purpose of the evaluation.

- (b) Evaluators should be aware of jurisdictionally relevant requirements for evaluations and able to articulate the pertinent factors from professional literature that played a role in the information-gathering process.
- (c) Evaluators should gather sufficient information to weigh multiple plausible explanations regarding the central issues in the evaluation and provide an adequate foundation for their opinions.

## **6.2 Commitment to Competent Methods**

- (a) Evaluators should use methods that are likely to yield accurate, objective, balanced, and independent data, and should be able to articulate the reasons for the methods they use.
- (b) Evaluators should strive to limit their activities and contacts to the minimum necessary to meet the goal of gathering sufficient and reliable information to address the purpose of the evaluation.

## **6.3 Multiple, Diverse, Reliable, and Valid Methods**

- (a) Evaluators should use multiple and diverse methods of data gathering to tap divergent sources of information to facilitate the exploration of multiple plausible explanations regarding the central issues in the evaluation.
- (b) When gathering information, evaluators should be mindful that increasing the number of instruments, or number and length of interviews, does not necessarily yield more reliable and valid information. This is particularly true when instruments are of questionable reliability or validity, and when interviews do not focus on relevant and useful information.

## **6.4 Methodological Balance**

- (a) Evaluators should use a balanced process to enhance objectivity and equity. Interviewing procedures, assessment instruments, and evaluative criteria should be substantively similar for all parties; however, when greater exploration of an issue is necessary with one of the parties, a difference in time and procedures may be justified. Evaluators should always be mindful of the potential biasing influence of spending more time with one party than the other or using different procedures with the parties.
- (b) Evaluators should ensure that significant issues and allegations raised by one party are brought to the attention of the other party or parties and they are given the opportunity to respond so the evaluator has balanced information about the issue.

## **6.5 Evaluation of all Adults in Parenting Roles**

- (a) Evaluators should seek the voluntary participation of any adult who performs a parental caregiving role, even if the individual is not a party to the case, such as stepparents and significant others. This includes adults living in, or expected to be living in, the home with the children and performing ongoing care of the children.
- (b) This section is not intended to apply to nannies, daycare providers, or other employed caregivers, who may be important collateral sources of information, but not subject to evaluation.
- (c) Evaluators should conduct forensic interviews and assessments of adults in a culturally sensitive and trauma-informed manner.
- (d) Evaluators should clearly articulate the limitations of their data and opinions when nonparties decline participation.
- (e) When an appointment order specifies the individuals to be evaluated but does not include individuals the evaluator believes are appropriate to evaluate, evaluators may:
  - (1) seek the court's authorization to evaluate the additional individuals;
  - (2) seek the consent of the nonparties to be evaluated;
  - (3) decline the appointment;
  - (4) clearly articulate the limitations of their data and opinions in light of being unable to evaluate the individuals.

## **6.6 Evaluation of Children**

- (a) Evaluators should interview children in a developmentally appropriate, culturally sensitive, trauma-informed manner using empirically informed interview techniques. If an evaluator chooses not to interview a child, the evaluator should explain the reason for this decision in the report.
- (b) Evaluators should interview all children who reside in the home, including stepsiblings, half-siblings, foster siblings, or other children, if appropriate given the issues under evaluation.
- (c) Evaluators should obtain written authorization to interview children who are not subjects of the evaluation prior to conducting the interviews.
- (d) In their reports and testimony, evaluators should describe the factors that influenced the weight that was given to the child's input and expressed wishes, including, but not limited to the child's developmental stage, emotional and cognitive maturity, independence, temperament, impact of trauma, experiences, cultural considerations, and role in family dynamics.



## **6.7 Evaluation of Relationships**

- (a) Evaluators should assess and describe:
  - (1) the relationships between each child and all adults living in a residence with the child and performing a parental caretaking role;
  - (2) the nature of the co-parenting relationship between the parents;
  - (3) sibling relationships; and
  - (4) children's relationships with extended family members and significant others.
- (b) Evaluators should gather data sufficient to reach an adequate understanding of cultural issues in families that are relevant to the assessment of relationships.

## **Section 7: Interviewing of Children**

### **7.1 Competence in Forensic Child Interviewing**

- (a) Evaluators should have knowledge of evidence-informed forensic child interview procedures and be able to articulate the evidence-informed strategies they used to elicit information from the child, such as the use of free recall methods.
- (b) Evaluators should have knowledge of the numerous factors that can affect the reliability and validity of children's statements, such as the effects of various forms of questions, multiple interviews, repeated questions, the presence of others.
- (c) Evaluators should be skilled in conducting culturally sensitive and trauma-informed interviews with children.

### **7.2 Structuring of Child Interviews**

- (a) Evaluators should recognize that the purpose of interviews with children is to gather information from the child about the nature and quality of a child's relationships, life and family experiences, perspectives on family issues, wishes, and preferences;
- (b) Evaluators should plan and structure interviews with their purpose in mind, and consider the child's age, developmental stage, language abilities, culture, any disabilities, and any known traumatic or adverse experiences;
- (c) Evaluators should inform children in a developmentally appropriate manner of the purpose of the interview and that what they say is not confidential.
- (d) Evaluators should strive to gather sufficient information to be able to consider a range of hypotheses about the issues central to the evaluation.

## **Section 8: Observational-Interaction Assessment**

### **8.1 Conducting Parent-Child Observations**

- (a) Evaluators should observe each parent and their children together, regardless of the child's age, unless doing so creates a significant risk to the child's physical or emotional safety or when such observations are impossible, such as when a parent is incarcerated or otherwise unable to participate in a parent-child interactive session.
- (b) Evaluators should conduct their observations to view samples of interactions between and among the children and their parents and to obtain data reflecting on each parent's skills and ability to respond to the children's needs and manage their behavior. In assessing each parent's skills and abilities and the reciprocal relationship between parent and child, evaluators should be attentive to:
  - (1) signs of reciprocal interaction and attention;
  - (2) parent's communication skills with the child;
  - (3) methods by which parent manages the interaction and influences the child's behavior, thoughts, attitudes, and feelings;
  - (4) parent's demands and expectations relating to developmentally appropriate behavior;
  - (5) the appropriateness of any materials brought to the interactive sessions; and
  - (6) developmental appropriateness of child's language, behaviors, and reactions in the presence of each parent.
- (c) Evaluators should be mindful that their presence and the presence of others in the same physical environment as those being observed may influence the behaviors and interactions that they are observing.
- (d) Evaluators should specifically describe the behavioral interactions between parents and children and differentiate their impressions and opinions from their observations.
- (e) When parent-child observations have not been conducted based on risk to the child, or when conducting such observations are impossible, evaluators should clearly note this in the record and articulate the basis for their decision to not conduct parent-child observations in their report.
- (f) Evaluators should articulate the limitations of their opinions and recommendations when observations of each parent with the children have not been completed.

## **8.2 Procedural Issues Regarding Parent-Child Observations**

- (a) Evaluators should give the parties information regarding the purpose of the parent-child observation, the way observational sessions differ from interview sessions, and any guidelines or instructions for the observation before the meeting takes place.
- (b) Evaluators should schedule all observational visits with advance notice to the parents. Unannounced or covert observations, such as use of hidden cameras or microphones, are inappropriately intrusive. This is not intended to apply to unintentional observations such as those that may occur in a waiting room or in public areas in which evaluators and participants may encounter one another.
- (c) Evaluators should create a detailed record of the observation session. If neither audio nor video recording is done and contemporaneous notetaking is difficult, notes should be entered as soon as possible following the session, and the time and date that the notes were made should be recorded in the record.

## **Section 9: Collateral Sources of Information**

### **9.1 Collateral Sources**

- (a) The term “collateral sources” or “collaterals” refers to individuals or institutions who provide information to the evaluator as part of the evaluation process who are not parties, attorneys, consulting experts in the case, or the court.
- (b) “Collateral materials,” sometimes referred to as “ancillary materials,” refer to any materials provided by the parties or attorneys as supporting documentation.

### **9.2 Quality and Relevance of Collateral Information**

- (a) Evaluators should use their best efforts to gather relevant, reliable, and valid information from collaterals to aid in exploring multiple hypotheses under consideration.
- (b) Decisions regarding the management of submissions from parties or attorneys can be challenging. Evaluators should develop a policy addressing such submissions and should include a description of that policy in the information furnished before evaluations are undertaken.
- (c) Evaluators should be knowledgeable about jurisdictional laws, case law, rules, and regulations concerning the review of child protection records, prior evaluation reports, and exceptions to the release of formerly protected information which may appear in an evaluation report and released as part of record production.

- (d) Evaluators should be judicious in determining which confidential records to request and should consider the potential impact of intrusions on privacy, repercussions on the family, and deterrent effects on obtaining mental health care.
- (e) Evaluators should consider collaterals' relationships with and allegiance to the parties when assessing the accuracy and reliability of the information they provide and should be prepared to explain their opinions concerning the accuracy and reliability of the information.
- (f) Evaluators should recognize that collaterals may have relevant information about issues central to the evaluation but not be willing to disclose it. When collaterals decline to provide information, evaluators should note it in the record, including any reasons given by the collateral for declining to participate or answer questions.
- (g) When important sources of collateral information are not available, evaluators should make this known to the court in their report.

### **9.3 Communication with Collaterals**

- (a) Evaluators should inform the parties of whom they will be contacting for collateral information and obtain written authorization from the parties when necessary for the release of protected information.
- (b) Evaluators should inform collateral sources in writing of the general purpose of the evaluation, how information they provide will be used, and that the information discussed between the collateral source and the evaluator is not confidential.

## **Section 10: Use of Formal Assessment Instruments**

### **10.1 Deciding to Use Formal Assessment Instruments**

- (a) The term "formal assessment instruments" includes tests that are scored using a standardized process as well as structured procedures and instruments that are scored using non-standardized procedures. It does not refer to assessment procedures and data-gathering techniques that are not scored.
- (b) Evaluators should recognize that the use of formal assessment instruments is within their discretion and is not always necessary in a particular evaluation.
- (c) When evaluators are qualified to use formal assessment instruments and elect not to do so, they should recognize that they might need to articulate the basis of that decision.
- (d) Evaluators should recognize that data received from standardized formal assessment instruments have known reliability and validity statistics. Unstandardized formal assessment instruments lack the power of those statistics and provide a different type of information that may be less reliable.

## **10.2 Evaluator Background and Qualifications**

- (a) Evaluators should be trained and experienced in the selection and administration of formal assessment instruments. Additionally, evaluators should have sufficient knowledge to independently interpret test data and to integrate test data with other information gathered.
- (b) If use of formal assessment instruments is deemed advisable, and if the evaluator does not have sufficient education, training, and expertise to use the appropriate formal assessment instruments, the evaluator should refer the administration and scoring of the formal assessment instruments to an expert who has sufficient training and experience, including education and training in the interpretation of formal assessment instruments within a forensic context.

## **10.3 Selection and Use of Formal Assessment Instruments**

- (a) Evaluators should be prepared to articulate the bases for selecting the specific formal assessment instruments they use and the limitations of those instruments. Whenever possible, evaluators should use instruments that have been normed on child custody litigants or for which there are comparison group data. Likewise, evaluators should use instruments that are normed on the race/ethnicity group and language of each party, or on an appropriate representative sample, whenever possible.
- (b) Evaluators should use formal assessment instruments in accordance with the instructions and guidance contained in the manuals that accompany the instruments. When using formal assessment instruments, evaluators should not make substantial changes in format, mode of administration, instructions, language, or content because violations of standard administration procedures can invalidate results. When such changes have been made, evaluators should articulate the rationale for having made such changes.
- (c) Evaluators should be mindful of the potential impact that cultural and language diversity may have on test performance and results and be prepared to explain the possible impact. Evaluators should also recognize that disabilities may not directly impair parenting but may impact test results.
- (d) Evaluators should recognize that formal assessment instruments carry an aura of precision that may be misleading. For this reason, evaluators should not assign greater weight to data from formal assessment instruments than is warranted, particularly when their opinions have been formulated on some other bases.

## **10.4 Inclusion in Reports of Data from Previous Reports**

Evaluators should consider including formal assessment data from previous evaluations in their reports. In doing so, evaluators should examine how current the data are, the qualifications of the previous evaluator, the context of the previous evaluation, and the importance of examining the raw data.



## **10.5 Use of Computer-Generated Interpretive Reports**

Evaluators should exercise caution in the use of computer-based interpretations and prescriptive texts. Statements from computer-generated reports should be clearly identified as such in reports and records. Evaluators should consider how interpretative statements are derived, and whether that method creates reports that are empirically reliable enough for a forensic context.

## **Section 11: Presentation and Interpretation of Data**

### **11.1 Presentation of Information and Opinions**

- (a) In reports and when offering testimony, evaluators should strive to be accurate, objective, fair, and independent, and avoid presenting information in a manner that may be misleading. Evaluators should include in their reports a listing of every contact, date, and duration of contact with individuals involved in the evaluation. Evaluators should specify the sources of information collected during the evaluation and relied upon in formulating their opinions.
- (b) Evaluators should refrain from offering opinions regarding parenting plans when they have not evaluated all of the parties, including the children.
- (c) Evaluators should expressly link the data presented in the report to their analysis of the issues being evaluated.
- (d) Evaluators should strive to rely on the best available peer-reviewed literature and research when interpreting data and formulating their opinions. Evaluators should provide citations for specific literature to which they refer in their reports and should be prepared to discuss any such research to which they refer, its quality and limitations, and its relevance to the individual family, as well as literature that offers differing perspectives, and why they chose to rely on one set of data over another.
- (e) Evaluators should recognize that use of diagnostic labels to describe the functioning of the parties can divert attention from the focus on their abilities and capabilities as parents. For these reasons, evaluators are cautious when using diagnostic terms, and should provide behavioral descriptions of any significant personality characteristics they note that bear upon the issues before the court.
- (f) When proposing different parenting time schedules or arrangements for siblings, evaluators should clearly articulate the advantages and disadvantages of each proposed plan.
- (g) Evaluators should not include information in their reports that is not relevant to the issues before the court and that does not provide a substantial basis of support for their opinions. Evaluators should retain all information gathered, comply with lawful requests to produce that information, and be prepared to discuss their reasons for including or not including certain information in their reports.

- (h) Evaluators should provide an evidence-informed basis for their opinions and be prepared to discuss case information and peer-reviewed literature that led to their opinions. Evaluators should inform the court when a particular psycho-legal question cannot be answered due to an insufficient basis for an opinion.
- (i) Evaluators should disclose in their report when there is known incomplete, unreliable, or missing data, and articulate the implications of this on any opinions offered.

## **11.2 Articulation of the Bases for Opinions Expressed**

- (a) In reports, evaluators should differentiate information gathered from interviews, observations, and other data from their inferences and opinions.
- (b) In reports, evaluators should explain the relationship between information gathered, their data interpretations, and opinions expressed concerning the issues in dispute. There should be a clear correspondence between the opinions offered and the data contained in both the report and case file.
- (c) Evaluators should only provide opinions that are sufficiently based upon facts or data, reliable principles and methods, and principles and methods that have been applied reliably to the facts of the case.

## **11.3 Recognition of the Scope of the Court Order**

Evaluators should avoid offering opinions to the court on issues that do not directly follow from the order of appointment or engagement agreement or are not otherwise relevant to the purpose of the evaluation as articulated in the court order or engagement agreement. If new substantive issues arise during the evaluation, the appointment order or engagement agreement should be modified to encompass the additional issues.

## **11.4 Adequacy of Data**

Evaluators should provide opinions about the behaviors and personality characteristics of a particular individual only when the evaluator has conducted a direct examination of that individual and has obtained sufficient data to form an adequate foundation for the information provided and opinions offered. Evaluators should connect these data to the specific issues guiding the evaluation.

## **11.5 Identification of Collateral Sources**

Evaluators should list the collateral sources with whom they had contact in their report whether or not the information obtained was utilized in formulating their opinions. When unsuccessful attempts have been made to contact collaterals, those collaterals should be identified, and an appropriate notation made in the report.

## **11.6 Formulation of Opinions**

Evaluators should explain in their report, or otherwise be prepared to explain, how different sources and types of information were considered in the formation of their opinions.

## **11.7 Articulation of Limitations**

In reports, or if requested during testimony, evaluators should articulate limitations to the evaluation with respect to methodology, procedure, data collection, and data interpretation. Additionally, evaluators should acknowledge any biases and how those were addressed.

# **Section 12: Approaches Involving Multiple Evaluators**

## **12.1 Types of Team Evaluations**

Some evaluators work in a setting where multiple individuals work together to complete an evaluation. Examples include:

- (a) training or supervision models in which an experienced evaluator provides supervision, support, or assistance to a less experienced evaluator, or more than one evaluator, as part of formal training or formal peer consultation.
- (b) use of a remote or adjunct evaluator in which there is a primary evaluator, and the additional evaluator conducts a specific component of the evaluation, such as a home visit in a remote area, or a specialty assessment, such as neurological testing or assessment of a special needs condition.
- (c) full team-conducted evaluations with two or more evaluators working together, such as in agencies and educational institutions.

## **12.2 Evaluator Responsibility**

Evaluators should identify the professionals who have participated in the evaluation in the report. All evaluators involved may be answerable to the court regarding their contribution to the report. A primary or lead professional should be identified to provide substantive accountability for the evaluation.

## **12.3 Additional Considerations for Evaluators in Training**

- (a) The use of any supervision or training model should be noted in the appointment order or engagement agreement with all trainees and the supervisor named in the order or agreement.
- (b) Evaluators who include a trainee as a non-contributing observer of the evaluation should inform the parties and attorneys, in writing, prior to the trainee's participation.

- (c) Evaluators providing supervision should provide the parties, attorneys, and the court with a clear written description of the work that the trainee will be conducting, including who will be responsible for the integration of data, final analysis, and opinions expressed in the report.
- (d) Evaluators providing supervision for a trainee should sign the report with both answerable to the court.
- (e) Evaluators-in-training should follow the same guidelines for parenting evaluations as experienced evaluators.

## **Section 13: Virtual Evaluation**

### **13.1 Use of Technology**

- (a) For reasons including health, cost, convenience, and access to service, evaluators may conduct components of an evaluation, or the entire evaluation, using communication technology.
- (b) Prior to beginning the evaluation, evaluators should inform the attorneys and the parties of any components of the evaluation that will be conducted virtually and obtain either an agreement between the attorneys and parties or an order from the court that virtual methods may be used.
- (c) Evaluators should be competent in the use of communication technology, including knowledge of telehealth practice guidelines, laws, and regulatory rules in their jurisdiction that may be applicable to the use of communication technology in evaluations.
- (d) Evaluators should have access to a secure and stable communication platform and establish a back-up method of communication, such as telephone, in the event the technology fails.
- (e) When technology communication is used, evaluators should use it in a balanced manner with both parties.
- (f) Evaluators should describe their policies and procedures for conducting virtual evaluations in their written information to the parties and attorneys prior to beginning the evaluation. They should include instructional protocols, including technology requirements, any rules and procedures regarding interviews, observations, and formal assessment, as well as any rules and procedures to reasonably ensure privacy and the integrity of the process, such as scanning the room for the presence of others.
- (g) When deciding whether to conduct any or all of an evaluation using communication technology, evaluators consider factors that may negatively affect the parties' ability to participate or the integrity of the process, including, but not limited to:

- (1) the parties' access, ability, and willingness to use technology;
  - (2) potential technology difficulties and interruptions that may significantly compromise the process;
  - (3) limitations in maintaining privacy and minimizing influences during interviews;
  - (4) limitations in rapport-building and observing behavior during interviews;
  - (5) limitations in observing interactions;
  - (6) mental health conditions, developmental limitations, or other disability that may significantly affect the process;
  - (7) concerns about intimate partner violence, child maltreatment, or substance misuse; and
  - (8) evolving research regarding the validity and reliability of remote methods.
- (h) If an evaluator determines that virtual methods are contraindicated after an evaluation has begun, the evaluator should inform the parties, attorneys, and possibly the court, so a new methodology or evaluator can be agreed upon or ordered.

## **13.2 Virtual Interviews with Children**

- (a) Evaluators should consider the child's age and stage of development when determining if a virtual interview is appropriate.
- (b) Evaluators should establish protocols to assess whether the child is in a private setting, how the child will receive assistance, if needed, and how the interview will be ended if the child's interest wanes or safety has been compromised.

## **13.3 Reporting Virtual Components**

- (a) In their reports, evaluators should provide a description of any virtual methods used, including a description of any protocols used to reasonably ensure integrity of the process.
- (b) Evaluators should note in their reports where the parties and children were located during virtual interviews and observations.
- (c) Evaluators should note in their reports if any person who was virtually interviewed or observed appeared uncomfortable or behaved in a manner that might suggest the environment was not private and free of influences.



## **APPENDIX A:**

### **Understanding of the Law, Legal System, and Family Court Setting**

Evaluators are most effective when they possess a working knowledge of the family court setting and the law governing parenting plans. Evaluators can work to develop their understanding of the family court setting by attending continuing education programs (including continuing legal education programs), observing other cases tried in the courts where they work, consulting with legal professionals and more experienced evaluators, supervision, mentorship, reading, and experience. Evaluators can also learn about the family court setting from the information available for self-represented parties that many family courts post on their websites. Legal communities can enhance the competence of evaluators by offering them training in the laws, rules, and practices governing family courts in that jurisdiction.

As they develop a growing working knowledge of the family court setting over their years of practice, evaluators can reduce the risk that their work product is excluded from evidence or given reduced weight. When they are uncertain about the governing law, evaluators should request guidance from the court (with copies of the written request to the parties and their counsel) or consult legal professionals who are not involved in the case.

This appendix (and the accompanying glossary) can help evaluators identify the areas of legal knowledge that will enhance their competence and value working in the family court setting.

#### **I. The Civil Legal System**

Evaluators should develop over time a working understanding of the civil legal system and its operation in each of the jurisdictions within which they work, including:

- A. fundamental principles and operation of the civil legal system, including the role and function of family courts;
- B. sources of governing law (constitutions, statutes, state rules, local rules, key case law);
- C. use of evaluations in developing court orders through negotiation, mediation, and other consensual dispute resolution processes, and by adjudication;
- D. how access to justice is facilitated in the family court setting, especially for self-represented parties;
- E. interplay between the laws governing domestic violence and the laws governing child custody determination;
- F. interstate and international child custody jurisdiction; obstacles to interstate and international enforcement; and assessment of abduction risk and abduction-prevention measures;
- G. legal terms of art and legally defined terms in the family court setting (see glossary of legal terms in Appendix B).

## **II. Legal Standards for the Issues Being Evaluated**

To identify, gather, and analyze relevant data, evaluators should develop a working knowledge of their jurisdiction's legal standards and principles for

- A. burdens of proof governing determination of the issues presented for evaluation;
- B. adoption and modification of temporary and permanent orders governing parenting rights and duties;
- C. the extent to which prior factual findings of courts (for example, findings that an act or pattern of abuse occurred or did not occur) are binding and must be treated as established facts for purposes of the evaluation.

## **III. Components of Orders Governing Parenting Rights and Duties**

- A. Evaluators should understand the components of parenting plan and related orders, including but not limited to provisions governing:
  - 1. communication and information exchange;
  - 2. allocation of decision-making authority;
  - 3. parenting time schedules;
  - 4. deviation from schedules for holidays, vacations, and special days;
  - 5. geographic restrictions on child's place of residence without further court order (relocation); and
  - 6. educational, therapeutic, and consensual dispute resolution services.
- B. Evaluators should be mindful that their work product may be used both for consensual resolutions and adjudication. Evaluators should also understand the extent to which the parties may have a broader range of choices about those provisions in an agreed-upon order than the law gives courts adjudicating these issues in contested hearings and trials.

## **IV. Law Governing the Conduct and Use of Child Custody Evaluations**

Evaluators should have a working understanding of the laws, regulations, and best practices in the governing jurisdiction, including:

- A. appointment or engagement of the evaluator and termination of the evaluator's appointment;
- B. conflicts of interest and how the role of the evaluator as a neutral officer of the court differs from other practice roles;
- C. the compulsory nature of court-ordered evaluations;
- D. required, discretionary, and prohibited child custody evaluation procedures and methods;

- E. privacy/liberty/dignity interests of family members and others participating in evaluations (including confidentiality and privilege);
- F. preconditions for and permissible methods for substance abuse testing;
- G. requirements and expectations for written reports and testimony;
- H. compensation of the evaluator;
- I. court supervision and discipline of court-employed evaluators, and related matters;
- J. general professional ethical and legal standards for evaluators and other mental health professionals;
- K. restrictions on dissemination of reports, testimony, and evaluator records.

## **V. Procedural Law and Practices in the Jurisdiction's Family Court**

Evaluators should have a working knowledge of family court procedures, policies, and practices as they impact use of the evaluator's work product in adjudication. These include:

- A. requirements for responding to subpoenas or requests for reports, files, and testimony transcripts;
- B. protocols for testifying witnesses;
- C. evidentiary rules governing consideration of reports, and admissibility of written reports;
- D. evaluator duties in discovery proceedings (including records production and evaluator deposition testimony); and
- E. professional etiquette for communications with counsel and the court, for depositions, and for the courtroom.

## Glossary of Legal Terms Commonly Used in the Family Court Setting

This glossary provides brief definitions of some key legal terms that are commonly used in the family court setting. (Note that each jurisdiction may have local variations of these terms.)

**Adjudication:** Giving or pronouncing a judgment, order, or decree by a court. Also the judgment, order, or decree given. The adjudicative process typically includes such events as motions, evidentiary hearings, judicial conferences, trials, and appeals.

**Appointment order:** An order of the family court appointing an evaluator to conduct a full or limited scope parenting evaluation. An appointment order makes the evaluator a person acting on behalf of the court and, as a matter of best practice, sets forth such matters as the purpose and scope of the evaluation, provides directions to the parties, their lawyers/attorneys, and the evaluator concerning the evaluation process, admissibility of any written report, and compensation of the evaluator.

**Burden of proof:** Burden of proof means the obligation of a party to establish, by evidence, a requisite degree of belief concerning a fact in the mind of the trier of fact (judicial officer or jury or arbitrator).

**Case law:** Written decisions of courts that are precedents and thus have either binding or persuasive authority for that jurisdiction.

**Civil legal system:** The system of laws and procedures for adjudication of non-criminal cases. Family law is a branch of the civil legal system.

**Child custody and visitation order:** A court order allocating responsibility for the care of a child (physical custody) and authority to make decisions about the child's life (legal custody). The term "parenting plan" is gradually replacing the terms child custody and visitation (access). Jurisdictions will have their own definitions of joint and sole legal custody, and joint and sole physical custody, and visitation (access).

**Consensual dispute resolution (CDR):** (Also known as Alternative Dispute Resolution or ADR.) A method of dispute resolution instead of adjudication. The most frequently seen models of CDR/ADR in the family court setting are negotiation; mediation; arbitration; mediation-arbitration; and parent coordination.

**Constitution:** A body of fundamental legal principles for the governance of a nation, state, province, or similar governmental entity.

**Court order:** A formal edict or direction issued by a court that has binding legal effect upon a party or parties, or as to all matters coming before that court.

**Criminal/penal justice system:** The system of laws and procedures for adjudication of government prosecutions for crimes. Some issues encountered in parenting cases, such as family abuse and child abduction, may involve criminal prosecutions.

**Discovery:** Procedures before trial or hearing by which the parties can obtain evidence and testimony in preparation for settlement or contested adjudication. Forms of discovery can include subpoenaed evidence, demands for production of documents and records; oral testimony (depositions), written interrogatories, requests for under oath admissions, etc. In some jurisdictions, evaluators may be required to sit for oral depositions before a matter is settled or adjudicated.

**Evidence:** Information presented in testimony, written declarations, or affidavits, and exhibits that is used by the fact finder (judicial officer or jury or arbitrator) to decide the case for one side or the other. “Admissible evidence” is evidence that the law permits factfinders to consider. “Weight and sufficiency of the evidence” refers to the persuasiveness of particular evidence in the mind of the fact finder in light of the burdens of proof.

**Governing legal standard:** The law governing what orders courts can make, and what facts and factors may or may not be considered in adjudicating a particular issue.

**International custody jurisdiction:** Power to make, modify, and/or enforce orders in cases involving more than one nation. Jurisdictional law governs which of several jurisdictions has that power over a particular case, subject, and parties.

**Interstate/interprovincial custody jurisdiction:** Power to make, modify, and/or enforce orders in cases involving more than one state or province within a nation. Jurisdictional law governs which of several jurisdictions has that power over a particular case, subject, and parties.

**Jurisdiction:** The power or authority of a court to hear and try a case; the geographic area in which a court has power; the types of cases it has power to hear; and the types of orders it is permitted to make.

**Mediation:** A type of consensual dispute resolution (CDR)/alternative dispute resolution (ADR) process in which a neutral third party is engaged to facilitate the parties in self-ordering; i.e., developing binding agreements and court orders. A hallmark of mediation is that the third party does not have the power to impose a decision upon the parties, although some jurisdictions use “recommending” mediation models. In many jurisdictions, mediation is confidential.

**Negotiation:** A type of consensual dispute resolution (CDR) process in which the parties try to reach binding agreements. Negotiations can be conducted with or without lawyers/attorneys representing one or more of the parties.

**Permanent orders:** A form of court order issued (typically in the form of a judgment) at the end of a case. In family law, orders for parenting plans and child support are typically modifiable, subject to the jurisdiction’s requirements for post-judgment modifications. Many jurisdictions will not modify a parenting plan without a showing of a material change of circumstances.



**Privilege:** Statutory and common law protections for confidential communications (such as attorney-client, psychotherapist-patient) which prevents or limits the power of courts to compel disclosure and admission of the confidential communications into evidence. Some jurisdictions have laws creating an exception to certain privileges in child custody cases. Waiver of privilege may occur by tendering the issue of physical or mental health in the litigation, by disclosure, or by a knowing, intelligent and voluntary waiver.

**Regulations:** Court rules or other rules that are subordinate to legislation. In the family law setting, there are often state (or provincial) and local court and other rules that augment the statutes and case law.

**Self-represented party/self-represented litigant (SRL):** A person appearing before a court or other tribunal without legal representation from a lawyer, attorney, or other agent. Also known in some jurisdictions as a “pro se litigant” (pro se from the Latin “for oneself”) or a litigant who appears “in propria persona” or “pro per.”

**Standard of proof:** In a civil court case, including a child custody/parenting determination, a party usually must prove a fact and/or issue in dispute is true by the “preponderance of the evidence” or on a “balance of probabilities,” etc.; i.e., anything more than 50% certainty. However, some issues may require a higher standard of proof, such as “clear and convincing” evidence. In criminal and quasi-criminal cases (in family law this may include contempt of court matters), typically the facts and/or issues must be proven to be true “beyond a reasonable doubt.”

**Statute:** A law adopted by the legislative body of a nation, state, province, or other entity.

**Stipulation:** In some jurisdictions, an agreement between the parties which, with the approval of the court, becomes a court order.

**Subpoena:** A court order or other document with legal force that requires or compels a person to attend at a hearing or at a discovery event (such as a deposition), or to deliver up certain documents or other things. A Latin term, meaning literally for “under penalty.” In some jurisdictions a subpoena is referred to as a “summons” or “summons to witness.”

**Temporary order:** A form of court order that lasts for a limited period of time. Also known as “interim orders,” “interlocutory orders,” *pendente lite* orders” or “holding orders.”

**Testimony:** Sworn evidence (oral or written), or else evidence made under oath or affirmation to tell the truth, given in a legal proceeding by a witness. Testimony takes the form of direct testimony presented by the party calling the witness, and cross-examination conducted by the opposing party. There are rules governing the form of the questions that may be asked on direct and cross-examination – with greater leeway for questions asked on cross-examination.

**Witness:** Person who gives testimony in an adjudicative proceeding. Lay witnesses typically are percipient (fact) witnesses as to matters within their personal knowledge. Expert witnesses may give opinion testimony where their subject matter expertise and foundational information meet the standards of the jurisdiction for such opinion testimony.



## **Association of Family and Conciliation Courts**

# **Guidelines for the Use of Social Science Research in Family Law**

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## **Guidelines for the Use of Social Science Research in Family Law**

Prepared by the Task Force on the Guidelines for the Use of  
Social Science Research in Family Law

Hon. William C. Fee, Chair; Stacey E. Platt, JD, Reporter; Milfred “Bud” Dale, JD, PhD; Kristin Doeberl, JD; Amy Holtzworth-Munroe, Ph.D; Janet Johnston, Ph.D; Gabriela Misca, PhD; Lorie Nachlis, J.D; Marsha Kline Pruett, PhD, MSL, ABPP, Sol Rappaport, PhD; Michael Saini, PhD; Liana Shelby, PsyD; Hon. R. James Williams; Theresa Williams, MS; Jeffrey Wittmann, PhD; and Peter Salem, MA, Executive Director of AFCC.

Approved by the AFCC Board of Directors, November 8, 2018

# **GUIDELINES FOR THE USE OF SOCIAL SCIENCE RESEARCH IN FAMILY LAW**

## **Preamble**

In recent years, increasing attention has been given to social science research in family law<sup>1</sup> — especially how it can inform professional practice and contribute to “best interest” decisions for children. Social science research is defined here as knowledge claims or general assertions about children, parents, and families in their social context that are derived from data gathered using one or more of a wide range of scientific research methodologies. Recognized scientific research methodologies involve description of the population of study and systematic, transparent, and replicable methods for ethically collecting and analyzing data and reporting the results of studies.

Vigorous debates have occurred within publications, professional conferences, and individual cases about the extent to which social science research claims are more or less well substantiated by research data (versus being speculative, untested, or based upon erroneous assumptions). Some debate is expected and useful for deepening our understanding of children and families; however, unresolved differences in the family law field can also magnify conflict and confusion. With more contentious issues, unresolved, inconsistent, and competing research claims and assertions may, in part, reflect misunderstanding and misuse of research data.

In 2016, then-AFCC President Marsha Kline Pruett appointed an interdisciplinary task force to develop guidelines to promote critical thinking about effective, responsible, and ethical use of social science research in family law–related education, practices, programs, and policy making.<sup>2</sup> The two-year process of task force meetings, drafting, and revision gave rise to these Guidelines for the Use of Social Science Research in Family Law.

AFCC does not intend these Guidelines to define mandatory practice. Rather, they are intended to provide family justice practitioners with guidance, parameters, and boundaries supporting the responsible use of research in family law.

Feedback received throughout the process made clear there is not universal agreement about when and if research should be used in family law. Many family justice practitioners value the general trend toward evidence-informed practice, recognizing the importance of anchoring life-changing assertions to the most objective sources of knowledge available. Others commented that family law–related research is of insufficient quality and quantity to be used to support

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<sup>1</sup> These Guidelines refer to family law in the broadest sense and include the practice of law, all family law-related dispute resolution processes, education and training programs, and policy advocacy or initiatives.

<sup>2</sup> AFCC President Marsha Kline Pruett, Ph.D., MSL, ABPP, convened the following people to serve with her on the task force: Hon. William Fee, Chair; Stacey Platt, J.D., Reporter; Milfred “Bud” Dale, J.D., Ph.D.; Kristin Doeberl, J.D.; Amy Holtzworth-Munroe, Ph.D.; Janet Johnston, Ph.D.; Gabriela Misca, Ph.D.; Lorie Nachlis, J.D.; Sol Rappaport, Ph.D.; Michael Saini, Ph.D.; Liana Shelby, Psy. D.; Hon. R. James Williams; Theresa Williams, M.S.; Jeffrey Wittmann, Ph.D.; and Peter Salem, M.A., Executive Director of AFCC.

specific recommendations on various issues, e.g., parenting time, effects of relocation, or quality of parent-child relationship maintained predominantly through technology. Still others warned that, because research is often derived from group data and focused on majority populations, it may serve to reinforce the norm, to the detriment of the individual child and minority groups. The Guidelines themselves take no position on what research methodologies should be used, e.g. qualitative or quantitative. Rather, they focus on helping consumers of research think critically about research claims and recognize the constraints of research methodology. This will enable family justice practitioners to better present and challenge research claims in individual cases, educational settings, legal matters, and policy making.

## **Part A: Introduction**

### **Rationale and Purpose**

The purpose of these Guidelines is to promote the effective, responsible, and ethical use of social science research in family law–related practices, programs, and policies. The Guidelines seek to encourage the use of research by all family justice professionals and self-represented litigants in a manner that is valid, useful, and applicable in family proceedings.

Social science can support evidence-informed decisions about how best to assist families. Integrating high quality research into practice promotes the use of empirically grounded approaches to resolving difficult human problems through best interest determinations, dispute resolution processes, therapeutic interventions, educational programs, and public policies. However, inaccurate or misleading use of research may introduce distortions into decision making or policy that lead to unfortunate outcomes for children and families. The Guidelines seek to minimize the likelihood of such outcomes.

The Guidelines have been written with the understanding that family justice practitioners (e.g., mental health providers, custody evaluators, educators, researchers, mediators, attorneys, and judges) each have different professional obligations. Moreover, practitioners play different roles (e.g., researchers produce research, expert witnesses present research, lawyers and self-represented litigants offer and challenge research, and judges are consumers of research), each of which requires a different level of knowledge regarding research methods and uses. The Guidelines recognize and respect interdisciplinary differences. They strive to join practitioners around a set of core values—thoroughness, precision, and integrity—that transcend differing roles in the family law process.



## **Target Audience(s)**

The Guidelines are intended for use by the multi-disciplinary professionals who comprise the membership of AFCC and by all family justice practitioners, including those making, evaluating, and challenging social science assertions.<sup>3</sup>

The Guidelines are particularly applicable to three types of practice that rely upon social science research to inform and support the work of family law:

1. **Education and Problem Solving:** this includes trainers and educational instructors, as well as other practitioners who use education in their problem-solving roles, such as mediators, parenting coordinators, child and parent advocates, judges, collaborative lawyers, parent educators, and therapists;
2. **Litigation/Negotiation/Advocacy:** this includes judges, arbitrators, attorneys, expert witnesses such as custody evaluators and trial consultants, and parents;
3. **Public Policy and Program Initiatives:** this includes court and community stakeholders, concerned citizens, special interest groups, lay and professional advocates, government policy officials, and legislators.

## **Guiding Principles**

The responsible use of empirical research involves looking beyond research claims to consider the quantity and quality of research evidence in support of those claims. It requires the user of research to be alert to how research findings are selected, analyzed, summarized, communicated to others, and applied. The following principles, further explained in the Guidelines, provide exemplary criteria for these tasks.

Assertions regarding the state of research evidence on any issue or question should be:

1. complete rather than selective in scope;
2. relevant and appropriate to the question or purpose of the issue at hand;
3. accurate, organized, clear to follow, and sufficiently detailed;
4. based on studies and research that have been independently assessed as high quality;

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<sup>3</sup> Family justice practitioners include all professionals and litigants, including self-represented litigants, who seek to present, use, and critique research claims.

5. self-critical, acknowledging limitations;
6. balanced and fair.

## **Part B: Guidelines**

### **FAMILY JUSTICE PRACTITIONERS USING SOCIAL SCIENCE RESEARCH SHOULD STRIVE TO:**

#### **1. USE HIGH QUALITY SOURCES**

**Identify reliable and trustworthy sources for research claims (using citations and full references to authors and publications of research studies).**

When using social science, family justice practitioners should rely on the best available research. Social science research relevant to family law can be found in a variety of sources and within a range of disciplines, including psychology, law, social work, family studies, sociology, and anthropology. High-quality research publications and reports are evaluated through a peer-review process, typically by experts in a specific area of research.

One purpose of the peer-review process is to identify errors or evidence of bias in the design and/or implementation of the research, in the analysis and/or reporting of findings, and in the assertions about implications for policy and practice. Generally, research from a peer-reviewed publication is likely to be of higher quality than that which appears in a non-peer-reviewed journal. Nevertheless, this does not mean that all peer-reviewed research is superior; peer review alone does not ensure high quality. Other factors, such as the quality of the publication source (e.g., journal) and the experience and reputation of the researcher should be considered. Generally, these factors provide indicators of the quality of the research:

- a. Peer-reviewed, published research should be the preferred source of research evidence for family justice practitioners. Text books, monographs, and edited volumes are increasingly subject to a peer-review process prior to their publication, although they are not usually as thoroughly assessed as journal articles.
- b. High quality information comes from direct research or reviews, summaries, and commentaries on research. While meta-analyses, secondary reviews, and research summaries are often practical and efficient tools, family justice practitioners should recognize the risks involved in not inspecting the original studies on a topic and, instead, relying on the interpretations of researchers or authors who did not do the original research.
- c. The most informative summaries and reviews draw on all available data that meet certain preselected criteria, leading to the inclusion of only high-quality studies. If summaries and reviews do not describe how they chose studies to include or exclude, they may be biased or incomplete.

- d. A complete reference list with accurate citations should be provided for any written source.

## **2. UNDERSTAND BASIC RESEARCH METHODS**

**Have a basic understanding of research design and the scientific methods used to produce social science research claims.**

A basic understanding of research methods requires familiarity with various research designs and methods used to study different situations. This helps the family justice practitioner understand a study's strengths and limitations. Without such knowledge, family justice practitioners are at risk of misunderstanding, misusing, or unknowingly accepting the misuse of data.

Non-researchers need not understand in depth what each aspect of methodology means in regard to particular studies or outcomes. However, they should seek to understand enough to know what questions to ask in order to find out whether a study is relevant to or representative of their particular circumstances. Non-researchers can improve their research literacy through continuing education and consultation. Having working knowledge of fundamental concepts such as probability, quantitative and qualitative analysis, and applicability of group data to individual instances is necessary to effectively and ethically make and dispute social science claims.

## **3. VERIFY TRANSPARENCY**

**Ensure that research studies are accurately reported so distinctions among studies can be understood.**

Transparency, or openness, in reporting research provides readers sufficient information to assess potential research biases, the reliability of the methods used, and the credibility and applicability of the conclusions.

The responsibility for promoting transparency in the dissemination of social science research is a shared task among researchers, journal editors, peer reviewers, and consumers of research. Researchers should ensure they are transparent about the methods they used and the potential limitations of their findings. Those who share research (e.g., create reviews of research findings, share findings with clients or students, or provide expert testimony about research) should be transparent about the strength, quality, and credibility of the studies that support their conclusions. Those who read and use research should ask critical questions about the strength and limitations of the research so they might determine the appropriate weight and impact of the effects reported.

#### **4. REPORT ACCURATELY**

##### **Assess and ensure that research studies are accurately reported.**

Persons making and disputing research claims should consider the full range of research available on an issue, rather than selectively drawing on studies or research reviews that support their arguments. Incomplete or inaccurate reporting of methods and findings, whether from mistakes or from advocacy toward a specific outcome, diminishes the value of research.

Family justice practitioners should strive to be as accurate as possible in sharing research findings and should avoid the distortion of findings to support a case or cause. Expert witnesses, child custody evaluators, and lawyers have an ethical duty to refrain from offering expert evidence in court that they know would be untruthful, unsupported, unreliable, invalid, or misleading.

#### **5. BE CURRENT AND COMPREHENSIVE**

##### **Ensure that claims about the state of research evidence on any issue are based upon complete reviews of the cumulative body of foundational and current research studies on that issue.**

When reporting the current state of the scientific knowledge on a given topic, family justice practitioners should strive to be up to date regarding available research findings on that topic, identifying results that both support their position and contradict it. When not reporting in a current or comprehensive manner, those making research claims should be explicit about the scope of those claims.

To stay current in their understanding of the scientific literature, family justice practitioners should routinely read the research and attend seminars or conferences. They might also seek professional consultations from knowledgeable colleagues with appropriate expertise.

#### **6. VERIFY GENERALIZABILITY OF RESEARCH CLAIMS**

##### **Verify the extent to which research claims can be generalized (a) to the facts of a particular case, (b) to diverse populations of clients and service providers, (c) to family law settings not included in the original studies, and (d) in diverse places.**

Conclusions from research conducted on specific groups of people might not apply to everyone. Family justice practitioners should consider developmental, cultural, racial, socioeconomic, and other relevant factors when applying research findings to a specific family. Research is often based on “convenience samples” using narrow social, racial, socioeconomic, or other groupings (e.g., white middle class), and the findings might not be applicable to persons of differing race/ethnicity, social class, or other social identifications or circumstances. Family justice

practitioners should identify when research findings being presented might not apply to a specific family or group.

Furthermore, research typically reports on group, or aggregate, data (the exception being case studies), and the results do not mean that everyone will experience the same outcome. For example, if research suggests that many children adjust to divorce by exhibiting certain behaviors, this does not mean every child of divorce will have the same reaction. Therefore, when using research to support or explain an opinion, make a recommendation, or provide general education, family justice practitioners should be clear that while the group data may support a specific conclusion, it does not guarantee that same behavior or outcome for particular persons or family circumstances.

## **7. COMMENT ON STUDY LIMITATIONS**

**Understand and acknowledge the limitations of research design and methodology that may impact a study's findings in reports and summaries.**

Thoroughly describing the limitations of a study or a research review helps prevent it from being given more weight or being considered more broad-based than is warranted. For example, if data are collected only at the conclusion of an intervention being studied, one cannot make assumptions about the intervention's longer term outcomes. Family justice practitioners should acknowledge the limitations of the research and scientific literature when presenting information and making recommendations. Specifically, they should discuss any limitations related to how strong the findings are—and for whom—in their reports, testimony, and presentations.

## **8. CONSIDER ALTERNATIVE INTERPRETATIONS**

**Consider and acknowledge alternative explanations of research claims and their applicability to a new problem, issue, case, or dispute.**

It is important to consider research findings from different perspectives. Empirical studies are often focused on specific questions/hypotheses that frame the interpretations of the data. In discussion of the data, alternative perspectives should be identified and competing hypotheses examined. The research may have failed to include or measure other factors that might explain the outcome or behavior of interest. For example, a study might report that children's adjustment to divorce may be attributable to father involvement or mother's parenting if these are the variables studied, when in reality conflict or poverty might explain as much or more of the outcomes. It is also possible that a study shows no significant results, because what really mattered wasn't studied. For example, outcomes of "separation" may be largely a function of ongoing parental conflict that wasn't identified in a study.

Family justice practitioners must, therefore, be cautious about interpretations presented as if they are the only possible conclusions to draw. They should, for example, be careful to distinguish



between correlational and causal findings. What researchers find is influenced by what they choose to study, how they choose to study it, and what they cannot study due to practical limitations.

## **9. IDENTIFY CONSENSUS AND DISAGREEMENT ON QUANTITY AND QUALITY OF RESEARCH**

**Identify areas of broad consensus and disagreement about the state of the research on an issue, acknowledging strengths and deficits in quantity and quality of research studies.**

Family justice practitioners should disclose whether there is sufficient research—considering the number and quality of separate research studies—on a topic to draw firm conclusions. It is also important that they be transparent about the extent to which those studies generate findings that are consistent or contradictory, and the possible reasons for contradictory findings, as not all research is of equal scientific quality or has the same relevance to the issue at hand. Meta-analyses and systematic reviews are exemplary means of culling results to show a consensus of findings that extend across different kinds of studies.

It is rarely safe to draw on a single study to offer or dispute firm evidence on an issue. One can be more confident when a study has been replicated, that is, when multiple studies on the same topic that rely on similar methodologies and draw from similar samples generate similar results.

## **10. DISCLOSE CONFLICTS OF INTEREST**

**Identify and disclose potential conflicts of interest that may influence or bias research claims in support of specific interventions, services, or child custody policies.**

Family justice practitioners should reflect on and be open about motivations that might impair their ability to objectively and accurately appraise research claims. For example, a person who conducts research on a program they developed, or in which they have an advocacy or financial interest, should disclose this information along with any steps taken to ensure that the study has been conducted, and the findings reported, in an objective manner. Conflicts of interest should be avoided when possible and disclosed when present. Consumers of research should remain vigilant for research reports that espouse a particular interpretation of existing data but are less than reliable due to conflicting interests impacting the expert presenting them.

## **11. IDENTIFY BASES OF CLAIMS**

**Distinguish the parts of a claim or opinion that are based on social science research from parts drawing on other bases, such as clinical observation, personal and professional values, or professional experience.**

Social science research should be used to inform, but not determine, a specific course of action. Other factors or sources of knowledge are also relevant. The key is to clarify the basis of knowledge.

Individual research studies, or even synthesized meta-analyses or reviews of studies, are not sufficient on their own to definitively support a specific determination or course of action, particularly when applying group research findings to an individual case. Resolutions and arguments presented in family law matters will therefore often draw on other bases beyond social science research, including professional judgment, clinical observation, and societal values. Persons making claims should be transparent about the different factors that led them to a particular conclusion, and the relative weight they applied to these factors.

## **12. ACKNOWLEDGE AND ADDRESS POWER IMBALANCE**

**Be aware of and correct for power imbalances between professional and client or differing professions that may lead to uncritical consideration or acceptance of research claims.**

Family justice professionals should be mindful of the impact, or perceived impact, of their expertise and influence over their clients and other practitioners. For example, parents attending a divorce education program might accept research claims by the presenter at face value and without critical assessment. Similarly, a lawyer with limited social science literacy might uncritically accept the representation made by a researcher or expert witness.

As such, family justice professionals who are presenting research should thoughtfully consider the manner in which it is being shared. Those listening to presentations have a right to a full and fair airing of the research so they are better positioned to critically review and question the information.

## **13. ESTABLISH RELEVANCE**

**Establish the relevance of social science research claims to the issue in family law by addressing the degree of fit between the research and the family law matter.**

The use of social science research findings offered as evidence in an adjudicative process, as information to enhance decision making in a dispute resolution process or in educational programs, requires consideration of how the research applies to the issue(s) under consideration. This requires determining how the concepts, findings, or principles of the research fit the context and facts, and therefore whether the research helps decision makers (e.g., courts or parents) to

resolve important and material issues in the case. The connection between the social science information put forward and the disputed issue or issues in a case should be examined each time it is introduced, whether for a trial or another dispute resolution process.

#### **14. ADHERE TO RULES OF COURT AND RULES OF EVIDENCE**

**Know and follow the rules of court and relevant statutes as they relate to the use and presentation of social science in family law proceedings.**

The rules of court (and, often, other dispute-resolution processes) are designed to balance fairness and efficiency, resulting in a just process. Rules of evidence provide the means for determining what evidence is admissible, how it will be heard and challenged, and how much weight it will be given. The rules of evidence regarding the admissibility of scientific evidence require additional considerations of soundness, validity, and reliability. If scientific evidence is admitted in family court, the ultimate weight given to that evidence is the responsibility of the judge.

The rules of evidence govern when, how, and under what conditions an expert witness can introduce social science knowledge into the court process. Knowing the rules of evidence helps social science and legal professionals use and challenge research properly, in ways that satisfy the requirements of evidence laws. Working on any interdisciplinary boundary—but especially one where research sometimes provides influential evidence—dictates that professional participation is in keeping with the highest ethical, scientific, and professional standards. Achieving these standards requires familiarity and understanding of the laws and policies governing the introduction and use of research in family law proceedings.

The rules of evidence for family proceedings are not always identical to those applicable in criminal and most other civil proceedings, as family courts must take account of the best interests of children as well as fairness to the parties. Further, judges and other professionals are inevitably affected by their implicit understandings of social reality and family life. Judges and other family justice professionals need to be self-aware, articulate their social understandings, and check them against the best available social science knowledge.

#### **15. AVOID MISLEADING TACTICS**

**Avoid tactics that contribute to false or misleading empirical claims.**

Deliberate misrepresentation of social science is unethical. Examples of misrepresentation include using one's status as an expert in the field (rather than the research itself) to legitimize advocacy claims; impugning the integrity of another researcher to delegitimize alternate interpretations; or cherry picking, i.e., selecting and presenting studies that support an argument while ignoring those that refute it.

Information should be presented in a way that organizes the evidence clearly and clusters information to offer an informed and balanced opinion of the research presented.

## **16. SEEK CONTINUING EDUCATION**

### **Improve research literacy by participating in and promoting personal, professional, and public education regarding the findings and use of social science research in family law.**

Research literacy addresses the degree to which family court practitioners understand the general purposes, methods, and contexts associated with generating, conducting, and reporting research. Family justice practitioners should seek and promote continuing education on an ongoing basis by attending continuing education programs and keeping current on the professional literature.

Continuing education is especially important in an interdisciplinary setting such as family law. Family justice practitioners should endeavor to stay current on the most recent social science research related to family law topics such as child development, the impact of separation and divorce on children, parent-child contact problems, intimate partner violence, the role of fatherhood, and the efficacy of various programs and processes (including mediation, parenting coordination, and divorce education) that families might encounter.

***Love and Appyness:  
How to Obtain Social  
Media, Financial,  
and Income  
Information from  
Common Apps***



***Hot Topic***

***Between  
Ruling and  
Appeal***

# Between Ruling and Appeal

# The Window

- ❖ The court has made its oral or letter opinion ruling but the judgment has not yet been drafted or entered
- ❖ → The ruling is against you, but it is also against the law. The judge got it wrong
- ❖ → The ruling is for you but it *might* be against the law... or it certainly isn't ideal ... the way you wished the court would have articulated its ruling
- ❖ Lawyering in this window of time is important; do not wash your hands of it before handing it to appellate counsel

# So You've Suffered a Bad Ruling

- ❖ Reasons to take action now, before the notice of appeal
  - ❖ 1. The judge might actually reconsider
    - ❖ Find this out now, instead of two years from now on remand from appeal
  - ❖ 2. Preserve your argument very clearly for the appellate court.

# The Options Prior to Appeal

- ❖ Motion for a New Trial
- ❖ Motion to Reconsider
- ❖ Object to the Form of Judgment



# ORCP 64 Motion for New Trial

- ❖ Must be filed *within 10 days* of entry of judgment
  - ❖ Can be filed before judgment
  - ❖ Filing after entry of judgment has impact on Notice of Appeal timelines so be careful!
  - ❖ If the Notice of Appeal has been filed, the trial court has lost jurisdiction to consider the Motion for New Trial
  - ❖ If the court is still considering your post-judgment motion for new trial as your 30 day appeal window closes, filing the appeal might be *too early*.
- ❖ If the trial court does not act on the motion, it is deemed denied by operation of law after 55 days. ORCP 64 F

# Timing of Motion for New Trial – Timeline Key

- ❖ ORCP 64 Motion after Notice of Appeal --- bad
- ❖ ORCP 64 Motion after judgment but before appeal – possible, but impact on Notice of Appeal deadlines
- ❖ ORCP 64 Motion before entry of judgment – best option, doesn't hurt

# Motion for New Trial - Substantive Requirements

- ❖ 1. Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having fair trial.
- ❖ 2. Misconduct of the jury or prevailing party.
- ❖ 3. Accident or surprise which ordinary prudence could not have guarded against.
- ❖ 4. Newly discovered evidence, material for the party making the application, which such party could not with reasonable diligence have discovered and produced at the trial.
- ❖ **5. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.**
- ❖ 6. Error in law occurring at the trial and objected to or excepted to by the party making the application. ORCP 64B

# Motion to Reconsider/Motion to Clarify

- ❖ It is not a real thing....
- ❖ “The so-called ‘motion for reconsideration’ appears neither in the Oregon Rules of Civil Procedure nor in any other Oregon Statute.” *Carter v. U.S. National Bank*, 304 Or 538 (1987). In fact, it has been suggested in appellate court opinions that a motion for reconsideration be called a “motion asking for trouble.” *Id.*
- ❖ The court has long held that a motion to reconsider is actually a motion for a new trial. *Guenther v. Martinez*, 98 Or App 735, 737, 780 P2d 799 (1989).

# Motion for Reconsideration/Clarification

- ❖ Do it anyway
- ❖ Court can actually revise its ruling
- ❖ Attach a legal argument memo and supplemental declarations (they are required under ORCP 64 regardless)
  - ❖ This has the *potential* added benefit of more clearly preserving your error.
- ❖ Remind the court it can change its mind at any time before the judgment is entered, and make the motion in conjunction with your request for specific findings of fact to make the court rethink its analysis, or at least articulate it
- ❖ *Wrona and Wrona*, 66 Or App 690, 674 P2d 1213 (1984); *Barone v. Barone*, 207 Or 26, 30, 294 P 2d 609 (1956). *Hiestand v Wolfard*, 272 Or 222 (1975); *Marriage of Haguewood*, 50 Or App 169 (1980)





# Object to the Form of the Judgment

- ❖ Use an objection to the form of judgment hearing and pleadings to address judgment findings
- ❖ Point out that ORCP 62A *requires* the court separately state findings of fact and conclusions of law

# Object to the Form of Judgment

- ❖ 1. Object to findings that hurt; see if the court will remove them or reconsider them
- ❖ 2. Propose additional/different findings that help you case, even if it is just helpful to the appeal
  - Make sure the judgment clearly articulates findings that support the legal analysis you think the court *should have* conducted

# Object to the Form of the Judgment

- ❖ 3. Make the appellate case easier. Include findings and rulings that make the errors clear and obvious.
  - ❖ → Make sure the judgment clearly articulates the incorrect legal analysis conducted by the court
  - ❖ → Include findings the court made that are problematic so you can later highlight those on appeal
- ❖ Do not rely on the court's oral statements, regardless of how crazy they are. Arguably those have no impact unless they are memorialized in the judgment.
  - ❖ → Try to attach/incorporate a transcript to the judgment, arguing that is the best evidence of the ruling...

# You Got a Good Ruling

- ❖ Assess the ruling
  - ❖ The outcome may be good but is the court's analysis supportable on appeal?
- ❖ Did the court conduct the necessary legal analysis?
  - ❖ e.g. did the court get the *Kunze* analysis correct?
  - ❖ e.g. Did the court consider the full set of criteria a move case?
- ❖ Did the court make *inappropriate* / *wrong* statements as the reason supporting its ruling?

# Consider the likelihood of a loss on appeal and how it might impact your case

## ❖ The GOOD

- ❖ You have leverage because you prevailed
- ❖ Statistically, the Respondent on appeal has a higher likelihood of success to prevail

## ❖ THE BAD

- ❖ Appeals take time and money .... For both parties
- ❖ If you lose, there is high probability of attorney fees being awarded against your client on appeal and a remand



# How to Really Win it Now

- ❖ What can you do in the trial court *now* to elevate your chance of success on appeal
- ❖ 1. Revise/improve the court's findings of facts

# Revise/Improve the Court's findings of fact

- ❖ What the trial court SAID at the close of hearing is ultimately irrelevant ... so put findings in the judgment that say what you want the court to have said

*“Plaintiff seeks to attach legal significance to the ‘offhand thoughts’ remarks of the trial court to the effect that plaintiff should prevail. We disagree. Antecedent remarks of the trial court which are not incorporated into the written findings or judgment are not considered to be findings of fact subject to review by this court. \* \* \* It must be remembered that a trial judge's oral decision is no more than a verbal expression of his informal opinion at that time. It is necessarily subject to further study and consideration, and may be altered, modified, or completely abandoned. It has no final or binding effect, unless formally incorporated into the findings, conclusions, and judgment. \*\*\*‘The reason why the rule which the defendant invokes is not applicable here is that a statement from the bench does not constitute a judgment until reduced to an order, decree or judgment. \*\*\*Accordingly, we direct our attention solely to the written findings of the court.’ Kallstrom v. Kallstrom, 265 Or 481, 484, 509 P2d 1195, 1196–97 (1973)*

# But Judge, You Didn't Say That

- ❖ If you need to have a form of judgment hearing on the additional findings, no problem
- ❖ “Your honor, I’m just offering additional and supplemental findings of fact that you can chose to agree with or to exclude, but I want to make sure you have those available to you for consideration ... should you want to adopt any of those in this judgment too.”

# Agree to a Motion to Reconsider/Remand?

- ❖ 2. Assess the probability that conducting the legal analysis an alternate way will change the judge's mind as to the ultimate conclusion. If not, suggest or agree to a motion to reconsider in light of the legal analysis both lawyers agree to...or even a remand from the appeal
- ❖ This should make sense for the potential appellant – their best outcome on appeal is likely a remand. It allows you the opportunity to help the court make the right findings and still support your client's position.
  - ❖ Get the additional findings now, while still fresh in the judge's mind.

# Agree to a Motion to Reconsider/Remand?

- ❖ Benefits for party defending the court's ruling:
  - ❖ 1. You have the same judge decide the same issue close in time (not a new/different judge 18 months from now without the trial fresh in their mind)
  - ❖ 2. You completely close off any avenue for potential appeal. You win now with certainty
  - ❖ E.g. Agree in cases of property or support issues, but perhaps not the best option in parenting time cases where the length of the appeal process could benefit you even if remanded



# Final Thoughts

- ❖ Whether the ruling is for you or against you, consider a consult with an appellate lawyer *before entry of the judgment* to see what you should be thinking about to advocate for your client

# Post-Ruling, Pre-Appeal Form Examples

## **Arguing Against the Ruling:**

Motion to Reopen and Supplement the Record

Objection to Form of Judgment

## **Defending the Ruling:**

Objection to Motion to Reconsider

Response to Motion for New Trial

Objection to Motion to Reopen the Record and Motion to Reconsider

Objection to Motion for New Trial and Motion for Reconsideration

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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF \_\_\_\_\_

6 No. \_\_\_\_\_

7 In the Matter of the Marriage of )

8 MOTHER DARLING, )

9 Petitioner, )

10 and )

11 FATHER DARLING, )

12 Respondent. )

**RESPONDENT'S MOTION TO  
REOPEN AND SUPPLEMENT  
THE RECORD**

13 Comes now, Respondent (Husband), through attorney Lauren Saucy, and moves the court to  
14 **ALTERNATIVE ONE: NEW EVIDENCE:** reopen the record on the grounds that new evidence  
15 (Declaration of Respondent's Counsel) needs to be considered. Respondent requests that the court reopen  
16 the record to hear additional testimony before entry of a judgment in this matter. In the alternative to a  
17 hearing, Respondent requests that the court accept his affidavit attached hereto as substantive evidence.

18 **ALTERNATIVE TWO: RECONSIDER:** reconsider the legal analysis regarding its ruling on  
19 \_\_\_\_\_ in light of the evidence already in the record and the supplemental arguments of counsel  
20 (Declaration of Respondent's Counsel) filed herewith. Respondent respectfully requests that the court  
21 articulate its legal analysis in light of this supplemental argument through a written ruling or oral ruling on  
22 the record such that it may be preserved for supplemental proceedings and on appeal.

23 **ALL:** In support of this motion, Respondent relies on the declaration of counsel filed herewith, the points  
24 and authorities below, and the court's entire file on this matter.

1 **POINTS AND AUTHORITIES**

2 1. *Baron v. Barone* provides that a domestic relations proceeding remains undecided until a  
3 written judgment is entered, even when the court has ruled from the bench. It is accepted that an oral  
4 pronouncement from the bench is not a final determination of the rights of the parties. *Barone v. Barone*,  
5 207 Or 26, 30, 294 P 2d 609 (1956).

6 2. A statement from the bench does not constitute an order or a judgment until it appears in a  
7 written order or judgment. *In Matter of Marriage of Conley*, 97 Or App 134, 137, 776 P2d 860 (1989);

8 3. A judge may change his mind concerning the proper disposition between the time of a hearing  
9 and his final action which takes place when he signs the order disposing the matter. *State v.*  
10 *Swain/Goldsmith*, 267 Or 527, 530, 517 P 2d 684 (1974). See also *Wrona and Wrona*, 66 Or App 690, 674  
11 P2d 1213 (1984):

12 “A judge may change his [or her] mind half a dozen times after announcing [the] decision  
13 and take additional testimony \*\*\* which may throw a new light on the problem, \*\*\* and,  
14 until a formal judgment or decree is finally entered of record, the case remains in the bosom  
15 of the court\*\*\*.” *Id* at 692.

16 4. A trial court has broad discretion to reopen a case to permit a party to present further  
17 evidence. *Hiestand v Wolfard*, 272 Or 222 (1975); *Marriage of Haguewood*, 50 Or App 169 (1980).

18 5. Declaration of Respondent’s Counsel setting out (**ATL ONE:**) new evidence not at the time  
19 available and recently discovered (**ALT TWO:**) the legal issues the court did not fully consider and/or rule  
20 on in this matter are intended to correct misstatements and law relied on by the court in making its ruling  
21 in this matter.

22 Dated this \_\_\_\_ day of \_\_\_\_\_, 2022.

23 \_\_\_\_\_  
24 Lauren Saucy, OSB #034441  
Attorney for Respondent

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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
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6 No. \_\_\_\_\_

7 In the Matter of the Marriage of )

8 MOTHER DARLING, )

9 Petitioner, )

10 and )

11 FATHER DARLING, )

12 Respondent. )

**PETITIONER'S OBJECTION TO  
RESPONDENT'S FORM OF  
JUDGMENT**

13 Petitioner, through her attorney Lauren Saucy, objects to Respondent's proposed form of judgment  
14 as detailed below.

15 **Points and Authorities**

16 **Background**

17  
18 **Legal Argument**

19 Petitioner objects to the proposed Judgment because it is inconsistent with applicable law and not  
20 supported by substantial evidence for the reasons outlined herein.

- 21 a. Attachment and Incorporation of the Letter Opinions to the Judgment Creates  
22 Inconsistencies and Ambiguities in the Court's Ruling.

23 The proposed Judgment attaches and incorporates this Court's letter opinions dated \_\_\_\_\_, and  
24 \_\_\_\_\_ (hereinafter collectively the "*Opinions*"). ORS 18.038(3) generally allows attachments of  
the "affidavits, certificates, motions, stipulations and exhibits as necessary or proper in support of the



1 judgment." However, the Opinions should not be attached to the Judgment in this case because they fail  
2 to comply with ORCP 62, are confusing, fail to include necessary findings of fact and conclusions of  
3 law, and they contain substantial inconsistencies.

4 As a general matter, findings of fact and conclusions of law should be separately stated. ORCP  
5 62A. Even if such findings of fact and conclusions of law are not separated by headings, they must at  
6 least be separated so as to not to "produce any uncertainty or confusion as to the distinct and separate  
7 effect and operation of either." *Weissman v. Russell*, 10 Or 73, 75 (1881). In this case, the Opinions fail  
8 to satisfy the general obligation of ORCP 62A in separating the relevant facts from conclusions of law.  
9 The Opinions were not written as Findings of Fact or Conclusions of Law. The blending of such facts  
10 and conclusions creates confusion as to what facts this Court actually found to substantiate the claims  
11 and what legal conclusions the Court made in applying these facts. The Opinions do not alleviate this  
12 Court from its obligation to make separate findings of fact and conclusions of law, are inadequate on  
13 their face, and should not be incorporated into the Judgment in this case.

14  
15 b. The Opinions do not Contain Adequate Findings of Fact and Conclusions of Law to  
16 Support the Court's Rulings in Favor \_\_\_\_\_

17 Counsel for the Petitioner requested special findings of fact pursuant to ORCP 62B. Necessary  
18 findings of fact in this case requested by Petitioner relate to material issues including, but not limited to,  
19 \_\_\_\_\_.

20 The Opinions appear to find that \_\_\_\_\_ Despite these apparent findings, the Court concludes  
21 that the presumption of equal contribution was not rebutted on the totality of the facts. However, the  
22 Opinions do not identify facts that contravene these findings which would otherwise support a ruling that  
23 the presumption was overcome. The Opinions also fail to set forth the material facts relevant to  
24 Petitioner's claim \_\_\_\_\_.

1 c. The Judgment Fails to Include Necessary Findings of Fact and Conclusions of Law as  
2 required by ORCP 62.

3 Petitioner requested specific findings be made by the court. Though the proposed Judgment does  
4 include seven separate proposed special findings of fact, those findings of fact fail to comply with the  
5 requirements of ORCP 62 because they do not address all material facts and conclusions of law  
6 necessary to support the court's ultimate ruling. For example, material findings of fact and conclusions  
7 of law are missing as to \_\_\_\_\_. Petitioner has set forth her proposed findings of fact and the  
8 specific legal issues she requests the court rule on in this objection. She asks that the court respond to  
9 each issue raised to more fully develop the court's record and to allow for meaningful appellate review  
10 as well as future modification.

11 **Proposed Findings and Legal Issues**

12 Petitioner seeks a determination and clarity on the following proposed findings and matters of  
13 law:

- 14 1.
- 15 2.
- 16 3.

17  
18  
19 DATED this \_\_\_\_ day of September, 2022.

20  
21 \_\_\_\_\_  
22 Lauren Saucy, OSB #034441  
23 Of Attorneys for Petitioner  
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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON

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8 MOTHER DARLING )

9 Petitioner, )

**OBJECTION TO PETITIONER'S  
MOTION TO RECONSIDER**

10 and )

11 FATHER DARLING )

12 Respondent. )

13 Respondent, through his attorney Lauren Saucy, objects to the Petitioner's Motion to Reconsider.

14 The Petitioner has filed a Notice of Appeal and this court no longer has jurisdiction of the case,  
15 except to rule on Petitioner's Motion to Stay which is pending.

16 The Oregon Rules of Civil Procedure does not provide for a motion to reconsider. If the motion  
17 can be considered a motion for a new trial, that time frame has passed.

18 Dated this \_\_\_\_\_ day of September, 2022.

19  
20 \_\_\_\_\_  
21 Lauren Saucy, OSB #03444  
22 Attorney for Respondent  
23  
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9/30/22

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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON

5 FOR THE COUNTY OF \_\_\_\_\_

6 No. \_\_\_\_\_

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8 MOTHER DARLING, )

9 Petitioner, )

10 and )

11 FATHER DARLING, )

12 Respondent. )

**PETITIONER'S RESPONSE TO  
RESPONDENT'S MOTION FOR  
NEW TRIAL**

13 Petitioner (Mother) responds to Respondent's (Father's) motion for new trial as follows:

14 Respondent moves for a new trial under the following rules:

15 ORCP 64 B(1):

16 *Irregularity in the proceedings of the court, jury or adverse party, or any order of the*  
17 *court, or abusive discretion, by which such party was prevented from having a trial.*

18 And ORCP 64 B(5):

19 *Insufficiency of the evidence to justify the verdict or other decision, or that it is against*  
20 *the law.*

21 **ORCP 64 B(1)**

22 Respondent's claim under ORCP 64B(1) should be unpersuasive. To be successful, Respondent must  
23 allege and persuade the court that, due to the irregularity he is alleging, he *was prevented from having a trial.*

24 ORCP 64 B(1). That is not the case here. Father at trial was allowed sufficient time and opportunity to  
present whatever evidence he wanted to present, and make any argument he wanted to make. He cites no

1 procedural irregularity that occurred. Instead, he takes issue with the substantive outcome. Father should not  
2 be awarded a new trial on these grounds.

3 Alternate: Procedural irregularity cited

4 To the extent Father's claim is based on alleged procedural irregularities at trial Father did not  
5 sufficiently raise that claim at trial to have it considered in an ORCP 64 B(1) motion. In *In re Marriage of*  
6 *Justice and Crum*, 265 Or App 635 (2014) the court addressed this specific issue, holding that a party who  
7 alleges procedural irregularity in a motion for a new trial must preserve, during trial, the claim of error. The  
8 court stated:

9 "On the other hand, "[w]hen a party having knowledge of an error or an irregularity during  
10 trial fails to call it to the court's attention and remains silent, speculating on the result, he is  
11 deemed to have waived the error, and the denial of a motion for a new trial based upon that  
12 ground presents no reviewable question." *Turman v. Central Billing Bureau*, 279 Or 443,  
13 450, 568 P2d 1382 (1977). The fact that wife in this case was aware of the alleged  
14 irregularity during trial and did not voice an objection creates at least the presumption that  
15 she might have intended to use that issue to seek a new trial. As the party moving for a new  
16 trial, wife had, at least, some obligation to rebut that presumption, or, at least, to offer some  
17 affirmative reason why she did not object to the time limit. She did not do so in her motion  
18 for a new trial or in her appellate brief."

19 As in *Justice*, Father here neither objected at the time of trial, nor cited in his motion for a new trial  
20 a viable reason that he was unable to raise the issue to the trial court at the time of original hearing. For  
21 those reasons, the Motion for New Trial should be denied.

22 **ORCP 64 B(5)**

23 Father's claim under ORCP 64 B(5) should be similarly unpersuasive. The court has held that  
24 motions for new trial made under ORCP 64B(5) *require* a prior motion to dismiss under ORCP 54B(2). In  
*Migis v. Autozone, Inc*, 282 Or App 774 (2016), the court stated:

25 "A motion brought under ORCP 64 B(5)—that the evidence is insufficient "to justify the  
26 verdict or other decision, or that is against the law"—requires a prior motion for a  
27 directed verdict, or, in the case of a bench trial, requires a party to have moved to dismiss  
28 under ORCP 54 B(2). See *Arena v. Gingrich*, 305 Or 1, 8 n 1, 748 P2d 547 (1988) (even  
29 though ORCP 64 B(5) does not expressly require a prior objection, "a motion for directed  
30 verdict has long been a prerequisite for an appeal assigning lack of evidence, with or



1 without a [subsequent] motion for a new trial”); *Riverside Homes, Inc. v. Murray*, 230 Or  
2 App 292, 298 n 3, 214 P3d 835 (2009) (a directed motion verdict is equivalent to a  
3 motion for involuntary dismissal under ORCP 54 B(2) when issue is tried to the court).  
4 Defendant failed to file or otherwise make an ORCP 54 B(2) motion.”

5 Father made no such motion at trial nor prior to entry of the judgment. Father should not be awarded a new  
6 trial on these grounds.<sup>1</sup>

### 7 **General Argument.**

8 In addition to the procedural inadequacies of Father’s claim, Father’s allegations should also fail  
9 on the merits. Father appears to allege that the court’s ultimate decision has insufficient basis in law  
10 because \_\_\_\_\_. Father’s claims are a mischaracterization of the trial court’s actual  
11 findings of fact as set forth in the General Judgment. The court did not base its decision on \_\_\_\_\_. In  
12 light of those findings specifically articulated by the court, the final ruling was well within the range of  
13 permissible outcomes.

### 14 **Conclusion.**

15 The trial court properly made a decision based on the evidence before it and was within the  
16 guidelines prescribed by relevant statute and case law. Father should not get a second opportunity to  
17 relitigate his case. Respondent failed to meet his burden at trial. He does not now, based on his allegations,  
18 meet the criteria to be granted a new trial and his motion must therefore be denied. Father’s continued  
19 procedural machinations only delay finality in this matter and require Mother to spend additional resources  
20 in unnecessary attorney fees.

21 Dated this \_\_\_\_\_ day of September, 2022.

22 \_\_\_\_\_  
23 Lauren Saucy, OSB #034441  
24 Attorney for Petitioner

25 \_\_\_\_\_  
26 <sup>1</sup>Mother notes that a party is precluded on appeal from assigning as error a denial of a motion for a new trial  
27 based on the insufficiency of the evidence. *Erwin v. Thomas*, 267 Or 311, 314, 516 P2d 1279 (1973)

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11 FATHER DARLING, )

12 Respondent. )

**PETITIONER'S OBJECTION TO  
RESPONDENT'S MOTION TO  
REOPEN THE RECORD TO TAKE  
LIMITED EVIDENCE AND MOTION  
TO RECONSIDER**

13 Petitioner, through her attorney Lauren Saucy, objects to Respondent's Motion to Reopen the Record  
14 to take Limited Evidence.

15 **Points and Authorities**

16 **Motion to Reopen**

17 Petitioner (Wife) acknowledges that a change in circumstances that occurs after trial but prior to the  
18 judgment being signed may be sufficient to allow a party to move to reopen the record to present additional  
19 evidence. *Eadie and Eadie*, 133 Or App 116 (1995); See *Pickering and Pickering*, 100 Or App 47 (1989).  
20 In this case Respondent (Husband) relies upon the ruling of *Wrona and Wrona*, 66 Or App 690 (1984) for  
21 his request that this court reopen the trial and allow additional evidence, or reconsider evidence that was  
22 previously presented. Wife in *Wrona* requested an additional hearing regarding the property issues in the  
23 case due to changes in her financial condition. *Id.* at 692. Specifically, Husband and Wife had signed a  
24 stipulated judgment under the assumption that Wife would be able to borrow \$27,500 from her brother in

1 order to pay an equalizing judgment to Husband. *Id.* Wife reported to the trial court the day after the  
2 hearing that her brother had reneged on his agreement to provide her with the money. *Id.* This is the type  
3 of change in circumstances post-trial or judgment has been held to serve as a basis for the court to reopen  
4 its record.

5 In this case, such a post-trial change did not occur. Instead, Husband alleges that he has "clarified  
6 with [Retirement Company]" the actual value of the specific retirement plan at issue. In that circumstance,  
7 Wife alleges Husband has failed to show any change in circumstances occurred after trial. The [retirement  
8 plan] was in place before and after the trial. The [retirement plan at issue] has ostensibly remained  
9 unchanged between the date of trial and Husband's motion reopen the record. Husband's post-trial  
10 realization that he relied on a value that he no longer believes to be accurate does not satisfy a change of  
11 circumstances, because no change occurred. Husband simply failed to investigate what he now believes to  
12 be the accurate value of the [retirement plan at issue].

13 Husband's request that the court reopen the record is strikingly similar to *Hoag and Hoag*, 122 Or  
14 App 230 (1993). In *Hoag*, Wife assigned error to the trial court's denial of her motion to reopen the record.  
15 *Id.* at 233. She argued that she failed to present all of the evidence that she could have offered concerning  
16 the amount and duration of spousal support and that the trial court should have exercised its discretion in  
17 allowing her to supplement the record as she requested. *Id.* In response, the Court of Appeals stated that,  
18 "She does not, however, explain why that additional evidence was not offered in the first place." *Id.*

19 Motions to reopen a case are often considered using the same criteria as ORCP 64. While ORCP  
20 64 is not the basis for Husband's request in this case, it is worth noting that ORCP 64 provides the following  
21 grounds for a new trial based on newly discovered evidence:

22 *B(4) Newly discovered evidence, material for the party making the application, which such*  
23 *party could not with reasonable diligence have discovered and produced at the trial.*

24 The *Hoag* court suggested that a party should provide an explanation why all of the evidence was

1 not offered in the first place. That statement is consistent with the requirements of ORCP 64, which places  
2 a burden on the moving party to show that he could not have simply produced the newly discovered evidence  
3 at the time of the trial. Husband in this case makes no such allegation. Husband argues that the valuation  
4 was incorrect, but fails to explain why he could not have provided that information at the trial.

#### 5 **Husband's Motion to Reconsider**

6 Husband additionally seeks a reconsideration of the court's earlier ruling on the issue of  
7 \_\_\_\_\_. Motions to reconsider are generally disfavored in the law. "The so-called 'motion for  
8 reconsideration' appears neither in the Oregon Rules of Civil Procedure nor in any other Oregon statute.  
9 Lawyers filing motions for reconsideration [...] might better denominate such a motion as a 'motion asking  
10 for trouble' [...] use of such motions creates uncertainty and should be discouraged." *Carter v. U.S. National*  
11 *Bank of Oregon*, 304 Or 538 (1987) (C.J. Peterson, concurring).

12 In *Carter*, the Oregon Supreme Court concluded that the motions at issue (which essentially  
13 requested a reconsideration) were properly treated as motions for a new trial insofar as they conformed to  
14 the requirements of ORCP 64. *Housley and Housley*, 202 Or App 182, 186 (2005) (superseded by ORS  
15 19.205 on other grounds) (summarizing holding in *Carter v. U.S. National Bank of Oregon*, 304 Or at 538).  
16 Therefore, Husband in this case must assert circumstances which would compel the need for a new trial  
17 under ORCP 64. Those circumstances include:

18 *B(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of*  
19 *the court, or abuse of discretion, by which such party was prevented from having fair trial.*

20 *B(2) Misconduct of the jury or prevailing party.*

21 *B(3) Accident or surprise which ordinary prudence could not have guarded against.*

22 *B(4) Newly discovered evidence, material for the party making the application, which*  
23 *such party could not with reasonable diligence have discovered and produced at the trial.*

24 *B(5) Insufficiency of the evidence to justify the verdict or other decision, or that it is*  
*against law.*

1                    *B(6) Error in law occurring at the trial and objected to or excepted to by the party*  
2                    *making the application.*

3                    Husband has made no such allegations in this case. Husband's should therefore be denied.

4                    DATED this \_\_\_\_ day of September, 2022.

5                    \_\_\_\_\_  
6                    Lauren Saucy, OSB #034441  
7                    Of Attorneys for Petitioner  
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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON

5 FOR THE COUNTY OF \_\_\_\_\_

6 No. \_\_\_\_\_

7 In the Matter of the Marriage of )

8 MOTHER DARLING )

9 Petitioner, )

10 and )

11 FATHER DARLING )

12 Respondent, )

**PETITIONER'S OBJECTION TO  
RESPONDENT'S MOTION FOR**

**1. Motion for New Trial;**

**2. Motion for Reconsideration.**

Oral argument requested

13 Petitioner (Wife), through attorney Lauren Saucy, responds to Respondent's (Husband) Motion for  
14 New Trial and Motion for Reconsideration. Oral argument is requested. Time required for hearing is 30  
15 minutes. This matter came before Judge \_\_\_\_\_ for hearing on \_\_\_\_\_, 2022. The hearing was  
16 concluded on that date.

17 **Procedural Background**

18 The issue at trial was \_\_\_\_\_

19 Husband subsequently filed a Motion for New Trial and a Motion for Reconsideration.

20 **Points and Authorities**

21 **1. Motion to Reconsider**

22 Husband does not state the rule or statute under which he moves for reconsideration because there  
23 is no authority for such a motion. *R & C Ranch, LLC v. Kunde*, 177 Or App 304, 316, 33 P3d 1011 (2001),  
24 *Modified and remanded on other grounds*, 180 Or App 314 (2002). "The so-called 'motion for

Page 1 - PETITIONER'S OBJECTION TO RESPONDENT'S MOTION FOR NEW TRIAL AND  
MOTION FOR RECONSIDERATION

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1 reconsideration' appears neither in the Oregon Rules of Civil Procedure nor in any other Oregon Statute."  
2 *Carter v. U.S. National Bank*, 304 Or 538, 546, 747 P2d 980 (1987) (Peterson, C. J., concurring). In fact,  
3 it has been suggested in appellate court opinions that a motion for reconsideration be called a "motion asking  
4 for trouble." *Id.*

5 The court has long held that a motion to reconsider is actually a motion for a new trial. *Guenther v.*  
6 *Martinez*, 98 Or App 735, 737, 780 P2d 799 (1989). Wife will therefore respond to both of Husband's  
7 motions under the Oregon Rule of Civil Procedure set forth as justification for a new trial.

## 8 **2. Motion for a New Trial**

9 Pursuant to ORCP 64B(5) Husband moves the court for a new trial. ORCP 64C in conjunction with  
10 ORCP 64B(5) allows a new trial to be granted only when the following extremely high threshold is met:

11 *"Insufficiency of evidence to justify the verdict or other decision, or that it is against law."*

12 A new trial is not automatic under the rules, but is rather within the discretion of the trial court.  
13 *Oberg v. Honda Motors Co.*, 316 Or 263, 272, 851 P2d 1084 (1993), *rev'd on other grounds*, 512 US 415  
14 (1994). As Husband's motion does not claim that Wife produced insufficient evidence to support the trial  
15 court's conclusions, Husband must therefore prove that the trial court's ruling *is against law*, which he  
16 cannot do. Instead, Husband appears to want to reargue evidence that he should have presented to the trial  
17 court originally, even though he had a full day of trial in which to do so, and had known Wife's position in  
18 this case all along.

19 The court's conclusions are well within the range of legally permissible outcomes allowed by statute  
20 and caselaw. ...[insert substantive argument as appropriate]

21 Husband raises this issue of the court's ability to \_\_\_\_ [ruling at issue] \_\_\_\_ under the law *for the*  
22 *first time* in his motion for a new trial.

23 It may also be relevant to the court in deciding this issue that Husband has known for some time that  
24

1 Wife intended to take this position, and has had ample time to bring this issue to the court's attention, but  
2 more importantly, present *any evidence Husband had* that might prove his case in prior court hearings.

3 The issue before the court was not a surprise to Husband at trial for which he had no time to prepare.  
4 He simply did not present evidence that supports the case he now claims to make, and has asked this court  
5 for an opportunity to "do over." That is not the function of a motion for a new trial. To do so would be to  
6 unreasonably punish Wife (in attorney fees, in time, and in lack of finality of judgment); and reward  
7 Husband by allowing him an unlimited opportunity to come up with new case theories and gather new  
8 evidence to present – though he never produced it to Wife after multiple discovery requests.

9 The trial court properly made a decision based on the evidence before it, and was within the  
10 guidelines prescribed by relevant statute and case law. Husband should not get a second opportunity to retry  
11 his case.

### 12 Conclusion

13  
14 Based upon the foregoing reasons, and specifically that there was no "insufficiency of evidence to  
15 justify the verdict or other decision, or that it was against law" Wife requests that the court deny Husband's  
16 motion for a new trial and motion for reconsideration.

17 Dated this \_\_\_\_ day of \_\_\_\_\_, 2022.

18  
19  
20 \_\_\_\_\_  
21 Lauren Saucy, OSB 034441  
22 Attorney for Petitioner  
23  
24

***What about the  
Children? - Silent  
Victims in Third  
Party Litigation***

# UNIFORM NONPARENT CUSTODY AND VISITATION ACT

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES

at its

ANNUAL CONFERENCE  
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-SEVENTH YEAR  
LOUISVILLE, KENTUCKY  
JULY 20 - JULY 26, 2018

*WITH PREFATORY NOTE AND COMMENTS*

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By  
NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

September 25, 2018



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# UNIFORM NONPARENT CUSTODY AND VISITATION ACT

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# UNIFORM NONPARENT CUSTODY AND VISITATION ACT

## PREFATORY NOTE

The Uniform Nonparent Custody and Visitation Act addresses issues raised when courts are asked to grant custody or visitation to nonparents. The act seeks to balance, within constitutional restraints, the interests of children, parents, and nonparents with whom the children have a close relationship.

Demographics indicate that many children in the United States live with nonparents. In a case before the U.S. Supreme Court (discussed later in the Prefatory Note), Justice O'Connor observed: "The demographic changes of the past century make it difficult to speak of an average American family. The composition of families varies greatly from household to household." *Troxel v. Granville*, 530 U.S. 57, 63 (2000).

In 2016, the United States Census Bureau reported that there were 73,745,000 children in the United States under age 18. Of that number, the breakdown for the children's living arrangements was:

- Living with both parents: 50,679,000
- Living with mother only: 17,223,000
- Living with father only: 3,006,000
- Living with neither parent: 2,836,000
- Of the children living with neither parent, 1,556,000 were living with grandparents.

U.S. Census Bureau, America's Families and Living Arrangements: 2016, Table C2, Household Relationship and Living Arrangements of Children Under 18 Years, by Age and Sex: 2016. Generally, close and beneficial relationships exist between nonparents and children who have lived together when the nonparent has cared for the child, giving rise to a need to preserve that relationship over a parent's objection in some situations. These types of close relationships also may develop between nonparents and children who, while never residing together, have had substantial and meaningful contact.

The vital role of nonparents in children's lives has been accentuated by the opioid epidemic. With 2.1 million adults experiencing opioid addiction in this country, many relatives have stepped forward to care for children because of their parents' addictions. See Jennifer Egan, *Children of the Opioid Epidemic*, New York Times Magazine (May 9, 2018). The legal status of such relative caregivers remains in limbo in many situations.

The provisions of this act address the legal issues raised by the growing number of children who have a substantial relationship with individuals other than their legal parents. The act does the following:

- recognizes a right to seek custody or visitation for two categories of individuals:  
(1) nonparents who have acted as consistent caretakers of a child without expectation of compensation, and (2) other nonparents who have a substantial relationship with the child



and who demonstrate that denial of custody or visitation would result in harm to the child; a nonparent who is not a relative of the child and who is seeking custody or visitation on the basis of a substantial relationship must have formed that relationship without expectation of compensation (Section 4);

- provides a rebuttable presumption that the parent's decision about custody or visitation is in the best interest of the child and imposes a burden of proof on the nonparent of clear-and-convincing evidence in order to obtain relief (Section 5);
- requires that the pleadings be verified and specify the facts on which the request for custody or visitation is based (Section 7);
- requires the court to determine on the basis of the pleadings whether the nonparent has pleaded a prima facie case for relief (Section 8);
- requires that notice be provided to: (1) any parent of the child; (2) any person having custody of the child; (3) any individual having court-ordered visitation with the child; and (4) any attorney, guardian ad litem, or similar representative for the child (Section 9);
- provides a list of factors to guide the court's decision regarding the child's best interest (Section 12);
- provides protections for victims of child abuse, child neglect, domestic violence, sexual assault, or stalking (Section 13);
- provides that the court may order a party to pay the cost of facilitating visitation, including the cost of transportation (Section 18); and
- provides under a bracketed optional provision that the rights and remedies of this act are not exclusive and do not preclude recognition of an equitable right or remedy for a de facto parent under law of the state other than this act (Section 20).

The act does not apply to a proceeding between two or more nonparents unless a parent is a party, nor does the act apply to children who are the subject of proceedings for abuse, neglect, or dependency. In addition, under an optional (bracketed) provision, a nonparent may not maintain a proceeding under this act solely on the basis of having served as a foster parent. The degree to which this act applies to children who are the subject of a guardianship depends on the guardianship law of the state.

Continuation of a relationship between a child and a nonparent can be an important—and even vital—interest for the child. When deciding whether to grant relief to a nonparent, courts must also, of course, consider the rights of parents. The U.S. Supreme Court has recognized a right of a fit parent to make decisions regarding the rearing of his or her child. *Troxel v. Granville*, 530 U.S. 57, 68-69 (2000).

In *Troxel*, the paternal grandparents sought visitation with their grandchildren following the father's death. The children had never resided with the grandparents but had visited with them regularly throughout their lives. When the mother did not provide the amount of visitation the grandparents requested, the grandparents filed an action under Washington State's nonparental visitation statute, Wash. Rev. Code § 26.10.160(3) (1994), which provided: "Any person may petition the court for visitation rights at any time including, but not limited to, custody proceedings."

At trial, the grandparents sought visitation, including overnights. The mother “did not oppose visitation altogether, but instead asked the court to order one day of visitation per month with no overnight stay.” 530 U.S. at 61. The trial court gave the grandparents visitation of “one weekend per month, one week during the summer, and four hours on both of the petitioning grandparents’ birthdays.” *Id.* at 62. The trial court’s findings in support of the judgment were that the Troxels [the grandparents] “are part of a large, central, loving family, all located in this area, and the [Troxels] can provide opportunities for the children in the areas of cousins and music.” *Id.* at 72.

The case (along with two other consolidated cases) was appealed to the Washington Supreme Court, which held the statute was unconstitutional on its face and that visitation to grandparents over objection of a parent should not be granted absent a showing of harm to the child. *In re Custody of Smith*, 137 Wash. 2d 1, 969 P.2d 21, 23 (1998).

The grandparents successfully petitioned for certiorari. The U.S. Supreme Court affirmed the Washington Supreme Court, although on narrower grounds. In her plurality opinion, Justice O’Connor stated that the statute was “breathtakingly broad,” 530 U.S. at 67, and the trial court’s findings were “slender,” *Id.* at 72. The plurality concluded that the statute, as applied, did not give sufficient deference to the decision of a fit parent to decide the amount of contact the children would have with the grandparents.

According to Justice O’Connor’s opinion, “The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Id.* at 65, *citing*, among other cases, *Meyer v. Nebraska*, 262 U.S. 390 (1923) (holding unconstitutional a Nebraska law prohibiting teaching any subject in a language other than English). In the plurality’s view, the statute “as applied, exceeded the bounds of the Due Process Clause.” 530 U.S. at 68.

The Superior Court’s order was not founded on any special factors that might justify the State’s interference with Granville’s fundamental right to make decisions concerning the rearing of her two daughters.

[S]o long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent’s children.

*Id.* at 68–69.

The plurality reasoned that because its decision was based on the “sweeping breadth” of the statute and the application of the statute in this case, the Court did not need to “consider the primary constitutional question passed on by the Washington Supreme Court—whether the Due Process Clause requires all nonparental visitation statutes to include a showing of harm or potential harm to the child as a condition precedent to granting visitation.” *Id.* at 73. For discussion of state law on the issue of harm, see the comment to Section 4 regarding “Substantial relationship and the showing of harm.”

This act balances the right of a child to maintain contact with a nonparent with whom the child has developed a bonded relationship (other than a paid child-care provider) and the rights of a parent. The statutes of many states specify the circumstances in which visitation by a nonparent may be sought—circumstances which often involve some disruption of the family—e.g., divorce, separation, death of a parent, or a child born outside of marriage. Such broad descriptions of circumstances in which visitation may be sought do not, by themselves, provide a reliable indicator of whether nonparental visitation (or custody) should be allowed. *See Dorr v. Woodard*, 140 A.3d 467, 472 (Me. 2016) (holding death of a parent without other compelling reasons was not sufficient reason to confer standing); *D.P. v. G.J.P.*, 146 A.3d 204 (Pa. 2016) (holding that separation of the parents for six months was not a sufficient basis to allow grandparents to seek visitation). The criteria of this act, in contrast, focus on the factors used to decide whether visitation or custody should be granted, particularly the closeness of the relationship between the child and the nonparent. At the same time, the act provides protections for parents, such as imposing a heightened burden of proof (clear and convincing evidence) upon the nonparent and requiring a nonparent to overcome a presumption that a parent’s decision about custody and visitation is in the child’s best interest.

## **UNIFORM NONPARENT CUSTODY AND VISITATION ACT**

**SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Nonparent Custody and Visitation Act.

**SECTION 2. DEFINITIONS.** In this [act]:

- (1) “Child” means an unemancipated individual who is less than [18] years of age.
- (2) “Compensation” means wages or other remuneration paid in exchange for care of a child. The term does not include reimbursement of expenses for care of the child, including payment for food, clothing, and medical expenses.
- (3) “Consistent caretaker” means a nonparent who meets the requirements of Section 4(b).
- (4) “Custody” means physical custody, legal custody, or both. The term includes joint custody or shared custody.
- (5) “Harm to a child” means significant adverse effect on a child’s physical, emotional, or psychological well-being.
- (6) “Legal custody” means the right to make significant decisions regarding a child, including decisions regarding a child’s education, health care, and scheduled activity.
- (7) “Nonparent” means an individual other than a parent of the child. The term includes a grandparent, sibling, or stepparent of the child.
- (8) “Parent” means an individual recognized as a parent under law of this state other than this [act].
- (9) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.
- (10) “Physical custody” means living with a child and exercising day-to-day care of the child.

(11) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(12) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(13) “Substantial relationship with the child” means a relationship between a nonparent and child which meets the requirements of Section 4(c).

(14) “Visitation” means the right to spend time, which may include an overnight stay, with a child who is living with another person.

### **Comment**

The definition of “child” is similar to the first portion of the definition of “child” in the Uniform Deployed Parents Custody and Visitation Act, § 102(3)(A) (2012). The age of majority in most states is 18 years of age, although some states set the age of majority at graduation from high school, and a few states set the age higher than 18 years of age. Unlike the Deployed Parents Custody and Visitation Act, this act does not include in the definition of “child” adult children who are the subject of a court order concerning custodial responsibility, such as individuals with a developmental disability. Rights to custody of or visitation with adult children would be determined under the state’s guardianship laws or other applicable law.

The term “compensation” is used in Sections 4 and 7. Section 4(b) provides that if a nonparent seeks custody or visitation on the basis of being a “consistent caretaker,” the relationship needs to have been formed “without expectation of compensation.” Similarly, under Section 4(c) a nonparent who does not have a familial relationship with the child who seeks custody or visitation on the basis of a “substantial relationship” with the child needs to have formed that relationship “without expectation of compensation.” Thus, under Section 4, a paid nanny who does not have a familial relationship with the child would not be able to seek custody or visitation. However, an individual who has both a familial and a substantial relationship with a child may seek custody or visitation even if the individual cared for the child with an expectation of compensation. Section 7(b)(5) requires that compensation arrangements be disclosed in the pleadings.

In family law, the terms “custody” and “visitation” are flexible concepts and in many states are being replaced with terms such as “legal decisionmaking,” “parenting time,” and other phrases. In most states, there is not a fixed amount of time the child spends with a parent who has “custody” or “visitation,” although some states utilize guidelines to specify the time the child spends with the noncustodial parent. Nonetheless, a person with “custody” provides the child



with a home or primary home. (In the case of joint custody with equal time-sharing, neither home may be primary compared to the other home.) The act was drafted with the anticipation that visitation granted to nonparents will be decided on the facts of each case rather than by guidelines. The definition of “custody” includes joint custody (sometimes referred to as shared custody). Thus, under this act, courts have the option of granting joint custody, as well as sole custody. Although many states utilize the term “parenting time” to describe the time a child spends with each parent, the terms “custody” and “visitation” are still commonly used, and are appropriate, to describe the time a child spends with a nonparent. “Visitation” is defined as: “the right to spend time, which may include an overnight, with a child who is living with another person.” For example, a nonparent may be granted the right to spend a defined period of time per month with a child who lives primarily with a legal parent or lives with parents who share custody. Visitation may include contact by telephone or other electronic means as well as in-person contact.

“Harm to a child” can be physical, emotional, or psychological and must result in a “significant adverse effect.” Testimony from a mental health professional, while not required, can be helpful to show the effect. Section 5(b) provides that when rebutting the presumption in favor of a parent’s decision, “[p]roof of unfitness of a parent is not required.”

The definition of “legal custody” is similar to the definition of that term in many states. The definition of “legal custody” also is similar to the definition of “decision-making authority” in the Uniform Deployed Parents Custody and Visitation Act (2012), which provides: “the power to make important decisions regarding a child, including decisions regarding the child’s education, religious training, health care, extracurricular activities, and travel.” As noted regarding the definition of “custody,” “legal custody” may be sole or joint. “Legal custody” might include the power to enroll a child in a religious school, but it normally should not include selection of a child’s religion since most courts have held both parents have a right to expose their child to his or her religious beliefs or lack of religious beliefs. *See, e.g., Felton v. Felton*, 383 Mass. 232, 418 N.E.2d 606 (1981); *In re Marriage of Mentry*, 142 Cal. App 260, 190 Cal. Rptr. 843 (1983); *Hansen v. Hansen*, 404 N.W.2d 460 (N.D. 1987).

The definition of “nonparent” is “an individual other than the parent of a child. The term includes a grandparent, sibling, and stepparent of the child”, as well as other relatives and nonrelatives. All nonparents—whether or not related to the child—must meet the requirements of the act, including clear-and-convincing evidence of status as a “consistent caretaker” or having developed a “substantial relationship” with a child.

The definition of “parent” is “an individual recognized as a parent under law of this state other than this [act].” The sources of the definition of “parent” may include the state’s parentage statutes, divorce statutes, and case law. In most states, “parent” would include biological parents, adoptive parents, presumed parents unless the presumption has been rebutted, and persons who have acknowledged parentage, even if they are not biologically related to the child.

The definitions of “person,” “record,” and “state” are the definitions provided by the Uniform Law Commission “Drafting Rules,” Rules 304, 305 & 306 (2012).

The definition of “physical custody” is similar to the definition of “physical custody” in the Uniform Child Custody Jurisdiction and Enforcement Act, § 102(14) (1997) (“the physical care and supervision of a child”).

For discussion of “visitation,” see the entry on “custody” and “visitation.”

### **SECTION 3. SCOPE.**

(a) Except as otherwise provided in subsection (b), this [act] applies to a proceeding in which a nonparent seeks custody or visitation.

(b) This [act] does not apply to a proceeding:

(1) between nonparents, unless a parent is a party to the proceeding;

(2) pertaining to custody of or visitation with an Indian child as defined in the Indian Child Welfare Act of 1978, 25 U.S.C. Section 1903(4)[, as amended], to the extent the proceeding is governed by the Indian Child Welfare Act of 1978, 25 U.S.C. Sections 1901 through 1963[, as amended]; and

(3) pertaining to a child who is the subject of an ongoing proceeding in any state regarding[:

(A) guardianship of the person; or]

[(B)] an allegation by a government entity that the child is abused, neglected, dependent, or otherwise in need of care.

[(c) A nonparent may not maintain a proceeding under this [act] for custody of or visitation with a child solely because the nonparent served as a foster parent of the child.]

(d) An individual whose parental rights concerning a child have been terminated may not maintain a proceeding under this [act] concerning the child.

(e) Relief under this [act] is not available during the period of a custody or visitation order [entered under the [cite to this state’s Uniform Deployed Parents Custody and Visitation

Act] or other order] dealing with custody of or visitation with a child of a deployed parent. A custody or visitation order entered before a parent was deployed remains in effect unless modified by the court.

**Legislative Note:** *In subsection (b)(3), the phrase “guardianship of the person” is in brackets to give the enacting state an option to include the phrase in the list of proceedings that are excluded from coverage under this act. If a state’s guardianship law allows a court to order visitation to a nonparent, the proceeding involving guardianship of the person of a child should be included in the list of proceedings not covered by this act. If the guardianship law of the state does not provide for visitation with a child who is the subject of a guardianship, the phrase “guardianship of the person” should not be included in subsection (b)(3).*

*Subsection (c) is in brackets to give the enacting state the option of not including this provision if state law recognizes the right of a former foster parent to seek custody or visitation with a child.*

*In a state in which the constitution or other law does not permit the phrase “as amended” when federal statutes are incorporated into state law, the phrase should be deleted in subsection (b)(2).*

### Comment

The scope provisions in subsections (a) and (b)(1) encompass disputes between a nonparent and a parent regarding custody or visitation. Subsection (a) also covers proceedings in which the nonparent and parent seek to enter an agreed order regarding custody or visitation.

Subsection (b)(2) is based on the Indian Child Welfare Act provision of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Section 104(a).

Subsection (b)(3) provides the act does not apply to a child who is the subject of an ongoing proceeding for abuse, neglect, dependency [or guardianship of the person]. Such laws and related regulations have their own provisions regarding where a child will be placed and who may have contact with the child. The abuse, neglect, dependency [and guardianship] laws usually are in a different section of statutory compilations than laws pertaining to divorce, parentage, and nonparental rights. This act should not conflict or interfere with the laws of the state regarding abuse, neglect, dependency [or guardianship]. When a child is no longer the subject of such proceedings, relief may be sought under this act. This provision is similar to Or. Stat. § 109.119(9) (West 2015) (excluding application of a nonparental visitation statute from children who are the subject of dependency proceedings). *Cf.* Minn. Stat. Ann. § 257C.08(4) (West 2015) (excluding foster parents from coverage under the state’s nonparental visitation law).

Subsection (c), which is bracketed, is an optional provision. If a state wishes to exclude coverage of the act to nonparents whose claim for custody or visitation is based solely on that

individual's service as a foster parent, the brackets should be removed and the section included. Under this approach, if the individual has an alternate basis for seeking relief, such as a preexisting substantial relationship with the child, that individual could still seek custody or visitation under the act. For example, if a child is removed from the parent's home and is placed with the child's aunt and uncle with whom the child had a preexisting substantial relationship, that substantial relationship could serve as a basis for obtaining custody or visitation (after the foster placement has concluded).

Under the law as it existed in 2018, states differed on the issue of visitation rights for foster parents. Some states exclude them from coverage in nonparent visitation statutes. *See*, statutes from Oregon and Minnesota. Texas allows foster parents to seek visitation. Tex. Fam. Code Ann. § 102.003(a) (West 2018) provides: "An original suit may be filed at any time by: . . . (12) a person who is the foster parent of a child placed by the Department of Family and Protective Services in the person's home for at least 12 months ending not more than 90 days preceding the date of the filing of the petition." *See also In re B.J.*, 242 P.3d 1128 (Colo. 2010) (stating the court had power to grant visitation to former foster parents, subject to application of a presumption in favor of the parent's decision).

Subsection (d) provides: "An individual whose parental rights concerning a child have been terminated may not maintain a proceeding under this [act] as to that child." If state law other than this act allows a parent whose rights have been terminated to regain parental rights, this act does not preclude using the other law. *See, e.g.*, 750 Ill. Comp. Stat. 50/14.5 (allowing a former parent whose rights have been terminated to petition for adoption if the child is still a ward of the court).

Subsection (e) is designed to avoid conflicts between orders entered regarding deployed parents and orders entered under this act, although this act also provides that an order entered before a parent was deployed remains in effect unless modified by court order. In subsection (e), the bracketed term "deployed" should be interpreted consistently with how the term is used in other state statutes dealing with custody of or visitation with a child of a deployed parent. If a state does not have state statutes on the subject, the state should consider enacting a definition similar to the definition in the Uniform Deployed Parents Custody and Visitation Act.

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) applies to "child-custody proceeding[s] . . . in which legal custody, physical custody, or visitation with respect to a child is an issue." UCCJEA, Section 104(4) (1997). The UCCJEA applies to guardianship proceedings as well as proceedings under this act. *Id.* If there are simultaneous proceedings under this act and under guardianship law, the UCCJEA (as well as law of the state regarding venue) would determine which court has priority to exercise jurisdiction.

#### **SECTION 4. REQUIREMENTS FOR ORDER OF CUSTODY OR VISITATION.**

(a) A court may order custody or visitation to a nonparent if the nonparent proves that:

(1) the nonparent:

(A) is a consistent caretaker; or

(B) has a substantial relationship with the child and the denial of custody or visitation would result in harm to the child; and

(2) an order of custody or visitation to the nonparent is in the best interest of the child.

(b) A nonparent is a consistent caretaker if the nonparent without expectation of compensation:

(1) lived with the child for not less than 12 months, unless the court finds good cause to accept a shorter period;

(2) regularly exercised care of the child;

(3) made day-to-day decisions regarding the child solely or in cooperation with an individual having physical custody of the child; and

(4) established a bonded and dependent relationship with the child with the express or implied consent of a parent of the child, or without the consent of a parent if no parent has been able or willing to perform parenting functions.

(c) A nonparent has a substantial relationship with the child if:

(1) the nonparent:

(A) is an individual with a familial relationship with the child by blood or law; or

(B) formed a relationship with the child without expectation of compensation; and

(2) a significant emotional bond exists between the nonparent and the child.



## Comment

### *1. Summary of bases for relief*

This section provides two bases for a nonparent to obtain custody or visitation.

The first basis [described in subsection (b)] is that the nonparent is a “consistent caretaker” of a child. The second basis [described in subsection (c)] requires that a “substantial relationship” has developed between the nonparent and the child and denial of custody or visitation would result in harm to the child.

Both bases require the nonparent to prove that ordering custody or visitation to the nonparent is in the best interest of the child. The showing of best interest is relevant not only to whether custody or visitation should be granted to a nonparent, but also to the amount of time the child should be with the nonparent.

### *2. Consistent caretaker*

The “consistent caretaker” provision has four enumerated elements in addition to a provision that the four enumerated elements occur “without expectation of compensation.” The elements are drawn from the American Law Institute Principles of the Law of Family Dissolution, § 2.03(1)(c) (2002); *Restatement on Children and the Law*, §§ 1.80 – 1.82 (Council Draft No. 3, dated Sept. 4, 2018); and the definition of “de facto parent” in the Uniform Parentage Act (UPA), § 609 (2017). *See also In re Custody of H.S.H.-K.*, 193 Wis. 2d 649, 694, 533 N.W.2d 419, 435 (1995) (a seminal case giving rights to persons who establish “a parent-like relationship with the child”).

Regarding the first element, in subsection (b)(1), the 12-month period during which the nonparent lived with the child need not be consecutive months. Examples of compelling reasons for shortening this period are: when a child is under 12 months of age and the petitioner has been living with the child since birth or shortly after, or the period of time is only slightly shorter than 12 months, such as 11.5 months, and all other requirements are met.

The second element requires that the nonparent exercise care of the child “regularly” (rather than sporadically).

The third element regarding making day-to-day decisions refers to minor decisions such as the time the child gets up and goes to bed and what food the child will eat. The decisions may include (but do not have to include) more major decisions, such as whether the child should have a medical procedure or enroll in a particular school.

Regarding the fourth element, the term “bonded” refers to the closeness of the relationship. The term “dependent” refers to the degree to which the child relies upon, and is in need of, the nonparent.

A nonparent's status as a consistent caretaker is phrased in the present tense ("the nonparent is a consistent caretaker"). The four enumerated elements are phrased in the past tense ("lived," "exercised," "made," "established"). Thus, if a nonparent was a caretaker of a child in the recent past, but the child is no longer living with the nonparent (such as because the child is back with the parent), the nonparent could still claim status as a consistent caretaker. Such an approach gives the act flexibility and does not force the nonparent to immediately seek relief after the nonparent has stopped living with the child or because the relationship between the parent and nonparent ended. If the child has not lived with the nonparent for a significant period of time, on the other hand, the nonparent would lose status as a consistent caretaker, but still might be able to seek relief under subsection (c) ("substantial relationship"). Determining whether too much time has elapsed before the nonparent sought relief will depend on multiple factors, including the child's age and whether significant contact between the nonparent and child has continued.

A showing that denial of custody or visitation would result in harm to the child is not required for a consistent caretaker because severance of a bonded and dependent relationship between a child and the consistent caretaker is presumptively harmful to the child.

The "consistent caretaker" provision of this act has similarities to the definition of "de facto parent" under the Uniform Parentage Act (2017), but the "consistent caretaker" provision is more flexible. Unlike the Uniform Parentage Act, the "consistent caretaker" provision does not require that the individual seeking custody or visitation hold the child out as his or her own. Compare Section 609 of the Uniform Parentage Act (2017). In addition, the "consistent caretaker" provision does not require that the individual has undertaken "full and permanent responsibilities of a parent." Moreover, an individual who fits the definition of "consistent caretaker" is entitled to request custody and visitation under this act, but is not entitled to other rights associated with parentage.

### *3. Substantial relationship and showing of harm*

The second basis for a nonparent to obtain custody or visitation under this act requires a showing of a familial or other relationship in which "a significant emotional bond exists between the nonparent and child [and] denial of custody or visitation would result in harm to the child." "Consistent caretaking" is not required. If a grandparent or other relative received compensation for caring for the child, that would not preclude the grandparent or other relative from seeking custody or visitation. If a nonparent who is not a relative seeks custody or visitation, the nonparent's relationship with the child must have been formed without expectation of compensation. Subsection (c) could be used by grandparents, siblings, stepparents, or others who may not have acted as a "consistent caretaker" but can demonstrate a very close relationship with the child.

The definition of "substantial relationship with the child" is drawn, in part, from Minn. Stat. Ann. § 518E.301 (West 2016), which provides: "'close and substantial relationship' means a relationship in which a significant bond exists between a child and a nonparent."

At least 10 state supreme courts have held, as a matter of state or federal constitutional law, that harm to the child if visitation is denied must be shown before visitation may be granted to a grandparent. *Crockett v. Pastore*, 259 Conn. 240, 789 A.2d 453 (2002); *Sullivan v. Sapp*, 866 So. 2d 28 (Fla. 2004); *Doe v. Doe*, 116 Haw. 323, 172 P.3d 1067 (2007); *In re Marriage of Howard*, 661 N.W.2d 183, 191 (Iowa 2003); *Blixt v. Blixt*, 437 Mass. 649, 774 N.E.2d 1052 (2002); *Moriarty v. Bradt*, 177 N.J. 84, 827 A.2d 203 (2003), *cert. denied*, 540 U.S. 1177 (2004); *Craig v. Craig*, 253 P.3d 57, 64 (Okla. 2011); *Smallwood v. Mann*, 205 S.W.3d 358 (Tenn. 2006); *Jones v. Jones*, 359 P.3d 603, 612 (Utah 2015); *In re Parentage of C.A.M.A.*, 154 Wash. 2d 52, 109 P.3d 405 (2005). These cases did not involve nonparents who had acted as consistent caretakers. Some courts have rejected a universal requirement of showing harm. *See Hiller v. Fausey*, 588 Pa. 342, 365–66, 904 A.2d 875, 890 (2006) (holding “that requiring grandparents to demonstrate that the denial of visitation would result in harm in every [case under the Pennsylvania statute] would set the bar too high” and is not required under the statute); *Walker v. Blair*, 382 S.W.3d 862, 872 (Ky. 2012) (“showing harm to the child is not the only way that a grandparent can rebut the presumption in favor of the child’s parents”).

In addition, as of 2017, statutes in nine states require proof of “harm,” “detriment,” or similar proof before visitation is granted to a nonparent. *See* Ala. Code § 30-3-4.2 (2017) (harm); Ark. Code § 9-13-103(e) (2017) (harm); Conn. Gen. Stat. § 46b-59(b) (2017) (harm); Ga. Code § 19-7-3(c)(1) (harm); 750 Ill. Comp. Stat. 5/602.9(b)(3) (2017) (harm); Mich. Stat. § 722.27b(4)(b) (2017) (harm); Tenn. Stat. § 36-3-306(b)(1) (2017) (harm); Tex. Fam. Code § 153.432(c) (2017) (significantly impair the child’s physical health or emotional well-being); and Utah Code § 30-5a-103(2)(f) (2017) (detriment). Connecticut has both case law and statute requiring “harm.” (Citations above).

The U.S. Supreme Court in *Troxel* did not opine on the issue of whether the constitution requires a showing of harm or potential harm. In her plurality opinion, Justice O’Connor said:

Because we rest our decision on the sweeping breadth of [Washington Code] § 26.10.160(3) and the application of that broad, unlimited power in this case, we do not consider the primary constitutional question passed on by the Washington Supreme Court—whether the Due Process Clause requires all nonparental visitation statutes to include a showing of harm or potential harm to the child as a condition precedent to granting visitation. . . . Because much state-court adjudication in this context occurs on a case-by-case basis, we would be hesitant to hold that specific nonparental visitation statutes violate the Due Process Clause as a *per se* matter.

530 U.S. at 73.

#### 4. Case law

Courts have recognized that a grant of custody is a greater intrusion on parental rights than a grant of visitation. *See, e.g., McAllister v. McAllister*, 2010 ND 40, ¶ 23, 779 N.W.2d 652, 660. In claims for either custody or visitation, a nonparent with a substantial relationship with the child must show harm, but the focus of the evidence will vary. In general, a nonparent

seeking custody of a child in that circumstance must show that custody for the nonparent is necessary to prevent harm to the child from the parent having custody, while a nonparent seeking visitation will need to show that continued contact with the nonparent through visitation is necessary to prevent harm from loss of that relationship. *See, e.g., Fish v. Fish*, 285 Conn. 24, 47–48, 939 A.2d 1040, 1054 (2008). In contrast, a nonparent who is a consistent caretaker and seeks custody (or continued custody) of the child will need to prove that custody in the nonparent is in the child’s best interests. In all situations, proof by clear and convincing evidence is required.

In the years since *Troxel* was decided, state courts have generally held that a grandparent’s claim that the grandparent has a positive relationship with the grandchild is not sufficient in itself to justify an order of visitation over the objection of a parent. *See, e.g., Dorr v. Woodard*, 2016 ME 79, 140 A.3d 467 (2016); *Neal v. Lee*, 2000 Ok 90, 14 P.3d 547 (2000); *State Dept. of Social & Rehabilitative Servs v. Paillet*, 270 Kan. 646, 16 P.3d 962 (2001); *Flynn v. Henkel*, 227 Ill.2d 176, 880 N.E.2d 166 (2007). On the other hand, if the grandparent has raised a child for a few years, that can be the basis for granting visitation to the grandparent over the parents’ objection. *See, e.g., Rideout v. Riendeau*, 761 A.2d 291 (Me. 2000) (the grandparents had helped raise their grandchildren for the first seven years of the oldest grandchild’s life and for lesser periods for the younger grandchildren); *E.S. v. P.D.*, 8 N.Y.3d 150, 863 N.E.2d 100 (2007) (grandparents cared for children while the mother was dying of cancer).

An example of a substantial relationship between the child and nonparents that resulted in an order of visitation for the nonparents is *Moriarty v. Bradt*, 177 N.J. 84, 827 A.2d 203 (2003), *cert. denied*, 540 U.S. 1177 (2004). The New Jersey Supreme Court reinstated a trial court’s grant of visitation to maternal grandparents after the mother’s death “where the children [had] a very extensive relationship with the grandparents [, including] years where they were seeing the grandparents every other weekend.” 827 A.2d at 224. In that case, there was “a very bad relationship” between the father and the grandparents, and the father believed the grandparents were “evil.” *Id.* at 225. The trial court found the grandparents were appropriate, acted in good faith, and were an important link to the mother’s side of the family. The visitation ordered was: “(1) monthly visitation alternating between a five-hour day visit one month and a visit with two overnights the next month and (2) one extended visitation period in July or August. The court specifically noted that the reason it ordered visitation was its reliance on the grandparents’ expert who opined that such visitation was ‘to protect the children from the harm that would befall them if they were alienated from their grandparents.’” *Id.* at 208.

Another example of a “substantial relationship” case in which a nonparent was granted visitation is *Hiller v. Fausey*, 588 Pa. 342, 344–45, 904 A.2d 875, 877 (2006). In *Hiller*, the court said: “Prior to Mother’s death, Child had frequent contact with Grandmother, especially during the last two years of his mother’s illness, when they saw each other on an almost daily basis. Grandmother often transported Child to and from school and cared for him when Mother attended doctors’ appointments or was too ill to provide care. Further, Grandmother took on the task of preparing Child for Mother’s death. The trial court found credible the testimony that Child and Grandmother enjoyed spending time together, showed a great deal of affection toward one another, and shared a very close relationship.” The Pennsylvania Supreme Court affirmed

visitation [referred to in Pennsylvania as ‘partial custody’] of one weekend per month and one week each summer.

Examples of cases in which a nonparent was able to obtain custody (or guardianship) of a child over opposition of a parent include the following fact pattern: the child had been living with a parent and a half-sibling for a substantial period of time; the other parent was minimally involved in the child’s life; the custodial parent died; the noncustodial parent wanted custody of the child; the child wanted to remain with the half-sibling, who by then was an adult. *See In re Guardianship of Nicholas P.*, 27 A.3d 653 (N.H. 2011) (affirming guardianship for the half-sibling); *In Interest of Child B.B.O.*, 277 P.3d 818 (Colo. 2012) (holding the half-sibling had standing to seek “primary allocation of parental responsibilities”).

#### 5. *Number of persons who may seek custody or visitation*

This act does not set a maximum number of nonparents who may obtain rights of custody or visitation. In most cases, however, the number of actively involved persons with a valid claim for custody or visitation will be small. As courts sort through complex family structures, the number of persons with potential claims for custody or visitation is a factor that should be considered—but without applying a fixed rule about how many persons with rights to time with the child is too many. The focus needs to remain on the best interest of the child.

### **SECTION 5. PRESUMPTION FOR PARENTAL DECISION.**

(a) In an initial proceeding under this [act], a decision by a parent regarding a request for custody or visitation by a nonparent is presumed to be in the best interest of the child.

(b) Subject to Section 15, a nonparent has the burden to rebut the presumption under subsection (a) by clear-and-convincing evidence of the facts required by Section 4(a). Proof of unfitness of a parent is not required to rebut the presumption under subsection (a).

#### **Comment**

The presumption and burden of proof contained in this section recognize the superior right of parents to custody of their children in custody disputes with nonparents, and also provide that the superior right or presumption can be overcome.

The presumption and burden of proof are designed to meet the requirements of *Troxel*. In her plurality opinion, Justice O’Connor emphasized that the Washington statute “contains no requirement that a court accord the parent’s decision any presumption of validity or any weight whatsoever.” 530 U.S. at 67. “The Superior Court’s order was not founded on any special factors that might justify the State’s interference with Granville’s fundamental right to make decisions concerning the rearing of her two daughters.” *Id.* at 68.



Subsection (a) does not restrict the bases on which a parent makes a decision regarding a request for custody or visitation by a nonparent. Section 12(7) lists among the factors the court shall consider in determining whether an order of custody or visitation to a nonparent is in the best interest of the child: “any other factor affecting the best interest of the child.” One such “other factor” would be the basis for the parent’s decision.

The Colorado Supreme Court has held that the burden of proof in a grandparent visitation case is clear-and-convincing evidence—even though the state’s grandparent visitation statute did not explicitly require it. In *In re Adoption of C.A.*, 137 P.3d 318, 328 (Colo. 2006), the court held under principles of Due Process that “[t]he grandparent bears the ultimate burden of proving by clear and convincing evidence that the parental determination is not in the child’s best interest and the visitation schedule grandparent seeks is in the child’s best interest.” See also *Walker v. Blair*, 382 S.W.3d 862, 871 (Ky. 2012); *Polasek v. Omura*, 2006 MT 103, ¶ 15, 332 Mont. 157, 162, 136 P.3d 519, 523 (2006); *Jones v. Jones*, 2005 PA Super 337, ¶ 12, 884 A.2d 915, 918 (2005), *appeal denied* (Pa. 2006) (holding that “convincing reasons” are required).

The nonparent visitation or custody statutes of 22 states and the District of Columbia (as of 2017) specify that clear-and-convincing evidence is the burden of proof for all or part of the statutory claim. Ala. Code § 31-3-4.2; Ct. Gen. Stat. § 46b-59(b); D.C. Code § 16-831.03(b); Ga. Code § 19-7-3(c); Idaho Code § 32-1704(6); Ind. Code 31-17-2-8.5(a); Iowa Code § 600C.1; Ky. Rev. Stat. §§ 403.270 & 403.280; Maine Rev. Stat. tit. 19-A, § 1891(3); Mich. Comp. Laws § 722.25(1); Minn. Stat. 257C.03; Mont. Code § 40-4-228(2); Nev. Rev. Stat. § 125C.050(4); N.H. Rev. Stat. 461-A:6(II); Neb. Stat. § 43-1802(2); 43 Okla. Stat. 109.109.4; Or. Stat. § 109.119; Pa. Stat. Ann. tit. 23, § 5327(b) (2015); R.I. Gen. Laws § 15-5-24.3(a)(2)(v); S.C. Code § 63-15-60; Utah Code § 30-5a-103(2); Va. Code § 20-124.2(B); W.Va. Code § 48-10-702(b).

As stated in Black’s Law Dictionary, “The burden of proof includes both the burden of persuasion and the burden of production.” Black’s Law Dictionary (10<sup>th</sup> ed. 2014).

If a child’s parents disagree about a nonparent’s request for custody of or visitation with a child, the court should consider each parent’s wishes in determining whether the nonparent has rebutted the presumption established by this Section. In *In re Marriage of Friedman & Roels*, 244 Ariz. 111, 418 P.3d 884, 886 (2018), the court held that “when two legal parents disagree about whether visitation is in their child’s best interests, both parents’ opinions are entitled to special weight.” The court further clarified that “under those circumstances, neither parent is entitled to a presumption in his or her favor and the parents’ conflicting opinions must give way to the court’s finding on whether visitation is in the child’s best interests.” *Id.*

The term “initial” in subsection (a) is the same as used in the Uniform Child Custody Jurisdiction and Enforcement Act, Section 201(a) (1997) (“initial child-custody determination”), and the term should have the same meaning in this act as in the UCCJEA.

## **SECTION 6. COMMENCEMENT OF PROCEEDING; JURISDICTION. A**

nonparent may commence a proceeding by filing a [petition] under Section 7 in the court having jurisdiction to determine custody or visitation under the [Uniform Child Custody Jurisdiction and

Enforcement Act].

***Legislative Note:*** *As of 2018, 51 jurisdictions have enacted the Uniform Child Custody Jurisdiction and Enforcement Act. Massachusetts has enacted the Uniform Child Custody Jurisdiction Act. In those jurisdictions, the applicable statute should be identified. If a jurisdiction has not enacted either statute, the jurisdiction should cite its standard for determining the court having jurisdiction.*

### **Comment**

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (1997) has been adopted in 49 states. As of September 2018, Massachusetts is the only state that has not adopted the UCCJEA, although Massachusetts did adopt the Uniform Child Custody Jurisdiction Act (UCCJA).

If at the time a petition is filed under this act, an action for custody or visitation is already pending regarding the same child, the petition should be filed as part of the pending action (assuming the pending action is filed in compliance with the UCCJEA).

### **SECTION 7. VERIFIED [PETITION].**

(a) A nonparent shall verify a [petition] for custody or visitation under penalty of perjury and allege facts showing that the nonparent:

(1) meets the requirements of a consistent caretaker of the child; or

(2) has a substantial relationship with the child and denial of custody or visitation would result in harm to the child.

(b) A [petition] under subsection (a) must state the relief sought and allege specific facts showing:

(1) the duration and nature of the relationship between the nonparent and the child, including the period, if any, the nonparent lived with the child and the care provided;

(2) the content of any agreement between the parties to the proceeding regarding care of the child and custody of or visitation or other contact with the child;

(3) a description of any previous attempt by the nonparent to obtain custody of or visitation or other contact with the child;

(4) the extent to which the parent is willing to permit the nonparent to have custody of or visitation or other contact with the child;

(5) information about compensation or expectation of compensation provided to the nonparent in exchange for care of the child;

(6) information required to establish the jurisdiction of the court under the [Uniform Child Custody Jurisdiction and Enforcement Act];

(7) the reason the requested custody or visitation is in the best interest of the child, applying the factors in Section 12; and

(8) if the nonparent alleges a substantial relationship with the child, the reason denial of custody or visitation to the nonparent would result in harm to the child.

(c) If an agreement described in subsection (b)(2) is in a record, the nonparent shall attach a copy of the agreement to the [petition].

***Legislative Note:*** *As of 2018, 51 jurisdictions have enacted the Uniform Child Custody Jurisdiction and Enforcement Act. Massachusetts has enacted the Uniform Child Custody Jurisdiction Act. In those jurisdictions, the applicable statute should be identified. If a jurisdiction has not enacted either statute, the jurisdiction should cite its standard for determining the court having jurisdiction.*

### **Comment**

Requiring verified pleading and specificity in pleadings is intended to reduce actions that are not meritorious and facilitate disposition of nonmeritorious cases by motions to dismiss or for summary judgment.

Regarding subsection (b)(3), the description of any previous attempt to obtain custody, visitation, or other contact with the child should include oral requests as well as written requests.

Among the facts required in the pleading is the information required to establish jurisdiction by Section 209 of the Uniform Child Custody Jurisdiction and Enforcement Act—a section titled “Information to be Submitted to the Court.” The section provides, in part:

“(a) [Subject to [local law providing for the confidentiality of procedures, addresses, and other identifying information], in] a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably

ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child-custody determination, if any;

(2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; . . .

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other State that could affect the current proceeding.”

If a child will receive financial benefits as a result of being in the custody of a nonparent, the nonparent may wish to specify those benefits in the petition. Such benefits might include Social Security benefits and health insurance.

## **SECTION 8. SUFFICIENCY OF [PETITION].**

(a) The court shall determine based on the [petition] under Section 7 whether the nonparent has pleaded a prima facie case that the nonparent:

(1) is a consistent caretaker; or

(2) has a substantial relationship with the child and denial of custody or visitation would result in harm to the child.

(b) If the court determines under subsection (a) that the nonparent has not pleaded a prima facie case, the court shall dismiss the [petition].

### **Comment**

Requiring the court to determine whether a nonparent has pled a prima facie case protects the interests of parents and filters out cases in which the petitioner does not have a meritorious claim, while at the same time allowing the opportunity to preserve close and significant relationships between a child and nonparent.

To reduce the burden of litigation, a parent may be able to expedite disposition of a case by using a motion to dismiss or for summary judgment.

In her plurality opinion in *Troxel*, Justice O'Connor stated: "As Justice KENNEDY recognizes, the burden of litigating a domestic relations proceeding can itself be 'so disruptive of the parent-child relationship that the constitutional right of a custodial parent to make certain basic determinations for the child's welfare becomes implicated.'" 530 U.S. at 75, *quoting id.* at 101 (Kennedy, J., dissenting). *See also D.P. v. G.J.P.*, 636 Pa. 574, 590, 146 A.3d 204, 213 (2016) (stating that bifurcating proceedings with determination of standing before the merits "serves an important screening function in terms of protecting parental rights"); *Rideout v. Riendeau*, 2000 ME 198, ¶ 30, 761 A.2d 291, 302 (stating that determination of standing before full litigation of the claim "provides protection against the expense, stress, and pain of litigation").

**SECTION 9. NOTICE.** On commencement of a proceeding, the nonparent shall give notice to each:

- (1) parent of the child who is the subject of the proceeding;
- (2) person having custody of the child;
- (3) individual having court-ordered visitation with the child; and
- (4) attorney, guardian ad litem, or similar representative appointed for the child.

#### **Comment**

Elements of the notice provision are similar to the notice provision of the Uniform Child Custody Jurisdiction and Enforcement Act, § 205(a) (1997) ("Before a child-custody determination is made under this [Act], notice and an opportunity to be heard . . . must be given to all persons entitled to notice under the law of this State as in child custody proceedings between residents of this State, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child"). The methods by which notice is given are governed by state and local rules. The term "person" is used in paragraph (2) because a government unit or other institution may have "custody" of a child. The term "individual" is used in paragraph (3) because only a natural person (an "individual") may have visitation with a child. Notice must be given only to individuals with "court-ordered" visitation, since determining the identity of individuals who might visit a child without a court order would be difficult if not impossible.

#### **SECTION 10. APPOINTMENT; INTERVIEW OF CHILD; COURT SERVICES.**

In the manner and to the extent authorized by law of this state in a family law proceeding other than under this [act], the court may:



- (1) appoint an attorney, guardian ad litem, or similar representative for the child;
- (2) interview the child;
- (3) require the parties to participate in mediation or another form of alternative dispute resolution, but a party who has been the victim of domestic violence, sexual assault, stalking, or other crime against the individual by another party to the proceeding may not be required to participate[ unless reasonable procedures are in place to protect the party from a risk of harm, harassment, or intimidation];
- (4) order an evaluation, investigation, or other assessment of the child’s circumstances and the effect on the child of ordering or denying the requested custody or visitation or modifying a custody or visitation order; and
- (5) allocate payment between the parties of a fee for a service ordered under this section.

***Legislative Note:*** The brackets in paragraph (3) should be removed and the phrase “unless reasonable procedures are in place to protect the party from a risk of harm, harassment, or intimidation” should be included in the paragraph in a state that requires mediation of custody and visitation cases, including a case involving an allegation of domestic violence. If a state does not require mediation in those circumstances, delete the phrase and the brackets.

### **Comment**

A variety of personnel and court services may assist the court in making decisions regarding nonparental custody and visitation. This act does not mandate the creation of new services in jurisdictions where no similar services exist, but the act does make such services available if the services already are utilized in other family law proceedings.

Regarding paragraph (1), the court has the power to appoint a representative for a child, such as an attorney, a guardian ad litem, or a similar representative.

The evaluations referenced in subsection (4) include mental health evaluations and evaluations of parenting skills.

In paragraph (3), the phrase “[unless] reasonable procedures are in place to protect the party from risk of harm, harassment, or intimidation” is the same as used in the Uniform Family Law Arbitration Act, § 12(b)(3) (2016). Among the protections that might be used is “shuttle mediation,” in which the parties to mediation are not in the same room with each other and the mediator shuttles between rooms.

**SECTION 11. EMERGENCY ORDER.** On finding that a party or a child who is the subject of a proceeding is in danger of imminent harm, the court may expedite the proceeding and issue an emergency order.

#### **Comment**

This section makes explicit that the court has the power to enter an emergency order, as well as a final order. Generally, other provisions of the act—including the requirements for pleadings, burden of proof, presumptions, and factors considered—should apply to the issuance of an emergency order in addition to a final order.

**SECTION 12. BEST INTEREST OF CHILD.** In determining whether an order of custody or visitation to a nonparent is in the best interest of a child, the court shall consider:

- (1) the nature and extent of the relationship between the child and the parent;
- (2) the nature and extent of the relationship between the child and the nonparent;
- (3) the views of the child, taking into account the age and maturity of the child;
- (4) past or present conduct by a party, or individual living with a party, which poses a risk to the physical, emotional, or psychological well-being of the child;
- (5) the likely impact of the requested order on the relationship between the child and the parent;
- (6) the applicable factors in [cite to this state’s law other than this [act] pertaining to factors considered in custody or visitation disputes between parents]; and
- (7) any other factor affecting the best interest of the child.

***Legislative Note:*** *The applicable factors in paragraph (6) include factors used to decide “parenting time” or a similar term used in the state’s statutes.*

#### **Comment**

The nonparent visitation statutes of most states, as they existed in 2017, list factors a court should consider (other than best interest of the child). This section reflects factors that have been used by the states. The second factor—the nature and extent of the relationship between the child and nonparent—may include consideration of whether there is a family

relationship between the child and the nonparent.

**[SECTION 13. PRESUMPTION ARISING FROM CHILD ABUSE, CHILD NEGLECT, DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING.**

(a) The court shall presume that ordering custody or visitation to a nonparent is not in the best interest of the child if the court finds that the nonparent, or an individual living with the nonparent, has committed child abuse, child neglect, domestic violence, sexual assault, stalking, or comparable conduct in violation of law of this state or another state.

(b) A finding that conduct specified in subsection (a) occurred must be based on:

(1) evidence of a conviction in a criminal proceeding or final judgment in a civil proceeding; or

(2) proof by a preponderance of the evidence.

(c) A nonparent may rebut the presumption under subsection (a) by proving by clear-and-convincing evidence that ordering custody or visitation to the nonparent will not endanger the health, safety, or welfare of the child.]

***Legislative Note:*** This section provides a presumption against granting custody or visitation to a nonparent if the nonparent or a person living with the nonparent has committed child abuse, child neglect, domestic violence, sexual assault, stalking, or comparable conduct. This goal can be accomplished by enacting Section 13 or amending existing state law concerning presumptions and rebuttal of presumptions applicable to a dispute between parents. The same types of presumptions and criteria for rebuttal of presumptions would apply to a nonparent seeking custody or visitation.

**Comment**

This section provides protection to victims or potential victims of domestic violence by providing a rebuttable presumption that custody or visitation should not be granted to a nonparent if the nonparent, or an individual living with the nonparent, has committed an act of domestic violence or related offenses.

In disputes between parents, approximately half the states apply a rebuttable presumption against granting joint physical custody or legal custody to a parent who perpetrated domestic violence. National Council of Juvenile and Family Court Judges, Rebuttable Presumption States

(2013), available online at: <http://www.ncjfcj.org/sites/default/files/chart-rebuttable-presumption.pdf>.

The Legislative Note gives drafters the option of adapting existing state law concerning presumptions and rebuttal of presumptions applicable to disputes between parents to disputes between nonparents and parents. Such state laws may provide an alternate list of offenses that give rise to presumptions, provide procedures for utilizing the presumptions, and establish criteria for rebutting the presumptions.

#### **SECTION 14. ORDER OF CUSTODY OR VISITATION.**

(a) If a nonparent seeks custody, the court may order:

- (1) sole or primary custody to the nonparent;
- (2) [joint custody] to the nonparent and a parent or other party; or
- (3) visitation to the nonparent.

(b) If a nonparent seeks visitation only, the court may not order custody to the nonparent seeking visitation.

**Legislative Note:** *If state law uses an alternative term, such as shared custody, for joint custody, the alternative term should be used in subsection (a)(2).*

#### **Comment**

This section specifies the types of orders a court can enter based on the relief sought. A nonparent who only seeks custody may be granted visitation since that is less of an intrusion on parental rights than is custody. While evidence in a specific case may not be sufficient to prove that a nonparent should be granted custody, it may nevertheless be sufficient to prove that an award of visitation is appropriate. However, a nonparent who seeks only visitation may not be granted custody since that would be a greater intrusion on parental rights which should not be granted without proper notice and proof.

Joint custody is among the options for custody arrangements involving nonparents. *See, e.g., Darby v. Combs*, 229 So. 3d 108 (Miss. 2017) (joint custody given to the child's maternal great-grandparents and paternal grandmother when both parents unfit); *McCormic v. Rider*, 27 So. 3d 277, 279 (La. 2010) (a "tripartite custody arrangement" between the grandmother, who had adopted the child, but was no longer able to care for the child by herself, and the former parents who had consented to the adoption a few years earlier).

#### **SECTION 15. MODIFICATION OF CUSTODY OR VISITATION.**

(a) On [motion], and subject to subsections (c) and (d), the court may modify a final

custody or visitation order under Section 14 on a showing by a preponderance of the evidence that:

(1) a [substantial and continuing] change in circumstance has occurred relevant to the custody of or visitation with the child; and

(2) modification is in the best interest of the child.

(b) Except as otherwise provided in subsections (c) and (d), if a nonparent has rebutted the presumption under Section 5 in an initial proceeding, the presumption remains rebutted.

(c) If a [motion] is filed to modify an order of visitation under this [act] to obtain an order of custody, the nonparent must rebut the presumption under Section 5.

(d) On agreement of the parties, the court may modify a custody or visitation order, unless the court finds that the agreement is not in the best interest of the child.

***Legislative Note:*** In subsection (a)(1), a state should use the terms in state law governing modification of custody or parenting time in proceedings between parents.

### **Comment**

Subsection (a) reflects the standard for modification of custody or visitation that is applied in most states: a showing of substantial and continuing change of circumstance, coupled with a showing that modification is in the best interest of the child. Under this approach, a custody or visitation order in favor of a nonparent generally would continue unless the party seeking modification established that a substantial change of circumstance had occurred since the order was entered and that the requested modification was in the best interest of the child.

Under subsection (b), if a nonparent obtained an order of visitation and later wishes to modify the order of visitation (such as a change in visitation schedule), the nonparent does not need to rebut the presumption in favor of the parent in the modification proceeding since the presumption already was rebutted in the earlier proceeding. The nonparent only needs to show the modification is in the best interest of the child. If, however, a nonparent who obtained an order of visitation wishes to obtain an order of custody, subsection (c) requires the nonparent to rebut the presumption under Section 5 since the order of custody would be a significantly greater intrusion on the parent's interest than the order of visitation. In addition, if a nonparent unsuccessfully sought visitation or custody, and the nonparent later sought custody or visitation again, the nonparent would still have to overcome the presumption under Section 5.

Among the changes in circumstance in which a parent might be able to modify an order of custody originally entered in favor of a nonparent would be when a parent had successfully completed a drug rehabilitation program and sought to have the child returned to parental custody. In that event, the parent would have the burden of proof, including showing that it is in the best interest of the child to make the modification.

**[SECTION 16. FINDINGS OF FACT AND CONCLUSIONS OF LAW.** When issuing a final order of custody or visitation, the court shall make findings of fact and conclusions of law on the record in support of its decision or, if the [petition] is dismissed under Section 8, state the reasons for the dismissal.]

***Legislative Note:** A state should omit this section if the requirement or lack of requirement to make findings of fact and conclusions of law is governed by court rule rather than statute or the state requires findings of fact and conclusions of law in all proceedings involving family law.*

#### **Comment**

Requiring findings of fact and conclusions of law has several benefits. The fact-finding process structures the court's review so that the court is less likely to overlook important facts or apply bias in reaching its decision. Careful fact-finding by the trial court also facilitates appellate review and may assist the parties in accepting the decision. At least 20 states and the District of Columbia require the trial court to make findings of fact in custody cases.

**SECTION 17. EFFECT OF ADOPTION OF CHILD BY STEPPARENT OR OTHER RELATIVE.** If a child is adopted by a stepparent or other relative of the child, an order of custody or visitation to a nonparent remains in effect and is not changed by the adoption unless modified, after notice to all parties to the custody or visitation proceeding, by the court that entered the order or the court that granted the adoption.

#### **Comment**

As of 2017, state laws regarding visitation by nonparents have dealt with the effect of a child's adoption in different ways, including: (1) providing that the visitation order survives adoption by a relative; (2) providing that nonparents can seek visitation following adoption by a relative; and (3) providing that the visitation provision does not apply if the child is adopted by a nonrelative. While an adoption decree would generally supersede any prior custody orders, this section protects a nonparent's right to visit a child after an adoption by a relative unless the visitation order is modified.



**SECTION 18. EXPENSE OF FACILITATING VISITATION.** The court may issue an order allocating responsibility between the parties for payment of the expense of facilitating visitation, including the expense of transportation.

**Comment**

This section permits a court to allocate responsibility for paying costs of facilitating visitation, including the cost of transportation. Cost of transportation could include an escort for a child. In most cases in which a nonparent is exercising visitation, the nonparent would pay the associated costs.

**SECTION 19. LAW GOVERNING CHILD SUPPORT.** The authority of a court to award child support payable to or by a nonparent is governed by law of this state other than this [act].

**Comment**

A nonparent granted custody of a child may wish to obtain child support from a parent or apply for benefits from government or private programs to help a child. Conversely, a nonparent may face a request for child support. Both the nonparent's right to seek support or apply for benefits, and the nonparent's potential liability for support are governed by law other than this act.

**[SECTION 20. EQUITABLE RIGHT OR REMEDY.** This [act] does not preclude the recognition of an equitable right or remedy for [a de facto parent] under law of this state other than this [act].]

***Legislative Note:*** *If state law treats a de facto parent as a nonparent, but recognizes on equitable grounds greater rights for the de facto parent than those established by this act, the state should enact this section.*

*If state law refers to "psychological parent" or an individual acting "in loco parentis" rather than "de facto parent," the alternative term should be substituted.*

**Comment**

The law regarding families is more dynamic than many areas of law. This act is not intended to preclude the development of additional equitable rights and remedies in this area or to nullify previously recognized equitable rights.

The Uniform Parentage Act (2017) recognizes legal parentage for an individual who meets the criteria for “de facto parent.” The definition of “de facto parent” under equitable principles may be different from the definition in the Uniform Parentage Act.

**SECTION 21. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**SECTION 22. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

**SECTION 23. TRANSITIONAL PROVISION.** This [act] applies to a proceeding:

- (1) commenced before [the effective date of this [act]] in which a final order has not been entered; and
- (2) commenced on or after [the effective date of this [act]].

**[SECTION 24. SEVERABILITY.** If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

***Legislative Note:*** Include this section only if this state lacks a general severability statute or a decision by the highest court of this state stating a general rule of severability.

**SECTION 25. REPEALS; CONFORMING AMENDMENTS.**

(a) . . . .

(b) . . . .

(c) . . . .

**Legislative Note:** *When enacting this act, a state should repeal: (1) general statutes, if any, regarding visitation for a grandparent, stepparent, sibling, and other nonparent; and (2) statutes, if any, regarding a custody dispute between a nonparent and a parent.*

*When enacting this act, a state should not repeal: (1) the state's Uniform Deployed Parents Custody and Visitation Act or other state statute dealing with custody of and visitation with a child of a deployed parent; (2) a statute regarding guardianship of a minor; (3) a statute regarding a child in custody of the state, including a child in foster care; or (4) a statute providing a de facto parent with the rights of a legal parent.*

**SECTION 26. EFFECTIVE DATE.** This [act] takes effect . . . .

**Peterson and Peterson and Hayworth and Mesillas;  
Washington County Circuit Court Case No. 20DR10354  
Hearing Date: March 4, 2021  
Judge James Fun's Findings Re: Granting and Upholding Grandparents' Temporary  
Protective Order of Restraint (8:46:32 to 8:50:23)**

Based on the documents that were filed with the Court together with the argument of counsel, the temporary protective order that was entered by the court remains in effect for all the reasons that Mr. Peterson expressed this morning on the record along with these conclusions by the Court.

As counsel has articulately pointed out, 107 does reference 109 in terms of a party and likewise 109, the third party custody and parenting time rights statute does not directly speak to temporary protective orders of restraint. Of course, as everybody knows, it speaks to temporary issues of custody and parenting time. And in the court's view the temporary protective order of restraint, although not directly referenced, must be a vehicle available to the court, because really all it does is ask the court to make these determinations.

If documents are filed that establish a 90-day routine involving third parties, that routine should be maintained pending further hearing. It does not address issues of temporary custody or parenting time and it does not, in my view, infringe upon the *Troxel* rights of a parent. All it does is ask that whatever routine that was in effect continue until further hearing and order by the court. And of course as Mr. Kramer points out, it makes perfect sense because 109 directly references temporary custody and parenting time and we all know that at such a hearing of course, the third parties would be obligated to present some evidence to persuade the court that a natural parent's right should be burdened when considering temporary custody or parenting time even on a temporary basis.

Lastly but not leastly important of all, I think that without the availability of a temporary protective order of restraint in such matters that there is really the possibility that a biological parent could use the process offensively to disadvantage third parties in terms of not allowing enough time or disadvantaging third parties by stretching out the time such that prior relationship could not be established, which would obviously be inequitable and unjust. Having said those things, this circumstance, like any other temporary protective order of restraint matter, allows a parent to object and allows the parent to ask for a hearing to contest the temporary protective order of restraint and be heard on that. And so, in summary, by issuing a temporary protective order of restraint the court does not conclude that there is an unduly burdensome restriction on a biological parent's custodial rights. There are procedural due process opportunities available to contest such actions like this temporary protective order of restraint.

## COMPARISON - GUARDIANSHIP VS. PSYCHOLOGICAL PARENT STATUTES

ISSUE	GUARDIANSHIP	PSYCHOLOGICAL PARENT	NOTES
Can you seek Custody?	Yes ORS 125.315	Yes ORS 109.119(3)(a)	
Relatives Preferred?	Yes ORS 125.200	No (Except in Juvenile Court)	
Can you seek Visitation/Contact?	Maybe ORS 125.315	Yes ORS 109.119(3)(b)	Court has authority as an incident of guardianship
Prior Custody or Relationship Status Required?	No	Yes ORS 109.119(1)	<i>Troxel</i> presumption and ORS 109.119 rebuttal factors apply if a legal parent object to a guardianship - See <i>Burk v. Hall</i> , 35 Or App 113 (2003)
Ex Parte Status Quo Order Possible?	No (But see temporary custody below)	Maybe ORS 109.119(3)(a), ORS 109.119(3)(b), ORS 107.097	
Temporary Custody Possible?	Yes ORS 125.600	Yes ORS 109.119(3)(a)	Guardianship temporary fiduciary requires proof that is an immediate and serious danger to the life or health of the child.
Can Custody Evaluation Be Ordered?	Maybe*	Yes ORS 109.119(7)(a)	Guardianship Court can order a visitor, but it is not clear that the court's authority extends to ordering a custody evaluation.

<b>Can Child Support Be Ordered?</b>	Yes ORS 125.025(3)(k)	No statutory authorization, but see ORS 109.010	Custodian/Guardian Can Seek to be Representative Payee of Social Security Benefits For Child
<b>Can Attorney Fees Be Awarded?</b>	No	Yes ORS 109.119(7)(b)	
<b>Standard of Proof Required</b>	Clear and Convincing ORS 125.305	Preponderance ORS 109.119(3)(a)	
<b>Can Order Be Modified/Terminated?</b>	Yes ORS 125.225	Yes ORS 107.135(a) Also see ORS 109.119(2)(c)	Change of Circumstances likely required for modifications of ORS 109.119 Custody Judgments; Only Best Interests required for termination of Guardianship
<b>Post Judgment Obligations</b>	Annual Report Required ORS 125.325; Mult. Co. SLR 9.075(4)	None	



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SPECIAL ISSUE: **TROXEL** V. GRANVILLE AND ITS IMPLICATIONS FOR FAMILIES AND PRACTICE: A MULTIDISCIPLINARY SYMPOSIUM: Response to **Troxel** v. Granville: Implications of **Attachment** Theory for Judicial Decisions Regarding Custody and Third-Party Visitation

**NAME:** Shelley A. Riggs

**BIO:** Author's Note: The editorial assistance of Michael Gottlieb, Ph.D., with earlier drafts of this article has been greatly appreciated.

Shelley A. Riggs, Ph.D., is a licensed psychologist and an assistant professor of psychology at the University of North Texas in Denton, Texas. Her research focuses on **attachment** processes in the family system and their implications for mental health and therapeutic intervention. She is a certified coder of the Adult **Attachment** Interview and has received extensive training in the administration and coding of the Strange Situation.

**SUMMARY:**

... The American legal system is under the impression that its activities and decisions are geared toward safeguarding children after divorce. ... Children can and do form **attachment** relationships with a variety of consistent caregivers, including a parent, grandparent, older sibling, aunt or uncle, adoptive parent, foster parent, stepparent, or an unmarried parent's cohabiting partner. ... Assuming that either one of the **Troxels** was an alternative **attachment** figure for their granddaughters, the act of substantially reducing their regularly scheduled visits only 5 months after the father's death may have compounded the children's sense of loss and consequently been unnecessarily harmful to their emotional well-being. ... Additional research grounded in **attachment** theory is sorely needed in the area of divorce, custody decisions, and alternative **attachment** figures. ... Effects on infant-mother **attachment** of mother's unresolved loss of an **attachment** figure or other traumatic experience. ... *The Berkeley Adult Attachment Interview*. Unpublished protocol, Department of Psychology, University of California, Berkeley. ... Disorganized infant **attachment** classification and maternal psychosocial problems as predictors of hostile-aggressive behavior in the preschool classroom. ... The relationship of the parental preference guideline to **attachment** behavior in young children of divorce. ...

**HIGHLIGHT:** In today's world, children grow up in families that take many different forms, and society can no longer consider the traditional nuclear family the normal or optimal family structure. As a result, in cases of divorce, courts are increasingly relying on the results of psychological research when awarding custody and visitation privileges. In contrast to recent trends, however, the U.S. Supreme Court's majority decision in **Troxel** v. *Granville* favors biological parents' rights over the psychological interests of children. This article discusses the potential contributions of **attachment** theory to the contest between biology and psychology in America's divorce courts.

**TEXT:**

[\*39] The American legal system is under the impression that its activities and decisions are geared toward safeguarding children after divorce. But I have rarely met a child who felt protected by this system. On the contrary, most children would be very surprised to hear that any judge, attorney, mediator, or anyone else had their interests at heart when setting up court-ordered visiting.

--Wallerstein, Lewis, and Blakeslee

(2000, p. 181)

Prior to the 17th and 18th centuries, Western societies did not provide special consideration or protection for children. As the property of their parents, children could be forced to labor in unhealthy conditions, sold into servitude, or brutally beaten without government interference (deMause, 1974; Kean, 1937). The modern conceptualization of childhood evolved only gradually as society began to recognize that children are vulnerable and unique individuals, deserving of guidance and protection. In the past century, "The historical trend has been toward a greater appreciation of the uniqueness of childhood, the importance of parenting, and the need for greater protection of the rights and well-being of children" (Sigelman, 1999, pp. 5-6). The 20th century also saw an unprecedented rise in the diversity of attitudes and acceptable behavior in many domains of life, including marriage and family relations. Far from being atypical, divorce is now a normative event in American family life (Emery & Forehand, 1994). In challenging our previous definitions of what is normal or best for children, the current high rates of divorce in this country underscore the dire need for social institutions, such as the law, to recognize and adapt to significant historical and social changes.

In contemporary U.S. society, the legal system has mandated the protection and prevention of harm to children, and in matters of divorce that their best interests be the primary consideration. The psychological literature unquestionably has contributed important insights to judicial efforts to clarify and specify precisely what constitutes harm and best interests. Developmental psychologists have investigated a wide array of research questions related to children's growth and have identified a number of risk factors and conditions that promote [\*40] resiliency and positive adjustment. With the introduction of concepts such as bonding and psychological parent (Goldstein, Freud, & Solnit, 1979), the family court's traditional preference for biological relatedness and protection of parental rights in custody decisions has shifted during the past 20 years to a growing recognition that the maintenance of **attachment** bonds is crucial to the healthy development of children (Rutter & O'Connor, 1999). Laws enacted in many states have, in fact, quite clearly placed a child's presumed best interests before the rights of biological parents (Waters & Noyes, 1983-1984).

Despite the apparent trend in state and local courts to acknowledge and award visitation to **attachment** figures other than parents (Derdeyn & Jennings, 1998), the U.S. Supreme Court in the recent *Troxel v. Granville* (2000) case upheld the Washington State Supreme Court's decision to deny a request for increased visitation by paternal grandparents. Rather than simply striking down the relevant Washington statute as too broad, the Supreme Court majority went further and returned to the traditional position that the right of biological parents to rear offspring in any way they choose surpasses the interests of children in maintaining long-established **attachments** with other significant figures in their lives (e.g., adoptive or foster parents, loving stepparents, grandparents, adult siblings, etc.). In doing so, the court reversed the trend to consider bonding and psychological parenting as primary issues in custody or visitation decisions and disregarded much of the current research literature concerning the importance of multiple **attachment** relationships, whether biological or nonbiological. The *Troxel* decision essentially ignores the right of children to have their best interests protected and may pave the way for future decisions that disrupt beneficial, resilience-promoting relationships, thus hindering children's healthy development.

## **ATTACHMENT THEORY**

Studies have repeatedly demonstrated that the quality of parental and family functioning and the quality of the caregiver-child relationship are among the strongest predictors of children's adjustment to parental separation and divorce (Buchanan, Maccoby, & Dornbusch, 1992, 1996; Hetherington, Bridges, & Insabella, 1998; Johnston, 1995; Wallerstein, 1998). **Attachment** theory (Bowlby, 1969, 1973, 1980) is particularly well-suited to address questions

regarding children's well-being in the face of parental divorce and court-ordered custody or visitation privileges because it is largely based on the salient themes of parent-child **attachment** and separation/loss. Moreover, a vast body of well-designed scientific research is available, documenting many core concepts of **attachment** theory. Bowlby's ideas and the scientific evidence supporting them can usefully inform court decisions regarding domestic relations matters, such as custody disputes and third-party visitation privileges, which have substantial consequences on children's present and future well-being.

## CORE PRINCIPLES AND CLASSIFICATIONS

Drawing on ideas from ethology and evolutionary biology, as well as his clinical observations of the intense distress experienced by children separated from their parents, Bowlby (1973, 1980) believed that humans, like other species, were biologically predisposed toward relational experiences that satisfied an instinctual need for security. The biological function of the **attachment** bond between parent and child is protection and contributes to survival of the child and hence the species (Bowlby, 1980, 1982, 1988). **Attachment** is an affectional bond that is a "relatively long-enduring tie in which the partner is important as a unique individual, [\*41] interchangeable with none other," characterized by "a need to maintain proximity, distress upon inexplicable separation, pleasure or joy upon reunion, and grief at loss" (Ainsworth, 1991, p. 38). By providing sensitive and consistently reliable care, parents foster a sense of security in the child, which in turn promotes independent exploration and the development of positive mental representations of others as available and the self as worthy of care. Conversely, insensitive, inconsistent care engenders anxiety and distrust. Of even more serious consequence, prolonged or permanent separation from an **attachment** figure can seriously injure and fragment the individual's sense of self.

Bowlby's **attachment** theory has inspired more than 30 years of productive research in the field of developmental psychology. Early studies utilizing the Strange Situation (Ainsworth, Blehar, Waters, & Wall, 1978), which allowed empirical assessment of infant-caregiver **attachment**, provided tangible support for the theoretical principles underlying **attachment** behavior in infancy. A four-way classification procedure categorizes distinct behavioral patterns demonstrated by infants during a series of separation and reunion episodes with the caregiver. One category is considered optimally secure and three other categories (avoidant, ambivalent, disorganized) represent different patterns of behavior thought to reflect insecure **attachment**. These four **attachment** classifications have been found to be associated with distinct caregiving styles, in particular the quality of a mother's responsiveness to her infant's communication (Ainsworth, Bell, & Stayton, 1974; Ainsworth et al., 1978; Belsky, Rovine, & Taylor, 1984; Egeland & Farber, 1984; Grossman, Grossmann, Spangler, Suess, & Unzner, 1985; Main, Tomasini, & Tolan, 1979).

Bowlby (1979) maintained that the **attachment** system is a lifetime construct that "characterize[s] human beings from the cradle to the grave" (p. 129). The **attachment** bond formed in early caregiving relationships is internalized by the infant and becomes organized as a strategy for relating to others, which is carried forward to profoundly influence subsequent relationships and mental health (Bowlby, 1979, 1980). A secure **attachment** strategy should buffer individuals from maladaptive responses to stress and allow them to effectively draw on support from friends, family, or mental health practitioners (Riggs & Jacobvitz, 2002). In contrast, people with insecure **attachment** strategies may be at greater risk for emotional problems due to distortions in their thinking and difficulties regulating emotion (Carlson & Sroufe, 1995).

Evidence from longitudinal investigations has linked infant **attachment** classification to a wide variety of later outcomes, including compliance, persistence, ego resiliency, ego control, problem-solving strategy, affective communication, empathy, social competence, flexibility, coping skills, and aggressive behavior in toddlers and preschool children (e.g., Arend, Gove, & Sroufe, 1979; Kestenbaum, Farber, & Sroufe, 1989; Matas, Arend, & Sroufe, 1978; Sroufe, 1983; Suess, Grossmann, & Sroufe, 1992; Troy & Sroufe, 1987; Waters, Wippman, & Sroufe, 1979). Other studies have reported associations between infant **attachment** classification and school-age children's capacity for intimacy, coping skills, self-confidence, peer relations, and aggression (e.g., Erickson, Egeland, & Sroufe, 1985; Grossmann & Grossmann, 1991; Lewis, Feiring, McGuffog, & Jaskir, 1984; Lyons-Ruth, Alpern, & Repacholi, 1993; Sroufe & Jacobvitz, 1989; Urban, Carlson, Egeland, & Sroufe, 1991). In adolescence, infant **attachment** classification

appears to be related to self-esteem, social competence, ego resiliency, identity, depression and anxiety, the modulation of emotion in problem solving, and interpersonal functioning (e.g., Greenberg, Siegel, & Leitch, 1983; Kobak & Sceery, 1988; McCormick & Kennedy, 1994; Papini, Roggman, & Anderson, 1991; Rice, 1990; Sroufe, Carlson, & Shulman, 1993). In all of these cases, security of **attachment** was associated [\*42] with indices of mental health and positive adaptation, whereas insecure **attachment** appeared to be a risk factor for maladaptive functioning.

Recent research assessing **attachment** organization in adolescents and adults has provided strong empirical support to Bowlby's (1979) suggestion that many forms of psychiatric disturbance can be attributed to deviations in the development of **attachment** bonds. For example, in studies utilizing the Adult **Attachment** Interview (George, Kaplan, & Main, 1985), individuals demonstrating the Dismissing (avoidant) form of insecure **attachment** appear to be predisposed to externalizing disorders, such as Conduct Disorder, antisocial personality, and substance abuse (e.g., Allen, Hauser, & Borman-Spurrell, 1996; Cole-Detke & Kobak, 1996; Rosenstein & Horowitz, 1996). Other studies have linked a second type of insecure **attachment**, Preoccupied (ambivalent), to a heightening of self-reported psychological distress, a higher incidence of mood disturbance, and symptoms of anxiety (e.g., Cole-Detke & Kobak, 1996; Pianta, Egeland, & Adam, 1996).

More severe psychopathology appears to be associated with a third insecure classification, Unresolved/Disorganized (Main, 1995, 1996), which represents an adult's disorganization and lack of resolution to a significant loss (i.e., death) or traumatic abuse experience in childhood. The Unresolved category has been associated with psychiatric hospitalization, suicidal ideation, Borderline Personality Disorder, and a number of other serious mental disorders (e.g., Adam, Sheldon-Keller, & West, 1996; Allen et al., 1996; Fonagy et al., 1996; Riggs & Jacobvitz, 2002; Rosenstein & Horowitz, 1996). Although insecure **attachment** organization does not automatically lead to mental illness, it nevertheless creates a vulnerability to emotional disturbance due to distorted self/other representations, irregular patterns of emotional regulation, and maladaptive behavioral strategies for interacting with the world (Carlson & Sroufe, 1995).

## **ATTACHMENT AND LOSS**

Early in his career, Bowlby worked with James Robertson (Robertson & Bowlby, 1952) in documenting the intense despair children suffered when separated from parents for prolonged periods during hospitalization. This collaboration was largely responsible for significant changes in hospital policies regarding parent-child visitation and institutionalized care and substantially influenced Bowlby's understanding of child development (Karen, 1990). Bowlby based much of his early work in **attachment** theory on his belief that the loss of or traumatic separation from an **attachment** figure in childhood creates a vulnerability to later physical or mental illness.

A wealth of evidence exists supporting Bowlby's prediction that the loss of a primary **attachment** figure produces significant psychological harm. Early parental loss has been identified as a major risk factor for depression and suicidal ideation/behavior in later life (Adam, 1994; Adam, Lohrenz, Harper, & Streiner, 1982; Bifulco, Harris, & Brown, 1992; Bowlby, 1980; Brewin, Andrews, & Gotlib, 1993; Brown & Harris, 1978). Childhood loss of an **attachment** figure through death is a core feature of the Unresolved **attachment** classification in adolescents and adults (Ainsworth & Eichberg, 1991; Main & Goldwyn, 1998). In addition to its association with numerous forms of emotional disturbance, Unresolved **attachment** has also been linked to parental separation or divorce in both clinical adolescent and nonclinical adult samples (Adam, Sheldon-Keller, & West, 1995; Riggs & Jacobvitz, 2002), suggesting that the stress of divorce "engenders profound distress and is potentially disorganizing in its impact because it demands complex, rapid recognition of a major life change and a rapid adaptation to changed circumstances" (Wallerstein, 1983, p. 269).

## **[\*43] ALTERNATIVE ATTACHMENT FIGURES**

Although **attachment** strategies formed in infancy tend to persist and become increasingly resistant to change as development progresses (Rothbard & Shaver, 1994), they can be modified by different environmental experiences. Studies documenting the association between infant-parent **attachment** and a number of family and contextual

variables suggest that alterations in these areas may contribute to individual development. Potential influences on **attachment** organization and its maintenance include social relations between the child and important adults, marital quality or the presence of a supportive parental partner, adverse life events such as the loss of an **attachment** figure through death or divorce, maltreatment, socioeconomic status, social support, family dysfunction and stability, and mental illness in parents or other family members (e.g., Belsky & Isabella, 1988; Belsky, Rovine, & Fish, 1989; Bowlby, 1973; Bretherton, Walsh, Lependorf, & Georgeson, 1997; Carlson, Cicchetti, Barnett, & Braunwald, 1989; Egeland, Jacobvitz, & Sroufe, 1988; Gaensbauer, Harmon, Cytryn, & McKnew, 1984; Parkes, 1971; Vaughn, Egeland, Sroufe, & Waters, 1979). In this section, I will specifically address the potential effect of **attachment** relationships with other important adults, referred to in the literature as secondary or alternative **attachment** figures.

As the infant's social world expands beyond the principal infant-caregiver dyad, multiple **attachment** relationships are likely to develop. Both Bowlby (1969, 1982) and Ainsworth (1967) recognized that children become attached not only to their mothers but also to other familiar figures such as fathers, grandparents, aunts and uncles, other adults in the house-hold, and older siblings. Indeed, in most societies nonparental caregiving is quite frequent or the norm (van IJzendoorn & Sagi, 1999), so it is not surprising that children form **attachment** bonds with people other than their biological parents.

However, not all close relationships are **attachment** relationships. In discussing the nature of **attachment** throughout the life cycle, Ainsworth (1991) pointed out that **attachment** differs from other affectional bonds because it involves a search for a sense of security and comfort in the relationship, which when present enables the child to confidently engage in activities outside of the relationship. Initially a property of the infant-caregiver dyad, **attachment** may become an important element in a variety of relationships in childhood through adulthood. For example, Ainsworth identified parent surrogates (e.g., older siblings, grandparents, mentors), intimate friends, and adult sexual partners as potential **attachment** figures at later development stages.

Bowlby (1980) conceived of an **attachment** figure as any person perceived as stronger and better able to cope with the world and someone who provides consistent protection and care. Several researchers have proposed guidelines for the identification of alternative **attachment** figures for children. The following criteria have been suggested for use in the determination of who qualifies as an alternative **attachment** figure: (a) provision of physical and emotional care, (b) the quality of care provided, (c) time spent with the child, (d) continuity or consistency in a child's life, and (e) emotional investment in the child (Cassidy, 1999; Colin, 1996; Howes, Hamilton, & Althusen, as cited in Howes, 1999). In our extraordinarily diverse contemporary society where there is no consensus regarding what constitutes the good life for children, it is critical to note that these theoretically and empirically grounded criteria for identifying **attachment** figures are utterly blind to gender, race, religion, sexual orientation, and even biological relatedness.

Because very young infants generally have a preferred **attachment** figure, some theorists have suggested that children develop a hierarchy of major caregivers, wherein the mother is primary and other **attachment** figures are secondary (Bretherton, 1985; Kelly & Lamb, 2000; [\*44] Main, Kaplan, & Cassidy, 1985). However, cross-cultural data provide little support for the hierarchy hypothesis. Instead, the **attachment** network appears to function in an integrated or interactive fashion, such that the combination of multiple **attachment** relationships considerably increases the power to predict children's later cognitive and emotional functioning (Howes, Rodning, Galluzzo, & Myers, 1988; Main & Weston, 1981; van IJzendoorn, Sagi, & Lambermon, 1992). Developing within the context of the family system as a whole, the quality of one relationship is reflected in the larger network of **attachments** and affects the development of other relationships within the system (Sroufe & Fleeson, 1988). Strong evidence of interconnections among social relationships in the research literature suggests that each significant human connection uniquely contributes to a child's development, potentially with compensatory and competing effects (Hinde & Stevenson-Hinde, 1988; Rutter & O'Connor, 1999). Based on these interactive effects, it does not make sense to consider nonmaternal caregivers as subsidiary **attachment** figures (van IJzendoorn et al., 1992). In most cases, children will typically form strong psychological **attachments** to their mothers and fathers and frequently develop strong **attachments** to other adults in their social network who consistently provide physical and emotional care.



Clearly, the empirical evidence indicates that alternative **attachment** figures can have a significant effect on children's later socioemotional development. Colin (1996) suggested two ways that alternative **attachment** figures are important: (a) A secure **attachment** with another caregiver can ease the discomfort of separation from the principal **attachment** figure and (b) a secure **attachment** with another caregiver may buffer or compensate for the negative effects associated with difficulties in the primary **attachment**. Alternative **attachment** figures may be especially critical during and after marital dissolution because parents are often over-whelmed by the upheaval in their lives and are thus unable to sensitively respond to the needs of their children, who may also be overwhelmed by the losses and changes in their own lives (Hetherington, Law, & O'Connor, 1993).

## THE ERROR OF THE **TROXEL** DECISION

As Justice Kennedy noted in his dissent, the conventional nuclear family is not the standard family form in today's world. Many children live in single-parent homes, remarried families, intergenerational households, adoptive or foster homes, and other family compositions. In fact, these alternate family structures are becoming the norm while the traditional nuclear family is becoming just one of many diverse family constellations (Walsh, 1993). In the United States, people of color, immigrant families, and families living in poverty have historically used alternative childcare arrangements involving networks of caregivers within or outside the family (Jackson, 1993). In today's society where two incomes have become an economic necessity for many families, most children are regularly cared for by a nonparent adult, frequently a grandparent or other member of their kinship network, which can include family and close friends (McGoldrick, 1993). As a result, it is highly likely that children will form multiple **attachment** relationships, which will substantially affect their development. Yet, as reflected in the U.S. Supreme Court's majority decision in **Troxel**, American society continues to idealize the intact biological nuclear family to the potential detriment of its children and future citizenry.

There are several problems inherent in the **Troxel** decision. First, the traditional right of parents to raise their children without interference from the state is based on the presumption that a fit parent will make appropriate decisions, that the "natural bonds of affection lead parents [\*45] to act in the best interests of their children" (*Parham v. J.R.*, 1979). In his dissent Justice Stevens stated, "The presumption that parental decisions generally serve the best interests of their children is sound, and clearly in the normal case the parent's interest is paramount. But even a fit parent is capable of treating a child like a mere possession" (p. 7). Although the majority of parents do have their children's best interests at heart, a minority of parents demonstrate behavior that does not render them unfit but nonetheless challenges this assumption. Parental insensitivity in the form of subtle rejection or role reversal, irresponsibility, emotional difficulties, neglect, indifference, and/or covert hostility can impede or irreparably impair a child's development, creating a vulnerability to later maladaptive behavior and mental illness. Yet based on the 14th Amendment and subsequent family preservation policies, family courts frequently impose custody and visitation orders that inflexibly bind the child to troubled and unhealthy relationships with ostensibly "fit" parents (Wallerstein et al., 2000).

Second, in reaffirming the parental prerogative, **Troxel** placed the biological ties of parents above any other relationship the child may have developed. If the intent is to prioritize biology as the most natural and normal guideline for custody and visitation decisions, perhaps the court is approaching it from the wrong direction. Rather than considering the parent's biological kinship to the child, the court might instead respect the child's biological need to attach to someone who can protect and care for him or her. Children can and do form **attachment** relationships with a variety of consistent caregivers, including a parent, grandparent, older sibling, aunt or uncle, adoptive parent, foster parent, stepparent, or an unmarried parent's cohabiting partner. Genetic heritage means less than nothing to a child. What matters to a child is the presence of a sensitive, loving caregiver, who provides him or her with a sense of security, stability, and physical and psychological well-being. Indeed, the child's own innate wisdom in seeking security in **attachment** clearly illustrates the principles embodied in the best interests standard.

The third and most salient issue in this case is the increasing recognition of the indirect and direct roles grandparents play in children's development and mental health (Crockenberg, Lyons-Ruth, & Dickstein, 1993), an



awareness reflected in legislation passed in every state allowing visitation rights to grandparents (Derdeyn & Jennings, 1998). Indirect influences of grandparents on their grandchildren's development include the social support they provide to mothers, which is associated with maternal responsiveness and nurturance toward infants (Crockenberg, 1987, 1988). Grandparents also provide social support to fathers, who then may better help and support their families (Parke & Tinsley, 1988). More important, perhaps, grandparents may directly contribute to infant development by serving as alternative **attachment** figures for their grandchildren (Kornhaber & Woodward, 1981). Beyond the **attachment** established between grandparents and grandchildren prior to divorce, evidence from several studies demonstrates that grandparents can and often do step in after an adult child's divorce. Grandparents often assist in a parenting or quasiparenting role for grandchildren, share in childcare responsibilities, and provide their children and grandchildren with a valuable source of emotional support, as well as a sense of security and continuity at a time when life may seem very unstable and chaotic (Bretherton et al., 1997; Crockenberg, 1987, 1988; Hetherington et al., 1993, 1998).

The potential for grandparents to serve as alternative **attachment** figures for their grandchildren in the aftermath of divorce would seem to increase when three generations live in the same household, as is often the case after divorce. Indeed, one study found that more than one third of parents and three quarters of their children had resided in a grandparent's home during or after the divorce (Wilks & Melville, 1990). Researchers have also reported that infants [\*46] interact similarly with and do not seem to differentiate between mothers and grandmothers with whom they have frequent contact but do not share a common residence (Myers, Jarvis, & Creasey, 1987). Moreover, the presence of a supportive grandparent or other relative is associated with resilience among children at risk for poor development by virtue of prolonged parental separation or mental illness (Rutter, 1985; Werner, 1984). In divorce proceedings where immature, poorly adjusted parents often destructively transfer their unsolvable conflicts onto their children, "Committed grandparents may nullify these damages by providing the continuity and support, essential to the child's sense of belonging and security" (Wilks & Melville, 1990). In these cases, then, grandparents fulfill Colin's (1996) identified functions for **attachment** figures. That is, grandparents may help the child cope with the absence of the noncustodial parent and may also buffer the child from the negative effects of parental insensitivity.

In the *Troxel* case, after separating from Granville, the children's father lived in the home of his parents, the *Troxels*. Based on the father's suicide, it is reasonable to assume that he was depressed and/or suffered from some other mental disorder. Because the father often may have been unavailable due to his emotional difficulties, it is highly likely that one or both grandparents assumed a major caregiving role with the children when they were in residence at the grandparents home during regular visitation with their father. So, for 2 years, the grandparents consistently served in a parental capacity, providing the protection of a family home as well as physical and emotional care for their two young granddaughters. Clearly, this arrangement would foster the development of close, supportive relationships between grandparents and grandchildren, which in all likelihood would meet the criteria for **attachment** previously discussed. Given the grandparents' caregiving role and the children's young ages at the time, it is highly probable that **attachment** bonds were firmly established between the Granville children and their grandparents at the time of their father's death. Assuming that either one of the *Troxels* was an alternative **attachment** figure for their granddaughters, the act of substantially reducing their regularly scheduled visits only 5 months after the father's death may have compounded the children's sense of loss and consequently been unnecessarily harmful to their emotional well-being.

However, an important caveat must be added here. It is not enough to say that the grandparents served as alternative **attachment** figures, because it is not only the identification of alternative **attachment** figures that is important but also the quality of children's **attachments** to all significant caregivers in their lives. As mentioned previously, a secure relationship with an alternative **attachment** figure may ease the distress associated with the unavailability of a principal caregiver and even buffer the effects of an insecure primary **attachment** (Colin, 1996). Therefore, if an insecure **attachment** exists between the child and either the custodial or noncustodial parent, it may be even more important to identify a secure **attachment** relationship among alternative **attachment** figures, which could potentially decrease the risk for maladaptive development in the child. Conversely, if the relationship with the alternative **attachment** figure was also insecure, close scrutiny of the particular case would be necessary to determine if continued contact with the alternative **attachment** figure would benefit the child. Consequently, in decisions regarding

custody and visitation it is recommended that in addition to identifying the child's **attachment** figures, the quality (secure vs. insecure) of the child's **attachment** relationships with all pertinent adults be assessed wherever possible given the constraints of the court in ordering nonparties to submit to evaluation.

Finally, in their reliance on previous interpretations of the 14th Amendment's Due Process Clause, the Court majority granted primacy to the interests of the parent over any other consideration that may be in the best interest of the child. In doing so, the Court indicated [\*47] essentially that parents have rights and children do not have rights, or if children do possess rights these rights are subordinate to the parental prerogatives. Indeed, despite the best interests standard, nowhere in the Supreme Court's decision is mention made that the preference of the children, or how they may have been adversely affected, was ever taken into account at any time during the legal process. It is as if the children did not exist or were "nonpersons, strangely lacking in preferences or opinions based on their own observations and experiences" (Wallerstein et al., 2000, p. 182). Although the parental preference guideline has been criticized as an inadequate criterion for custody decisions (e.g., Dyer, 1999; Radin, 1984), based on the results of their research, several scholars have argued recently that children's wishes should be heard by the court and seriously considered as important decision criteria in custody laws (Kaltenborn, 2001; Wallerstein et al., 2000).

## IMPLICATIONS AND FUTURE DIRECTIONS

As Justice Stevens pointed out in his dissenting opinion in *Troxel*, the high courts of this country have recognized in previous cases that parental rights are not absolute but instead must be balanced by the consideration of "the best interests of the child." The best interests standard has been criticized for a number of reasons, including (a) the likelihood of such a vague concept being interpreted differently by judges who hold diverse opinions and values that may be influenced by personal biases involving moral, religious, cultural, ethnic, or sexist attitudes; (b) the complications it brings to divorce negotiations; and (c) the lack of training and questionable qualifications of judges to evaluate the scientific evidence and results of psychological testing to make the abstract decisions that are intrinsic to considerations regarding children's best interests in the context of family disputes (Mnookin, 1975; Pearson & Luchesi Ring, 1982-1983; Sorensen & Goldman, 1990; Thompson, 1986). Despite these limitations and the difficulties inherent in developing fair policies and procedures, the best interests standard appears to be the only reasonable choice. Strict rules for custody decisions and visitation awards also have their disadvantages because it is inevitable that exceptions will arise due to the fact that human behavior is never entirely predictable. Rigid guidelines make it less likely that judges will recognize and respond to these "special cases" and also that new research will be incorporated to modify the guidelines (Waters & Noyes, 1983-1984). Moreover, the indeterminate nature of the best interests standard accurately reflects the indeterminate nature of the human family. Each family, each parent, each child is unique and therefore it is unrealistic that uniform guidelines can be developed that will suit everyone. One size does not and cannot fit all.

Yet we are not entirely without guidance. There is a vast psychological knowledge base from which to draw and additional research in this area can be encouraged and funded. Although the empirical and theoretical literature on **attachment** cannot guarantee valid judgments in custody and visitation decisions, it can provide broad guidelines that "may reduce the tendency toward idiosyncratic and value-laden decision-making by establishing a broader empirical frame of reference within which decisions are justified" (Thompson, 1986, p. 67). Without such guidelines, judges may be swayed by personal values and biases regarding normal or optimal families, which as many of the justices in this case pointed out, is not a satisfactory reason for interfering with the established rights of parents to decide what is appropriate for their children. Thompson (1991) presented the following guidelines based on **attachment** theory for judicial considerations regarding parent-child relationships:

- [\*48] 1. Attention to parenting roles related to psychological versus exclusively biological significance, thus including consideration of the importance of nonparental caregivers.
- 2. Recognition of **attachment** to multiple caregivers.
- 3. Appreciation of the distinction between primary and secondary caregiving roles, particularly with respect to very young children who still require basic caregiving ministrations from a primary caregiver.
- 4. Acknowledgement of the child's need to maintain ties to noncustodial caregivers through an ongoing

visitation schedule.

Thompson (1991) acknowledged that these guidelines contradict early legal traditions governing child custody decisions, as well as the recommendation of Goldstein, Freud, and Solnit (1979) that noncustodial parental visitation be entirely under the control of the custodial parents. However, the empirical evidence on which these guidelines are based provide a more objective and valid foundation for custody and visitation decisions than the subjective opinions of individual judges.

If we agree that the prevention of personal distress, maladjustment, or psychological disturbance is in the best interests of the child, we can perhaps agree that the identification of alternative **attachment** figures in child custody and third-party visitation disputes is an important consideration. This issue cannot be accommodated by an oversimplified judicial standard but must instead be evaluated with a case-by-case assessment of the child's **attachment** network. These conclusions concur with Justice Kennedy's dissenting opinion that "in the design and elaboration of their visitation laws, states may be entitled to consider that certain relationships are such that to avoid the risk of harm, a best interests standard can be employed by their domestic relations courts in some circumstances" (*Troxel* at 7).

Additional research grounded in **attachment** theory is sorely needed in the area of divorce, custody decisions, and alternative **attachment** figures. In particular, assessment procedures designed specifically for forensic evaluations of **attachment** relationships need to be developed. Unfortunately, Ainsworth's Strange Situation (or a modified version), which was developed purely as a research tool, has often been misused by so-called "experts" to evaluate the strength of a child's **attachment** to a parent or other adult in custody cases. However, coding for the Strange Situation, which requires intensive training and rigorous reliability testing, does not assess the strength of the relationship but rather the quality of the relationship, that is, the security or insecurity of **attachment** (A. Sroufe, personal communication, July 17, 2002). Consequently, the Strange Situation is inappropriate for deciding which person a child is most attached to and should not take precedence over the recommendations of a skilled case worker who has spent extensive time with the relevant parties.

Fortunately, responsible researchers are working on the development of procedures to identify specific **attachment** figures for a particular child. For example, Howes et al. (as cited in Howes, 1999) began by identifying broad categories of people who may be **attachment** figures (e.g., parents, relatives, child-care providers) and subsequently conducted interviews and social network analyses to determine which of these caregivers are **attachment** figures for the child in question. Howes (1999) recommended multiple methods of assessing the adult's emotional investment in the child, including the adult's perception of the adult-child relationship, interviews with other adults, and, perhaps most important, interview and narrative assessments of the child's **attachment** to the adult.

Given the increasing phenomenon of grandparents acting as primary caregivers and custodians for their children's children, it would seem especially important to investigate **attachment** relationships with grandparents and their potential to promote healthy psychological [\*49] development and resiliency in children. In addition, investigations should continue into how the **attachment** network develops and incorporates multiple relationships, as well as how each of these relationships individually and together contributes to child development and mental health. Research of this kind may provide judges, attorneys, mediators, and forensic psychologists with an empirical framework useful in the court's difficult and complex task of assisting families in restructuring family interactions, maintaining valuable connections between children and their loved ones, and facilitating the formation of a healthy social and family environment.

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## AREA REVIEW

# **The Attachment Network in Family Law Matters: A Developmental-Contextual Approach**

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*A developmental-contextual framework recognizes that children continue to develop and change across the life span and are influenced by previous experiences and by their current environment, including the events and people around them.. This model is especially well suited for use in child custody evaluations. In this article, we review developmental considerations relevant to custodial decisions and consider the defining elements of an attachment bond and the organization of children's attachment networks. Recommendations for research follow. We then provide a detailed example illustrating how the model may be used and conclude with practice implications an recommendations.*

**KEYWORDS** *attachment, child custody, social network*

Family court judges and lawyers see the attachment network in the courtroom on a daily basis. Grandparents, siblings, aunts and uncles, non-biological co-parents (e.g., stepparents or lesbian/gay partners), fellow church members, and others often are there to support parents and children during divorce proceedings. Though this network is vital to a child's development, it is seldom a legal consideration except when an interested third party

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intervenes seeking custody and/or visitation rights. As a result of grandparents' seeking visitation rights, all 50 states have enacted laws allowing grandparents, and sometimes other non-parent figures, standing to petition the court for access to children (Bostock, 1994; Roberts, 2003).

In any best-interest determination, two fundamental elements must be included: a child's developmental level and the context in which the child lives. Yet, in the U.S. Supreme Court's decision in *Troxel v. Granville* (2000), neither of these issues was even discussed. In this article, we argue that child custody evaluators (CCEs) will find it useful to adopt a developmental-contextual framework that recognizes that children continue to develop and change across the life span and are influenced not only by historical experience but by their current environment, including the events and people around them (Dixon & Lerner, 1999). In particular, a solid attachment network of caring adults provides a safety net for both children and parents and may be crucial in making best-interest determinations. First, we review some developmental considerations relevant to custody decisions. Second, we consider the defining elements of an attachment bond, discuss the dynamic organization of children's attachment networks, and make recommendations for future research. Finally, we provide a detailed example and include practice implications and recommendations for assessment of multiple attachment relationships in child custody evaluations.

## DEVELOPMENTAL CONSIDERATIONS

### Attachment Organization in Infancy

Bowlby (1973, 1980) proposed that human infants, like other species, are born biologically "wired" to attach to other humans who can care for and protect them, thereby promoting survival of the child and hence the species. The biological readiness to become attached remains active at least through end of the first year and perhaps into the second; in fact, there is some evidence that children who do not establish attachments during that period may be at risk for maladaptive organization of the attachment system (Chisholm, Carter, Ames, & Morison, 1995) and serious emotional disturbance such as reactive attachment disorder (O'Connor & Rutter, 2000). There are four phases in the early development of the attachment system, three of which occur during the first year of life and a fourth that begins sometime around the child's third birthday (Bowlby, 1982; Marvin & Britner, 1999). Because attachment is a lifetime construct, further developments and modifications may take place in the attachment system at older ages.

According to Marvin and Britner (1999), during the first phase of development, early attachment behaviors (e.g., crying, smiling) develop and subsequently become more refined and controlled in the second phase, in which infants begin to differentiate between familiar caregivers (e.g.,

mother, father, grandparent) and other people. In the third phase of the developing attachment system, beginning at approximately 6 to 9 months of age with the onset of many new capabilities (e.g., locomotion/exploration, cognitive skills, communication strategies) and lasting through the second year, infants are thought to reorganize their increasingly active behaviors and consolidate their attachment to primary caregivers. Though caregivers initially take primary responsibility for maintaining proximity and protecting the infant, as children become more mobile and vocal, they gradually begin to share this responsibility by communicating their needs and/or actively monitoring and seeking out the caregivers. Prior to this period, infants appear to suffer no ill effects from brief separations from primary caregivers when left in the care of an adequate substitute (NICHD Early Child Care Research Network, 1997; Sagi, van IJzendoorn, Aviezer, Donnell, & Mayseless, 1995), but some research suggests that overnight separations from primary attachment figures during this period may contribute to the development of behavioral disorganization and insecurity in the child's attachment relationships (Sagi et al. Solomon & George, 1999a). After reorganization and consolidation in the third phase of development, there is a reduction in the number of individuals who are able to activate or deactivate the child's attachment behaviors (i.e., reduce anxiety to the point that child feels comfortable/secure and can explore again), and a permanent or lengthy disruption of the attachment bond with those preferred caregivers is highly likely to lead to the short- and long-term effects of loss (Marvin & Britner, 1999).

Midway through this third phase, at approximately 12 to 18 months of age, infant attachment can be assessed utilizing the famous "Strange Situation" (Ainsworth, Blehar, Waters, & Wall, 1978), a laboratory procedure designed to elicit observable attachment behaviors by increasing infant stress levels in an unfamiliar environment. This procedure and the findings of early research have provided the empirical foundation that the bulk of early attachment theory and research rests. Following, we provide a brief overview of infant attachment classifications and their outcomes. (For detailed reviews, see DeWolff & van IJzendoorn, 1997; Solomon & George, 1999b; Weinfield, Sroufe, Egeland, & Carlson, 1999.)

On the basis of many hours of home and laboratory observations, Ainsworth and colleagues (1978) found that differential behavior of the caregiver predicted infant attachment behavior in the Strange Situation. Specifically, infants whose caregivers had been sensitive and responsive to them at home demonstrated secure attachment behaviors in the lab, characterized by active exploration in the caregiver's presence, distress at separation, and active greeting and subsequent calming after the caregiver's return. Conversely, there are three non-optimal patterns associated with different types of insecure attachment behaviors in infants. For example, infants whose caregivers were either unpredictable or intrusive in the home showed insecure-ambivalent (e.g., clingy, angry) attachment behaviors in

the laboratory, whereas infants whose caregivers were rejecting in the home showed insecure-avoidant attachment behaviors (e.g., indifferent, overly self-reliant) in the laboratory. A fourth category of infants demonstrated contradictory behaviors with no coherent strategy; research evidence indicated that this “disorganized” attachment pattern was associated with maltreatment, parental frightened/frightening behavior, maternal psychopathology and excessive alcohol use. (For a review, see Lyons-Ruth & Jacobvitz, 1999.) A meta-analysis of almost 2,000 infant-caregiver dyads in 39 studies reported a worldwide distribution of infant attachment classifications almost identical to that of Ainsworth’s original sample (van IJzendoorn & Kroonenberg, 1988). Approximately two-thirds (65%) of the dyads were assigned to the secure classification, 21% to the insecure-avoidant group, and 14% determined to be insecure-ambivalent. The distribution of the disorganized/disoriented classification is less stable, ranging from 10% to 13% in the middle-class, low-risk samples (see Main and Solomon, 1986, for a review) to almost 82% in samples of maltreated children (Carlson, Cicchetti, Barnett, & Braunwald, 1989).

Through repeated interactions with caregivers, children developmental representations of self and others in relationships, which subsequently influence personality development, interpersonal behavior, and mental health (Bowlby, 1980; Thompson, 1991). Highlighting the profound influence of attachment relationships on overall child development, researchers have suggested that the impact of early parent-child interactions may extend to neurobiological development, affecting sensory and motor integration, learning, communication, motivation, and the regulation of several biobehavioral systems (Cicchetti & Valentino, 2006; Fraley, Davis, & Shaver, 1998; Gerhardt, 2004; Hofer, 2006; Roth, Wilson, & Sullivan, 2004). In particular, early attachment organization is related to emotional regulation and psychobiological response to stress (Carlson & Sroufe, 1995; Gerhardt, 2004). Though insecure attachments do not automatically lead to mental health problems, associated problems with emotional regulation and maladaptive strategies for interacting with the world do create a propensity for psychopathology. Generally, insecure-ambivalent and insecure-avoidant children may be vulnerable to difficulties, but they have at least established an organized attachment strategy that is “good enough,” albeit not ideal, to obtain contact with others and sufficient care from caregivers. In contrast, the disorganized infant lacks a coherent, workable strategy for interacting with caregivers and appears to be at greatest risk for behavioral and emotional problems (Lyons-Ruth, Melnick, Bronfman, Sherry, & Llanas, 2004). Longitudinal studies have reported strong associations between insecure infant attachment classification and later problems with coping skills, self-confidence, peer relations, aggression, as well as symptoms of ADHD, depression, dissociation, and other serious psychopathology (e.g., Ogawa, Sroufe, Weinfield, Carlson, & Egeland, 1997; for reviews, see Carlson & Sroufe, 1995, and Greenberg, 1999).



## Attachment Beyond Infancy

Although attachment strategies formed in infancy tend to persist and become increasingly resistant to change, the stability of attachment organization from infancy to adolescence and adulthood can be modified by different life experiences (for a review, see Belsky, 1999). In both high-risk and middle-class samples, longitudinal studies following infants into early adulthood have documented evidence of “lawful discontinuity” wherein changes in attachment organization are predictably related to experiences of family adversity, such as parental loss, child maltreatment, parental mental or physical illness, and family dysfunction during early adolescence; such reactions are also possible as a result of divorce if, for example, a child loses contact with a parent and/or other significant disruptions occur in the parent-child relationship (Waters, Merrick, Treboux, Crowell, & Albersheim, 2000; Weinfield et al., 2000).

Because the attachment system can shift in response to environmental changes, it is important to examine attachment processes beyond infancy. As physiological and cognitive capacities mature and expand, developmental needs change, and new emotional and behavioral expressions of attachment develop. In the fourth phase of attachment development between the ages of 3 and 5, although children continue to use their attachment figures as a secure base and actively seek physical proximity to them, advances in representational and communicative competencies allow preschoolers to better understand the goals, motivations, and feelings of caregivers and take them into account to achieve their own attachment-related goals (Marvin & Britner, 1999). For example, parents are familiar with the negotiations and reassurances that are sometimes necessary with their preschool children when babysitters are hired for a few hours. During this period, children of divorcing parents can tolerate routine departures and other short separations from both parents if they are provided with a simple explanation that explicitly addresses their feelings, assures them that they will be taken care of, and presents a clear plan for reuniting with the caregiver who is currently absent.

In the context of this new “goal-corrected” partnership, children become less dependent on physical proximity to maintain a sense of security, and they become increasingly comfortable spending longer periods of time away from an attachment figure (Marvin & Britner, 1999). By school age, social-cognitive abilities have improved to the extent that mental representations of self and other are more comprehensive, and children are increasingly able to regulate their own behavior. The “set-goal” of the attachment system shifts from physical proximity to the availability of the attachment figure (Bowlby, 1973), which is demonstrated through open communication, responsiveness, and physical accessibility (Bowlby, 1987, cited in Ainsworth, 1990). In middle childhood, communication with the

attachment figure, rather than physical proximity, becomes more important and may be critical in reducing anxiety if a child feels threatened by separation from the caregiver. To minimize the threat to security caused by temporary separations from either parent during visitation, planned phone calls and open communication can reassure children, substantially reduce perceived threat, and restore children's confidence in the caregiver's continued availability. This is one reason why CCEs will sometimes recommend that children carry cellular telephones so that symbolically they are never out of contact with the other parent.

In adolescence, the attachment system continues to evolve in the context of numerous developmental transitions, such as the onset of formal operational thinking, decreases in egocentrism, objective examination of the parent-child relationship, and the beginning of interest in romantic partners (Allen & Land, 1999). As a result of these maturational changes, the attachment system is activated less frequently, and children become progressively more self-reliant. Strong empirical evidence suggests that the parent-child bond remains a significant predictor of children's well-being throughout middle childhood, adolescence, and even into adulthood (Buhrmester, 1992; Buhrmester & Furman, 1987; Larson, Richards, Moneta, Holmbeck, & Duckett, 1996; see Allen & Land, 1999 for review) but, with increasing age, attachment behaviors become more directed toward friends and romantic partners (Alan & Land, 1999; Furman & Buhrmester, 1985, 1992; Lempers & Clark- Lempers, 1992). Therefore, custody arrangements that require regular weekend visitation or lengthy stays away from their primary residence may no longer be workable for teenagers, who want to remain near friends and involved in peer activities during weekends. Consequently, nonresident parents should make concerted efforts to remain available by actively contacting and encouraging communication with their teenagers during separations. As a result, both will find it necessary to make frequent accommodations, despite controlling court orders if they are to take account of their teens' active lives and ever-changing schedules. Doing so is a challenge for all parents, but it can be especially challenging for those who remain in conflict, seeing any deviation as maliciously motivated by the other parent rather than their child's legitimate needs. When such feelings prompt insistence on rigid adherence to final decrees of divorce that may have been written years earlier, parents risk harming their teens by disrupting their evolving attachment system.

For example, one of us (MCG) has been involved as a CCE in a variety of cases where motions to modify were filed because of such circumstances. In all these cases, teens' legitimate and developmentally appropriate desires were ignored by one parent despite feedback from numerous sources that such behavior was inappropriate and/or harmful. In one case, a father refused his 15-year-old daughter any contact with her friends during his parenting time and even refused her access to a telephone. He insisted that

she follow his schedule and would not even allow her to choose where they ate. In another case, even though she knew how much her 13-year-old son wanted to play soccer, a mother refused to take him to team practices and games because she knew that his father would also attend. She argued that she would not take the child because the father was interfering with her parenting time despite his legal right to attend the boy's activities.

## CONTEXTUAL CONSIDERATIONS: THE ATTACHMENT NETWORK

Attachment relationships develop not only in the context of dyadic communications between parents and children but in the context of the family system (Cummings & Davies, 1994; Marvin & Stewart, 1990), and the larger eco-systemic environment. Consequently, multiple contextual factors must be considered to understand how attachment bonds are developed and maintained over time (Belsky, 1999). There are numerous environmental factors that can contribute to attachment insecurity including family dysfunction and instability, loss of parent through death, poor marital quality, intimate partner violence (IPV), child neglect or maltreatment, uncontrolled mental illness in parents or other family members, transitions in caregiving (e.g., parent returning to work after staying home with child, loss of long-term nanny/babysitter, changes in child-care facility), reduction in socioeconomic status, relocation, low social support for parents, and the lack of supportive relationships between the child and other important adults (Chapple, 2003; Matsuoka, Uji, & Hiramura, 2006; see Belsky, 1999, and Kobak, 1999 for reviews.).

Though all of these factors are potential sequelae of divorce, the significance of support from other caring adults for both parents and children underscores the importance of the broader attachment network. This network is especially important because children sometimes have insecure attachment bonds with their parents, but secure attachments with non-parental caregivers, such as grandparents, other relatives, nannies, and/or family friends (Levitt, Guacci, & Coffman, 1993). Consequently, for children of divorcing parents, not only can secure attachments to other attachment figures ease separation from primary attachment figures, they may buffer or protect children from the negative effects of an insecure or maladjusted primary attachment (Colin, 1996; van IJzendoorn & Sagi, 1999). This is especially the case when children live in violent homes. For example, when they are older and able to do so, many who have learned to anticipate IPV will flee to a neighbor or the home of a trusted friend or relative for comfort and safety.

### Identifying Attachment Figures

Unfortunately, there is some inconsistency regarding the meaning of attachment in family courts (Byrne, O'Connor, Marvin, & Whelan, 2005), but

defining it is more complicated than one might expect. This is because (1) there is definitional ambiguity within the attachment literature (Levitt, 2005) and (2), as discussed, the attachment system and its behavioral manifestations change as children mature, requiring a more dynamic conceptualization that can be applied to various developmental stages. The latter is extremely important to legal decisions because custody matters can appear before the court when a child is of any age and the final orders will persist through various stages of the child's development, unless later challenged and modified. Although orders ideally should be written with consideration of how the attachment system functions and is behaviorally manifested at the time of the divorce and at different periods in development, realistically it is difficult for judges to write final orders that anticipate what the child's needs will be at future ages.

Ainsworth (1991) described the "attachment" bond as a specific type of "affectional" bond. She proposed that an affectional bond (1) is persistent, not transitory, (2) is emotionally significant, (3) involves a specific person who is not interchangeable with anyone else, (4) includes a desire to maintain proximity or contact to that person, and (5) engenders distress when involuntarily separated from that person. According to Ainsworth, an attachment bond meets these five criteria but is distinguished from an affectional bond by an additional criterion, namely the search for security and comfort in the relationship. (N. B. Whether security is or is not achieved is irrelevant; it is the *seeking* of security and comfort that matters in the identification of an attachment figure. Those who seek but do not obtain security in the relationship are by definition considered to have an insecure attachment bond with that partner.)

A second way of defining attachment involves determining whether children direct attachment behaviors toward specific persons. More specifically, an attachment relationship is generally composed of three interrelated features: proximity seeking, secure base effect (i.e., exploration in presence of attachment figure), and separation protest (Bowlby, 1969; Sroufe & Waters, 1977). Some researchers have applied these three components to identify attachment network members (Freeman & Brown, 2001), whereas others have used only the last component (i.e., separation protest) to construct a more inclusive definition, which characterizes attachment bonds as relationships that would result in intense grief if lost (Berman & Sperling, 1994; Fraley & Shaver, 1999).

Which of these definitions is most suitable for use in best-interest determinations? The distinction between attachment bonds and other close relationships is an important one because not all affectional relationships become attachment relationships. Scholars have proposed that the designation of a child's attachment figure(s) must consider specific criteria: (1) provision of physical and emotional care, (2) the quality of care provided, (3) time spent with the child, (4) continuity or consistency in the child's life, and

(5) emotional investment in the child's life (Cassidy, 1999; Colin, 1996; Howes, Hamilton, & Althusen, as cited in Howes, 1999). Needless to say, these elements may capture a variety of children's relationships such as those with grandparents, stepparents, and cohabiting partners.

An excellent example of non-parent attachment figures who arguably met these criteria made its way to the U.S. Supreme Court in the case of *Troxel v Granville* (2000). The Troxel's son Brad had two daughters with Tommie Granville. After the couple separated, Brad moved in with his parents and brought the girls to their home during his parenting time. Two years after their separation, Brad committed suicide. The Troxels continued to see the girls as they had before until Tommie informed them that she intended to reduce their time with the children to one short visit per month. In the supreme court's decision upholding Tommie's argument, no consideration whatsoever was given to the nature of the attachment relationships the girls had with their grandparents or how Tommie's decision may have adversely affected them.

In contrast to the multiple criteria earlier, Levitt (2005) suggested a broader definition focusing solely on the potential for acute grief responses upon separation. Such a conceptualization would greatly expand the range of potential support figures for children and more readily apply to later developmental phases when shifts in the attachment network are likely to occur. For example, consider an aunt who lives in another town and may see her niece and nephew only a few weeks a year during holidays and school vacations. Despite the relatively infrequent contact, over time and repeated visits the children may develop a special bond with her and might experience profound grief at the loss of this relationship. Though not meeting the more strict aforementioned criteria, the aunt could be considered an important attachment figure using Levitt's more inclusive definition that considers the children's perception of the relationship and their expected response to the loss of that relationship.

### Monotropic vs. Polytopic Models

The developmental research has often been criticized for an exclusive emphasis on the mother-child attachment relationship (Cowan, 1997; Lewis, 2005; Takahashi, 2005), but the theoretical literature has long recognized that children become attached to multiple caregivers (Ainsworth, 1967, 1991; Bowlby, 1969/1982). Developmentally, the likelihood of multiple attachment figures increases with age, though the number of attachment figures at any one point is finite. Furthermore, growing empirical literature that includes relationships with fathers, siblings, and child care providers demonstrates only moderate overlap between them (Howes & Smith, 1995; Fox, Kimmerly & Schafer, 1991; Sagi et al., 1995; Steele, Steele, & Fonagy, 1996). This lack of overlap suggests that attachment dyads maybe are

independent of one another. This is why, for example, when dual-career parents of a young child divorce, it can be extremely helpful for the child to adjust to his or her new circumstances if the Nanny remained with them regardless of the parent they were visiting.

Currently, there are two lines of thought regarding the development of the attachment network. According to the traditional view, Bowlby (1969/1982), Ainsworth (1967, 1991) and most contemporary scholars (e.g., Cassidy, 1999; Hazan & Shaver, 1994; Kobak, Rosenthal, & Serwik, 2005; Main, 1999; Marvin & Britner, 1999) conceptualize the attachment network as a “monotropy” or hierarchical organization of attachment figures. That is, there is one clearly preferred “primary attachment figure” present from birth, and additional attachment figures of varying ranks are sequentially added to the network at later times, beginning at about 18 months and continuing throughout the life span (Bowlby, 1969/1982; Marvin & Britner). In the monotropic view, the quality of the child’s attachment bond with the primary attachment figure shapes future relationships. Although later experiences and present circumstances clearly contribute to current functioning, the mental representations and relational strategies formed in the first attachment relationship influence the individual’s interpretations and responses to subsequent interactions or events and thereby continue to have a powerful impact on developmental outcomes throughout the life span.

Empirical evidence generally supports the existence of an attachment hierarchy in infancy. Studies have shown that infants display clear discrimination and consistent preferences for one person (Cummings, 1980; Farran & Ramey, 1977). If several caregivers are available, most infants seek and maintain proximity to one (Ainsworth, 1967, 1982; Rutter, 1981; Lamb, 1976) and, in unfamiliar settings, infants are more reassured by the presence of the primary attachment figure (Ricciuti, 1974; Shill, Solyom, & Biven, 1984). Although most research to date has focused on the mother, the primary attachment figure can be anyone in the infant’s immediate environment who consistently provides physical and emotional care (e.g., fathers, grandparents, siblings, step-parents, cohabitating partners, or nannies). Indeed, the results of one study indicated that 24% of infants directed more/stronger attachment behavior to fathers than to mothers (Colin, 1987, as cited in Hazan & Zeifman, 1999). Important is though normative changes in the composition of the network are expected with advancing age, emerging evidence suggests that a hierarchy of attachment figures continues to exist throughout middle childhood, adolescence and adulthood (Doherty & Feeney, 2004; Freeman & Brown, 2001; Hazan & Zeifman, 1994; Kobak et al., 2005; Trinke & Bartholomew, 1997).

Other researchers have proposed a “polytropic” model of relationship development (e.g., Lewis, 1982, 2005; Takahashi, 2005). For example, Lewis’s social network model suggests that the mother-child attachment bond is only one of many close relationships that develop simultaneously in



a complex social network and are utterly enmeshed from birth. In particular, multiple attachments may be important to consider when diverse cultures and races with prominent collective (vs. individualistic) beliefs and values are involved (Jackson, 1993). Although social network theorists generally acknowledge the importance of the mother figure, they do not necessarily assume a hierarchical structure nor endorse a linear model of the early parent-child bond's influence on later relationships. Rather, they suggest that many close relationships, other than attachment relationships, are equally important but influential in different domains at various times throughout the life cycle. For example, care giving and nurturing functions may predominate in infancy, whereas play and learning may become equally important in childhood as the need for care giving decreases and exploration increases (Lewis, 2005). Preliminary empirical evidence with adult samples supports the differentiation of domain-specific attachment representations that reflect regularities within particular relationship domains, such as familial, friendship, and romantic domains (Overall, Fletcher, & Friesen, 2003; Sibley & Overall, 2008). Specifically, Overall and colleagues demonstrated that individuals develop mental representations of specific relationships (e.g., current romantic partner, specific family members, certain close friends) that are nested within broader representations of functional domains of relationships (e.g., family, friendship, romantic love), which in turn are located within a global and nonspecific attachment orientation. These findings suggest that specific relationships fulfill different domain functions (nurturance/care, play, romantic love) that may have diverse meaning and importance to current and future outcomes depending on the functional needs of the child at any given age or developmental stage.

### The Social Network

Integrating research on attachment and social networks, Levitt (2005) proposed a broader conceptualization of social relations that locates attachment figures within a larger network of significant relations. Levitt suggested that the social convoy (i.e., network) emerges "developmentally from a core of attachment relations in infancy and [expands] to include other important relationships as the child engages in a broader social sphere" (p. 38). With increasing age, the boundaries between attachment bonds and other close relationships become more flexible and permeable as these relationships change and serve diverse needs in childhood and adolescence. Consequently, attachment relationships will be renegotiated as new modes of interaction are established with other people and alternations are made in the maintenance of each relationship (Schneider-Rosen, 1990).

Empirically, the convoy has been conceptualized as a hierarchy of three concentric circles surrounding the individual (the bull's-eye), with

those identified as closest and most important placed in the inner circle and considered functionally equivalent to attachment figures. Using a modified mapping procedure in a longitudinal study with middle school children and adolescents, Levitt et al. (2002, as cited in Levitt, 2005) found that most children's inner circle included parents and siblings; almost half of the children identified grandparents and other family members as part of the inner circle. Important is that children with close support from multiple persons showed better adjustment, and there was a highly significant effect of grandparent presence across gender and ethnicity (Levitt et al., 2002, 2005). In particular, after divorce, grandparents and other relatives often assume a greater care giving role wherein they share in child care responsibilities and provide emotional support to both the divorcing parent and his or her children. This external support system can be particularly important because divorcing parents may temporarily be less available and lack disciplinary consistency with their children owing to their own increasing responsibilities and problems, such as employment and financial concerns and depression and other intense emotional reactions. Thus, the broader attachment network can foster a sense of security and continuity to parents and children during an unstable and potentially chaotic period and act as a buffer against the short- and long-term negative effects of divorce (Bretherton, Walsh, Lependorf, & Georgeson, 1997; Crockenberg, 1987, 1988; Hetherington, Law, & O'Connor 1993; Hetherington, Bridges, & Insabella 1998).

Despite scholarly disagreement regarding the monotropic versus polytropic organization of the attachment network, there is a general consensus that the attachment/social network and the people in it are likely to change with age as social needs and the function of relationships evolve over the life cycle (Kobak et al., 2005; Levitt, 2005; Lewis, 2005). In particular, changes in the primary attachment bond and inner circle of attachment relationships are likely to increase with age, but changes may also occur owing to disruptions in attachment relationships caused by death, divorce, remarriage, or other significant changes in the family structure (Kobak et al., 2005). Though parents tend to be permanent members of the attachment network, their positions vis a vis each other and other network members may change as the child matures and others are added or eliminated from network (Kobak et al., 2005). Again, consider the Troxels. A divorced father, who may have been a primary attachment figure for his children prior to the separation, moves in with his parents, who provide financial and emotional support to him and to his visiting children. Though the father remains a member of his children's attachment network, his own parents may be added to the inner circle; they may even assume the position of primary attachment figures if he becomes psychological distressed and/or is less available to meet their needs. Owing to the stress of sudden bereavement, these grandparents may have become even more important to their grandchildren after their father died.

In the context of custody disputes, it is important to consider what roles different people play and how well those people fulfill the functional needs of children. Gender and age differences in the caregiver's provision of and child's need for these various functions (Lewis, 2005; Lewis & Weinraub, 1976) may be particularly relevant to custody and visitation determinations. For example, while certainly not universal, there is some evidence that female network members are more likely to be involved in the function of nurturance and care giving (Belle, 1987), whereas fathers (perhaps males in general) are more likely to play with their infants and older children (Lamb, 1977; Lewis & Weinraub, 1976). If the need for nurturance is stronger in infancy, as suggested by Lewis (2005), it may be desirable for infants to maintain more consistent contact with mothers, grandmothers, and aunts who form the inner circle of the infant's social network. Conversely, as play becomes progressively more important to optimal development in childhood, increased contact with fathers and other important male figures may be advisable as children grow older. Although the salience of these functions may vary with age, many domains are likely to remain relevant throughout the life cycle and different people will be involved. Younger children may look to parents for nurturance, whereas in adolescence a same-sex best friend or romantic partner might be added for this function (Hunter & Youniss, 1982). Similarly, fathers often may fulfill the play function in early childhood, but siblings and same-age peers increasingly serve this function in childhood and adolescence (Buhrmester & Furman, 1987).

Unfortunately, most of these findings are dated and may not accurately reflect the current circumstances of children of divorce. If at the time of divorce one parent were working at home as a primary care giver, she or he would most likely need to return to work, and the children would be placed in day care. Children's relationships with their parents and caregivers will change, and in some cases dramatically so. When parents have time with their children, they will find it necessary to assume more responsibilities than either one may have had to fill prior to divorce. As a result of the women's movement, traditional gender role stereotypes are fading. We believe this is a healthy development, especially for children, but these socio-historical changes have created a dire need for the academic community to conduct relevant research that reflects contemporary realities.

## RECOMMENDATIONS FOR FUTURE RESEARCH

There are many unanswered questions regarding the development and functioning of the attachment network. Fundamental theoretical issues, such as the definition of an attachment bond and more accurate identification of membership in an attachment network are needed. With respect to CCEs, best-interest determinations that rely upon presumptions of biological

supremacy are likely to arrive at conclusions quite different from those that utilize broader definitions allowing a greater variety of care givers to be considered as attachment figures. Recent studies have begun to extend early research with mothers to children's relationships with fathers and other attachment figures (e.g., Colin, 1987), but replication and further exploration is sorely needed. Notably, there is a dearth of studies examining attachment to grandparents, step-parents, and cohabitating or partners despite the common role they play as caregivers. (For a recent study on the role of cohabiting partners, see Berger, Carlson, Bzostek, & Osborne, 2008.) Similarly, studies with greater ecological validity in the context of contemporary societal factors are needed to examine multiple attachment relationships in relation to socioeconomic status, racial and cultural heritage, and the diversity of post-modern family structures (e.g., dual career, single-parent, divorced, blended/step-parent, same-sex couples).

To complicate matters all the more, the literature is limited largely to the study of dyadic relationships in isolation and does not consider the attachment network as a whole. Although recent research has made some progress in identifying members of the broader attachment network among school age children (Kerns, Tomich, & Kim, 2003; Kobak et al., 2005; Levitt, Guacci-Franco, & Levitt, 1993) and adolescents (Freeman & Brown, 2001), assessment tools and procedures require further validation and development for different age groups to be useful in CCEs. Also, recent research on domain-specific attachments in adulthood needs to be extended to infancy and childhood to identify what factors and relational domains are most important to the best interests of children of different ages. Furthermore, the relative independence and/or systemic interdependence of multiple attachment relationships are important to consider. For example, the presence of a grandparent or other extended family members in the attachment network could directly affect the individual well-being of parents and children and more indirectly influence the general quality of the children's relationships with parents and other attachment figures.

An especially thorny issue for CCEs centers on the theoretical debate concerning whether multiple attachments are formed immediately and simultaneously (polytropy) or only after a primary attachment has been established first (montropy). Though both sides of this issue acknowledge the increasing importance of the attachment network as children age, the answer to this question is directly relevant to the ongoing controversy regarding overnight visitation for infants and toddlers. A polytropic perspective suggests that overnight visitation with non-custodial parents is desirable and advantageous to both children and adults. In contrast, the traditional monotropic perspective suggests that in spite of the potential disadvantage to non-custodial parents of delaying overnight visitation for the first few years of life, infant development might progress most optimally when in the

familiar environment of the primary caregiver, especially at nighttime when typical childhood fatigue and fears of the dark often activate the attachment system. Field studies of children's adjustment in differing custodial situations at various developmental levels could contribute substantially to the practical refinement of theoretical models describing the attachment network and provide valuable empirical data to inform CCEs. To illustrate these issues and address their practical implications, we now provide a detailed case example.

### CASE EXAMPLE

Following, we provide a detailed fictional case. At various points, we discuss relevant developmental issues that may arise in the context of the evolving attachment network.

#### Who's Who?

Izzy A. Lostchild was 6 months old when his parents separated. When Mr. Lostchild moved out, Ms. Lostchild became depressed and called her mother, Mrs. Mary Well, for help. Mrs. Well was glad to come help with Izzy so Ms. Lostchild could continue working, and it was not long before she moved in and assumed full-time care of him. Three months later, the Lostchilds reconciled, and both wanted Mrs. Well to stay so that Izzy would not have to be placed in day care. Unfortunately, the Lostchilds soon realized their efforts were in vain and separated for the last time when Izzy was 18 months old.

#### Analysis

This set of circumstances leaves Izzy in a position of potential vulnerability. Had his parents remained together, it would be reasonable to assume that he would have developed a strong attachment relationship with one if not both of his parents. Unfortunately, this was not the case. Because both his parents had demanding jobs, he saw them little. Furthermore, his father was not living at home during much of the time that we would normally expect initial attachment relationships to develop. Furthermore, Mrs. Well was introduced into his life. Though one might argue that her involvement only complicated matters for Izzy, it is equally if not more likely that she may be the one to whom Izzy feels most securely attached at this point in his development. In addition, research suggests that increased membership in the attachment network, especially the presence of grandparents, is associated with greater well-being for children.

## Where's My Blankie?

Mr. Lostchild was a national sales manager who worked out of town all week long, leaving home Sunday night and not returning until late Friday night. As a result, he was able to spend time with Izzy only on the weekends, even though the Final Decree of Divorce, granted when Izzy was 21 months old, awarded him far more time. Despite limited opportunity, he made sure to see Izzy as much as possible.

## Analysis

What would we recommend if Mr. Lostchild wanted to have overnight visitation with Izzy at this point? The answer is that it depends. Had Izzy been younger than 18 months of age, as the mixed opinions in the literature suggest, the wisdom of overnight visitation is debatable. However, given the child's current age, if for example, Izzy had spent the night with his father without distress during the first separation period or if Mr. Lostchild often cared for Izzy alone outside the presence of Ms. Lostchild and her mother, we would see little potential problem in his continuing to do so after the parents separated again. Conversely, what if, at the time of divorce, Izzy had never spent the night with his father? Would he be distressed? Would he be able to tolerate being separated from his grandmother and mother for that length of time? We do not know the answer because it would depend on a variety of factors, including Izzy's attachment to each of them, and to his father, plus his personality and temperament. Under normal circumstances, we would recommend that Izzy initially remain with his mother and grandmother to sleep but spend increasing amounts of time during the days with his father as frequently as possible to promote the positive development of their attachment relationship, until eventually Izzy felt equally comfortable in his father's care. Unfortunately, this was not possible owing to Mr. Lostchild's work schedule. Therefore, despite his legal right, we would recommend that Mr. Lostchild be patient and do without overnight visits to first give Izzy whatever time he needed to feel comfortable in his father's care for extended periods of time.

## Play Time

Over the next three years, Izzy spent increasing amounts of time with his father. Eventually, and when his schedule allowed, Mr. Lostchild would pick Izzy up every other Friday evening and take him to school on Monday morning. Izzy looked forward to the visits and always had a good time. This situation continued until Izzy was 5 years old, when Mr. Lostchild was able to get a new job that required far less travel; he immediately asked his ex-wife to increase the amount of time he saw Izzy, and Ms. Lostchild



agreed that it would be good for Izzy to spend more time with his Dad now that he was older. However, Mr. Lostchild felt that he had missed so much time with Izzy that he filed a motion to modify to increase his parenting time beyond what he was given at the time of the divorce. He based his motion in part on the need for Izzy to spend more time getting to know Mr. Lostchild's close-knit extended family because Ms. Lostchild had not facilitated those relationships. Ms. Lostchild felt his request was excessive and she objected. Efforts to mediate their differences failed, and at a hearing, the court granted Mr. Lostchild's motion.

## Analysis

At 5 years of age, play becomes significant and rivals nurturance in importance for children, but nurturance remains important. Therefore, a 50/50 split, for example, might not necessarily be best for Izzy. In part, this would depend on how secure Izzy felt with his father. It would depend also on the frequency of contact that Izzy had with both parents and his grandmother regardless of whom he was staying with. Additionally, the advisability of a 50/50 parenting plan would depend on whether it reduced or exacerbated parental conflict. For example, if the Lostchilds never cooperated with each other well, we would not support Mr. Lostchild's motion if it meant exposing Izzy to even more conflict during exchanges. Conversely, if Mr. Lostchild lived nearby, he and his ex-wife cooperated, and Izzy had frequent contact with both of them, this plan could well be feasible.

So far, we have not considered the role of Mrs. Well. Let us assume that Mr. Lostchild and his mother-in-law always got along well and she felt that he was a "good Dad." What if Mr. Lostchild prevailed and Izzy soon began to complain of missing his grandmother, who arguably had been Izzy's primary care giver and with whom he may have the most secure bond? If so, we see little reason why Izzy's concerns should not be accommodated. For example, could Izzy call his grandmother when he missed her? Could Mrs. Well spend a night with them from time to time? Or could Mr. Lostchild invite her to spend an afternoon with them participating in an activity? If doing so would help Izzy feel more comfortable and facilitate the transition to spending more time with his father, we would encourage Mr. Lostchild to do so. This, of course, raises the question of Ms. Lostchild's reaction to such requests, which we discuss next.

## Can't We All Get Along?

Unfortunately, the court's modified parenting plan did not end the conflict; in fact, it exacerbated it, and discord now arose between Ms. Lostchild and her mother as well. Mrs. Well disagreed with her daughter, believing that Izzy was benefiting from more time with his father. To make matters worse,

Ms. Lostchild seemed unconcerned that Izzy was frequently exposed to their arguments. It did not help matters when Ms. Well told her daughter not only that Izzy should not be exposed to this but that she held her responsible for initiating it. It was at this time that Izzy began to experience tantrums at parent exchanges.

### Analysis

Izzy is now in an unfortunate position, and his behavior is entirely predictable. There are at least two possible and non-overlapping explanations. First, the conflict may be causing him some degree of separation anxiety. Second, his behavior may be an effort to stop his parents from arguing by diverting their attention to him.

This is a time when family therapy for the adults would be most helpful. A skilled practitioner could explain Izzy's behavior, show how it was related to the conflict, and help the adults contain it. If successful, Izzy's exposure to the conflict would be reduced, and we have good reason to believe that his tantrums would remit promptly. At the same time, such an intervention would not address the underlying conflicts that may remain among the adults.

### And Here I Thought You Cared About Me

Ms. Lostchild felt betrayed by her mother's position and, in the ensuing years, their relationship deteriorated. When Izzy was 9 years old, the accumulated resentment led to a vicious argument between mother and daughter, and Ms. Lostchild told her mother to move out and would not allow Mrs. Well any contact with Izzy. After Mrs. Well moved out, Izzy frequently asked to see her, but Ms. Lostchild refused. In fact, both Izzy and Mrs. Well were so distressed by this turn of events that they began to have telephone contact with each other behind Ms. Lostchild's back, and Mr. Lostchild even facilitated some clandestine visit for them. Eventually, Mrs. Well could no longer tolerate the situation and filed a motion with the court to obtain visitation rights with Izzy. She was granted standing and, with Mr. Lostchild's support, eventually prevailed. This situation continued for several years, and during that time, things seemed much improved; overt conflict subsided, and Izzy seemed to do well.

### Analysis

Our example rests on the assumption that Ms. Lostchild's decision to eliminate contact between her mother and Izzy deprived him of an important attachment relationship. Once Mrs. Well formally intervened, the court

could have ordered a forensic mental health assessment to address this question. A prudent evaluator would (1) take a detailed history of Mrs. Well's role as Izzy's caregiver; (2) make an assessment of her mental health and capacity as a caregiver; (3) interview Izzy and assess his developmental needs; and (4) perform collateral interviews with Mr. and Ms. Lostchild. Using Levitt's (2005) bull's eye model as an organizational and conceptual framework, the mental health professional could assess the importance of the relationship between Izzy and his grandmother and make appropriate recommendations to the court.

### The Chickens Come Home to Roost

About the time Izzy entered middle school, everyone began to notice that he was often angry and noncompliant. Over the next 2 years, his grades deteriorated, and Izzy began to demonstrate behavioral problems that ultimately ended in the school's insisting that he and the family receive treatment or else they would provide him an alternative placement. The family sought treatment from an experienced family psychologist who found herself stymied from the outset because the parents and grandmother could not agree on anything, engaging only in fault finding. Despite the psychologist's best efforts, the family made little progress in reducing conflict, and Izzy's behavior deteriorated further. After numerous failed attempts, the family discontinued treatment. Within a year, Izzy was arrested for theft, and there was suspicion that he was motivated to do so to buy drugs.

### Analysis

This turn of events is sad but hardly surprising. Izzy has lived in an atmosphere of conflict for his entire life. He could never be sure who would be there for him or would act purely on his behalf. In such an environment, how could we expect him to feel secure in any of his relationships? The experience with the family psychologist may only have exacerbated his distress in this regard. Izzy significantly escalated the seriousness of his acting out behavior, yet he soon discovered that the adults in his life were still more concerned with being right than they were doing what was best for him. At this juncture, there seemed no way out, and it is hard not to despair for Izzy.

### What Else is Left?

By this time, Mr. Lostchild was at his wits end. He believed that he was the only one who could get control of Izzy's behavior, and he filed a motion to modify to become Izzy's primary caretaker, trying to minimize the role and

influence of his ex-wife as much as possible. In the process of doing so, he succeeded in enlisting Mrs. Well's support for his position because she believed that Izzy needed a strong male figure.

### Analysis

By now, we might all agree that Izzy is going to need a firm hand if he is to be diverted from his present course. He certainly needs structure, discipline, and consistency. Is Mr. Lostchild up to the task? Will he be able to gain control of Izzy by firmly enforcing rules and providing adequate discipline without depriving him of the opportunity to develop relationships with peers that are so critical to his social and developmental needs? Would Mr. Lostchild have Mrs. Well's cooperation and support in this regard? Even if he did, would that be helpful, or would enlisting her cooperation only create more resentment from Ms. Lostchild that would again spill over on to Izzy? Alternatively, is this a time when sending Izzy away to school or relatives should be considered? This is certainly a drastic option, but two issues cause us to consider it. First, there is no evidence that the significant adults in his life are going to change their behavior and put him ahead of their own interests. Second, given his age, this may be the last chance for Izzy to develop the kind of strong attachment relationships that he so desperately needs.

### A Ray of Hope

During the course of the litigation, Mr. Lostchild received a telephone call from his uncle, Salt O'The Earth. Mr. Lostchild was close with his uncle as a child, having spent extended summers vacations with him on his sheep ranch in Montana. Izzy had been to visit the Earths on numerous occasions, and everyone knew that Izzy looked up to his great uncle. In fact, some felt that he was the only one Izzy would obey. Mr. Earth knew about the situation with Izzy and, after careful consideration, he and his wife offered to have him come live with them on the ranch. Mr. Lostchild's first reaction was a negative one. He lost his temper and became angry with his uncle for interfering, but he did not sleep that night. On one hand, he felt bad for hurting his uncle, whom he loved. On the other, he began to wonder whether getting Izzy away from the maelstrom of the family conflict might just be the change Izzy needed. The next day, he called his uncle to apologize; then he contacted his lawyer to request that he draft a proposal for settlement. Ms. Lostchild's lawyer saw the wisdom of the offer immediately and gently and sensitively spoke with her client about how this might be Izzy's last best hope and that she should at last consider putting aside her resentments toward Mr. Lostchild and think about Izzy. After much soul searching, she agreed. Only Mrs. Well rejected the proposal, believing that it was not

best for Izzy to be away from her. However, when both Mr. and Ms. Lostchild confronted her with the reality of Izzy's situation and the fact that Mrs. Well was also unable to control him, she relented and reluctantly gave her blessing to the arrangement. As a result, the dispute was not litigated, and temporary custody was given to the Earths, with the Lostchilds and Mrs. Well retaining visitation rights.

### Analysis

We acknowledge that this is an extreme example and that most custodial disputes do not end in such a dramatic way. Nevertheless, we think Izzy's story illustrates our point. Children establish relationships with others independently of biological ties. We do not know enough about Izzy's relationship to the Earths. Could a forensic mental health assessment address that question? Perhaps a social convoy evaluation of Izzy's current attachment network could provide some insight into their relationship, but we are skeptical that it would yield unequivocal findings. Sending Izzy to Montana entails great risk. Then again, would it be better to send him to a boarding or military school where he had relationships with no one? What we know is that the environment in which he was being reared did not serve him well. We cannot know whether the damage done will be permanent or whether the Earths will have the positive influence over him that everyone hoped for. Nevertheless, given the precarious nature of his situation, it certainly seems worth a try.

## PRACTICE IMPLICATIONS

Current theory and science emphasize that multiple interrelated factors influence child development and well-being. These findings strongly suggest that it is vital for CCEs and judges to take account of developmental age, relationships with care givers and the broader eco-systemic environment when making best-interest determinations and crafting parenting plans. Multiple attachment relationships can have a powerful impact on children's lives, for better or worse. The CCE's goal should be to assess all relevant members of attachment networks to make recommendations that will encourage positive relationships and minimize the influence of negative ones. Preference should be given to the person who is best able to maintain a stable environment, encourage multiple attachment relationships, and adjust to children's ever-changing developmental needs.

We understand that such recommendations may not all be practical within the legal context. Unless a nonparent enters as a formal intervenor, he or she would not normally be ordered to participate in a CCE because he or she is not a party to the lawsuit. However, when such nonparents play a

significant role in a child's life but do not participate, CCEs are at a significant disadvantage as vital information may never be acquired. As a result, the CCE may potentially make recommendations that are not in the child's best interest and could even be harmful. For example:

A psychologist was appointed to perform a CCE subsequent to a motion to modify filed by the father. He alleged that his ex-wife should have her parenting time significantly curtailed and supervised owing to her uncontrolled schizophrenia. At the time the motion was filed, the father had remarried, but the step-mother was not ordered to participate and was interviewed only briefly as a collateral resource. The CCE found that the mother was in fact seriously disturbed and that all efforts to help her obtain treatment had been futile. She concluded, and later testified, that the children were not safe with their mother and that her parenting time should be severely limited and supervised. Some years later, the psychologist ran into the step-mother, who had since divorced the father because he was physically abusive to her and the children.

We do not know whether this situation could have been avoided. However, the example makes us wonder what the nature of the relationships was between the children and the step-mother. Could she have been involved in the CCE? Is there a possibility she would have had standing to intervene? Even if she did not, does that prevent the CCE from suggesting that a non-parent be awarded parenting time or even custody? Questions such as these are now being addressed in many jurisdictions, and CCEs are in an excellent if not a unique position to raise them, especially when court orders for CCEs are being crafted.

We recommend that CCEs seriously consider whether to accept cases when they have reason to believe that they will not be able to gain a full understanding of the family's circumstance and direct knowledge of the adults who are significantly involved with the children. In such circumstances, the court may be unable or unwilling to order those persons to submit to the evaluation. When this is the case, there is no reason why a CCE cannot make his or her views known to the lawyers and the court regarding the importance of including such individuals in the evaluation. We recommend that the CCE ask the lawyers to consult with their clients and seek their agreement for such persons to participate. When such agreements cannot be made, we believe that CCEs should note this fact in their reports to the court as a limitation of their findings.

## CONCLUSIONS

This article addresses a situation in which scientific knowledge has outpaced legal developments. As a general matter, we conclude that the law



does not fully contemplate the broader ecological context and circumstances in which children live. Though recent legal developments, such as awarding visitation to grandparents, step-parents, and former romantic partners are encouraging, they have not gone far enough. We argued that a developmental-contextual approach to the conceptualization and assessment of attachment relationships may promote a more holistic view of the child's best interest that could benefit children and perhaps prevent harm.

We could have written our case example with a variety of outcomes. For example, how might things have been different had there been a CCE when Mr. Lostchild filed his first motion to modify? What if, after he won more parenting time with Izzy, the court appointed a parenting coordinator to help with decision making and communications among the adults? Could Izzy's troubling course have been altered? We would like to think so, but we cannot know. What we hope this article shows is that disrupted attachment relationships can have serious, adverse, and long-term consequences for children who find themselves in such situations. Children do not choose their parents, and mental health professionals cannot spin straw into gold. Yet, awareness of and attention to children's attachment relationships is vital if we have any hope of assisting them.

In this article, we have gone a step further by encouraging the reader to consider the importance of children's wider attachment networks in CCEs. Depending on the jurisdiction, such relationships may carry little or no legal weight, yet they can be vitally important to children. We realize that our recommendations will not be adopted into law in the near future. Conversely, CCEs are in a unique position to advance this knowledge by making lawyers and judges aware of these issues and employing their best efforts to incorporate them into their work.

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## **GRANDPARENTS AND PSYCHOLOGICAL PARENTS RIGHTS AND REMEDIES© (Rev. September 2022)**

### **IMPORTANT LEGAL DEVELOPMENTS**

<b>DATE</b>	<b>LEGAL CHANGES AFFECTING GRANDPARENT AND THIRD PARTY VISITATION RIGHTS</b>
June 2000	The United States Supreme Court issues <i>Troxel v. Granville</i> .
July 31, 2001	Oregon Laws Regarding Grandparent and Psychological Parent Rights were fundamentally modified by the 2001 Legislature. This legislation, amending ORS 109.119, which became law on July 31, 2001, was intended to make Oregon's law consistent with the US Supreme Court's decision in 2000, <i>Troxel v. Granville</i> and applies to all cases, including those filed or decided before the effective date of the new law.

June 10, 2004	<p style="text-align: center;">TROXEL APPLIED IN OREGON – THE NEW STANDARD</p> <p>In <i>O'Donnell-Lamont and Lamont</i>, 337 Or 86 (2004), the Supreme Court reversed the Court of Appeals and restored custody of the children to grandparents. The Supreme Court's decision brings some much needed clarity to the application of <i>Troxel</i> as well as the post-<i>Troxel</i> version of ORS 109.119. Contrary to several prior Court of Appeals decisions, the Supreme Court held that it is not necessary that a third party overcome the <i>Troxel</i> birth parent presumption by demonstrating that the birth parent would harm the child or is unable to care for the child. Rather, the Supreme Court adhered to the legislative standard that "the presumption could be overcome by a showing, based on a preponderance of the evidence, that the parent does not act in the best interest of the child." <i>Id.</i> at 107. While a parent's unfitness or harm to a child can be strong evidence to overcome the <i>Troxel</i> (and ORS 109.119) birth parent presumption, that presumption may be rebutted by evidence of any of the enumerated factors as well as other evidence not specifically encompassed by one of the statutory factors. <b>"The statutory touchstone is whether the evidence at trial overcomes the presumption that a legal parent acts in the best interest of the child, not whether the evidence supports one, two, or all five of the nonexclusive factors identified in ORS 109.119 (4)(b)."</b> <i>Id.</i> at 108.</p>
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# **1. The Presumption that a Legal Parent Acts in the Best Interest of the Child/Rebutting the Presumption.**

Oregon law now establishes a presumption that a legal parent acts in the best interest of a child in cases where a third party seeks custody or visitation rights. The presumption may be rebutted by a number of factors, including:

- I. If the petitioning person is or recently has been the child's primary caretaker;
- ii. The legal parent is unwilling or unable to care adequately for the child;
- iii. If the child would be psychologically, emotionally or physically harmed if no custody or visitation relief was ordered;
- iv. The legal parent fostered, encouraged or consented to the relationship between the child and the third party;
- v. Granting the requested relief would not substantially interfere with the custodial relationship between the legal parent and the child; and
- vi. The legal parent unreasonably denied or limited contact between the child and the third party.

Upon the request of the legal parent or the third party, the court may order that a custody or visitation study be performed at the expense of either the legal parent, the third party or both. An attorney may be appointed for a children at the request of the child (mandatory appointment) or at the request of one of the parties (discretionary appointment).

## **2. Psychological Parents' Rights--Visitation.**

- a. Authority. ORS 109.119.
- b. Eligibility.

Any person (not necessarily a blood relative) who has maintained "an ongoing personal relationship with substantial continuity for at least one year, through interaction, companionship, interplay and mutuality." The person must show a substantial degree of contact with the child for a period of at least a year. The person does not have to show that he or she had physical custody, only a relationship and substantial contact with the child. This statute applies to blood relatives and non-blood relatives, including grandparents, step-grandparents, stepparents and persons whose children have not established paternity. There is no longer a separate law that governs rights of grandparents. Grandparents must meet the same standards as other third parties. A petition may be filed in a new legal proceeding or through an existing guardianship or domestic relations proceeding. For interventions in juvenile court proceedings, see section 4B.

- c. Relief Available.

The petitioning party must rebut the presumption that the legal parent acts in the best interest of the child. If the court finds "from clear and convincing evidence" that the presumption has been rebutted, the court may order reasonable visitation or contact rights if it is in the best interest of the child. "Clear and convincing evidence" is a higher legal standard than is normally required. It means substantially more than a preponderance of the evidence (more than 51 percent), but not as high a standard as that used in a criminal case--"beyond a reasonable doubt." The presumption may be rebutted by a number of factors. Attorney fees are available to the prevailing party. Note that some courts, including Multnomah County, require a separate hearing to first establish that the petitioning party has the requisite ongoing personal relationship before proceeding to a hearing on the merits of the petition.

### 3. **Psychological Parents' Rights--Custody.**

- a. Authority. ORS 109.119.
- b. Eligibility.

A person petitioning for custody under this statute must show a "child-parent relationship." The statute defines "child-parent relationship" as follows:

"...a relationship that exists or did exist, in whole or in part, within the six months preceding the filing of an action under this section, and in which relationship a person having physical custody of a child or residing in the same household as the child supplied, or otherwise made available to the child, food, clothing, shelter and incidental necessities and provided the child with necessary care, education and discipline, and which relationship continued on a day-to-day basis, through interaction, companionship, interplay and mutuality, that fulfilled the child's psychological needs for a parent as well as the child's physical needs. However, a relationship between a child and a person who is the foster parent of the child is not a child-parent relationship under this section unless the relationship continued over a period exceeding 12 months."

In other words, a person requesting custody must show that they had exclusive or shared physical custody of the child within six months before the petition. It does not include foster parents unless the relationship extended for a period of 12 months or more. Shared custody may not be sufficient unless the third party has "fulfilled the child's psychological needs for a parent as well as the child's physical needs."

- c. Relief Available.

If the required relationship is shown, and if the presumption that a legal parent acts in the best interest of the child is rebutted (see Section 1 above) the court may award custody to the third party or appropriate visitation rights if it is in the best interests of the child. Upon filing the petition, the court may also award temporary custody, pending a final hearing. Note that some courts, including Multnomah County, require a separate hearing to first establish that the petitioning party has the requisite child-parent relationship before proceeding to a hearing on the merits of the petition.



**4. Intervention by Psychological Parents and Grandparents – ORS 109.119; ORS 419B.116; and ORS 419B.875.\***

Except for grandparents who have some limited rights based upon their status as grandparents (see section 6D below), unless a person is allowed to “intervene” or granted rights of “limited participation”, they are not parties, are not given formal notice of legal proceedings, and are not entitled to formally address the Court. Both grandparents, psychological parents and third parties may seek to intervene in family law proceedings affecting a child. Such persons may also seek to intervene in Juvenile Court proceedings.

a. Intervention in Circuit Court. ORS 109.119.

To intervene in circuit court, a person must allege that they have either a child-parent relationship or an ongoing personal relationship, as well as alleging facts that the intervention is in the best interest of the child. If allowed, Intervention will provide the intervener with formal notice of legal proceedings and the right to present evidence to the court. It does not, however, guarantee any substantive relief in the form of custody, visitation or contact rights. To obtain such rights, the party must overcome the presumption of a legal parent (see Sections 1-3 above).

b. Intervention in Juvenile Court Proceedings. ORS 419B.116.

In order to intervene in a juvenile court proceeding, a person must allege and prove that he/she has had a “care giver relationship”. The care giver relationship must have existed during the year preceding the initiation of the juvenile court proceeding, for at least 6 months during the juvenile court proceeding (one year for nonrelated foster parents), or for at least one-half of the child’s life if the child is less than 6 months of age. In order to demonstrate the care giver relationship, the person must also show physical custody or shared residence with the child, and that the person has provided the child on a daily basis with the love, nurturing and other necessities required to meet the child’s psychological and physical needs.

Obtaining intervention is very challenging. Persons seeking in juvenile court must also prove to the court that the other participants (e.g., parents, child's attorney, Department of Human Services) *cannot adequately present the case*. The meaning of “*cannot adequately present the case*” is not clear, specifically whether this means *presenting the case* from the perspective of the state, the child, the petitioning party or a combination of the above.

An intervener in a juvenile court proceeding will be given notice of court proceedings, the opportunity to present evidence and the opportunity to be considered as a visitation or placement resource for the child. Persons granted intervention rights may seek to be a temporary or a permanent placement resource.

c. **Rights of Limited Participation In Juvenile Court. ORS 419B.875.**

Persons who do not meet the care giver standards for full intervention may nevertheless qualify for rights of limited participation. The person must file a motion and affidavit with the juvenile court at least two weeks before a proceeding in the case in which participation is sought.\* If the petition is granted, the court will determine what rights are given to the person, but rights will generally include at least notice of hearings and the right to present evidence. Persons with rights of limited participation may seek to be a temporary placement or visitation resource but not a permanent placement resource.

Obtaining rights of limited participation is very challenging. Persons seeking rights of limited participation in juvenile court must also prove to the court that the other participants (e.g., parents, child's attorney, Department of Human Services) *cannot adequately present the case*. The meaning of "*cannot adequately present the case*" is not clear, specifically whether this means *presenting the case* from the perspective of the state, the child, the petitioning party or a combination of the above.

**5. Modification of Psychological Parents/Grandparent Visitation and Custody Orders.**

Modification of Orders under Amended ORS 109.119.

Once a visitation or custody order is issued under ORS 109.119, there is no need to re-litigate the issue of the presumption of the natural parent. In visitation cases, the modification standard is the "best interest of the child." In custody cases, before the best interest standard is reached, a moving party will have to show that there has been a substantial and unanticipated change of circumstances. However, if a third party is granted custody in a chapter 107 proceeding it is currently unclear if the change of circumstances standard applies.

## 6. Juvenile Court Proceedings.

- a. Authority. ORS Chapter 419B (dependency); ORS Chapter 419C (delinquency, criminal--dispositional stage only).
- b. How the State Obtains Custody of A Child.

The State of Oregon may obtain legal custody of a child if the child commits an act which would be a crime if they were adult, or if the child is subject to abuse, neglect, or abandonment by the parent or custodian. The state may also obtain custody of run-aways. When the state obtains custody, it almost always places the child with State Office for Services to Children and Families, now known as Department of Human Services (DHS), although it does have authority to place the child with a grandparent, blood relative or other appropriate person. DHS, by statute, must now take reasonable efforts to give notice to relatives and to favor relative placements over stranger placements. However, in the past this preference has often been ignored. Sometimes no contact is made with the extended family. Other times, DHS has a built-in prejudice against extended family because they fear the extended family will take the side of the former custodial parent and interfere with their efforts.

- c. Rights of Third Parties in Juvenile Court.

Juvenile Court proceedings are usually open to the public, particularly in non-criminal matters. See Section 4 above for rights of intervention and limited participation by third parties. Apart from those rights, the court is not required to hear from an extended family member unless he or she is called as a witness by the state (through DHS) or a party (mother, father or the child--through their attorneys). However, if a legal grandparent of a child requests in writing and provides contact information to DHS, the agency must give the legal grandparent notice of a hearing concerning the child and give the legal grandparent an opportunity to be heard. This does not make the legal grandparent a party to the proceeding. Persons interested in obtaining or maintaining their relationship with a child in the custody of the state should consider hiring an attorney and filing for intervention or rights of limited participation (see discussion above) and stay in close contact with the following individuals:

- i. DHS caseworker (consult phonebook for branch office nearest your home).
- ii. Juvenile Court counselor (Multnomah County: **503.988.3460**; Washington County: **503.846.8861**; Clackamas County: **503.655.8342**).
- iii. Court Appointed Special Advocate (CASA)--(In Multnomah County: **503.988.5115**; Washington County: **503.992.6728**; Clackamas County: **503.723.0521**) an advocate appointed by the court to look after the best interests of the child and report information to the court. Check with the Juvenile Court counselor for the name of the CASA, if one exists.

- iv. Child's attorney -- a court may, but is not required to appoint an attorney for the child. Again, check with the court, through the Juvenile Court counselor, for the name of the attorney.
  - v. Attorneys for mother and father--again, check with the court to get in contact with mother or father's attorney.
  - vi. Citizens Review Boards (CRBs) – CRBs are volunteer panels established under state law assigned to review DHS cases approximately every six months. CRBs are volunteer citizens. While they do not participate directly in Juvenile Court proceedings, they prepare reports and make recommendations regarding whether DHS is on track in its placement and whether the child needs or is receiving appropriate representation from the CASA or attorney. (For general information about CRBs in Multnomah, Washington, or Clackamas Counties contact the Portland Regional office at 503.731.3007. Otherwise contact Rebecca Regello, Regional Field Manager for Multnomah and Washington Counties at 503.731.3206 or Dave Smith, Regional Field Manager for Clackamas County at 503.731.4356)
- d. Rights of Grandparents and Foster Parents in Juvenile Court Proceedings.
- I. Notice and the Opportunity To Be Heard (ORS 419B.875(7))

DHS is required to make diligent efforts to identify and obtain contact information for the grandparents of a child or ward committed to the department's custody. When the department knows the identity of and has contact information for a grandparent, the department shall give the grandparent notice of a hearing concerning the child or ward. Therefore concerned grandparents should give written notice and their contact information to DHS so they will be notified of hearings. If a grandparent is present at a hearing concerning a child or ward, the court shall give the grandparent an opportunity to be heard. This does not make the legal grandparent a party to the proceeding.

Foster parents present at a dependency hearing also have a right to be heard.
  - ii. Court Ordered Visitation and Contact (ORS 419B.876)

At a hearing concerning a child in the legal custody of DHS, a court may order visitation and/or contact and communication rights to a grandparent of the child. A grandparent seeking such rights must notify DHS and the other parties to the case at least 30 days before the date of hearing. To qualify, such grandparent must show that there was a pre-existing ongoing relationship with the child prior to the establishment of the wardship and that court ordered visitation or contact will not negatively impact the court's permanent plan for the child.

e. **Special Concerns.**

- i. If you do not believe the child's interests are being adequately represented, you may ask the court, through the Juvenile Court counselor, to appoint an attorney for the child.
- ii. It is important in Juvenile Court that your primary goal be the best interests of the child. The court, and particularly DHS, are extremely wary where an extended family member strongly takes the position of the parent who has lost custody. In such a case, DHS may feel that the extended family member is interfering with their attempts to rehabilitate the parent, and DHS fears that the extended family member may not be able to protect the child. In some cases, it may be appropriate to strongly advocate the position of the parent who has lost custody. In other cases, it may be more appropriate to give emotional (and sometimes financial) support to the parent, without "taking their side."
- iii. The state provides a foster care subsidy to children placed with strangers, but in many cases denies that subsidy to children placed with extended family members. An extended family member who receives physical custody of the child should make every effort to seek any foster care subsidy which may be available (TANF, Title IV(E); Non-Needy Relative Grant and/or the Oregon Health Plan).

**7. Adoption.**

- a. Authority. ORS 109.305-109.410.
- b. Eligibility.

Any person may seek to adopt a child. However, an adoption will not be granted unless the consent (or a waiver of the consent) is received from the child's birth parents. If the child's birth parents' rights have been terminated, then DHS must give its consent to the adoption. A birth parent's consent may be waived if paternity has never been established or if the birth parent willfully neglected or abandoned the child for at least one year prior to the adoption petition.

- c. Relief Available.

If the adoption is granted, the person becomes the legal parent of the child. The effect of the adoption is to terminate the birth parents' rights.

d. Special Concern--Adoption and the Termination of Grandparents' Rights.

Since an adoption terminates the rights of the birth parents, it also has the effect of terminating the blood relationship of the grandparents. Therefore, it may be important to intervene in an adoption proceeding to protect your rights. Intervention has its own problems.

Notice to grandparents is required only in stepparent adoptions and then a motion for visitation rights must be filed within 30 days (see Section 6(e) below).

In non-stepparent adoptions, you may never find out about a pending adoption, because the law does not require notice to be given to extended family members--only to birth parents. Even if you do intervene, the court may permit the adoption to proceed and not award you any visitation with the child. Although it has not been conclusively determined, when a conflict exists between an extended family member and the new adoptive family, the court will give preference to the rights and concerns of the new adoptive family over the extended family member.

A grandparent or current caretaker who seeks but is denied a request to be the adoptive parent may seek a review by DHS of the denial and thereafter a limited right to appeal to the Circuit Court for a review of the agency (DHS) decision.

See also Section 6(d) above (notice to grandparents of DHS hearings) and Section 8 below regarding guardianship options as alternatives to adoption.

e. Notice/Visitation Rights in Stepparent Adoptions. ORS 109.309; ORS 109.332.

In stepparent adoptions only, grandparents must be given notice of the proposed stepparent adoption by receiving a true copy of the adoption petition. Within 30 days of service of the petition, a grandparent may file a motion with the court seeking visitation rights after the adoption. Visitation rights will only be awarded if it can be established, by clear and convincing evidence, that visitation with the grandparent(s) is in the best interests of the child; that a substantial relationship existed prior to the adoption; and that establishing visitation rights will not interfere with the relationship between the child and the adoptive family. This law does not apply to independent or Department of Human Resources (DHS)-sponsored adoptions.

f. Open Adoption Agreements. ORS 109.305.

In both stepparent adoptions and non-stepparent adoptions (including independent and DHS cases), birth parents and adoptive parents may sign an "open adoption" agreement, allowing visitation with grandparents. This agreement is enforceable by the courts but does not otherwise affect the adoption.



## 8. Guardianship.

- a. Authority. ORS 109.056, 125.055, ORS 419B.365, ORS 419B.366.
- b. Types of Guardianship.
  - i. Juvenile Court Permanent Guardianship. The Juvenile Court may appoint a permanent guardian for a child *as an alternative to a formal termination of parental rights*. Although parental rights are not terminated, the parent could never have physical custody restored. The terms of contact between the child and the parent is determined by the Court and the guardian (ORS 419B.365).
  - ii. Juvenile Court Non Permanent Guardianship. The Juvenile Court may now also terminate DHS involvement and, maintain wardship but award a more traditional guardianship to a foster parent, relative or third-party. Unlike a permanent guardianship, this guardianship option provides for modification and a potential future termination and restoration of a natural parent's rights (ORS 419B.366).
  - iii. Civil Court Guardianship. Any person may apply to the court to become a guardian of a minor under ORS 125.055. A person petitioning for a guardianship to the court must give appropriate notice to the child, the child's recent custodians, and the child's birth parents. In addition, the person must show a need for the guardianship, because the child's essential needs for physical health and safety are not being met. The court must find by clear and convincing evidence that the guardianship is necessary. The Court of Appeals has applied *Troxel v. Granville* to the guardianship context and therefore, to establish a guardianship, over the objection of a birth parent, it will be necessary to overcome the constitutional presumption in favor of the birth parent (see Section 1 above).
  - iv. Delegation of Parental Powers. Under another statute, ORS 109.056, a parent, through a "power of attorney," can delegate their parental powers to another for a period not exceeding six months. This does not need to be filed with a court, but the power of attorney should be properly drafted and signed before a notary.
  - v. Relative Caregiver Authority by Affidavit. ORS 109.575 authorizes a relative caregiver to consent to medical treatment and education for minors left in their care. The caregiver is required to complete a specific affidavit to utilize this authority and to attempt to give notice to the legal parent of his or her intent to exercise this authority.

c. Relief Available.

A guardian has the powers and responsibilities of a parent, except that the guardian is not responsible to provide his or her personal funds to support the child. A guardian may petition for appropriate public assistance or child support from one or both of the child's parents.

## 9. Third Parties and Military Deployment of Parents

Oregon law now allows a deployed parent to petition the court for visitation, during deployment, between the child of the deployed parent and a stepparent, grandparent, or other family member related to the child. The court must consider whether visitation will facilitate contact between the child and the deployed parent, the best interests of the child, and the third-party visitation factors in ORS 109.119.

CAUTION: This information is a general guide to your rights. Specific rights and remedies will vary with each case. This guide is not a substitute for legal advice. You should consult with an attorney in any matter concerning your rights or the rights of your children or grandchildren. You may contact the Oregon State Bar Lawyer Referral Service for the name and number of an attorney who may be able to assist you. **Telephone: 503.684.3763 or toll-free in Oregon 1.800.452.7636.**

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# **GRANDPARENT AND PSYCHOLOGICAL PARENT RIGHTS IN OREGON AFTER *TROXEL*® - UPDATE (Rev. September 2022)**

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## **INTRODUCTION**

Grandparents, foster parents, and other third-parties play an increasing role in the care of children, statewide and nationally. The relationship between these third parties and natural or biological parents has resulted in a significant and evolving body of case law and statutory changes.

Nationwide:

- The U.S. Census estimates that between 2016-2020, more than 7 million grandparents were living with their own grandchildren under the age of 18.
- More than 2.4 million grandparents were responsible for caring their own grandchildren under the age of 18.
- More than one third of Grandparents in the U.S. are responsible for caring for grandchildren under the age of 18. Almost half of those have been responsible for the grandchild(ren) for over 5 years.
- There are 2,7 million grandchildren under the age of 18 years living with a grandparent householder who is responsible for their own grandchildren under the age of 18. Of those, 1,7 million have a parent present whereas 1 million have no parent present.

In Oregon:

- The U.S. Census estimates that there are 54,643 grandchildren under the age of 18 living with a grandparent householder in Oregon.
- Of the estimated 54,643 grandchildren under the age of 18 living with a grandparent householder in Oregon, 41.6% are under the age of 6; 34.2% are 6-11 years old; and 24.2% are 12-17 years old.
- An estimated 22,774 children under the age of 18 in Oregon live with a grandparent householder who is responsible for those grandchildren. Of those, 14,596 have a parent present, whereas 8,178 have no parent present.
- There are on average 8000 children in foster care on any given day in Oregon.

## THE LEGAL LANDSCAPE

In the seminal case of *Troxel v. Granville*, 530 US 57, 120 S. Ct. 2054, 147 L.Ed 2d 49 (2000), the United States Supreme Court held that awarding visitation to a non-parent, over the objections of a parent is subject to constitutional limitations. The court invalidated, as applied, a Washington statute authorizing “any person” to petition for visitation rights “at any time” and providing that the court may order such visitation if it serves the “best interest of the child,” on the ground that the statute violates a natural parent’s right to substantive due process. The court specifically recognized as a fundamental liberty interest, the “interest of parents in the care, custody and control of their children.” The *Troxel* case has affected laws in virtually all of the states, and has significantly reduced previously recognized rights of grandparents, step-parents and psychological parents in favor of birth parents.

In 2001, Oregon’s legislature responded to *Troxel* by radically restructuring Oregon’s psychological parent law (ORS 109.119) and in so doing, eliminated ORS 109.121-123, which gave specific rights to grandparents.

Before discussing the implications of *Troxel* and amended ORS 109.119, it is important to understand Oregon’s law before *Troxel*.

### GRANDPARENT AND THIRD PARTY RIGHTS IN OREGON BEFORE *TROXEL*

Before *Troxel*, Oregon’s jurisprudence evolved from a strict preference in favor of natural parents to a fairly straight-forward application of the best interests test. In *Hruby and Hruby*, 304 Or 500 (1987), the Oregon Supreme Court held that the best interest standard is not applicable in custody disputes between natural parents and other persons, and that in custody disputes, a natural parent would not be deprived of custody absent “some compelling threat to their present or future well-being.” That standard remained in place until 1999 when in *Sleeper and Sleeper*, 328 Or 504 (1999), *Hruby* was effectively swept aside and the court ordered that the best interest standard be applied to psychological parent cases. In *Sleeper*, the stepfather, a primary caretaker, obtained custody over biological mother. (See also *Moore and Moore*, 328 Or 513 (1999)). Significantly, the court limited the *Sleeper* holding, applying the best interests test under the statute, by making it limited by an undefined “supervening right” of a natural parent. Therefore, before *Troxel*, once a third party had met the test for being psychological parent (*de facto* custodian), the best interest standard was applied and the psychological parent competed on an equal footing with the natural parent, subject to the natural parent’s “supervening right.” This “supervening right” was defined and applied in the post *Troxel* cases.

## TROXEL APPLIED – THE NEW STANDARD

In ***O'Donnell-Lamont and Lamont***, 337 Or 86 (2004), the Supreme Court reversed the Court of Appeals and restored custody of the children to grandparents. The Supreme Court's decision brings some much needed clarity to the application of *Troxel* as well as the post-*Troxel* version of ORS 109.119. Contrary to several prior Court of Appeals decisions, the Supreme Court held that it is not necessary that a third party overcome the *Troxel*/birth parent presumption by demonstrating that the birth parent would harm the child or is unable to care for the child. Rather, the Supreme Court adhered to the legislative standard that "the presumption could be overcome by a showing, based on a preponderance of the evidence, that the parent does not act in the best interest of the child." *Id.* at 107. While a parent's unfitness or harm to a child can be strong evidence to overcome the *Troxel* (and ORS 109.119) birth parent presumption, that presumption may be rebutted by evidence of any of the enumerated factors as well as other evidence not specifically encompassed by one of the statutory factors. "The statutory touchstone is whether the evidence at trial overcomes the presumption that a legal parent acts in the best interest of the child, not whether the evidence supports one, two, or all five of the non-exclusive factors identified in ORS 109.119 (4)(b)." *Id.* at 108.

Notwithstanding this broad and encompassing standard, the case law demonstrates that two factors, parental fitness and harm to the child, are by far the most significant. See also discussion below on "*Demonstrating Harm to the Child - What Is Enough?*"

## DIGEST OF POST-TROXEL CASES IN OREGON

1. ***Harrington v. Daum***, 172 Or App 188 (2001), CA A108024. Visitation awarded to deceased mother's boyfriend over objection of birth father, reversed. After *Troxel v. Granville*, application of ORS 109.119 requires that "significant weight" be given to a fit custodial parent's decision. The parent's constitutional right is a supervening right that affects the determination of whether visitation is appropriate and prevents the application of solely the best interest of the child standard.

2. ***Ring v. Jensen***, 172 Or App 624 (2001), CA A105865. Award of grandparent visitation, reversed. Grandmother's difficulty in obtaining the amount of visitation desired does not demonstrate the pattern of denials of reasonable opportunity for contact with the child as required by ORS 109.121.

3. ***Newton v. Thomas***, 177 Or App 670 (2001), CA A109008. Interpreting a prior version of ORS 109.119, the court reversed an award of custody to the grandparents in favor of the mother. Under ORS 109.119, a court may not grant custody to a person instead of a biological parent based solely on the court's determination of what is in the child's best interest. The court must give significant weight to the supervening fundamental right of biological parents to the care, custody and control of their children. In a footnote, the court declined to consider the impact of the amendments to ORS 109.119 enacted by the 2001 Legislature.

4. **Williamson v. Hunt**, 183 Or App 339 (2002), CA A112192. Award of grandparent visitation reversed. The retroactive provisions of amended ORS 109.119 apply only to cases filed under the 1999 version of that statute and former ORS 109.121. Parental decisions regarding grandparent visitation are entitled to “special weight.” Without evidence to overcome the presumption that a parent’s decision to limit or ban grandparent visitation is not in the best interest of the child, the trial court errs in ordering such visitation (but see *Lamont*, Case Note 6).

5. **Wilson and Wilson**, 184 Or App 212 (2002), CA A113524. Custody of stepchild awarded to stepfather, along with parties’ joint child, reversed. Under *Troxel*, custody of the mother’s natural child must be awarded to fit birth mother and because of the sibling relationship, custody of the parties’ joint child must also be awarded to mother. [See Case Note 20 discussion below for Court of Appeals decision on remand from Supreme Court.]

6. **O’Donnell-Lamont and Lamont**, 184 Or App 249 (2002), CA A112960. Custody of 2 children to maternal grandparents, reversed in favor of birth father (mother deceased). To overcome the presumption in favor of a biological parent under ORS 109.119(2)(a) (1997), the court must find by a preponderance of the evidence either that the parent cannot or will not provide adequate love and care or that the children will face an undue risk of physical or psychological harm in the parent’s custody. [See discussion at Case Note 12 for *en banc* decision and discussion above, and Case Note 16 below for Supreme Court decision.]

7. **Moran v. Weldon**, 184 Or App 269 (2002), CA A116453. *Troxel* applied to an adoption case. Adoption reversed where father’s consent was waived exclusively based upon the incarceration provisions of ORS 109.322. *Troxel* requires that birth father’s consent may not be waived without “proof of some additional statutory ground for terminating parental rights\*\*\*.”

8. **State v. Wooden**, 184 Or App 537, 552 (2002), CA A111860. Oregon Court of Appeals, October 30, 2002. Custody of child to maternal grandparents, reversed in favor of father (mother murdered). A legal parent cannot avail himself of the “supervening right to a privileged position” in the decision to grant custody to grandparents merely because he is the child’s biological father. Father may be entitled to assert parental rights if he grasps the opportunity and accepts some measure of responsibility for the child’s future. To overcome presumption in favor of father, caregiver grandparents must establish by a preponderance of the evidence that father cannot or will not provide adequate love and care for the child or that moving child to father’s custody would cause undue physical or psychological harm. Rather than order an immediate transfer, the court ordered that birth father be entitled to custody following a 6-



month transition period. [See also Case Note 20, *Dennis*, for an example of another transition period ordered.]

9. ***Strome and Strome***, 185 Or App 525 (2003), *rev. allowed*, 337 Or 555 (2004), CA A111369. Custody of 3 children to paternal grandmother reversed in favor of birth father. The Court of Appeals ruled that where the biological father had physical custody for 10 months before trial, and had not been shown to be unfit during that time, Grandmother failed to prove by a preponderance of the evidence that father cannot or will not provide adequate love and care for the children or that placement in his custody will cause an undue risk of physical or psychological harm, in spite of father's past unfitness. [See discussion below Case Note 22 for Court of Appeals decision on remand from Supreme Court.]

10. ***Austin and Austin***, 185 Or App 720 (2003), CA A113121. In the first case applying revised ORS 109.119 and, in the first case since *Troxel*, the Court of Appeals awarded custody to a third party (step-parent) over the objection of a birth parent (mother). The constitutionality of the revised statute was not raised before the court. The court found specific evidence to show that mother was unable to adequately care for her son. The case is extremely fact specific. Father had been awarded custody of three children, two of whom were joint children. The third child at issue in the case, was mother's son from a previous relationship. Therefore, sibling attachment as well as birth parent fitness were crucial to the court's decision. Petition for Review was filed in the Supreme Court and review was denied [337 Or 327 (2004)].

11. ***Burk v. Hall***, 186 Or App 113, 121 (2003), CA A112154. Revised ORS 109.119 and *Troxel* applied in the guardianship context. In reversing a guardianship order the court held that: "\*\*\*\*guardianship actions involving a child who is not subject to court's juvenile dependency jurisdiction and whose legal parent objects to the appointment of guardian are – in addition to the requirements of ORS 125.305 – subject to the requirements of ORS 109.119." The constitutionality of amended ORS 109.119 was not challenged and therefore not addressed by this court.

12. ***O'Donnell-Lamont and Lamont***, 187 Or App 14 (2003) (*en banc*), CA A112960. The *en banc* court allowed reconsideration and held that the amended psychological parent law [ORS 109.119 (2001)] was retroactively applicable to all petitions filed before the effective date of the statute. The decision reversing the custody award to grandparent and awarding custody to father was affirmed. Although 6 members of the court appeared to agree that the litigants were denied the "\*\*\*\*fair opportunity to develop the record because the governing legal standards have changed\*\*\*\*," a remand to the trial court to apply the new standard was denied by a 5 to 5 tie vote. [See discussion at Case Note 6 and Case Note 16 for Oregon Supreme Court decision.]

13. **Winczewski and Winczewski**, 188 Or App 667 (2003), *rev. den.* 337 Or 327 (2004), CA A112079. [Please note that the *Winczewski* case was issued before the Supreme Court's decision in *Lamont*.] The *en banc* Court of Appeals split 5 to 5 and in doing so, affirmed the trial court's decision, awarding custody of two children to paternal grandparents over the objection of birth mother, and where birth father was deceased. For the first time, ORS 109.119 (2001) was deemed constitutional as applied by a majority of the members of the court, albeit with different rationales. Birth mother's Petition for Review was denied by the Supreme Court.

14. **Sears v. Sears & Boswell**, 190 Or App 483 (2003), *rev. granted* on remand, 337 Or 555 (2004), CA A117631. The court reversed the trial court's order of custody to paternal grandparents and ordered custody to mother where the grandparents failed to rebut the statutory presumption that mother acted in the best interests of a 4-year old child. Mother prevailed over grandparents, notwithstanding the fact that grandparents were the child's primary caretakers since the child was 8 months old, and that mother had fostered and encouraged that relationship. *Sears* makes it clear that the birth parent's past history and conduct are not controlling. Rather, it is birth parent's present ability to parent which is the pre-dominate issue. [See Case Note 19 for decision on remand.]

15. **Wurtele v. Blevins**, 192 Or App 131 (2004), *rev. den.*, 337 Or 555 (2004), CA A115793. Trial court's custody order to maternal grandparents over birth father's objections. A custody evaluation recommended maternal grandparents over birth father. The court found compelling circumstances in that if birth father was granted custody, he would deny contact between the child and grandparents, causing her psychological harm, including threatening to relocate with the child out-of-state.

16. **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. The Oregon Supreme Court reversed the Court of Appeals and restored custody of the children to grandparents. Contrary to several prior Court of Appeals decisions, the Supreme Court held that it is not necessary that a third party overcome the *Troxel* birth parent presumption by demonstrating that the birth parent would harm the child or is unable to care for the child. Rather, the Supreme Court adhered to the legislative standard that "the presumption could be overcome by a showing, based on a preponderance of the evidence, that the parent does not act in the best interest of the child." *Id.* at 107. While a parent's unfitness or harm to a child can be strong evidence to overcome the *Troxel* (and ORS 109.119) birth parent presumption, that presumption may be rebutted by evidence of any of the enumerated factors as well as other evidence not specifically encompassed by one of the statutory factors. "The statutory touchstone is whether the evidence at trial overcomes the presumption that a legal parent acts in the best interest of the child, not whether the evidence supports one, two, or all five of the non-exclusive factors identified in ORS 109.119(4)(b)."

17. ***Meader v. Meader***, 194 Or App 31 (2004), CA A120628. Grandparents had previously been awarded visitation of two overnight visits per month with three grandchildren and the trial court's original decision appeared to be primarily based upon the best interests of the children and the original ruling was considered without application of the *Troxel* birth parent presumption. After the Judgment, birth parents relocated to Wyoming and grandparents sought to hold parents in contempt. Parents then moved to terminate grandparents' visitation. At the modification hearing, before a different trial court judge, parents' modification motion was denied on the basis that birth parents had demonstrated no "substantial change of circumstances." *Id.* at 40. [But See Casenote 38 - EPLER regarding the modification standards applicable in Chapter 107 v. Chapter 109.119 proceedings.]

The Court of Appeals reversed and terminated grandparents' visitation rights. The court specifically found that in a modification proceeding no substantial change of circumstances was required. *Id.* at 45. Rather, the same standard applied a parent versus parent case [see *Ortiz and Ortiz*, 310 Or 644 (1990)] was applicable, that is the best interest of the child. The evidence before the modification court included un rebutted expert testimony that the child's relationship with grandmother was "very toxic; that the child did not feel safe with grandmother; that the child's visitation with grandmother was a threat to her relationship with Mother and that such dynamic caused the child to develop PTSD." The court also found "persuasive evidence" that the three children were showing signs of distress related to the visitation.

18. ***Van Driesche and Van Driesche***, 194 Or App 475 (2004), CA A118214. The trial court had awarded substantial parenting time to step-father over birth mother's objections. The Court of Appeals reversed finding that the step-parent did not overcome the birth parent presumption. This was the first post - *Lamont* (Supreme Court) case. Although mother had encouraged the relationship with step-father while they were living together, and although such evidence constituted a rebuttal factor under ORS 109.119, this was not enough. The court found that such factor may be given "little weight" when the birth parent's facilitation of the third-party's contact was originally in the best interest of the child but was no longer in the best interest of the child after the parties' separation. Step-father contended that the denial of visitation would harm the children but presented no expert testimony.

19. ***Sears v. Sears & Boswell***, 198 Or App 377 (2005), CA A117631. The Court of Appeals, after remand by the Supreme Court to consider the case in light of *Lamont* [Case Note 16], adheres to its original decision reversing the trial court's order of custody to maternal grandparents and ordering custody to birth mother. Looking at each of the five rebuttal factors as well as under the "totality of the circumstances", birth mother prevailed again. Grandparents' strongest factor, that they had been the child's primary caretaker for almost two years before the custody hearing, was insufficient. Specifically, grandparents did not show birth mother to be unfit at the time of trial, or to pose a serious present risk of harm to the child.

20. ***Dennis and Dennis***, 199 Or App 90 (2005), CA A121938. The trial court had awarded custody of father's two children to maternal grandmother. Based upon ORS 109.119 (2001) and *Lamont*, the Court of Appeals reversed, finding that grandmother did not rebut the statutory presumption that birth father acts in the best interest of the children. The case was unusual in that there was apparently no evidentiary hearing. Rather, the parties stipulated that the court would consider only the custody evaluator's written report (in favor of grandmother) and birth father's trial memorandum, in making its ruling on custody. Birth father prevailed notwithstanding the fact that he was a felon, committed domestic violence toward birth mother, and used illegal drugs. However, birth father rehabilitated himself and re-established his relationship with his children. Although grandmother had established a psychological parent relationship and had been the long-term primary caretaker of the children, she was not able to demonstrate that birth father's parenting at the time of trial was deficient or inadequate; nor was grandmother able to demonstrate that a transfer of custody to birth father would pose a present serious risk of harm to the children as grandmother's concerns focused on birth father's past behaviors. The case continued the Court of Appeals trend in looking at the present circumstances of the birth parent rather than extenuating the past deficiencies. The case is also significant in that rather than immediately transferring custody of the children to birth father, and because birth father did not request an immediate transfer, the case was remanded to the trial court to develop a transition plan and to determine appropriate parenting time for grandmother. Birth father's request for a "go slow" approach apparently made a significant positive impression with the court. [See also Case Note 8, *State v. Wooden*, for an example of another transition plan.]

21. ***Wilson and Wilson*** [see Case Note 5 above]. Birth father's Petition for Review was granted [337 Or 327 (2004)] and remanded to the Court of Appeals for reconsideration in light of *Lamont*. On remand [199 Or App 242 (2005)], the court upheld its original decision, which found both parties to be fit. Birth father failed to overcome the presumption that birth mother does not act in the best interest of birth mother's natural child/father's stepchild; therefore, for the same reasons as the original opinion, custody of the party's joint child must also be awarded to birth mother.

22. ***Strome and Strome***, 201 Or App 625 (2005). On remand from Supreme Court to reconsider earlier decision in light of *Lamont*, the court affirms its prior decision (reversing the trial court) and awarding custody of the 3 children to birth father, who the trial court had awarded to paternal grandmother. Although birth father had demonstrated a prior interference with the grandparent-child relationship, the rebuttal factors favored birth father. The court particularly focused on the 10 months before trial where birth father's parenting was "exemplary." Because the children had remained in the physical custody of grandmother for the many years of litigation, the case was remanded to the trial court to devise a plan to transition custody to father and retain "ample contact" for grandmother. [See Case Note 9 above.]

23. **Poet v. Thompson**, 208 Or App 442 (2006), CA A129220. Rulings made resulting from a pre-trial hearing to address issues of temporary visitation or custody under ORS 109.119, are not binding on the trial judge as the “law of the case.” A party who does not establish an “ongoing personal relationship” or “psychological parent relationship” in such a hearing may attempt to establish such relationships at trial notwithstanding their failure to do so at the pre-trial hearing. Note the procedures and burdens to establish temporary visitation or custody or a temporary protective order or restraint are not established by statute or case law.

24. **Jensen v. Bevard and Jones**, 215 Or App 215 (2007), CA A129611. The trial court granted grandmother custody of a minor child based upon a “child-parent relationship” in which grandmother cared for the child on many, but not all, weekends when mother was working. The Court of Appeals reversed, finding that grandmother’s relationship did not amount to a “child-parent” relationship under ORS 109.119 and therefore, was not entitled to custody of the child. Mother and grandmother did not reside in the same home.

*Practice Note:* *It is unclear in this case whether grandmother also sought visitation based upon an “ongoing personal relationship.” [ORS 109.119(10)(e)]. If she had, she may have been entitled to visitation but would have had to prove her case by a clear and convincing standard. Where a third-party’s “child-parent” relationship is not absolutely clear, it is best to alternatively plead for relief under the “ongoing personal relationship,” which is limited to visitation and contact only.*

25. **Muhlheim v. Armstrong**, 217 Or App 275 (2007), CA A129926 and A129927. The Court of Appeals reversed the trial court’s award of custody of a child to maternal grandparents. The child had been in an unstable relationship with mother and the child was placed with grandparents by the Department of Human Services (DHS). Although father had only a marginal relationship with the child, the court nevertheless ruled that he was entitled to custody, because the grandparents had not sufficiently rebutted the parental presumption factors set forth in ORS 119.119(4)(b). Grandparents had only been primary caretakers for 5 months preceding the trial. Father had a criminal substance abuse history but “not so extensive or egregious to suggest that he is currently unable to be an adequate parent.” While stability with grandparents was important and an expert had testified that removal of the child would “cause significant disruption to her development,” those factors did not amount to “a serious present risk of psychological, emotional, or physical harm to the child.” As in *Strome* (Case Note 22 above), the court directed the trial court to establish a transition plan to transfer custody to father and preserve ample contact between the child and her relatives.

*Practice Note:* *This case follows the general trend of preferring the birth parent over the third-party, and the downplaying of issues related to a birth parent’s prior history, lack of contact, and disruption to the stability of the child. It may have been important in this case that grandparents hired a psychologist to evaluate their relationship, but the psychologist never met with father, nor was a parent-child observation performed.*

26. ***Middleton v. Department of Human Services***, 219 Or App 458 (2008), CA A135488. This case arose out of a dispute over the placement of a child between his long-term foster family and his great aunt from North Dakota, who sought to adopt him. DHS recommended that the child be adopted by his foster parents. The relatives challenged the decision administratively and then to the trial court under the Oregon Administrative Procedures Act (APA) (ORS 183.484). The trial court set aside the DHS decision, preferring adoption by the relatives. On appeal, the case was reversed and DHS's original decision in favor of the foster parent adoption was upheld. The court emphasized that its ruling was based upon the limited authority granted to it under the Oregon APA, and this was not a "best interest" determination. Rather, DHS had followed its rules, the rules were not unconstitutional, and substantial evidence in the record supported the agency decision. Since substantial evidence supported placement with either party, under the Oregon APA the court was not authorized to substitute its judgment and set aside the DHS determination.

27. ***Nguyen and Nguyen***, 226 Or App 183 (2009), CA A138531. Following the trend in recent cases, an award of custody to maternal grandparents was reversed and custody was awarded to birth mother. Mother had been the primary caretaker of the minor child (age 7 at the time of trial) but became involved in a cycle of domestic violence between herself, the child's father, and others; residential instability, and drug use. Mother also had some mental health issues in the past. At trial, the custody evaluator testified that mother was not fit to be awarded custody at the time of trial, but could be fit if she could make "necessary changes and provide stability and consistency \*\*\*." As to parental fitness, the most important issue according to the court, was that mother's history did not make her **presently** unable to care adequately for the child. As to the harm to the child element, the court repeated its past admonition that the evidence must show a "serious present risk" of harm. It is insufficient to show "\*\*\*\*that living with a legal parent **may** cause such harm." As in *Strome* (Case Note 22), the court directed the trial court to establish an appropriate transition plan because of the child's long-term history with grandparents.

28. ***Hanson-Parmer, aka West and Parmer***, 233 Or App 187 (2010), CA A133335. The trial court determined that husband was the psychological parent of her younger son, and is therefore entitled to visitation with him pursuant to ORS 109.119(3)(a). Husband is not biological father. On appeal, the dispositive legal issue was whether husband had a "child-parent relationship." ORS 109.119(10)(a) is a necessary statutory prerequisite to husband's right to visitation in this case. Held: Husband's two days of "parenting time" each week is insufficient to establish that husband "resid[ed] in the same household" with child "on a day-to-day basis" pursuant to ORS 109.119(10)(a). Reversed and remanded with instructions to enter judgment including a finding that husband is not the psychological parent of child and is not entitled to parenting time or visitation with child; otherwise affirmed. See *Jensen v. Bevard* (Case No. 24).



29. **DHS v. Three Affiliated Tribes of Port Berthold Reservation**, 236 Or App 535 (2010), CA A143921. In a custody dispute under the Indian Child Welfare Act (ICWA) between long-term foster parents and a relative family favored by the tribe of two Indian children, the Court of Appeals found good cause to affirm the trial court's maintaining the children's placement with foster parents. Although this was not an ORS 109.119 psychological parent case, it contains interesting parallels. Under the ICWA, applicable to Indian children, the preference of the tribe for placements outside the biological parent's home, is to be honored absent good cause. Although the ICWA does not define the term "good cause", the trial court concluded that it "properly and necessarily includes circumstances in which an Indian child will suffer serious and irreparable injury as a result of the change in placement." The Court of Appeals agreed with the trial court that good cause existed based upon persuasive expert testimony that "the harm to [the children] will be serious and lasting, if they are moved from [foster parents'] home." This analysis has its parallel in the ORS 109.119 rebuttal factor which provides for custody to a third-party if a child would be "psychologically, emotionally, or physically harmed" if relief was not ordered. It also parallels the Supreme Court's analysis of the ORS 109.119 harm standard, as requiring proof of circumstances that pose "a serious risk of psychological, emotional, or physical harm to the child." This case points to the necessity of expert testimony to support a third-party when they are seeking to obtain custody from a biological parent. See *Lamont* decision (Case Note 16).

30. **Digby and Meshishnek**, 241 Or App 10 (2011), CA A139448. Former foster parent (FFP) sought third-party visitation from adoptive parents. FFP had last contact with children in July 2005 and filed an action under ORS 109.119 in June 2007, pleading only a "child-parent relationship" and not an "ongoing personal relationship." Trial court allowed FFP visitation rights. Court of Appeals reversed finding that FFP did not have a "child-parent relationship" within 6 months preceding the filing of the petition and because FFP did not plead or litigate an "ongoing personal relationship." *Lesson: Plead and prove the correct statutory relationship (or both if the facts demonstrate both).*

31. **G.J.L. v. A.K.L.**, 244 Or App 523 (2011), CA A143417 (*Petition for Review Denied*). Grandparents were foster parents of grandson for most of his first 3 years of life. After DHS returned child to birth parents and wardship was terminated, parents cut off all contact with grandparents. Trial court found that grandparents had established a grandparent-child relationship and that continuing the relationship between them and child would be positive. Trial court denied Petition for Visitation because of the "*significant unhealthy relationship*" between grandparents and mother. No expert testimony was presented at trial. On appeal, the Court found that grandparents had prevailed on three statutory rebuttal factors (recent primary caretaker; prior encouragement by birth parents; and current denial of contact by parents). However, the Court of Appeals denied relief because grandparents failed to prove a "*serious present risk of harm*" to the child from losing his relationship with grandparents, and that grandparents' proposed visitation plan (49 days per year) "*would substantially interfere with the custodial relationship.*" A Petition for Review was denied.

32. ***In the Matter of M.D., a Child, Dept. Of Human Services v. J.N.***, 253 Or App 494 (2012), CA A150405. (Juvenile Court) The court did not err in denying father's motion to dismiss jurisdiction given that the combination of child's particular needs created a likelihood of harm to child's welfare. However, the court erred by changing the permanency plan to guardianship because there was no evidence in the record to support the basis of that decision- that the child could not be reunified with father within a reasonable time because reunification would cause "severe mental and emotional harm" to child. The "severe mental and emotional harm" standard parallels to the Oregon Supreme Court's analysis of the ORS 109.119 harm standard, as requiring proof of circumstances that pose a "serious risk of psychological, emotional, or physical harm to the child." See *Lamont* decision [Case No. 16].

33. ***In the Matter of R.J.T., a Minor Child, Garner v. Taylor***, 254 Or App 635 (2013), CA A144896). Non-bio parent obtained an ORS 109.119 judgment by default against child's mother for visitation rights with child. Later mother sought to set aside the default which was denied. Non bio parent later filed an enforcement action and also sought to modify the judgment seeking custody. The trial court set aside the original judgment, finding that non bio parent did not originally have a "child-parent" or "ongoing personal" relationship to sustain the original judgment; if she did have such a relationship, she could not rebut the birth parent presumption; and finally, that even if the birth parent presumption was rebutted, that visitation between non bio parent and the child was not in the child's best interest. On appeal, the Court of Appeals reversed the trial court for setting aside the original judgment *sua sponte*, finding no extraordinary circumstances pursuant to ORCP 71C. The Court of Appeals bypassed the issue as to whether there was originally an ongoing personal relationship with the child and originally whether the birth parent presumption had been rebutted. Instead, it simply upheld the trial court, finding that visitation should be denied because it was not in the child's best interests. Since this was not a *de novo* review, the court did not explain why visitation was not in the best interests of the child, but it would appear that the continuing contentious relationship between the parties was a significant factor.

34. ***Underwood et al and Mallory, nka Scott***, 255 Or App 183 (2013), CA A144622. Grandparents obtained custody of child by default. Although certain ORS 109.119 rebuttal factors were alleged, the judgment granting custody to Grandparents was pursuant to ORS 109.103. Mother later filed a motion to modify the original judgment citing ORS 107.135 and ORS 109.103, but not ORS 109.119. In response, Grandparents contended that Mother did not satisfy the "substantial change of circumstances" test, governing ORS 107.135 modifications. The trial court and the Court of Appeals agreed. The Court of Appeals also noted with approval the trial court's finding that a change of custody would not be in the child's best interest, noting in particular that Grandparents had been the primary caretaker of the child for the past 10 years and facilitated (until recently) ongoing relationships between the child, his siblings, and mother. Because the case had originally been filed (apparently erroneously) under ORS 109.103, the Court of Appeals avoided "*the complex and difficult question \*\*\* as to whether the provision of ORS 109.119(2)© that removes the presumption from modification proceedings would be constitutional as applied to a circumstance where no determination as to parental unfitness was made at the time the court granted custody to grandparents.*" Accordingly, where a custody or visitation judgment is obtained originally by default without a specific finding that the birth parent presumption had been overcome, it is unclear as to whether such presumption, under the United States Constitution, needs to be rebutted in modification or other subsequent proceedings.

35. **Dept. of Human Services v. S.M.**, 256 Or App 15 (2013), CA A151376. This is a juvenile court case holding a trial court's order allowing children, as wards of the court, to be immunized pursuant to legal advice but over mother and father's religious objections. There is an insightful discussion of *Troxel v. Granville* at pp 25-31. The court found that the immunization order did not violate *Troxel* or the constitutional right of parents to "direct the upbringing of their children," but noted the possibility that certain state decisions might run afoul of constitutional rights. This case strongly suggests that legal parents may be fit in certain spheres of parenting, but unfit as to others.

36. **Dept. Of Human Services v. L. F.**, 256 Or App 114 (2013), CA A152179. This is a fairly standard juvenile court case where the Court of Appeals upheld the trial court's finding of jurisdiction as to mother. As applied to ORS 109.119 litigation, the court's holding as follows may be relevant to the rebuttal factor relating to parental fitness and harm to the child. Noting that child, L.F., had *\*\*\* severe impairments of expressive and receptive language,* the Court of Appeals agreed with the trial court that *\*\*\* mother's inability or unwillingness to meet [child's] medical and developmental needs of [child] to a threat of harm or neglect. \*\*\* [Child's] development and welfare would be injured if mother were responsible for his care because she does not understand how to meet his special needs. Without the ability to understand and meet [child's] developmental and medical needs, it is reasonably likely that mother's care would hinder [child's] development and fall short of satisfying his medical needs."* *Id.* at 121-122.

37. **Kleinsasser v. Lopes**, 265 Or App 195, 333 P3d 1239 (2014). In a marked departure from recent trends, the Court of Appeals upheld the trial court's judgment awarding custody of a child to Stepmother over the objections of biological Mother, where Father had died. Child had resided with Father and Stepmother for the prior four years. Mother had been in and out of Oregon and had not been active in the child's life until after Father's death. In contrast to a more rigid focus on the "parental fitness" and "harm to child" factors in prior cases, and although this was not a de novo review case, the Court of Appeals assessed all of the ORS 109.119 rebuttal factors and agreed with the trial court's findings that Stepmother satisfied the rebuttal factors except one. As to the parental fitness factor, the Court of Appeals disagreed with the trial court finding as to mother's past absenteeism as it related to her parental fitness. Consistent with prior rulings, it is the birth parent's present state of fitness, as of the date of the trial, that is most important. The trial court noted Mother's attitudes and conduct toward the child-Stepmother relationship which reflected poorly on her understanding of the child's best interests.

38. ***Epler and Epler and Graunitz***, 258 Or App 464 (2013), (Court of Appeals); 356 Or 634 (2014) (Supreme Court). In the underlying divorce between Mother and Father, both parents stipulated that paternal Grandmother have custody of granddaughter. Grandmother had custody for most of the child's life, including the 5 years prior to Mother's modification motion. Mother filed to modify custody and argued that she was entitled to the Troxel /ORS 109.119 birth parent presumption. The trial court denied Mother's motion finding she had failed to prove a "change of circumstances" and that even if she had, the best interests of the child required that Grandmother retain custody. Mother appealed and the Court of Appeals upheld the trial court finding:

- When a biological parent stipulates to custody to a third-party in a ORS Chapter 107 proceeding and then seeks to modify such judgment, ORS 107.135 applies and such parent will be required to demonstrate a substantial change of circumstances. Such stipulation serves as a rebuttal to the *Troxel* presumption.
- ORS 107.135 does not expressly apply to modification proceedings in ORS 109.119 actions; rather ORCP 71C and the court's inherent authority applies. The *Troxel* presumption does not apply to ORS 109.119 modifications.
- The parental fitness standard in *Troxel* third-party cases is broader than the parental fitness standard in ORS Chapter 419B juvenile court termination cases (and presumably broader than such fitness standard in ORS Chapter 419B juvenile court dependency cases).

The Supreme Court affirmed the Court of Appeals, but for different reasons, finding:

- Because the custody to Grandmother was pursuant to a Chapter 107 dissolution proceeding that this case is not governed by the psychological parent statute ORS 109.119, but rather the modification statute, ORS 107.135.
- Mother is not entitled to the Troxel presumption that her custody preference is in the child's best interest (at least as to the facts of this case) and
- Mother was not prejudiced when she was held to the substantial change-in-circumstances rule."
- Because the trial court found properly that it was not in the child's best interests that custody be changed, the Supreme Court did not address Mother's argument that the application of the change of circumstances rule unduly burdened her due process rights under *Troxel*.

39. **Department of Human Services v. A.L.**, 268 Or App 391, 400 (2015). Parents successfully challenged the juvenile court's jurisdiction where, among other things, they had placed their children with paternal grandparents. "Because parents have entrusted their children to paternal grandparents who pose no a current threat of harm, the court did not have a basis for asserting jurisdiction over the children." A parent's inability to parent independently does not amount to a condition "seriously detrimental to the child," when such child is placed in a safe alternative placement. See also, **Matter of NB**, 271 Or App 354 (2015) - another juvenile court case in which juvenile court jurisdiction of a child was based in part by the parents' delegation/transfer of care to third parties (grandparents). Construing ORS 419B.100(2), the Court held that the fact of the delegation could indeed be a factor in determining whether juvenile court jurisdiction was appropriate, but the delegation *per se* was not sufficient. Rather the inquiry would have to be case specific and address particular facts, for example whether the child was exposed to risks of the parent(s) while in the third party's care. In the **NB** case, DHS didn't meet the burden to demonstrate such risks.

39A. **Larkins v. Larkins**, 275 Or.App. 89 (2015); and **In re Marriage of Southard**, 275 Or.App. 538 (2015). Both cases involve a child (AR) who was raised in large part by Southard who was married to AR's mother. *Southard had raised AR as his own child, was named on his birth certificate for his entire life, and lived with him on and off over a five-year period.* Mother led Southard to believe that AR was his biological father, but AR's biological father was Larkins, another husband of Mother's.

In the first part of the consolidated appeal (*Larkins*), the Court denied Mother's appeal of the dissolution judgment where the trial court awarded custody of AR (and Southard's biological children) to Southard. The Court did not find admissible evidence that the marriage to Southard was void, but it held that *it was within the court's authority to make a custody award to a party who has sought the benefit of a marriage even if the court had declared the marriage void.*

In the second part of the consolidated appeal (*Southard*), Mother challenged the trial's ruling that Southard was entitled to custody as a psychological parent under ORS 109.119. The Court found that Southard rebutted the legal parent presumption under ORS 109.119 (and *Troxel*) on 3 levels: circumstances detrimental to AR if Southard's motion were not granted; that Mother fostered, encouraged or consented to the relationship between AR and Southard; and that Mother unreasonably denied or limited contact between the child and Southard; Using the same factors and findings, the Court affirmed the trial court's finding that custody to Southard was in AR's best interests.

40. ***Kennison v. Dyke***, 280 Or App 121 (2016). CA157378. ORS 109.119 judgement awarding grandmother visitation, reversed and remanded because trial court failed to make the required findings that grandmother rebutted, by clear and convincing evidence, the birth parent presumption prescribed by ORS 109.119. The Court of Appeals made it clear that “an order granting visitation rights must include ‘findings of fact supporting the rebuttal of the presumption.’ ORS 109.119(2)(b)” The trial court had made ten detailed findings including a finding that “it would be unreasonable for [grandmother] to have no visitation” but the Court of Appeals agreed with mother that the trial court must specifically find that a third party (here grandmother) rebutted the statutory presumption that mother acted in the best interest of the child, “*before determining whether visitation would be in the best interest of the child.*” Although the trial court made specific findings it did not make a specific reference to the statutory presumption and specifically that grandmother had overcome the presumption by clear and convincing evidence [PRACTICE TIP: be prepared to provide the court with proposed findings of fact and conclusions of law at the conclusion of your case or attach the same to your trial memorandum].

41. ***Husk v. Adelman***, 281 Or App 378 (2016). CA158504. Mother’s former partner was awarded third party visitation under ORS 109.119. The trial court was (mostly) upheld by the Court of Appeals, on a clear and convincing standard. Mother and her former partner were originally going to adopt a child together but later mother changed her position and adopted the child as her own. Several experts testified regarding the child’s needs and whether mother’s limitations on her partner’s visitation schedule was appropriate and in the best interests of the child or self-serving and retaliatory. *De novo* review was requested but not adopted by the Court. Apart from the interesting fact pattern and the battle of the experts, this case is interesting in other respects. As to the “clear and convincing” standard required in ORS 109.119, when an “ongoing personal relationship” is present, the Court of Appeals made it clear that “... the clear and convincing standard of proof applies only to the courts’ ultimate determination. The courts’ subsidiary factual findings including [any of the statutory rebuttal factors] need only be found by a preponderance of the evidence ...” Mother did prevail in one aspect. The Court of Appeals reversed the trial court’s order that partner receive access to child’s medical and educational records, finding that such an order was beyond the authority granted to the court under ORS 109.119(3)(b) which provides only “visitation or contact rights.” Finally, in a footnote, the court reiterated prior holdings that the constitutional requirements set forth in *Troxel v. Granville* 530 US 57 (2000) are satisfied once ORS 109.119 is applied properly.



42. **Holt and Atterbury**, 291 Or. Ap. 813 (2018). The Court upheld an award of custody of child to grandparents. In doing so it validated the construct that the Court is to use when determining if the birth parent presumption has been rebutted:

*Further, when determining whether the presumption the legal parent acts in the best interest the child has been rebutted, “the court’s focus is not in whether one or more of the statutory factors are present, but on whether the evidence as a whole is sufficient to overcome the presumption that the parent acts in the best interest of the child.” \* \* \* Put another way, “[i]n specific cases, the weight to be given to each of the five statutory factors, to the evidence supporting those factors, and to other relevant evidence, will vary.” Id., at 823-824 (internal citations omitted)*

In contrast to **Jensen** (see case note 24), here the Court found that the child’s residence with grandparents 5-6 days a week met the “day to day” basis requirement to establish a child-parent relationship under ORS 109.119(10(a)).

43. **Dept. of Human Services v. J. G. K.**, 298 Or App 398 (2019). In a wardship case under ORS Chapter 419B, a parent has the right to present evidence that the support of a third party with his/her parenting might reduce or eliminate the need for a wardship. The Court held: “\*\*\*evidence that a parent has the assistance of friends and family members is relevant to the jurisdictional inquiry, because it is probative of how likely it is that the threat of harm or injury presented by the alleged or established jurisdictional bases will be realized. If the involvement of friends and family members sufficiently counters the risk to a child otherwise presented by a parent’s deficits so that the child is safe, dependency jurisdiction is not warranted.” See also case note 39 - *Department of Human Services v. A.L.*, 268 Or App 391, 400 (2015)

44. **Thomas Ross Keffer v. A. R. M.**, 313 Or App 503 (2021). Guardianship to grandfather was reversed where the guardian was appointed under ORS Ch. 125 while a juvenile dependency case was still pending. The trial court presumably could have appointed grandfather as guardian under ORS 419B.365 (permanent) or 419B.366 (durable). Arguably, the Court could have dismissed the juvenile dependency case first and then appointed a guardian under ORS Ch. 125, but the tenor of the Court of Appeals opinion suggests otherwise, that the trial court should have used the available remedies under the juvenile code rather than using the probate code. See also case notes 39 and 43 where the Court suggests that juvenile court jurisdiction may not be appropriate when a legal parent reasonably delegates care (or shares care) with a fit and responsible third party. The question in all three cases is one of timing and procedure.

## DEMONSTRATING HARM TO THE CHILD - WHAT IS ENOUGH?

**Query:** Is the court expecting empirical or objective evidence that a transfer to a birth parent's full custody from a psychological parent would cause psychological harm to a child? How does one establish such evidence? Perhaps, some children may have to actually suffer psychological harm to form an empirical base. If a child is psychologically harmed as a result of the transition, does this constitute grounds for a modification? How long does one have to wait to assess whether psychological harm is being done - 6 months? One year? Some guidance is offered from the following cases.

Although Amended ORS 109.119 provides that the natural parent presumption may be rebutted if "circumstances detrimental to the child exists if relief is denied," summary evidence that a child would be harmed through a transition to the custodial parent will not be adequate. In *State v. Wooden* [Case Note 8], the testimony of noted child psychologist Tom Moran, that moving the child now "would be devastating and traumatic" was not sufficient. The court was critical as to the narrow scope of Dr. Moran's analysis - he did not perform a traditional custody evaluation "instead, he offered an opinion - - based solely on his limited contact with the child - - on the narrow issue of the probable effect of awarding custody 'right now'." Moran was also rebutted by Dr. Jean Furchner, who recommended that custody be awarded to father after a transition period of between 6 to 12 months.

In the *Strome* case [Case Note 9], the court majority discounted the testimony of Dr. Bolstad (who, in contrast to Dr. Moran in *Wooden*, did a comprehensive evaluation including mental health testing) that found the children to be "significantly at risk." The majority preferred the testimony of evaluator Mazza who evaluated Father and the children only, albeit in a more intensive fashion. *Strome* reversed the trial court and awarded custody to father drawing a dissent of 4 members of the court.

Five members of the *Winczewski* court [Case Note 13], agreed that the facts demonstrated that birth mother was unable to care adequately for the children and that the children would be harmed if grandparent's were denied custody. That decision relied in part on the opinion of custody evaluator Dr. Charlene Sabin, whose report contained extensive references to mother's inability to understand the needs of the children; her unwillingness to accept responsibility for the children's difficulties and her very limited ability to distinguish between helpful and harmful conduct for the children. Viewing the same evidence through a different prism, Judge Edmonds and 4 members of the court determined that such evidence was inadequate to meet the constitutional standard. Judge Schuman and Judge Armstrong would have required evidence "far, far more serious" than presented to deny mother custody.

In the Supreme Court's *Lamont* decision [Case Note 16], the court specifically interpreted the "harm to child" rebuttal factor, ORS 109.119(4)(a)(B). Although the statutory language appeared to include a "may cause harm" standard, the Supreme Court adopted a limiting construction finding that "circumstances detrimental to the child" (ORS 109.119(4)(a)(B) "\*\*\*\*refers to circumstances that pose a **serious present risk** of psychological, emotional, or physical harm to the child." The use of the reference to "serious present risk" is significant. The court specifically rejected an interpretation that the birth parent presumption could be overcome merely by showing that custody to the legal parent "may" cause harm. *Id.*, at 112-113. While helpful, this does not end the analysis. Although the harm may occur in the future, arguably an expert can testify that a transfer of custody to a birth parent presents a serious present risk of harm even though the actual harm may occur in the future. Regardless of how one articulates the standard, it is clear from *Lamont* and *Van Driesche* [Case Note 18] that expert testimony will be required to demonstrate harm to the child and likely be necessary in order to demonstrate deficits or incapacity of a parent.

The trend in recent cases is to focus on the current, not past, parenting strengths and weaknesses of the birth parent, particularly where the birth parent has made a substantial effort at rehabilitation or recovery. Recent cases also suggest that the importance of preserving the stability achieved with a third-party and avoiding the trauma due to a change of custody may not be sufficient to meet the "serious present risk of harm" standard. This is particularly so where the third-party and birth parent are cooperating [*Dennis*, Case Note 20] and a reasonable transition plan can be developed. On the other hand, a third party may be given favorable consideration when he or she has acted as the primary caretaker for a substantial period of the child's life. [*Kleinsasser*, Case Note 37; *Epler*, Case note 38].

## DO CHILDREN HAVE CONSTITUTIONAL RIGHTS?

In the ongoing battles between birth parents and third parties, it seems that the rights of children have been largely ignored, except to the extent that the best interests standard is still considered on a secondary level. In *Troxel*, Justice Stevens in dissent found that children may have a constitutional liberty interest in preserving family or family-like bonds. In a challenge that does not appear to have been taken root in post-*Troxel* jurisprudence, Justice Stevens warned:

It seems clear to me that the due process clause of the 14<sup>th</sup> Amendment leaves room for states to consider the impact on a child of possibly arbitrary parental decisions that neither serve nor are motivated by the best interests of the child. 120 S. Ct. at 2074.

Contrast Justice Stevens' opinion with the case of *Herbst v. Swan* (Case No. B152450, October 3, 2002, Court of Appeals for the State of California, Second Appellate District), applying *Troxel* and reversing a decision awarding visitation to an adult sister with her half-brother (after their common father died). The statute was determined to be an unconstitutional infringement upon the mother's right to determine with whom the child could associate.

In *Winczewski* [Case Note 13], Judge Brewer, citing a number of cases from other states and literature from journals, noted: "In the wake of *Troxel*, courts are beginning to recognize that 'a child has an independent, constitutional guaranteed right to maintain contact with whom the child has developed a parent-like relationship.'" 188 Or App at 754. Judge Brewer recognized that "\*\*\*\*it is now firmly established that children are persons within the meaning of the constitution and accordingly possess constitutional rights." 188 Or App at 752. But such rights are not absolute: "When the compelling rights of child and parent are pitted against each other, a balancing of interest is appropriate." 188 Or App at 750. In the final analysis, however, Judge Brewer did not articulate the parameters of a child's constitutional right and how that is to be applied, concluding only that a child's constitutional right "to the preservation and enjoyment of child-parent relationship with a non-biological parent is both evolving and complex." 188 Or App at 756. It would appear that Judge Brewer would be content to consider a child's constitutional right as part of the best interest analysis, but only if the *Troxel* presumption has been rebutted. 188 Or App at 756. Commenting upon Judge Brewer's analysis, Judge Schuman and Judge Armstrong were sympathetic to "a more sensitive evaluation of the child's interest than *Troxel* appears to acknowledge," but refused to accord to a child a free-standing fundamental substantive due process right. Rather, Judge Schuman and Judge Armstrong would accord a child "an interest protected by the state as *parens patriae*" rather than as a right. 188 Or App at 761.

In the 2003 and 2005 legislative sessions, this author proposed legislation (SB 804 [2003], SB 966 [2005]) which would mandate the appointment of counsel for children in contested custody third party v. parent proceedings, unless good cause was shown. Counsel would be appointed at the expense of the litigants, but each court would be required to develop a panel list of attorneys willing to represent children at either modest means rates or pro bono. The legislation stalled in committee in 2003 and 2005 with opponents citing cost considerations to litigants and that the court's discretionary power was adequate. Appointment of counsel for children in ORS 109.119 cases remains available pursuant to ORS 107.425(4) and (6) - (mandatory upon request of the child; discretionary upon request of a party).

For further information about the implications of *Troxel* on children and families, see: Barbara Bennett Woodhouse, *Talking about Children's Rights in Judicial Custody and Visitation Decision-Making*, 33 Fam. L.Q. 105 (Spring 2002); *Family Court Review*, An Interdisciplinary Journal, Volume 41, Number 1, January 2003, Special Issue: *Troxel v. Granville and Its Implications for Families and Practice: A Multidisciplinary Symposium*;

Victor, Daniel R. and Middleditch, Keri L., *Grandparent Visitation: A Survey of History, Jurisprudence, and Legislative Trends Across the United States in the Past Decade*, 22 J. Am. Acad. Matrimonial Lawyers 22, 391 (Dec. 2009); and Atkinson, Jeff, *Shifts in the Law Regarding the Rights of Third Parties to Seek Visitation and Custody of Children*, 47 F.L.Q. 1, 34 (Spring 2013).

## **TIPS AND WARNINGS**

- ORS 109.121-123 (former grandparent visitation statutes) was abolished. Now, grandparents are treated as any other third parties seeking visitation or custody. Therefore a grandparent-child relationship which has languished for more than a year may result in the loss of any right to make a claim. (However Grandparents are given some special consideration in juvenile court proceedings. ORS 419B.876)
- Although ORS 109.119 does not require the specific pleading of facts to support the rebuttal of the parental parent presumption, some trial courts have required this and have dismissed petitions without such allegations.
- ORS 109.119(2)(b) requires findings of fact supporting the rebuttal of the legal parent presumption. Be prepared to offer written fact findings to the court.
- Beyond the findings of fact to support the rebuttal of the legal parent presumption, request findings of fact pursuant to ORCP 62 at the outset of your case and be prepared to draft the findings for the court. This will reduce the likelihood of remand if an appeal is successful.
- It may be appropriate to seek appointment of counsel for the children involved. ORS 107.425 applies to psychological parent cases. It mandates the appointment of counsel if requested by the child and permits the appointment of counsel at the request of one of the parties. Expense for the appointment is charged to the parties.
- Custody and visitation evaluations are authorized upon motion at the parties' expense. This evidence is critical to the issue of the presumption as well as best interests of the child. An evaluator should be prepared to speak to issues of attachment (both to the birth parent and the third party); potential short and long term emotional harm if the child is placed with the birth parent or third party.
- The application of third party rights in the juvenile court has been substantially restructured. See ORS 419B.116; 419B.192; 419B.875; 419B.876 In 2003, the legislature created a new form of guardianship that would permit third parties to have custody of children under a court's wardship, but without the involvement of the Department of Human Services (DHS). (ORS 419B.366).
- Whether representing a birth parent or a third-party, counsel should consider and present to the court a detailed transition plan to guide the court's decision in the event that a change of custody is ordered.

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***Employment Law  
Issues Every Family  
Lawyer Should be  
Aware of in Practice  
and for their  
Practice***



# McKEANSMITH

EMPLOYMENT LAW ISSUES  
EVERY FAMILY LAWYER SHOULD BE  
AWARE OF IN THEIR PRACTICE  
AND FOR THEIR PRACTICE

# What Law Governs?

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- Federal – like the U.S. Constitution – sets the floor, states can be more rigorous
- Family Medical Leave Act – Applies to employers with 50+ employees
- Oregon Leave Act – Applies to 25+ employees
- Federal Age Discrimination Act – Applies to 40+ years
- Oregon Age Discrimination Act – Applies to *any* age (can't discriminate on *youth* or older age)

Family law disputes often involve businesses  
Jointly owned  
Marital asset

Question: What is it WORTH?

Answer: Value impacted by potential claims

# Independent Contractors v. Employees

- Employees – Protections for employees
- Employers – Avoid complex (and annoying) regulations/laws (payroll taxes, withholding)

## What's the big deal?

- Workers' Compensation
- Sexual Harassment
- Sick Leave
- Leave Laws
- Discrimination / Retaliation
- Minimum Wage / Overtime
- Meals / Breaks
- NOTE: Oregon is one of the most employee friendly states

# Criteria for Determining Employment Status

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Different tests for different agencies

- IRS
- Oregon Employment Department (Strictest)
- Workers' Compensation Department
- Oregon Department of Revenue
- Department of Labor



# The Economic Realities Test

- If your business is dependent upon that worker for the nature of what you do
- The employer derives an economic benefit from that worker
- EXAMPLE:
  - Can be a bar without a plumber
  - Cannot be a strip club without dancers

# Classification of Employees

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- Exempt vs. Non-Exempt
- Minimum Wage and Overtime
- Paid Sick Leave
- OFLA/FMLA
- Oregon Paid Family Leave  
(who has heard of this?)

# What Everyone Thinks:

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- Salary vs. Hourly Employee
- Title (Manager)

# What it Really Is:

- Amount of Salary + Actual Duties

# Salary + Duties Test

- Minimum salary of X
  - NOTE: Oregon minimum wage is higher than Federal
- Duties – 50%+ must be professional, administrative, or executive
- > 50% = Not Exempt!

## Why is this important?

# Overtime / Wages Due on Termination

- Pay attention to your location – different minimum wages based on location
- WATCH OUT FOR REMOTE WORKERS
- Penalties
- Failure to Pay Wages on Termination / When Due
- Hourly rate x 8 hours per day x Up to 30 days

**EG: Employee making \$50,000 annually = \$24 per hour**

**\$24 hour x 8 hours per day x 30 days + \$5,769.23**

# Tricky Issues

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- Different pay rates for different work
- Commissions
- Different duties
- REMOTE WORKERS
- Aiding and Abetting – you are now PERSONALLY LIABLE regardless of your corporate structure



# REMOTE WORKERS - What's the big deal?

## Different Wage Laws

Example: Overtime entitlements vary.

Washington/Oregon = overtime for hours in excess of 40 in workweek.

Alaska/California/Nevada = overtime for hours in excess of 8 in one day.

Kentucky = no overtime required.

**Different Leave Laws** – some states have more generous benefits than Oregon/Feds.

Expense reimbursement

Workers Compensation

Registering as a Foreign Corporation

Payroll Requirements

Taxes

Etc. ....!!!!!!

# Hiring and Firing

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- Hire slowly
- Fire quickly

# Hiring – Potential Traps

- Applications
- Background checks
  - Ban the Box – ORS 659A.360 / PCC 23.10
  - Credit checks – 659A.320(4)
- Past salary – ORS 652.220; ORS 659A – effective 2019
- Age
- EQUAL PAY ACT

# Salary Disclosure Requirements and the Dangers of Remote Workers

Washington – 1/1/23 - must disclose salary range or wage scale in job postings open to applicants.

California – Must disclose pay range for a job if an applicant asks for it after an initial interview.

Colorado – If one employee in Colorado, then must include pay range and benefits in every job listing even for remote positions in Colorado.

NYC – 11/1/22 - must list pay range on all job postings.

# Equal Pay Act – O.R.S. 652.210 - 235 <sup>f t g v</sup>

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Every worker must get equal pay for equal work regardless of gender, race, age, or other protected characteristics.

- Pay = wages, bonuses, benefits, and more.
- Can't give someone a pay cut to make their pay equal with other employees.

\* A difference in pay may be based on specific bona fide factors including one or more of the following: a seniority system, a merit system, a system that measures earnings by quantity or quality of production, including piece-rate work, workplace location, travel, education, training, or experience.

- There must be a consistent and verifiable system for this pay structure.

# Damages for Violations of Equal Pay Act

1. Difference in pay
2. Liquidated damages in same amount of difference in pay
3. Penalty for failing to pay wages due on termination
4. Punitive damages



# The Interview – What's Permissible?

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- Are you married?
- Do you have kids? What sort of childcare do you use?
- What do you do for fun?
- Are you able to work Saturday and Sundays?
- What legal related organizations do you belong to?
- What non-legal organizations do you belong to?
- Tell me about yourself.

# Typical Workplace Policies

- Non-Competes (limits vary from state to state)
  - OR – 2 weeks, written job offer,
  - WA – prohibited for employees earning less than \$107.301
- Non-Solicitation
- Confidentiality
- Workplace Privacy vs. Security
- Social Media – Can you monitor/edit/restrict/require
- Email / cell phones / computers

# Typical Workplace Policies cont.

- Discipline
- Investigations
- Drug & Alcohol Testing
- Talking about salaries
- Personal Dress / Scent / Style
- EEOC
- Sexual Harassment / No Harassment
  - Must have specific language in your policies (who to go to);
  - Non-disparagement, confidentiality, no-rehire provisions prohibited (unless requested by employee)

# Sexual Harassment

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- What is it?
- What should employees do?
- What should employers do – before and after a complaint

# Leave Laws

- Jury Duty
- Military Leave;
- Holiday Pay
- Religious Accommodation
- Oregon - PAID FAMILY LEAVE
  - ALL employees participate
  - Employers with 25+ employees must participate
  - Deductions begin 1/1/23; benefits begin 9/1/23
  - Includes Safe Leave

# Benefits

- Sick Leave (unpaid)
- Vacation (watch out — pay on termination)
- Holiday Pay
- Workers Compensation – NOT a Benefit!



# Discrimination – Protected Classes (Federal / Oregon)

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- Sex, Race, Religion, National Origin, Gender Identity, Color
- Age, Disability, Marital Status, Military, Equal Pay
- Retaliation (OSHA / Leave Laws / Workers' Compensation)
- Talking About Wages, Association with Protected Class, etc.

# Final Paychecks

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- Fired – next business day
- Quit with less than 48 hours notice –
  - due sooner of 5 biz days or next pay period
- Quit with notice – next business day

# Deductions from Paychecks

## ORS 652.610

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- Overpayment
- Retail establishment where an employee bought on credit
- Short till or register

## MISCELLANEOUS OTHER TRAPS....

- Meals / Breaks / Breastfeeding
- Overtime
- Compensatory time
- Travel time
- Notices – POST-POST-POST
  - Remote!

# Recordkeeping Requirements

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- Wage claims – 6 years
- Overtime – 2 years

# Firing

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- At Will State
- Offer Letters vs. Contracts
- Handbooks



# Your Best Defense

# INSURANCE

THANK YOU

***Unbundled Family  
Law: Why Do It,  
What It Can Be, and  
How to Get it Right***

- (3) The court's order on the motion may include directions to the clerk's office to do one of the following:
  - (a) File the documents or materials, unsealed, in the court file.
  - (b) File the documents or materials under seal in the court file.
  - (c) Return the documents, unfiled, to the moving party.
- (4) When documents or materials are filed under seal, the filing party must present the clerk with a copy of the signed court order and submit the documents or materials in a sealed envelope marked "SEALED DOCUMENTS OR MATERIALS" and with a notation that identifies the case caption and the party making the submission. In addition, all documents ordered to be filed under seal must have the words "FILED UNDER SEAL BY COURT ORDER" located directly below the document title.

#### 5.170 LIMITED SCOPE REPRESENTATION

##### (1) Applicability

This rule applies to limited scope representation in civil cases subject to this chapter when an attorney intends to appear in court on behalf of a party.

##### (2) Notice of Limited Scope Representation

When an attorney intends to appear in court on behalf of a party, the attorney shall file and serve, as soon as practicable, a Notice of Limited Scope Representation in substantially the form as set out on the Oregon Judicial Department website ([www.courts.oregon.gov/forms](http://www.courts.oregon.gov/forms)).

##### (3) Termination of Limited Scope Representation

When the attorney has completed all services within the scope of the Notice of Limited Scope Representation, the attorney shall file and serve a Notice of Termination of Limited Scope Representation in substantially the form as set out on the Oregon Judicial Department website ([www.courts.oregon.gov/forms](http://www.courts.oregon.gov/forms)), in accordance with UTCR 3.140.

##### (4) Service of Documents

After an attorney files a Notice of Limited Scope Representation in accordance with this section, service of all documents shall be made upon the attorney and the party represented on a limited scope basis. The service requirement terminates as to the attorney when a Notice of Termination of Limited Scope Representation is filed and served, or when an attorney withdraws.

#### 5.180 CONSUMER DEBT COLLECTION

##### (1) Definitions. As used in this rule, unless otherwise indicated:

- (a) "Consumer" means a natural person who purchases or acquires property, services, or credit for personal, family, or household purposes.

- (5) When solemnizing a marriage a judge, under ORS 106.120(9), will accept a copy of a valid waiver granted under this rule in lieu of proof of payment of the fee required under ORS 106.120(9). The judge will maintain the copy of the waiver with other records of the marriage for as long as the judge is required to maintain the other records.

**8.110 LIMITED SCOPE REPRESENTATION (Repealed)**

REPORTER'S NOTE: UTCR 8.110 was repealed effective August 1, 2017. UTCR 5.170 (Limited Scope Representation) became effective that date and applies to domestic relations proceedings, so UTCR 8.110 was no longer needed.

**8.120 INFORMAL DOMESTIC RELATIONS TRIAL**

- (1) Upon the consent of both parties, Informal Domestic Relations Trials may be held to resolve any or all issues in original actions or modifications for dissolution of marriage, separate maintenance, annulment, child support, and child custody filed under ORS chapter 107, ORS chapter 108, ORS 109.103, and ORS 109.701 through 109.834.
- (2) The parties may select an Informal Domestic Relations Trial within 14 days of a case subject to this rule being at issue (see UTCR 7.020(6)). The parties must file a Trial Process Selection and Waiver for Informal Domestic Relations Trial in substantially the form provided at [www.courts.oregon.gov/forms](http://www.courts.oregon.gov/forms). This form must be accepted by all judicial districts. SLR 8.121 is reserved for the purpose of making such format mandatory in the judicial district and for establishing a different time for filing the form that is more consistent with the case management and calendaring practices of the judicial district.
- (3) The Informal Domestic Relations Trial will be conducted as follows:
  - (a) At the beginning of an Informal Domestic Relations Trial the parties will be asked to affirm that they understand the rules and procedures of the Informal Domestic Relations Trial process, they are consenting to this process freely and voluntarily, and they have not been threatened or promised anything for agreeing to the Informal Domestic Relations Trial process.
  - (b) The Court may ask the parties or their lawyers for a brief summary of the issues to be decided.
  - (c) The moving party will be allowed to speak to the Court under oath concerning all issues in dispute. The party is not questioned by counsel, but may be questioned by the Court to develop evidence required by any statute or rule, for example, the applicable requirements of the Oregon Child Support Guidelines if child support is at issue.
  - (d) The parties will not be subject to cross-examination. However, the Court will ask the non-moving party or their counsel whether there are any other areas the party wishes the Court to inquire about. The Court will inquire into these areas if requested and if relevant to an issue to be decided by the Court.
  - (e) The process in subsections (3)(c) and (3)(d) is then repeated for the other party.

- (f) Expert reports will be received as exhibits. Upon the request of either party, the expert will be sworn and subjected to questioning by counsel, the parties, or the Court.
  - (g) The Court will receive any exhibits offered by the parties. The Court will determine what weight, if any, to give each exhibit. The Court may order the record to be supplemented.
  - (h) The parties or their counsel will then be offered the opportunity to respond briefly to the statements of the other party.
  - (i) The parties or their counsel will be offered the opportunity to make a brief legal argument.
  - (j) At the conclusion of the case, the Court shall render judgment. The Court may take the matter under advisement, but best efforts will be made to issue prompt judgments.
  - (k) The Court may modify these procedures as justice and fundamental fairness requires.
- (4) The Court may refuse to allow the parties to utilize the Informal Domestic Relations Trial procedure at any time and may also direct that a case proceed in the traditional manner of trial even after an Informal Domestic Relations Trial has been commenced but before judgment has been entered.
- (5) A party who has previously agreed to proceed with an Informal Domestic Relations Trial may file a motion to opt out of the Informal Domestic Relations Trial provided that this motion is filed not less than ten calendar days before trial. This time period may be modified or waived by the Court upon a showing of good cause. A change in the type of trial to be held may result in a change in the trial date.



## FORMAL OPINION NO 2011-183

### Scope of Representation; Limiting the Scope

#### Facts:

Lawyer A is asked by Client X for assistance in preparing certain pleadings to be filed in court. Client X does not otherwise want Lawyer A's assistance in the matter, plans to appear *pro se*, and does not plan to inform anyone of Lawyer A's assistance.

Lawyer B has been asked to represent Client Y on a unique issue that has arisen in connection with complex litigation in which Client Y is represented by another law firm.

Lawyer C has consulted with Client Z about an environmental issue that is complicating Client Z's sale of real property. Client Z asks for Lawyer C's help with the language of the contract, but intends to conduct all of the negotiations with the other party and the other party's counsel by herself.

#### Question:

1 May Lawyers A, B, and C limit the scope of their representations as requested by the respective clients?

#### Conclusion:

1. Yes, qualified.

#### Discussion:

In each example, the prospective client seeks to have the lawyer handle only a specific aspect of the client's legal matter. Such limited-scope representation<sup>1</sup> is expressly allowed by Oregon RPC 1.2(b):

A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

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<sup>1</sup> This is sometimes described as the "unbundling" of legal services, or as discrete task representation.

As the examples herein reflect, a lawyer may limit the scope of his or her representation to taking only certain actions in a matter (e.g., Lawyer A's drafting or reviewing pleadings), or to only certain aspects of, or issues in, a matter (e.g., Lawyer B's representation on a unique issue in litigation, or Lawyer C's advising in a single issue in a transactional matter). In order to limit the scope of the representation, Oregon RPC 1.2 requires that (1) the limitation must be reasonable under the circumstances, and (2) the client must give informed consent.<sup>2</sup>

With respect to the requirement that the limitations of the representation be reasonable, comment [7] to ABA Model RPC 1.2 offers the following guidance:

If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

The second requirement of Oregon RPC 1.2 is the client's informed consent to the limited scope representation. Oregon RPC 1.0(g) defines informed consent as:

[T]he agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

---

<sup>2</sup> A lawyer providing a limited scope of services must be aware of and comply with any applicable law or procedural requirements. For example, if Lawyer A drafts pleadings for Client X, the pleadings would need to comply with Uniform Trial Court Rule (UTCRR) 2.010(7), which requires a Certificate of Document Preparation by which a *pro se* litigant indicates whether he or she had paid assistance in selecting and completing the pleading.

Obtaining the client's informed consent requires the lawyer to explain the risks of a limited-scope representation. Depending on the circumstances, those risks may include that the matter is complex and that the client may have difficulty identifying, appreciating, or addressing critical issues when proceeding without legal counsel.<sup>3</sup> One "reasonably available alternative" is to have a lawyer involved in each material aspect of the legal matter. The explanation should also state as fully as reasonably possible what the lawyer will not do, so as to prevent the lawyer and client from developing different expectations regarding the nature and extent of the limited-scope representation.

By way of example, Oregon RPC 4.2 generally prohibits a lawyer from communicating with a person if the lawyer has actual knowledge that the person is represented by a lawyer on the subject of the communication.<sup>4</sup> Mere knowledge of the limited-scope representation may not be

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<sup>3</sup> A limited-scope representation does not absolve the lawyer from any of the duties imposed by the Oregon Rules of Professional Conduct (RPCs) as to the services undertaken. For example, the lawyer must provide competent representation in the limited area, may not neglect the work undertaken, and must communicate adequately with the client about the work. *See, e.g.*, Oregon RPC 1.1; Oregon RPC 1.3; Oregon RPC 1.4. Likewise, a lawyer providing limited assistance to a client must take steps to ensure there are no conflicts of interest created by the representation. *See, e.g.*, Oregon RPC 1.7; Oregon RPC 1.9.

<sup>4</sup> Oregon RPC 4.2 provides that:

In representing a client or the lawyer's own interests, a lawyer shall not communicate or cause another to communicate on the subject of the representation with a person the lawyer knows to be represented by a lawyer on that subject unless:

(a) the lawyer has the prior consent of a lawyer representing such other person;

(b) the lawyer is authorized by law or by court order to do so; or

(c) a written agreement requires a written notice or demand to be sent to such other person, in which case a copy of such notice or demand shall also be sent to such other person's lawyer.

*See, e.g.*, OSB Formal Ethics Op No 2005-6 (discussing communicating with a represented party in general); OSB Formal Ethics Op No 2005-80 (rev 2016); *In*

sufficient to invoke an obligation under Oregon RPC 4.2.<sup>5</sup> Accordingly, the lawyer providing the limited-scope representation should communicate the limits of Oregon RPC 4.2 with the client. If the client wants the protection of communication only through the lawyer on some or all issues, then the lawyer should be sure to communicate clearly to opposing counsel the scope of the limited representation and the extent to which communications are to be directed through the lawyer.<sup>6</sup>

---

*re Newell*, 348 Or 396, 234 P3d 967 (2010) (reprimanding lawyer for communicating in a civil case with a person known to be represented by a criminal defense lawyer on the same subject). See also Oregon RPC 1.0(h), which provides: “‘Knowingly,’ ‘known,’ or ‘knows’ denotes actual knowledge of the fact in question . . . .”

<sup>5</sup> See, e.g., Colorado RPC 4.2 cmt [9A] (“[a] pro se party to whom limited representation has been provided . . . is considered to be unrepresented for purposes of this Rule unless the lawyer has knowledge to the contrary”); Los Angeles County Bar Association Formal Ethics Op No 502 (1999) (“[s]ince Attorney is not counsel of record for Client in the litigation . . . the opposing attorney is entitled to address Client directly concerning all matters relating to the litigation, including settlement of the matter”); Missouri Supreme Court Rule 4-1.2(e) (“[a]n otherwise unrepresented party to whom limited representation is being provided or has been provided is considered to be unrepresented for purposes of communication under Rule 4-4.2 and Rule 4-4.3 except to the extent the lawyer acting within the scope of limited representation provides other counsel with a written notice of a time period within which other counsel shall communicate only with the lawyer of the party who is otherwise self-represented”); DC Bar Ethics Op No 330 (2005) (“Even if the lawyer has reason to know that the *pro se* litigant is receiving some behind-the-scenes legal help, it would be unduly onerous to place the burden on that lawyer to ascertain the scope and nature of that involvement. We therefore believe that the most reasonable course for an attorney dealing with a party who is proceeding *pro se* is to treat the party as not having legal representation, unless and until the party or a lawyer for the party provides reasonable notice that the party has obtained legal representation.”).

<sup>6</sup> While not required, it may be advisable to clarify the scope of the limited-scope representation in writing to opposing counsel. *Cf.* Washington RPC 4.2 cmt [11] (providing “[a] person not otherwise represented to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, he or she is to

In the case of Lawyer A, even if the lawyer's participation was announced in compliance with court rules (such as by compliance with UTCR 2.010(7)), Oregon RPC 4.2 would not be implicated because Lawyer A is not counsel of record and the limited assistance in preparing pleadings is not evidence that Lawyer A represents Client X in the matter.<sup>7</sup> In the case of Lawyer C, the lawyer should make clear to Client Z that the limited-scope representation does not include communication with the opposing counsel.

Finally, while the client's informed consent to the limited-scope representation is not generally required to be in writing,<sup>8</sup> an effective written engagement letter minimizes any such risks if it "specifically describe[s] the scope of the representation, how the fee is to be

---

communicate only with the limited representation lawyer as to the subject matter within the limited scope of the representation").

<sup>7</sup> See, e.g., Kansas Bar Association Ethics Op No 09-01 (2009): "Attorneys who provided limited representation must include on any pleadings a legend stating 'Prepared with Assistance of Counsel.'" But "[a]n attorney who receives pleadings or documents marked with the legend 'Prepared with Assistance of Counsel' has no duty to refrain from communicating directly with the *pro se* party, unless and until the attorney has reasonable notice that the *pro se* party is actually represented by another lawyer in the matter beyond the limited scope of the preparation of pleadings or documents, or the opposing counsel actually enters an appearance in the matter."

See also State Bar of Nevada Formal Advisory Op No 34 (rev 2009) (an ostensibly *pro se* litigant assisted by a "ghost-lawyer" is to consider the *pro se* litigant "unrepresented" for purposes of the RPCs, which means that the communicating attorney must comply with RPC 4.3 governing communications with unrepresented persons).

<sup>8</sup> Since Oregon RPC 1.2 does not require a writing, Oregon RPC 1.0 does not require a recommendation to consult independent counsel. It is worth noting, however, that if the lawyer is providing a limited-scope representation with respect to a contingency matter, such an arrangement would need to be in writing. See ORS 20.340. See also *Fee Agreement Compendium* ch 8 (contingent-fee agreement) (Oregon CLE 2007).

computed, how the tasks are to be limited, and what the client is to do.”<sup>9</sup>  
*The Ethical Oregon Lawyer* § 16.4-3(c) (OSB Legal Pubs 2015).

**Approved by Board of Governors, February 2011.**

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<sup>9</sup> In addition, “when a lawyer associates counsel to handle certain aspects of the client’s representation, the division of responsibility between the lawyers should also be documented in a written agreement.” *See Fee Agreement Compendium* ch 9 (hourly fee agreement). *See also* Oregon RPC 1.5(d) (discussing when fees may be split between lawyers who are not in the same firm).

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 3.4-2 (describing scope of representation in the fee agreement), § 7.5-1 (scope of representation), § 8.5-1 (communicating with a represented person); and *Restatement (Third) of the Law Governing Lawyers* § 90 (2000) (supplemented periodically).

# Balanced Informal Domestic Relations Trial Selection Template

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1                                   **IN THE CIRCUIT COURT OF THE STATE OF OREGON**  
2                                   **FOR THE COUNTY OF [COUNTY]**  
3                                   **FAMILY LAW DEPARTMENT**

4  
5   In the Matter of the [MATTERTYPE] of  
6   [PET\_FULLNAME],  
7                                   Petitioner,  
8  
9   and  
10   [RESP\_FULLNAME],  
11                                   Respondent.

Case No: \_\_\_\_\_

**DOMESTIC RELATIONS TRIAL  
PROCESS SELECTION**

12 Parties in a domestic relations case have a choice about how they want their trial to be conducted.

13  
14   (1) **Traditional Trial.** In a traditional trial, the parties must follow Oregon’s full Uniform  
15   Civil Trial Rules (UTCrs) and the Oregon Rules of Evidence. That includes formal  
16   procedures for introducing information (known as “evidence” and including documents,  
17   pictures, records etc.) to the Court and for calling and questioning witnesses. The Judge  
18   usually only interacts with the parties through these formal procedures. These rules can  
19   be complicated, so that each party will usually benefit from having a lawyer’s full scope  
20   representation.

21                                   *or*

22   (2) **Informal Domestic Relations Trial** (IDRT or “informal trial”) under UTCR 8.120. With  
23   an informal trial, the formal Rules of Evidence do not apply, and the parties are able to  
24   engage in a direct conversation with their Judge. Each party to the trial may be able to  
25   show evidence to the Judge without the validation requirements of the Oregon Rules of  
26   Evidence, and they may be able to introduce witness or third party testimony without the  
27   witness needing to be present in court. The parties’ ability to call witnesses in court may  
28   be limited.

Because the rules governing informal trials are less complicated, this may be a good  
option for people who do not have a lawyer or who have engaged a lawyer on a limited

scope basis. Even when a party to an informal trial has an attorney, the Judge can limit what the attorney can say and do in court.

Both parties must choose an informal trial or the Court will conduct a traditional trial. Check with your court for more information about the Informal Domestic Relations Trial process.

---

I choose to proceed under the rules for (select one):

☐ **TRADITIONAL TRIAL**

- I agree to follow the formal requirements of the Oregon Rules of Evidence for introducing and substantiating evidence.
- I agree to follow the formal requirements of the Oregon Rules of Evidence for calling and questioning witnesses.
- I agree to follow the formal requirements of the Oregon Uniform Trial Court Rules
- I agree to follow the formal requirements of the Oregon Rules of Civil procedure.
- I understand that
  - My ability to engage in direct conversation with the Judge will be limited, and the Judge may not ask either party questions about their case, so that the only information the judge gets is what the attorneys or self-represented parties ask of witnesses;
  - Each party (or their lawyer) can formally object to the evidence presented and an objection sustained by the Judge will prevent the Judge from considering that evidence.
  - I am confident that I (or my attorney) understand the Uniform Trial Court Rules, the Rules of Civil Procedure and the Oregon Rules of Evidence governing a traditional trial process.
  - I may be subject to cross examination by the other party in this case or their lawyer.
  - Friends, family, and other witnesses can only communicate information by coming to court and being subject to examination by me or my lawyer, and will be subject to cross examination by the other party in this case or their lawyer.
  - Unless both parties agree to an informal trial, the Court will hold a traditional trial.

☐ **INFORMAL DOMESTIC RELATIONS TRIAL (IDRT) under UTCR 8.120**

- I agree to waive the formal question-and-answer manner of traditional trial
- I agree the court may ask me questions directly about the case

- I agree to waive the Oregon Rules of Evidence in this Informal Domestic Relations Trial:
- The court will consider any document or physical evidence a party submits
  - Both parties can tell the court anything they feel is relevant
- I understand that:
- My participation in this IDRT process is strictly voluntary and no one can force me to agree to this process.
  - The court will decide how much weight to give to documents, physical evidence, and testimony that is entered as evidence during the IDRT.
  - I am confident I understand the IDRT process.
- I have not been threatened or promised anything for selecting the IDRT process

I hereby declare that the above statements are true to the best of my knowledge and belief. I understand they are made for use as evidence in court and I am subject to penalty for perjury.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[CLIENT\_FULLNAME]  
Name (printed)

\_\_\_\_\_  
[CLIENT\_ADDRESS]  
Contact Address, City, State, & Zip

\_\_\_\_\_  
[CLIENT\_PHONE]  
Contact Phone

///

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## Limited Scope Representation Explanatory Letter Template

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The Commons Law Center  
PO BOX 16520  
Portland, OR 97292

[ADDRESSEE]  
[ADDRESSEE\_ADDRESS\_1]  
[ADDRESSEE\_ADDRESS\_2]  
[ADDRESSEE\_CITY], [ADDRESSEE\_STATE] [ADDRESSEE\_ZIP]  
[ADDRESSEE\_EMAIL]

Re: Limited Scope Representation Explanatory Letter

Dear [ADDRESSEE\_NAME],

The Commons Law Center has been hired by [CLIENT\_NAME], [PETITIONER / RESPONDENT] in a limited scope capacity, as permitted under Oregon Rules of Professional Conduct 1.2(b) and OSB Formal Opinion No. 2011-183.

**We will not be [CLIENT\_NAME]'s attorneys of record on this matter and should not be listed as such except as necessary to fulfil our limited scope duties.** Our limited scope representation is limited to [DESCRIBE LIMITED SCOPE DUTIES].

Our limited scope representation of Petitioner will terminate immediately upon our completion of our duties, and, if necessary, we will file a notice of termination of limited scope representation with the Court.

Should Petitioner at some point hire The Commons Law Center to represent them further in this matter, we will file a new Notice of Representation or Notice of Limited Scope Representation. **Unless and until that happens, all court notices should continue to be sent directly to and all service should be made directly on Petitioner.**

If you have any questions regarding our limited scope representation of Petitioner or The Commons Law Center's limited scope services in general, please feel free to contact us by phone at 503-850-0811 or by email at [ATTORNEY\_EMAIL].

Sincerely,  
[ATTORNEY\_NAME], OSB #[ATTY\_BAR\_NO]

cc: [CLIENT], [COURT/JUDGE], [OPPOSING\_PARTY / OPPOSING\_COUNSEL]

## Notice of Limited Scope Representation + Notice of Termination of Limited Scope Representation Templates

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1  
2  
3  
4  
5 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**  
6 **FOR THE COUNTY OF [COUNTY]**  
7 **FAMILY LAW DEPARTMENT**

8  
9 In the Matter of the [MATTERTYPE] of  
10 [PET\_FULLNAME],  
11 Petitioner,  
12  
13 and  
14 [RESP\_FULLNAME],  
Respondent.

Case No: \_\_\_\_\_

**NOTICE OF LIMITED SCOPE  
REPRESENTATION**

15  
16 1. Attorney [ATTY\_FULLNAME], of The Commons Law Center, and [Petitioner /  
17 Respondent], [PET\_FULLNAME / RESP\_FULLNAME], have an agreement that the attorney  
18 will provide limited scope representation to the party.

19 2. Attorney [ATTY\_FULLNAME] will represent the party in connection with the  
20 following court proceedings:

- 21 a. [Scope of Services 1]  
22 b. [Scope of Services 2]  
23 c. Remote Appearances. The scope of Attorney's representation is limited to  
24 making court appearances by remote means only. In-person appearance at one or  
25 more proceeding in connection with this matter is expressly out of scope of  
26 Attorney and [Petitioner's / Respondent's] engagement agreement. This notice of



1 limited scope representation will be accompanied or followed by a motion, order,  
2 and other required documentation requesting remote participation for all  
3 applicable proceedings. In the event that the Court denies the request for remote  
4 participation, all or part of Attorney's limited scope engagement agreement will  
5 be defeated and Attorney will file an appropriate notice of termination of limited  
6 scope representation.

7 3. During the limited scope representation period, [ATTY\_FULLNAME] is the  
8 attorney of record. All court notices should be sent to Attorney and, for all filings in the case,  
9 service should be made on Attorney.

10 4. Additionally, all court notices should be sent to the party directly, and, for all  
11 filings in the case, service should be made on the party directly. The party's name and address  
12 are listed below for that purpose:

13 [PET\_FULLNAME / RESP\_FULLNAME]  
14 [ADDRESS\_1]  
15 [ADDRESS\_2]  
16 [CLIENT\_CITY], [CLIENT\_STATE] [CLIENT\_ZIP]  
[CLIENT\_PHONE]  
[CLIENT\_EMAIL]

17 5. This notice accurately sets forth all matters in connection with court proceedings  
18 on which Attorney [ATTY\_FULLNAME] has agreed to serve as attorney of record for  
19 [PETITIONER / RESPONDENT] in this case. The information provided herein is not intended  
20 to set forth all of the terms and conditions of the agreement between [PETITIONER /  
21 RESPONDENT] and Attorney [ATTY\_FULLNAME] for limited scope representation.

22  
23 DATED: [DATE]

24 s/[ATTY\_FULLNAME]  
25 [ATTY\_FULLNAME], OSB #[ATTY\_BAR\_NO]  
26 LIMITED SCOPE ATTORNEY FOR [PETITIONER /  
RESPONDENT]  
[ATTY\_EMAIL]

1                                   **IN THE CIRCUIT COURT OF THE STATE OF OREGON**  
2                                   **FOR THE COUNTY OF [COUNTY]**  
3                                   **FAMILY LAW DEPARTMENT**

4  
5       In the Matter of the [MATTERTYPE] of  
6       [PET\_FULLNAME],  
7                                   Petitioner,  
8       and  
9       [RESP\_FULLNAME],  
10                                  Respondent.  
11

Case No: \_\_\_\_\_

**NOTICE OF TERMINATION OF  
LIMITED SCOPE REPRESENTATION**

12               1.       Attorney [ATTY\_FULLNAME], of The Commons Law Center, and [Petitioner /  
13       Respondent], [PET\_FULLNAME / RESP\_FULLNAME], previously agreed to a limited scope  
14       representation, as set out in a previously filed Notice of Limited Scope Representation.

15               2.       Attorney has completed all services within the scope of the Notice of Limited  
16       Scope Representation and has completed all acts ordered by the court within the scope of that  
17       appearance.  
18

19               3.       Attorney and [PETITIONER / RESPONDENT] now terminate the representation  
20       referred to in the previously filed Notice of Limited Scope Representation.

21               4.       The date of the next hearing in this proceeding is [HEARING\_DATE].  
22

23               5.       All future court notices should be sent to the party directly, and all service should  
24       be made on the party directly. The party's name and address are listed below for that purpose:  
25  
26

[PET\_FULLNAME / RESP\_FULLNAME]  
[ADDRESS\_1]  
[ADDRESS\_2]  
[CLIENT\_CITY], [CLIENT\_STATE] [CLIENT\_ZIP]  
[CLIENT\_PHONE]  
[CLIENT\_EMAIL]

6. In the event that the scope of their engagement changes to encompass additional work, Attorney and [PETITIONER / RESPONDENT] reserve the right to file additional Notice(s) of Limited Scope Representation in this matter.

DATED: [DATE]

s/[ATTY\_FULLNAME]  
[ATTY\_FULLNAME], OSB #[ATTY\_BAR\_NO]  
LIMITED SCOPE ATTORNEY FOR [PETITIONER /  
RESPONDENT]  
[ATTY\_EMAIL]

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# Master Engagement Agreement + Statement of Legal Work Templates

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The Commons Law Center  
PO BOX 16520  
Portland, OR 97292

# Master Engagement Agreement

<Client Fullname>  
<Client Address 1>  
<Client Address 2>  
<Client City>, <Client State> <Client Zip>  
<Client Email>  
<Client Phone>

Dear <Client FName>,

Thank you for reaching out to The Commons Law Center (“The Commons”) for legal help. The Commons is a 501(c)(3) nonprofit law firm that primarily engages in limited scope legal representation. That means we represent our clients for specific parts of their legal case instead of handling all elements of the case (or matter) on the client’s behalf. This allows us to help keep your legal expenditures lower by advising and assisting you with some portions of your matter, while you address other portions of the matter on your own.

This Master Engagement Agreement (referred to in this document as “MEA,” or “Agreement”) contains the general terms of our engagement but does not obligate us to perform any specific legal services. The details of specific legal services we will perform on your behalf will be contained in each Statement of Legal Work (referred to in this document as “SLW”) issued and agreed-upon under the terms of this Agreement.

## Executive Summary

This Agreement limits your rights—and limits our duties to you—under certain laws and regulations. You should review the provisions below and, because our interests and your interests may differ with respect to this agreement, you should consider having outside counsel advise you about this agreement (although whether you engage outside counsel to review this Agreement is up to you). Limitations contained in this Agreement include, but are not limited to:

- Our work for you will be on a limited scope basis, and you will continue to be partially or solely responsible for important parts of your case or legal claim.

- If you do not keep track of your own deadlines, due-dates, statutes of limitations, and other important timelines, or if you do not produce the proper materials in response to them, you may lose important legal rights, including the ability to bring or continue a legal claim.
- Fees you pay to us will be deemed “earned on receipt,” unless we expressly say otherwise in an applicable SLW and may not be refundable except in specific situations outlined below.
- We will not hold fees you pay in our Lawyers’ Trust Account unless we expressly say that we will in an applicable SLW.
- You will have important duties of timely communication and response to our requests for documents or information. If you do not provide necessary information to us or respond to our request in the required time, we may terminate our representation of you.

This executive summary is provided for your convenience. Specific terms of this Agreement are outlined below.

## Parties and Purpose

1. **Parties.** You, the client, are engaging The Commons Law Center (referred to in this document as “we,” “us,” or “The Commons”) to provide limited scope legal services in connection with your legal case or matter.
2. **Limited Scope Legal Services.** By signing this MEA, you acknowledge that you intend to hire us to assist you with one or more limited scope legal services as outlined in any accompanying SLW. Specifically, this means that we will not be providing you with any advice or representation regarding any legal question outside of the scope of work expressly outlined in the SLW.

You acknowledge that you have been informed of the nature of limited scope legal services and agree that you are knowingly consenting to any potential risks and limitations of this type of legal work because it serves to make the services more affordable to you. More specifically:

- a. **You understand and agree that you will be primarily responsible for important aspects of your case or matter that aren’t expressly covered by a SLW with us.** These may include (but are not limited to):
  - i. Tracking and complying with deadlines and statutes of limitation;

- ii. Making, receiving, and/or responding to communications with a court or tribunal;
- iii. Negotiating with, responding to, or otherwise communicating with your opposing party or their lawyer;
- iv. Making reasonable discovery requests; assessing and complying with your opponent's reasonable discovery requests; and
- v. Appearing at trials, hearings, mediations, arbitrations, judicial conferences, or other legal proceedings.

**Your failure to keep up with these obligations can result in you losing important legal rights, up to and including losing your case.**

- b. You understand and agree that, depending on the nature and time-frame of an applicable SLW, your opposing party or their attorney may be permitted to communicate with you directly instead of having to communicate through us.
- c. You understand and agree that, depending on the nature and time-frame of an applicable SLW, our obligations to you may differ from those of a full-scope attorney. The nature of our engagement is likely to limit our ability to investigate all of the factual circumstances and legal theories which a full-scope representation would typically entail. As a result:
  - i. We may not be required, or able, to advise you on every possible aspect of your case;
  - ii. We may base our legal advice on the representations you make to us without having a duty or obligation to independently verify the accuracy or completeness of those representations; and
  - iii. Our duties to you under the Oregon Rules of Professional Conduct and other applicable statutes, rules, and regulations are limited to items and activities that are specifically within the scope of an applicable SLW.

You should consider consulting with other attorneys, who may offer a different type of legal services, to determine whether a full-scope attorney or a limited-scope attorney is more appropriate for your situation, budget, and comfort level.

- d. You understand and agree that, depending on the nature and time-frame of an applicable SLW, we may file a Notice of Limited Scope Representation with any court or tribunal where we appear on your behalf, and that such notice will be communicated to your opposing party or their counsel. You further acknowledge that, depending on the scope of an SLW, opposing counsel in your case may be allowed to communicate with you directly.



- e. You understand and agree that, depending on the nature and time-frame of an applicable SLW, once we have fulfilled our obligations under that SLW we may file a Notice of Termination of Limited Scope Representation with the court or tribunal where we have appeared on your behalf, and that such notice will be communicated to your opposing party or their counsel.
- 3. **Full-Scope Alternatives.** You understand and acknowledge that other legal services providers may be available to help you with your matter on a full-scope basis, and you agree that you are knowingly electing to engage us on a limited scope basis consistent with this Agreement.
- 4. **Changes to Scope.** All changes to the scope of services to be delivered under an applicable SLW must be sent in writing by the requesting party and approved in writing by the receiving party. Specifically:
  - a. If you request changes to the scope of services under a SLW, you understand and acknowledge that such changes may (i) change the fee we charge for the work, (ii) change the time required to complete the work, (iii) change the work required of you to facilitate completion of the work, and/or (iv) have other impacts on the performance of the work.
  - b. If we request substantial changes to the scope of services under an SLW based on information we discover while the work is being performed, we will notify you of any (i) changes to the fee necessary to complete the work, (ii) changes to the time required to complete the work, (iii) additional work required of you to facilitate our completion of the work, and/or (iv) any other impacts on the performance of the work.

## Fees and Payment

- 5. **Flat Fees.** Unless otherwise specified within an SLW, all services under this Agreement will be performed on a pre-paid, flat-fee basis. The total cost of services may also include costs that we will pay to a third party on your behalf, such as filing fees, process server costs, mailing costs, etc.

Any SLW for flat fee work will not be deemed accepted by us unless and until payment is made in-full, and we reserve the right to revoke any offer to provide services contained in a SLW before a full payment has been made. Unless we expressly agree otherwise, The Commons will not begin work on any matter until the full fee for that matter has been paid.

- 6. **Fee Determination.** Our flat fees are based on a fee scale that slides depending on a client's income and assets, and can be adjusted during an engagement if we learn of undisclosed income or assets.

In determining a client's legal fees, The Commons considers the client's pricing tier, the legal issue(s) to be handled, the novelty and difficulty of the questions involved, the skill and

experience requisite to perform the services properly, the time limitations imposed by the client or the circumstances, and the value of the services as perceived by the client. By paying a flat fee under a particular SLW, you agree that the fee is a reasonable and accurate reflection of the value you perceive from the services detailed in that SLW.

7. **Flat Fees Earned Upon Receipt.** For flat-fee legal services, you agree that all payments are deemed to be earned upon receipt. You understand and agree that these fees will not be deposited into our lawyer trust account.
8. **Possible Refunds Upon Early Termination.** Notwithstanding Section 7 above, you may discharge us as your attorneys at any time, and we reserve the right to withdraw from further representation of you at any time. If we withdraw from representation, we will provide you with reasonable written notice at your last known mailing address, email address, or telephone number at which you receive text messages.

If you discharge us, or if we withdraw from your case before we have completed the services under an applicable SLW, then you may be entitled to a refund of all or part of the fee if the services for which the fee was paid are not completed. We may be entitled to keep a portion of the fee that is proportional to the amount of work we have completed. We will refund any unearned fees to you. We will not be required to refund any costs that have already been paid to a third party on your behalf.

9. **Hourly Fees and Retainers.** We may agree to represent you in a particular SLW on a limited scope, hourly fee basis. This will likely be the case if we agree to prepare for, help you prepare for, and/or represent you at a trial or complex hearing. The details of the hourly fee agreement will be contained in the applicable SLW, but in general:
  - a. Any SLW involving an hourly fee will require you to make an advance deposit (sometimes called a retainer) that we will hold in our lawyer trust account. Any SLW for hourly fee work will not be deemed accepted by us unless and until this advance deposit is made in-full, and we reserve the right to revoke any offer to provide services contained in a SLW before a full deposit has been made. Any interest earned by the pooled trust account is required to be paid to the Oregon Law Foundation by the Oregon Rules of Professional Conduct.
  - b. An SLW involving an hourly fee may include a requirement that you make minimum monthly payments into our lawyer trust account, and those payments may exceed the value of legal work we perform on your behalf in that month.
  - c. An SLW involving an hourly fee may include a requirement that you maintain a minimum amount in our lawyer trust account. It may further require that if your balance falls below that amount, you will be required to make a catch-up payment to bring the balance back to the minimum amount. Failure to respond to a trust deposit request within 10 days may result in us terminating our representation of you.

- d. For an SLW involving an hourly fee, we will send you a periodic billing statement that generally reflects the time expended on your matter and reflects fees for legal work done and costs incurred on your behalf in the period.

We will draw funds from your trust balance to pay your bill on or after the 10th day after we send you the billing statement. If the balance in your trust is insufficient to cover the billed amount, you will be responsible for making an additional payment to cover the billed amount.

- 10. **Late Fees.** If a billing statement is not paid within 21 days of the billing statement date, we may assess a late fee of 9% per annum each month on the unpaid balance.
- 11. **Third Party Payors.** Certain services under a Statement of Legal Work may be paid, in full or in part, directly or indirectly, by a third party payor. You agree that we may accept third party payment for legal services that we provide to you. We acknowledge and agree that our duties under the Oregon Rules of Professional Conduct are to you and to you alone, and there will be no interference with our independence of professional judgment or attorney-client relationship due to another person or organization paying for your legal services. As a condition of accepting payment for your case we may be required to provide information relating to your representation to persons providing funding. Whenever possible, that information will be provided in a way which will obscure your identity. Our individual SLW will disclose the information which we are obligated to report in your case. By agreeing to that SLW, you will be agreeing to permit us to disclose that information.

## Communication, Contacts, and Duties

- 12. **Client Portal.** Our preferred method of communication with you is through our secure client portal, which is powered by our law firm management software called Clio. Once you accept our invitation to the portal, you can send messages to your legal team and upload documents and photos. You will have the option of downloading a smartphone app from Clio to facilitate communication through the portal.

We may also communicate with you via mail, email, or text message (if you have indicated that you prefer to communicate via text). If you elect to communicate via email or text message, you recognize that emails and text messages can be intercepted and read, disclosed, or otherwise used or communicated by an intended third party. This could be used as an argument that no attorney client privilege exists for these communications.

For real-time communication, we may use phone calls or video calls powered by an appropriate software program.

- 13. **Primary Contact.** For each SLW, you will be assigned an appropriate legal professional from The Commons Law Center team as your primary contact for the matter. Other members of our team may complete certain tasks associated with your case, including but not limited to law clerks, paralegals, assistants, and supervisory attorneys.

14. **Client Participation.** As part of our delivery of legal services under a SLW, we will ask you to provide information, send us documentation, show up on time to all appointments and meetings, and perform other tasks necessary to complete our work. The deadlines for these tasks may be very short depending on the task and any associated statutory or regulatory deadlines. You agree to accomplish all tasks within the time allotted, or to promptly notify us if you will be unable to do so.

If you are not responsive to our requests, that may be grounds for us to terminate our representation under the applicable SLW and this agreement.

15. **Client Files.** We will send you information and correspondence appropriate to the scope of each SLW we perform on your behalf. These copies will be your file copies, and it is your responsibility to retain and organize your own client file. We will keep a digital copy of the file in our systems, and that will be our file. We will return any original documents you provide to us unless they are required to be filed in court.

We will keep our copy of your client file for the minimum length required under the Oregon Rules of Professional Conduct or other applicable rules. After that time, we reserve the right to destroy our copy without further notice to you.

16. **Outside Counsel.** You understand and agree that, as part of The Commons' mission of training legal professionals, we may engage with outside attorneys to assist with your matter subject to applicable conflict of interest checks and other requirements under the Oregon Rules of Professional Conduct.
17. **Event of Attorney Incapacity.** You agree that we may appoint another attorney to assist with the closure of our office or the transfer of your matter in the event of the death, disability, impairment, or incapacity of any or all of the legal team members who are working on your case or matter. The assisting attorney may review your file to protect your rights and can assist with the closure of our law office or the transition of your matter to another attorney. You agree to promptly sign any withdrawal of representation or substitution of counsel to facilitate any such transition.

## Term and Termination

18. **Effective Date.** This Master Engagement Agreement is effective as of the day you agree to it. The effective date of any SLW will be the date you agree to it unless otherwise specified in the SLW.
19. **Term and Termination.** This Agreement will remain in effect while we are working on any SLW for you and will terminate upon any of the following events:
- a. Your legal case or matter is concluded and all of our work under applicable SLWs is complete;

- b. Six months have elapsed since the completion of the most recent SLW under this agreement, even if your legal case or matter is not concluded; or
- c. It is expressly terminated by either party through written notice to the other party.

We reserve the right to terminate representation if we determine, in our sole discretion, that we agreed to represent you based on statements, documents, affirmations, or other information you provided that were false or misleading, or based on your intentional withholding of relevant information that materially alters our understanding of the matter or representation.

We reserve the right to terminate representation if we determine, in our sole discretion, that you have engaged in conduct that is harassing, inappropriate, or otherwise disrespectful to any member of our legal services team, to judges or court staff, or to your opposing party or their attorney.

20. **Conflict Check.** Our ability to provide legal services is contingent upon our completion of a conflict of interest check in accordance with the Oregon Rules of Professional Conduct. You agree to respond to our reasonable requests for information necessary for us to complete a check, including the names and other identifying information of other parties involved with your legal issue, especially your opposing party.

If, at any time, we discover a potential conflict of interest, you agree and understand that we will pause any legal work on your behalf until we determine whether an actual conflict exists. If, at any time, we determine that an actual conflict of interest exists, we will, at our sole discretion, either (i) attempt to seek an appropriate conflict of interest waiver from all applicable parties or (ii) immediately terminate our representation of you by terminating this MEA and any outstanding SLWs.

In the event we terminate our representation due to a conflict of interest, you may be entitled to a refund of any fees paid under Section 8 of this agreement. By entering into this agreement, you agree and consent to our continued representation to persons who are our clients prior to your entering into this agreement even if our representation of them requires us to decline to provide legal services to you.

21. **Financial Eligibility for Services.** Our nonprofit mission allows us to provide low-cost legal services to income-qualified individuals. You agree to respond to our reasonable requests for information necessary to determine your financial eligibility for our services, including paystubs, tax returns, and other relevant documentation. We may also use your financial information to make fee determinations under Sections 6 and 9 above.

If, at any time, we discover information indicating that you do not meet the financial eligibility requirements for our services, you agree and understand that we may pause any legal work on your behalf until we determine whether you are eligible. If we determine that you are not eligible for our reduced-cost legal help, we may terminate our representation of you by

terminating this MEA and any outstanding SLWs.

In the event we terminate our representation due to a lack of financial eligibility, you may be entitled to a refund of any fees paid under Section 8 of this agreement.

## Miscellaneous Terms

**22. Informed Consent.** Under the Oregon Rules of Professional Conduct, we are required to state the following: We recommend that you seek independent legal advice before consenting to the terms of this Agreement. Whether you actually seek an independent lawyer is up to you. Specifically, our duty to recommend that you seek independent legal advice is due to the informed consent provisions of the following Rules of Professional Conduct:

- a. RPC 1.2(b) (regarding the limited scope representation provisions in Section 2)
- b. RPC 1.8(f)(1) (regarding accepting third party payment provision in Section 11)
- c. RPC 1.9(a), RPC 1.9(c), and RPC 1.18 (regarding consent to continued representation of current clients provision in Section 20.)

**23. Data Collection and Sharing.** As a registered nonprofit organization, we collect data about our services and report that data publicly, including in our annual report, in grant applications, and in reports to our funders. Any data we report is anonymous, and we will not report publicly identifying information without your consent.

**24. Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner.

**25. Amendment and Waiver.** This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving.

**26. Interpretation.** This Agreement, together with all Schedules, Exhibits, and Statements of Legal Work, constitutes the sole and entire agreement of the parties to this Agreement with respect to the scope and nature of our legal representation of you, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to the representation. In the event of any conflict between the terms and provisions of this Agreement and those of any Schedule, Exhibit or Statement of Legal Work, the following order of precedence shall govern: (a) first, the applicable Statement of Legal Work; (b)

second, this Agreement, exclusive of its Exhibits and Schedules; and (c) third, any Exhibits and Schedules to this Agreement.

27. **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Oregon without giving effect to any choice or conflict of law provision or rule (whether of the State of Oregon or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Oregon.

**Signing this engagement letter indicates your agreement to the terms laid out above. Please contact us before signing this letter if any portion is not consistent with your understanding of our agreement.**

Sincerely,

	ACKNOWLEDGED and agreed to:
_____	_____
<TCLC Signer Name> The Commons Law Center	<client name>
<date>	<date>



# Statement of Legal Work

## Strategic Legal Assessment

<Client Fullname>  
<Client Address 1>  
<Client Address 2>  
<Client City>, <Client State> <Client Zip>  
<Client Email>  
<Client Phone>

<date>

Dear <Client FName>,

Thank you for engaging The Commons Law Center to perform the following limited scope legal work in conjunction with our agreed-upon Master Engagement Agreement (MEA). This Statement of Legal Work (SLW) describes the scope and limitations of this specific legal project.

1. **Fees.** You agree to pay \$150 for the services described in this SLW. All payments are due up-front and must be received prior to, or in conjunction with, your scheduling of your Assessment Meeting with a licensed legal professional.

This fee is deemed to be earned upon receipt in accordance with the terms of our MEA.

If you miss your appointment for an Assessment Meeting, which includes arriving more than 10 minutes late for that appointment, this will constitute you discharging the Commons as your attorneys with all of our services completed. Therefore, we will not refund you any amount of the fee. We may, at our sole discretion, offer to reschedule missed appointments for an additional fee of not more than \$75.

2. **Our Deliverables.** The Scope of our legal work is limited to the following:
  - a. **Case and Information Review.** Prior to our conversation with you, we will conduct an initial review of the following information provided by you relevant to your legal issue:
    - All relevant case numbers (if available);
    - Legal documents;
    - Correspondence (letters, emails, etc);
    - Questions you have about your legal situation, rights, and responsibilities; and
    - Other information you provide.

You must submit the documents, information, and questions to us, preferably using the Client Portal, as soon as possible, but no later than 24 hours prior to your scheduled appointment.

We will also review the documents and information contained in the Oregon eCourt Information System (OECI) for your primary case number (if applicable). Additionally, we will conduct a preliminary search in OECI to determine if other court cases exist that may impact your legal issue; however, we cannot guarantee that we will find all relevant cases if you do not provide us with those case numbers.

- b. **Assessment Meeting.** We will provide you with a 40-minute conversation between you and one of our licensed legal professionals, conducted by telephone or videoconference, to help you (i) understand the legal issue you are facing, (ii) orient you to the legal processes and timelines associated with your issue, (iii) document your stated goals for handling the issue; (iv) recommend possible courses of action for you to deal with your issue, and (v) answer any questions you may have.
  - c. **After Visit Summary.** We will provide you with a written After Visit Summary containing our summary assessment of your situation and our recommendations for possible next steps you can take to address your legal issue and meet your goals.
  - d. **Follow-up Questions.** After you receive your After Visit Summary, we will answer any questions you have related to the information in the Summary for five days after we send it to you, provided that you submit your questions through the Client Portal (unless another method is agreed to by your licensed legal professional).
3. **Other Work is Out of Scope.** Our services under this Statement of Legal Work are expressly limited to the above activities. Other possible legal work is out of scope, including, without limitation, the following: conducting a full legal analysis of individual claims, defenses, or other items related to your legal issue; conducting a full legal review of any documents or filings that you prepare or receive from an opposing party; preparing legal documents or filings on your behalf; making any appearances or filings with a court or tribunal on your behalf; and negotiating or otherwise corresponding with your opposing party or their lawyer on your behalf.

The above examples are for illustration purposes and are not meant to be a complete list of out-of-scope items.

We may be available to perform additional legal work on your behalf (including items contained in the above list), however any such work will be contained in a separate Statement of Legal Work and will require payment of any fees and costs associated with the applicable SLW prior to us beginning work on such legal work.

4. **Your Duties.** In order to facilitate our delivery of the Services outlined in Section 2, you agree to do the following:
  - Send us your documents, correspondence, case information, questions, and other information **at least 24 hours prior to your scheduled appointment,** preferably using the Client Portal;

- Notify us **at least 48 hours in advance of your scheduled appointment** if you need to reschedule your appointment;
- If you need to reschedule, you may do so only one time;
- Arrive on time to your appointment, or be available at the appointed time for a scheduled phone call, and understand that **arriving more than 10 minutes late may result in the appointment being treated as canceled**; and
- Thoroughly review your After Visit Summary as soon as you receive it, and send us any questions you may have, preferably through the Client Portal, **within 5 days of receiving the summary**.
- At all times, you are obligated to let us know how you can be contacted. Failure to keep us informed of your current address, phone number and email address may result in the immediate termination of your representation.

5. **Reliance on Your Representations.** You agree and acknowledge that, for purposes of this Assessment, we will rely on the information and representations you provide to us. We will not conduct an independent investigation to confirm or refute anything you have told us unless we specifically note that we have done so in our After Visit Summary. The advice and guidance we give you is dependent upon you giving us a full and accurate account of your situation.

By signing below, I agree to the scope, timeline, and fee above. I authorize The Commons Law Center to begin working on this Legal Matter. I understand this offer of services expires if not signed within 10 days of the date listed at the top of this page.

ACKNOWLEDGED and agreed to:
_____
<client name>
<date>

# Statement of Legal Work

## Dissolution Petition

<Client Fullname>  
<Client Address 1>  
<Client Address 2>  
<Client City>, <Client State> <Client Zip>  
<Client Email>  
<Client Phone>

<date>

Dear <Client FName>,

Thank you for engaging The Commons Law Center to <plain language description of work>.

In conjunction with our agreed-upon Master Engagement Agreement (MEA), this Statement of Legal Work (SLW) describes the scope and limitations of this specific legal project.

1. **Our Deliverables.** The Scope of our legal work is limited to the following:

- a. **Case and Information Review.** Prior to our conversation with you, we will <insert relevant activities and review the ones below>; conduct a review of the following information relevant to your legal issue: Legal documents; Correspondence (letters, emails, etc); Documents and information contained in the Oregon eCourt Information System (OECI) for your primary case number (if applicable); A search in OECI to determine if other court cases exist that may impact your legal issue; Questions you have about your legal situation, rights, and responsibilities; and Other information you provide, including documents and information you provide in response to questions from us.

You must submit the documents, information, and questions to us, preferably using the Client Portal, as soon as possible, but no later than 24 hours prior to your scheduled appointment.

- b. **Planning Meeting.** We will engage in a XX-minute conversation between you and one of our licensed legal professionals, conducted by telephone or videoconference, to help you (i) understand the legal issue you are facing, (ii) orient you to the legal processes and timelines associated with your issue, (iii) plan for and obtain information necessary to complete drafting and/or other tasks, and (iv) answer any questions you may have.
- c. **Document Drafting.** We will draft and, if applicable, file and serve the following documents associated with your dissolution petition:

- i. <insert all specific documents and deliverables, each as an individual list item>
- ii. <document 2>
- iii. <document 3>

- d. **Revisions From Your Review.** After we have drafted all of the above documents, we will send them to you for your review (discussed in more detail below). We will make one round of revisions to the documents based on the feedback we receive from you after you complete your review.
- e. **Filing and Service.** Once all documents are finalized, we will e-file them with the appropriate court on your behalf, pay the required filing fee / request a fee-waiver for the filing fee, and arrange for a process server to serve applicable documents on your opposing party.
  - i. Note, the process service fees generally include three attempts at service. While this is typically enough to perfect service, occasionally it is not. Additional service attempts or service by substitute means may require you to pay an additional fee.
- f. **Wrap-up Conversation.** We will engage in a 20-minute wrap up conversation with you to help you understand your progress, discuss our recommended next steps, and answer any questions you may have.

- 2. **Other Work is Out of Scope.** Our services under this Statement of Legal Work are expressly limited to the above activities. Other possible legal work is out of scope, including, for example: <insert relevant activities that are expressly out of scope>.

The above examples are for illustration purposes and are not meant to be a complete list of out-of-scope items.

We may be available to perform additional legal work on your behalf (including items contained in the above list), however any such work will be contained in a separate Statement of Legal Work and will require payment of any fees and costs associated with the applicable SLW.

- 3. **Your Duties.** In order to facilitate our delivery of the Services outlined in Section 1, you agree to do the following:
  - a. Send us your documents, correspondence, case information, questions, and other information at least 24 hours prior to your scheduled Planning Meeting, preferably using the Client Portal;
  - b. At all times, you are obligated to let us know how you can be contacted. Failure to keep us informed of your current address, phone number and email address may result in the immediate termination of your representation.

- c. Respond as soon as possible to any questions we ask you, documents we request from you, or other information we request from you. You agree to take no longer than 24 for any response unless we agree in writing to a longer time-frame;
  - d. Notify us at least 48 hours in advance if you need to reschedule any appointment;
    - i. If you need to reschedule, you may do so only one time;
  - e. Arrive on time to your appointment, or be available at the appointed time for a scheduled phone call, and understand that arriving more than 10 minutes late may result in the appointment being treated as canceled;
  - f. Thoroughly review the draft documents we send as soon as you receive them, and send us feedback and/or corrections within 24 hours of receiving the summary (unless your legal professional agrees to a longer review period). Your review should include, at minimum:
    - i. <insert any specific tasks and review the ones below>
    - ii. Checking all names for spelling and accuracy;
    - iii. Checking all dates for accuracy;
    - iv. Checking for accuracy the identification of all financial accounts, insurance policies; real property assets, and/or personal property assets;
    - v. Checking the accuracy of any statements of fact or allegations; and
    - vi. A general review of all documents for accuracy and completeness.
4. **Fees.** You agree to pay a total of \$X,XXX for the services described in this SLW. All payments are due up-front and must be received prior to, or in conjunction with, your scheduling of your Assessment Meeting with a licensed legal professional.

This amount includes \$X,XXX for legal services and \$XXX in costs associated with paying third parties on your behalf.

This fee is deemed to be earned upon receipt in accordance with the terms of our MEA.

We may, at our sole discretion, offer to reschedule missed appointments or other deadlines for an additional fee of not more than \$75.

By signing below, I agree to the scope, timeline, and fee above. I authorize The Commons Law Center to begin working on this Legal Matter. I understand this offer of services expires if not signed within 10 days of the date listed at the top of this page.

ACKNOWLEDGED and agreed to:

\_\_\_\_\_

<client name>

<date>



***From Hotline Call to  
Founded Letter:  
Effective Strategies  
for Representing  
DHS-Involved Clients***

From Hotline  
Call to Founded  
Letter:

# EFFECTIVE STRATEGIES FOR REPRESENTING DHS-INVOLVED CLIENTS

# CONTENTS

- The Role of DHS in Family Law Matters
- The Assessment Process
- Meeting with DHS – Things NOT to Do
- Immediate Danger Hearings (Present vs. Impending Danger)
- Founded – Now What?
- Notice
- Requesting Review
- Common Issues
- Where to Go Next

# THE ROLE OF DHS IN FAMILY LAW MATTERS

- Structure of the Oregon Department of Human Services
- When do we engage with DHS? How can DHS involvement benefit a client?
- A day in the life of a CPS worker: How do CPS workers view family law attorneys during the assessment process? What can you do to make their job smoother?
- The flow chart of workers: Screening → Child Protective Services → Permanency (we are dealing with CPS 99% of the time)
- Who is your client to DHS? And how does that change the approach?
  - Alleged Perpetrator
  - Parent
  - Alleged Victim

Oregon



DHS



Child Welfare



CPS

## THE NUMBERS

- A total of 42,876 received reports were assigned for CPS assessment. A total of 34,407 CPS assessments were completed, which includes reports that were assigned in the previous year.
- Of all completed CPS assessments, 7,352 were founded for abuse and involved 10,766 victims. Of those victims, 1,983 (18.4%) were removed from their homes.
- Of all victims, 41.5 percent were 5 years old and younger.
- Of all types of abuse incidences, the threat of harm was the most frequently identified.
- type of abuse (46.8 percent), followed by neglect (35.4 percent).
- At 42.3 percent, parent/caregiver alcohol or drug abuse issues represented the most common family stress factor when child abuse was present.
- The next most common stressors were domestic violence (32.5 percent) and parent/caregiver involvement with law enforcement agencies (19.7 percent).

-2021 Child Welfare Data Book

## THE ASSESSMENT PROCESS

- Ultimate goal of every assessment: DETERMINE CHILD SAFETY – if a child is unsafe, a plan must be made to either keep that child safely in the home with a safety plan or place that child out of the home, either with a relative or in substitute care. If a child is safe, DHS will work to get out of that case quickly. Assessments are due within 60 days of assignment, but often that deadline gets extended.
- When working with DHS, whether representation of a client during an assessment or representation of a client requesting a review of a Founded disposition, understanding the role of DHS and the job of the Child Protective Services worker responsible for the assessment is key.
- Response timelines:
  - Within 24 hours (further broken down in 0-2 hour and 2-24 hour responses)
  - Within 72 hours
  - Within 10 business days

## THE ASSESSMENT PROCESS

- Make initial face-to-face contact with:  
The alleged victim;  
Siblings;  
Parent or caregiver;  
Other children and adults living in the home; and The alleged perpetrator
- Observe and assess the home environments, including the sleep environments of any infant in the home. Gather safety-related information through interviews (with family and collaterals) and observations.  
Determine if there is a present danger safety threat.  
Determine if there is an impending danger safety threat (apply the safety threshold criteria).
- Develop a protective action plan when it is determined the child is unsafe due to a present danger safety threat.
- Develop an initial safety plan when a child is determined to be unsafe due to an impending danger safety threat.
- Develop an ongoing safety plan when a child is determined to be unsafe from an impending danger safety threat at the conclusion of the CPS assessment.
- Determine whether the initial safety plan or ongoing safety plan is the least intrusive plan sufficient to manage child safety (identify how the safety threat occurs and apply the in-home safety plan criteria).

*-Child Welfare Procedure Manual*



## MEETING WITH DHS – THINGS TO DO AND NOT TO DO

- DO meet in your client's home with DHS whenever possible.
- DO allow your client to talk (to the extent appropriate and on topic).
- DO provide collateral contacts for DHS to contact to gather information in support of your client.
- DON'T allow your client to contact the Child Abuse Hotline when they have an assigned caseworker, unless it is a **new** report of abuse or an emergency.
- DON'T use DHS as a custody evaluator.
- DO request the disposition of the assessment, and the records after the assessment is complete.
- DO reach out to the worker's supervisor when necessary. For unresponsive caseworkers and supervisors, the program manager is the next step.

## IMMEDIATE DANGER HEARINGS (PRESENT VS. IMPENDING DANGER)

- In family law, DHS and attorneys often cross paths the most when a Motion for an Immediate Danger Order is filed pursuant to ORS 107.139. What is “immediate danger”? The statute does not define it. Child Welfare’s danger definitions –
- **PRESENT DANGER** (analogous to Immediate Danger) will always have a Protective Action Plan A present danger safety threat is present when the danger is: Immediate, Significant, and Clearly observable.
- **PRESENT DANGER** results in a Protective Action Plan. A “PAP” must: Manage present danger safety threats; Be in place before the CPS worker leaves the home; Not remain in place longer than 10 calendar days; and Not not remain in place after the CPS assessment is complete.
- **IMPENDING DANGER** is present when the family behaviors, conditions and circumstances result in all 5 of the safety threshold criteria being met. This results in an ongoing safety plan.
- “PAP” = IMMEDIATE DANGER MOTION: How to ensure you have what you need from DHS at ex-parte? What to elicit from DHS at a contested Immediate Danger hearing?

## FOUNDED – NOW WHAT?

- There are three potential dispositions or outcomes for every CPS assessment per OAR 413-015-1010/ORS 418.259:

- Founded (Substantiated): reasonable cause to believe the abuse occurred (less than probable cause. .
- Unable to Determine (Inconclusive): there is no evidence the abuse occurred.
- Unfounded (Unsubstantiated): there is some indication the *abuse* occurred, but there is insufficient evidence to conclude that there is reasonable cause to believe the abuse occurred.

Only a Founded disposition may be reviewed, as it is the only conclusive finding of abuse or neglect.

NEXT STEP... Order the assessment:

- <https://www.oregon.gov/dhs/Pages/RecordRequests.aspx>
- DHS ROI is included with your materials.

REQUEST REVIEW WITHIN 30 DAYS OF RECEIPT OF LETTER OR ELSE RIGHT TO REVIEW IS WAIVED.

## OAR 413-010-0715: PROVIDING NOTICE OF A CPS FOUNDED DISPOSITION

(1) The local Child Welfare office must deliver a “Notice of a CPS Founded Disposition” (Form CF 313) to the person identified as the perpetrator in the CPS founded disposition, except as provided in section (2) of this rule. If the perpetrator is a juvenile, notice must be provided as required by OAR 413-010-0716 (Providing Notice of a CPS Founded Disposition and Other Documents to a Juvenile), otherwise, the notice must be delivered as follows:

- (a) By certified mail, restricted delivery, with a return receipt requested to the last known address of the perpetrator; or
- (b) By hand delivery to the perpetrator. If hand delivered, the notice must be addressed to the perpetrator and a copy of the notice must be signed and dated by the perpetrator to acknowledge receipt, signed by the person delivering the notice, and filed in the child welfare case file.
- (c) If subsection (2)(b) of this rule does not apply, the method or process for providing notice of a CPS founded disposition when domestic violence has been identified should maximize the safety of the child, the adult victim, and Department employees. The Department will not use the adult victim to deliver the notice.

(2) A “Notice of a CPS Founded Disposition” (Form CF 313) is not required if:

- (a) The CPS founded disposition was made prior to August 4, 2000. Notice will be given on CPS founded dispositions made prior to August 4, 2000 as provided in OAR 413 010-0717.
- (b) Domestic violence has been identified and if providing the notice would increase the risk of harm to a child, adult victim, or Department employee. This exception may only be made with Department management approval based on documentation of risk.

## REQUESTING REVIEW

There are three levels of review available for a Founded disposition that is requested timely (within 30 days of receipt of Founded Notification Letter):

- a. **LOCAL OFFICE:** The local Child Welfare office must conduct a review and issue a "Notice of Local Child Welfare Office CPS Founded Disposition Review Decision" (Form CF 314) to the requestor within 30 days from the date the local Child Welfare office receives a request for review of a CPS Founded disposition.
- b. **CENTRAL OFFICE:** Central Office must conduct a review and issue a "Notice of Central Office CPS Founded Disposition Review Decision" (Form CF 315) within 60 days from the date Central Office receives a request for a review.
- c. **JUDICIAL REVIEW:** ORS 183.484. Petition for review **MUST** be filed within 60 days of the last decision notice from Central Office.

**What happens at a review? What materials can be provided and what should the letter look like?**

## REQUESTING REVIEW

- What questions must DHS answer when completing a review? OAR 413-010-0735
  - Several, but essentially, it boils down to this: Was there reasonable cause to find abuse occurred and that this person requesting review was the cause of the abuse?
- What are the potential outcomes?
  - a. Uphold; or
  - b. Overturn to:
    - a. Unable to Determine, or
    - b. Unfounded

## COMMON ISSUES

1. Often, a client will find out about a Founded disposition long after the assessment has closed. What are their options? REQUEST – if DHS does not have proof of a signed certified receipt delivery, notice was not provided. You can reach out to the local office where the assessment took place to request notice and provide an accurate address. OAR 413-010-0718.
2. Requesting the assessment records is key. The requirement is that DHS provides records within 15 days when those records are available. However, there can be a delay. Order as soon as possible, but if the assessment is not released in time, write the letter requesting review and provide a narrative of your client's story and why the disposition reached for the allegation(s) is incorrect. If the disposition is upheld, you will hopefully have enough time to receive it before your Central Office review request, which is a NEW request.
3. Threat of Harm: What is it and how to approach review of this allegation?



## WHERE TO GO NEXT

Most Founded dispositions are upheld at the local level (and even at the level of Central Office). Because of this, it is important to use someone with experience and knowledge about DHS.

As a former CPS caseworker, I can assist with a perspective that few have. I am happy to help. Please call me if you have any questions.

## MATERIALS

- 2021 Child Welfare Data Book (p. 1 – 10)
- DHS Child Welfare Procedure Manual, CPS Assessments
- Oregon Safety Model Practice Comparison Matrix
- Oregon Child Welfare Safety Model Training – Key Concepts: “Present and Impending Danger”
- DHS me2099 Form

#### **413-010-0700**

##### **Purpose**

(1) The purpose of these rules (OAR 413-010-0700 to 413-010-0750) is to establish procedures for ensuring the rights of individuals to receive notice and the opportunity to request a review when a Child Protective Services (CPS) assessment results in a CPS founded disposition.

(2) The Federal Child Abuse Prevention and Treatment Act (CAPTA) requires child protective service agencies to provide notice to individuals identified as responsible for child abuse and to provide individuals with an opportunity to request and have a review of the disposition.

**Statutory/Other Authority:** ORS 418.005

**Statutes/Other Implemented:** ORS 418.005

##### **History:**

[CWP 1-2021, amend filed 01/04/2021, effective 01/04/2021](#)

CWP 2-2012, f. & cert. ef. 4-4-12

CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

CWP 1-2003, f. & cert. ef. 1-7-03

SOSCF 18-2000, f. & cert. ef. 8-4-00

#### **413-010-0705**

##### **Definitions**

Definitions for OAR 413-010-0700 to 413-010-0750 are in OAR 413-010-0000.

**Statutory/Other Authority:** ORS 418.005

**Statutes/Other Implemented:** ORS 418.005

##### **History:**

CWP 13-2015, f. & cert. ef. 8-4-15

CWP 2-2012, f. & cert. ef. 4-4-12

CWP 26-2011(Temp), f. 10-5-11, cert. ef. 10-6-11 thru 4-3-12

CWP 2-2005, f. & cert. ef. 2-1-05

CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

CWP 1-2003, f. & cert. ef. 1-7-03

SOSCF 9-2001, f. 6-29-01, cert. ef. 7-1-01

SOSCF 18-2000, f. & cert. ef. 8-4-00

#### **413-010-0710**

##### **Required Forms**

Several Department forms are referred to by form number in these rules. The forms are available at the Department's website. When use of a form is required by these rules, the current version of the form must be used.

[ED. NOTE: Forms referenced are available from the agency.]

**Statutory/Other Authority:** ORS 418.005

**Statutes/Other Implemented:** ORS 418.005

##### **History:**

CWP 2-2012, f. & cert. ef. 4-4-12

CWP 26-2011(Temp), f. 10-5-11, cert. ef. 10-6-11 thru 4-3-12

CWP 2-2005, f. & cert. ef. 2-1-05

#### **413-010-0714**

##### **Notice and Review when the Perpetrator is a Department Employee**

When the *perpetrator* is a Department employee, the Department will follow the Child Welfare Procedure Manual for notice and review outlined in "CPS Assessment and Founded CPS Disposition Review for Department Employees".

**Statutory/Other Authority:** ORS 418.005

**Statutes/Other Implemented:** ORS 418.005

**History:**

[CWP 1-2021, amend filed 01/04/2021, effective 01/04/2021](#)

CWP 2-2012, f. & cert. ef. 4-4-12

CWP 2-2005, f. & cert. ef. 2-1-05

CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

CWP 1-2003, f. & cert. ef. 1-7-03

SOSCF 18-2000, f. & cert. ef. 8-4-00

#### **413-010-0715**

##### **Providing Notice of a CPS Founded Disposition**

(1) The local Child Welfare office must deliver a "Notice of a CPS Founded Disposition" (Form CF 313) to the person identified as the *perpetrator* in the CPS founded disposition, except as provided in section (2) of this rule. If the perpetrator is a juvenile, notice must be provided as required by OAR 413-010-0716, otherwise, the notice must be delivered as follows:

(a) By certified mail, restricted delivery, with a return receipt requested to the last known address of the perpetrator; or

(b) By hand delivery to the perpetrator. If hand delivered, the notice must be addressed to the perpetrator and a copy of the notice must be signed and dated by the perpetrator to acknowledge receipt, signed by the person delivering the notice, and filed in the child welfare case file.

(c) If subsection (2)(b) of this rule does not apply, the method or process for providing notice of a CPS founded disposition when domestic violence has been identified should maximize the safety of the child, the adult victim, and Department employees. The Department will not use the adult victim to deliver the notice.

(2) A "Notice of a CPS Founded Disposition" (Form CF 313) is not required if:

(a) The CPS founded disposition was made prior to August 4, 2000. Notice will be given on CPS founded dispositions made prior to August 4, 2000 as provided in OAR 413 010-0717.

(b) Domestic violence has been identified and if providing the notice would increase the risk of harm to a child, adult victim, or Department employee. This exception may only be made with Department management approval based on documentation of risk.

(3) Notifications made in section (1) of this rule must be documented in the Child Welfare electronic information system within five business days of the supervisory approval of the *CPS assessment*. The documentation must include:

(a) Who made the notification.

(b) To whom the notification was made.

(c) The date the notification was made.

(d) A copy of the original "Notice of a CPS Founded Disposition" (Form CF 313) delivered to the perpetrator saved in the Child Welfare electronic information system.

[ED. NOTE: Forms referenced are available from the agency.]

**Statutory/Other Authority:** ORS 418.005

**Statutes/Other Implemented:** ORS 418.005

**History:**

[CWP 1-2021, amend filed 01/04/2021, effective 01/04/2021](#)

CWP 2-2012, f. & cert. ef. 4-4-12

CWP 2-2005, f. & cert. ef. 2-1-05

CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

CWP 1-2003, f. & cert. ef. 1-7-03

SOSCF 18-2000, f. & cert. ef. 8-4-00

[\*\*413-010-0716\*\*](#)

**Providing Notice of a CPS Founded Disposition and Other Documents to a Juvenile**

(1) The local Child Welfare office that determines a juvenile is the perpetrator must deliver the "Notice of CPS Founded Disposition" (Form CF 313) to one of the following persons who may act on behalf of the juvenile in submitting a request for review based on having legal custody of the juvenile:

(a) The juvenile's parent; or

(b) The juvenile's guardian.

(2) If the juvenile is in the legal custody of the Department or the Oregon Youth Authority, the notice must be sent to both of the following:

(a) The juvenile's attorney; and

(b) The juvenile's parent, unless there is cause to believe such communication will be detrimental to the juvenile (see OAR 413-020-0170(3)(c)).

(3) If the juvenile is in the legal custody of the Department and is unrepresented, the Department will ask the juvenile court to appoint an attorney for the juvenile.

(4) The "Notice of a CPS Founded Disposition" (Form CF 313) must be delivered by certified mail, restricted delivery, with a return receipt requested to the last known address of each mandatory recipient identified in sections (1) and (2) of this rule.

(5) Any other notices or documents that must be provided to perpetrators pursuant to these rules must be delivered to the appropriate persons as outlined in this rule if the perpetrator is a juvenile.

[ED. NOTE: Forms referenced are available from the agency.]

**Statutory/Other Authority:** ORS 418.005

**Statutes/Other Implemented:** ORS 418.005 & 419.370

**History:**

CWP 2-2012, f. & cert. ef. 4-4-12

CWP 2-2005, f. & cert. ef. 2-1-05

CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

CWP 1-2003, f. & cert. ef. 1-7-03

SOSCF 18-2000, f. & cert. ef. 8-4-00

**413-010-0717**

**Inquiry about a Review When a CPS Founded Disposition was Made Prior to August 4, 2000**

(1) The Department will not deliver a "Notice of Founded CPS Disposition" (Form CF 313) to a person identified as a perpetrator in a CPS founded disposition completed prior to August 4, 2000, unless a person makes an inquiry to the Department about an opportunity for review and qualifies for a review as described in section (2) of this rule.

(2) An individual identified as a perpetrator in a CPS founded disposition completed prior to August 4, 2000 may contact any Child Welfare office and inquire about a review of the disposition. If a complete record of the incident, including a complete copy of the CPS assessment and documentation collected during the CPS assessment, is still available, the Department proceeds in accordance with OAR 413-010-0718. If a complete record of the incident is no longer available, the Department will not conduct a review but will provide notice to the individual that a review will not be conducted and the reasons for that determination.

[ED. NOTE: Forms referenced are available from the agency.]

**Statutory/Other Authority:** ORS 418.005

**Statutes/Other Implemented:** ORS 418.005

**History:**

CWP 2-2012, f. & cert. ef. 4-4-12

CWP 2-2005, f. & cert. ef. 2-1-05

CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

CWP 1-2003, f. & cert. ef. 1-7-03

SOSCF 18-2000, f. & cert. ef. 8-4-00

**413-010-0718**

**Inquiry about a Review of a CPS Founded Disposition When a Person Believes They Have Not Received a Notice**

If a person believes he or she is entitled under these rules (OAR 413-010-0700 to 413-010-0750) to a "Notice of CPS Founded Disposition" (Form CF 313) but has not received one, the person may contact any Child Welfare office to inquire about a review of the disposition.

(1) If the local Child Welfare office determines that the person making the inquiry has been identified as a perpetrator in a CPS founded disposition since August 4, 2000, staff must determine whether a "Notice of CPS Founded Disposition" (Form CF 313) was delivered to the perpetrator or the perpetrator refused the delivery of the notice, as evidenced by the returned receipt.

(2) If a notice was delivered to the perpetrator or the perpetrator refused delivery of the notice, as evidenced by a returned receipt, and the time for requesting review of the CPS founded disposition has expired, the local Child Welfare office must either prepare and deliver a "Notice of Waived Rights" (Form CF 316) or inform the perpetrator by telephone of the information required in the "Notice of Waived Rights" and document the telephone notification in the child welfare case file.

(3) If the perpetrator is a juvenile, the local Child Welfare office must prepare and deliver a "Notice of Waived Rights" to the appropriate persons identified in OAR 413 010-0716.

(4) If no returned receipt exists or if it appears that notice was not properly provided, the local Child Welfare office must deliver a "Notice of CPS Founded Disposition" as provided in OAR 413-010-0720 or, if the perpetrator is a juvenile, as provided in OAR 413-010-0716.

[ED. NOTE: Forms referenced are available from the agency.]

**Statutory/Other Authority:** ORS 418.005

**Statutes/Other Implemented:** ORS 418.005

**History:**

[CWP 1-2021, amend filed 01/04/2021, effective 01/04/2021](#)

CWP 2-2012, f. & cert. ef. 4-4-12

CWP 2-2005, f. & cert. ef. 2-1-05

CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

CWP 1-2003, f. & cert. ef. 1-7-03

SOSCF 18-2000, f. & cert. ef. 8-4-00

[413-010-0720](#)

**Information Included in the "Notice of a CPS Founded Disposition" (Form CF 313)**

The "Notice of a CPS Founded Disposition" (form CF 313) must include all of the following:

(1) The case number and assessment completed date for the CPS assessment that resulted in the CPS founded disposition.

(2) The full name of the individual who has been identified as responsible for the abuse as it is recorded in the case record.

(3) A statement that the CPS Disposition was recorded as "founded" including a description of the type of abuse identified.

(4) A statement, written by a Child Welfare employee who has completed the mandatory Child Welfare training for CPS workers, which briefly explains how the CPS founded disposition was determined.

(5) A statement about the right of the individual to submit a request for review of the CPS founded disposition.



- (6) Instructions for making a request for review, including the requirement that the requestor provide a full explanation why the requestor believes the CPS founded disposition is in error.
- (7) A statement that the person waives the right to request a review if the request for review is not received by the local Child Welfare office within 30 calendar days from the date of receipt of the "Notice of CPS Founded Disposition," as documented by a returned receipt.
- (8) A statement that the local Child Welfare office will consider relevant information and materials contained in the Department's case file, including the CPS assessment and disposition, screening information, assessment information and narrative, related police reports, medical reports, and information submitted with the request for review by the person requesting review.
- (9) A statement that the review process will not include re-interviewing the victim; interviewing or meeting with the person requesting a review, with others associated with the requestor, or with others mentioned in the assessment; or conducting a field assessment of the allegation of abuse.
- (10) A statement that the local Child Welfare office will send the requestor a "Notice of Local Child Welfare Office CPS Founded Disposition Review Decision" (Form CF 314) within 30 days of receiving a request for review.

**Statutory/Other Authority:** ORS 418.005

**Statutes/Other Implemented:** ORS 418.005

**History:**

[CWP 1-2021, amend filed 01/04/2021, effective 01/04/2021](#)

[CWP 118-2018, amend filed 11/29/2018, effective 11/29/2018](#)

[CWP 106-2018, temporary amend filed 09/12/2018, effective 09/12/2018 through 03/10/2019](#)

CWP 2-2012, f. & cert. ef. 4-4-12

CWP 26-2011(Temp), f. 10-5-11, cert. ef. 10-6-11 thru 4-3-12

CWP 2-2005, f. & cert. ef. 2-1-05

CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

CWP 1-2003, f. & cert. ef. 1-7-03

SOSCF 18-2000, f. & cert. ef. 8-4-00

**[413-010-0721](#)**

**Making a Request for a Review of a CPS Founded Disposition**

A person requesting a review must use information contained on the "Notice of CPS Founded Disposition" to prepare a written request for review. The written request for review must be delivered to the local Child Welfare office within 30 calendar days of the receipt of the Notice of CPS Founded Disposition and must include the following items:

- (1) Date the request for review is written;
- (2) Case number and the date the CPS assessment was completed found on the "Notice of CPS Founded Disposition";
- (3) Full name of the person identified as responsible for abuse in the CPS founded disposition;
- (4) A full explanation about why the person disagrees with the CPS founded disposition;

- (5) Any additional relevant information and materials the person wants considered during the review;
- (6) The person's current name (if it has changed from the name noted in section (3) of this rule);
- (7) The person's current street address and telephone number; and
- (8) The person's signature.

**Statutory/Other Authority:** ORS 418.005

**Statutes/Other Implemented:** ORS 418.005

**History:**

[CWP 1-2021, amend filed 01/04/2021, effective 01/04/2021](#)

CWP 2-2012, f. & cert. ef. 4-4-12

CWP 2-2005, f. & cert. ef. 2-1-05

CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

CWP 1-2003, f. & cert. ef. 1-7-03

SOSCF 18-2000, f. & cert. ef. 8-4-00

[413-010-0722](#)

**Determining When Legal Findings Preclude a Right to Request a Review and Providing Notice of Legal Proceeding (Form CF 317)**

- (1) The Department does not conduct a review when there is a legal finding consistent with the CPS founded disposition. In that case, a "Notice of Legal Finding" must be provided as provided in OAR 413-010-0723.
- (2) If the Department is aware that a legal proceeding is pending, the local Child Welfare office will not review the CPS founded disposition until the legal proceeding is completed.
- (3) If the Department is aware that a legal proceeding is pending, the local Child Welfare office must prepare and deliver a notice of legal proceedings (CF 317) within 30 days after receipt of a request for review. This informs the requestor that the Department will not review the disposition until the legal proceeding is completed and will take no further action on the request.
- (4) The requestor may, at the conclusion of the legal proceeding, again submit a request for review within 30 days.
- (5) The requestor retains the right to request a review for 30 days following resolution of the legal proceeding.

[ED. NOTE: Forms referenced are available from the agency.]

**Statutory/Other Authority:** ORS 418.005

**Statutes/Other Implemented:** ORS 418.005

**History:**

CWP 2-2012, f. & cert. ef. 4-4-12

CWP 26-2011(Temp), f. 10-5-11, cert. ef. 10-6-11 thru 4-3-12

CWP 2-2005, f. & cert. ef. 2-1-05

CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

CWP 1-2003, f. & cert. ef. 1-7-03  
SOSCF 18-2000, f. & cert. ef. 8-4-00

#### **413-010-0723**

##### **Providing a Notice of Legal Finding (Form CF 318)**

If a requestor inquires about a review of a CPS founded disposition and there is a legal finding consistent with the CPS founded disposition, the local Child Welfare office staff must prepare and deliver a "Notice of Legal Finding" (Form CF 318) that informs the requestor that the Department will not review the disposition.

[ED. NOTE: Forms referenced are available from the agency.]

**Statutory/Other Authority:** ORS 418.005

**Statutes/Other Implemented:** ORS 418.005

**History:**

CWP 2-2012, f. & cert. ef. 4-4-12  
CWP 26-2011(Temp), f. 10-5-11, cert. ef. 10-6-11 thru 4-3-12  
CWP 2-2005, f. & cert. ef. 2-1-05  
CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04  
CWP 1-2003, f. & cert. ef. 1-7-03  
SOSCF 18-2000, f. & cert. ef. 8-4-00

#### **413-010-0724**

##### **Providing a Notice of Waived Rights (Form CF 316) When a Request for Review Has Been Received**

The local Child Welfare office staff must provide a "Notice of Waived Rights" (Form CF 316) when the person authorized to request a review:

(1) Delivers the written request for a *Local Child Welfare Office CPS Founded Disposition Review* to the local Child Welfare office more than 30 calendar days after the "Notice of a CPS Founded Disposition Review" (Form CF 313) was received by the addressee, as evidenced by the returned receipt for that notice.

(2) Delivers the written request for a *Central Office CPS Founded Disposition Review* to the local Child Welfare office more than 30 calendar days after the "Notice of Local Child Welfare Office CPS Founded Disposition Review Decision" (Form CF 314) was received by the addressee, as evidenced by the returned receipt for that notice.

**Statutory/Other Authority:** ORS 418.005

**Statutes/Other Implemented:** ORS 418.005

**History:**

[CWP 1-2021, adopt filed 01/04/2021, effective 01/04/2021](#)

#### **413-010-0732**

##### **Local Child Welfare Office Responsibilities Related to Notices and Reviews**

(1) If an individual asks to review Department records for the purpose of reviewing a CPS founded disposition, state and federal confidentiality law, including OAR 413-010-0010 to 413-010-0075 and 413-350-0000 to 413-350-0090 govern the inspection and copying of records.

(2) The local Child Welfare office must maintain records to demonstrate the following, when applicable:

(a) Whether the Department delivered a "Notice of CPS Founded Disposition;"

(b) Whether or not the Notice of CPS Founded Disposition was received by the addressee, as evidenced by a returned receipt documenting that the notice was received, refused, or not received within the 15-day period provided by the United States Postal Service;

(c) The date a Request for a Local Child Welfare Office CPS Founded Disposition Review was received by the local Child Welfare office;

(d) If a review is conducted by a local Child Welfare office, whether the "Notice of the Local Child Welfare Office CPS Founded Disposition Review Decision" (Form CF 314) was received by the addressee as evidenced by a returned receipt documenting that the notice was received, refused, or not received within the 15-day period as provided by the United States Postal Service; and

(e) The date a request for review by Central Office was received by the Department.

(3) The Child Welfare supervisor in each local Child Welfare office or designee must maintain a comprehensive record of the reviews completed by the local Child Welfare office on CPS founded dispositions arising out of the local Child Welfare office to which the supervisor is assigned. The record must include the date, case number, date the CPS assessment was completed, and the decision for each review completed by the local Child Welfare office.

[ED. NOTE: Forms referenced are available from the agency.]

**Statutory/Other Authority:** ORS 418.005

**Statutes/Other Implemented:** ORS 418.005

**History:**

[CWP 1-2021, amend filed 01/04/2021, effective 01/04/2021](#)

CWP 2-2012, f. & cert. ef. 4-4-12

CWP 26-2011(Temp), f. 10-5-11, cert. ef. 10-6-11 thru 4-3-12

CWP 2-2005, f. & cert. ef. 2-1-05

CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

CWP 1-2003, f. & cert. ef. 1-7-03

SOSCF 18-2000, f. & cert. ef. 8-4-00

[413-010-0735](#)

### **Local Child Welfare Office Review of CPS Founded Dispositions**

(1) The local Child Welfare office must conduct a review and issue a "Notice of Local Child Welfare Office CPS Founded Disposition Review Decision" (Form CF 314) to the requestor within 30 days from the date the local Child Welfare office receives a request for review of a CPS founded disposition.

(2) If the request for review was delayed because a legal proceeding was pending as provided in OAR 413-010-0720(6), or the proceeding has been completed without a legal finding that would preclude a

review, the review must occur within 30 days from the date the local Child Welfare office receives a new request for review.

(3) The Local Child Welfare Office CPS Founded Disposition Review must occur as follows:

(a) The review may not include re-interviewing the victim; interviewing or meeting with the person requesting a review, with others associated with the requestor, or with others mentioned in the assessment; or conducting a field assessment of the allegation of abuse.

(b) The review must be based on current child welfare practice and definitions of abuse. Rules in place at the time the CPS assessment was completed also must be considered.

(c) The following must be considered by the Local Child Welfare Office CPS Founded Disposition Review Committee members and the Child Welfare Program Manager or designee:

(A) Relevant information and materials contained in the Department's child welfare case file including the CPS assessment and disposition, screening information, assessment information and narrative, related police reports, medical reports, and information provided by the person requesting review;

(B) Whether there is reasonable cause to believe that abuse occurred;

(C) Whether there is reasonable cause to believe that the person requesting review is responsible for the abuse; and

(D) Whether there is reasonable cause to believe that the type of abuse for which the CPS assessment was founded is correctly identified in the assessment.

(d) The Local Child Welfare Office CPS Founded Disposition Review Committee must:

(A) Make recommendations as follows:

(i) Retain the founded disposition;

(ii) Change the disposition to unfounded or unable to determine;

(iii) Change the type of abuse (see OAR 413-015-1015 for a list of the types of abuse) for which the CPS Disposition was founded.

(B) At the conclusion of the Review Committee, each committee member must make their respective recommendations known to the Child Welfare Program Manager or designee.

(e) The Child Welfare Program Manager or designee must:

(A) Observe the Review Committee;

(B) Ask questions of the committee members as needed for clarification;

(C) Consider the committee's recommendation or recommendations and the basis for the recommendation or recommendations; and

(D) Make one of the following decisions:

(i) Retain the founded disposition.

- (ii) Change the disposition to unfounded disposition or unable to determine.
- (iii) Change the type of abuse (see OAR 413-015-1015 for a list of the types of abuse) for which the CPS Disposition was founded.
- (f) The decision and the basis for the decision must be documented.

[ED. NOTE: Forms referenced are available from the agency.]

**Statutory/Other Authority:** ORS 418.005

**Statutes/Other Implemented:** ORS 418.005

**History:**

[CWP 1-2021, amend filed 01/04/2021, effective 01/04/2021](#)

CWP 2-2012, f. & cert. ef. 4-4-12

CWP 26-2011(Temp), f. 10-5-11, cert. ef. 10-6-11 thru 4-3-12

CWP 2-2005, f. & cert. ef. 2-1-05

CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

CWP 1-2003, f. & cert. ef. 1-7-03

SOSCF 18-2000, f. & cert. ef. 8-4-00

**[413-010-0738](#)**

**Notice of Local Child Welfare Office CPS Founded Disposition Review Decision**

- (1) The Child Welfare supervisor or designee must prepare a "Notice of Local Child Welfare Office CPS Founded Disposition Review Decision" (Form CF 314) as described in OAR 413-010-0738.
- (2) The "Notice of Local Child Welfare Office CPS Founded Disposition Review Decision" (Form CF 314) must include the following:
  - (a) Whether there is reasonable cause to believe that abuse occurred;
  - (b) Whether there is reasonable cause to believe the person requesting the review was responsible for the abuse;
  - (c) The decision resulting from the Local Child Welfare Office CPS Founded Disposition Review;
  - (d) If the CPS founded disposition is changed, whether it will be changed to "unable to determine" or to "unfounded;"
  - (e) If the Local Child Welfare Office CPS Founded Disposition Review results in a decision that the CPS founded disposition should be retained but that the type of abuse for which the disposition was founded should be changed, the type of abuse that should be founded and the reason for this change;
  - (f) If the CPS founded disposition is retained but the type of abuse is changed, notice that the person requesting the review has the right to request a new Local Child Welfare Office CPS Founded Disposition Review of the change;
  - (g) A summary of the information and reasoning of the Local Child Welfare Office CPS Founded Disposition Review upon which the decisions were based;

(h) If a CPS founded disposition is determined to be "unable to determine" or "unfounded," notice that the change will be noted in the CPS assessment narrative;

(i) If the founded disposition is retained, a statement about how to request a review by Central Office, as described in OAR 413-010-0740.

(3) The local Child Welfare office must place the request for review and a copy of the "Local Child Welfare Office CPS Founded Disposition Review Decision" (Form CF 314) in the child welfare case file. A change may not be made in the existing written child welfare case file except to add the determinations.

(4) The Department must send the "Local Child Welfare Office CPS Founded Disposition Review Decision" (Form CF 314) by certified mail, restricted delivery, with a return receipt requested, to the person requesting review within 30 days of the request for review.

(5) When as a result of a Local Child Welfare Office CPS Founded Disposition Review, a decision is made to change a CPS founded disposition, the Child Welfare supervisor or designee must assure the revised disposition is reflected in the Department's information system. The Child Welfare supervisor or designee forwards the necessary information (Form CF 322) to the Department's Office of Information Services (OIS) Service Desk.

[ED. NOTE: Forms referenced are available from the agency.]

**Statutory/Other Authority:** ORS 418.005

**Statutes/Other Implemented:** ORS 418.005

**History:**

[CWP 1-2021, amend filed 01/04/2021, effective 01/04/2021](#)

CWP 2-2012, f. & cert. ef. 4-4-12

CWP 26-2011(Temp), f. 10-5-11, cert. ef. 10-6-11 thru 4-3-12

CWP 2-2005, f. & cert. ef. 2-1-05

CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

CWP 1-2003, f. & cert. ef. 1-7-03

SOSCF 18-2000, f. & cert. ef. 8-4-00

[\*\*413-010-0740\*\*](#)

**Requesting a Central Office Review**

(1) A person entitled to the notice described in OAR 413-010-0738 may, within 30 days of receipt of the notice, request a Central Office CPS Founded Disposition Review.

(2) A person requesting a Central Office CPS Founded Disposition Review may use a copy of the request for local Child Welfare office review or prepare a new request for Central Office Review, following the requirements outlined in OAR 413-010-0721.

(3) A person requesting a Central Office CPS Founded Disposition Review must deliver the request to the local Child Welfare office within 30 days of the date the "Notice of Local Child Welfare Office CPS Founded Disposition Review Decision" (Form CF 314) was received by the requestor, as evidenced on a United States Postal Service return receipt.

[ED. NOTE: Forms referenced are available from the agency.]



**Statutory/Other Authority:** ORS 418.005

**Statutes/Other Implemented:** ORS 418.005

**History:**

CWP 2-2012, f. & cert. ef. 4-4-12

CWP 26-2011(Temp), f. 10-5-11, cert. ef. 10-6-11 thru 4-3-12

CWP 2-2005, f. & cert. ef. 2-1-05

CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

CWP 1-2003, f. & cert. ef. 1-7-03

SOSCF 18-2000, f. & cert. ef. 8-4-00

**[413-010-0743](#)**

**Local Office Responsibilities in a Request for Central Office CPS Founded Disposition Review**

Within 10 calendar days after receiving a request for a Central Office CPS Founded Disposition Review, the local Child Welfare office must forward the following documents to the Department's Central Office CPS Program Unit:

- (1) The request for review; and
- (2) A copy of the child welfare case records pertinent to the CPS founded disposition, including the information reviewed as part of the Local Child Welfare Office CPS Founded Disposition Review.

**Statutory/Other Authority:** ORS 418.005

**Statutes/Other Implemented:** ORS 418.005

**History:**

CWP 2-2012, f. & cert. ef. 4-4-12

CWP 26-2011(Temp), f. 10-5-11, cert. ef. 10-6-11 thru 4-3-12

CWP 2-2005, f. & cert. ef. 2-1-05

CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

CWP 1-2003, f. & cert. ef. 1-7-03

SOSCF 18-2000, f. & cert. ef. 8-4-00

**[413-010-0745](#)**

**Central Office Review of CPS Founded Dispositions**

- (1) Central Office must conduct a review and issue a "Notice of Central Office CPS Founded Disposition Review Decision" (Form CF 315) within 60 days from the date Central Office receives a request for a review.
- (2) The Central Office CPS Founded Disposition Review must occur as follows:
  - (a) The CPS program office schedules a review of the CPS founded disposition when a written request for review and case file information is received from the local Child Welfare office.
  - (b) The review may not include re-interviewing the victim; interviewing or meeting with the person requesting a review, with others associated with the requestor, or with others mentioned in the assessment; or conducting a field assessment of the allegation of abuse.

(c) The review must be based on current child welfare practice and definitions of abuse. Rules in place at the time the CPS assessment was completed also must be considered.

(d) The following must be considered by the Central Office CPS Founded Disposition Review Committee members and the CPS Program Manager or designee:

(A) Relevant information and materials contained in the Department's child welfare case file, including the CPS assessment and disposition, screening information, assessment information and narrative, related police reports, medical reports, and information provided by the person requesting review;

(B) Whether there is reasonable cause to believe that abuse occurred;

(C) Whether there is reasonable cause to believe that the person requesting review is responsible for the abuse; and

(D) Whether there is reasonable cause to believe that the type of abuse is correctly identified in the assessment.

(e) The Central Office CPS Founded Disposition Review Committee must:

(A) Make recommendations as follows:

(i) Retain the founded disposition;

(ii) Change the disposition to unfounded or unable to determine;

(iii) Change the type of abuse (see OAR 413-015-1015 for a list of the types of abuse) for which the CPS Disposition was founded.

(B) At the conclusion of the Review Committee, each committee member makes their respective recommendation known to the CPS Program Manager or designee.

(f) The Central Office CPS Program Manager or designee must:

(A) Observe the Review Committee;

(B) Ask questions of the committee members as needed for clarification;

(C) Consider the committee's recommendation or recommendations and the basis for the recommendation or recommendations; and

(D) Make one of the following decisions:

(i) Retain the founded disposition.

(ii) Change the disposition to unfounded or unable to determine.

(iii) Change the type of abuse (see OAR 413-015-1015 for a list of the types of abuse) for which the CPS Disposition was founded.

(g) The decision and the basis for the decision must be documented.

[ED. NOTE: Forms referenced are available from the agency.]

**Statutory/Other Authority:** ORS 418.005

**Statutes/Other Implemented:** ORS 418.005

**History:**

[CWP 1-2021, amend filed 01/04/2021, effective 01/04/2021](#)

[CWP 38-2018, minor correction filed 04/16/2018, effective 04/16/2018](#)

CWP 2-2012, f. & cert. ef. 4-4-12

CWP 26-2011(Temp), f. 10-5-11, cert. ef. 10-6-11 thru 4-3-12

CWP 2-2005, f. & cert. ef. 2-1-05

CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

CWP 1-2003, f. & cert. ef. 1-7-03

SOSCF 18-2000, f. & cert. ef. 8-4-00

**[413-010-0746](#)**

**Notice of Central Office CPS Founded Disposition Review Decision**

(1) Within 60 calendar days of the date Central Office receives the request for review from the local Child Welfare office, a CPS Program Coordinator or designee prepares and sends to the requestor by certified mail, restricted delivery, with a return receipt requested, a "Notice of Central Office CPS Founded Disposition Review Decision" (Form CF 315) that includes the following information:

- (a) Whether there is reasonable cause to believe that abuse occurred;
- (b) Whether there is reasonable cause to believe that the person requesting review was responsible for the abuse;
- (c) The decisions resulting from the Central Office CPS Founded Disposition Review;
- (d) If the CPS founded disposition is changed, whether the change will be to "unable to determine" or to "unfounded disposition;"
- (e) If the Central Office CPS Founded Disposition Review results in a decision that the CPS founded disposition should be retained but the type of abuse for which the disposition was founded should be changed, the new type of abuse and the reason for this change;
- (f) If the CPS founded disposition is retained but the type of abuse is changed, notice that the person requesting the review has the right to request a new Central Office CPS Founded Disposition Review based on the change;
- (g) A summary of the information used as part of the Central Office CPS Founded Disposition Review and the reasoning for reaching the decision; and
- (h) If a CPS founded disposition is changed to "unable to determine" or "unfounded," notice that the change will be made to the CPS assessment narrative.

(2) A "Notice of Central Office CPS Founded Disposition Review Decision" (Form CF 315) is sent to the person requesting review, the local Child Welfare office for filing in the child welfare case record, the CPS worker, and the supervisor involved in the initial CPS assessment and determination of disposition.

(3) The CPS Program Office maintains a comprehensive record of the reviews of CPS founded dispositions conducted by Central Office. The record includes the date of the review, case number,

sequence number, a copy of the materials used in the review and the decision that resulted from the review for each review conducted by Central Office.

[ED. NOTE: Forms referenced are available from the agency.]

**Statutory/Other Authority:** ORS 418.005

**Statutes/Other Implemented:** ORS 418.005

**History:**

[CWP 1-2021, amend filed 01/04/2021, effective 01/04/2021](#)

CWP 2-2012, f. & cert. ef. 4-4-12

CWP 26-2011(Temp), f. 10-5-11, cert. ef. 10-6-11 thru 4-3-12

CWP 2-2005, f. & cert. ef. 2-1-05

CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

CWP 1-2003, f. & cert. ef. 1-7-03

SOSCF 18-2000, f. & cert. ef. 8-4-00

#### **[413-010-0748](#)**

##### **Review Initiated by the Department**

The Child Safety Program Manager may direct that either the local Child Welfare office or Central Office review a founded disposition if there is good cause to do so, such as a determination that there is a legal finding that contradicts the CPS founded disposition.

**Statutory/Other Authority:** ORS 418.005

**Statutes/Other Implemented:** ORS 418.005

**History:**

[CWP 1-2021, amend filed 01/04/2021, effective 01/04/2021](#)

CWP 2-2012, f. & cert. ef. 4-4-12

CWP 26-2011(Temp), f. 10-5-11, cert. ef. 10-6-11 thru 4-3-12

CWP 2-2005, f. & cert. ef. 2-1-05

CWP 16-2004, f. & cert. ef. 10-1-04

CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

#### **[413-010-0750](#)**

##### **Revising Founded Abuse Dispositions in the Department's Electronic Information System**

When as a result of a Central Office CPS Founded Disposition Review, a decision is made to change a CPS founded disposition, the CPS Program Coordinator or designee forwards the necessary information (Form CF 322) to the Department's Office of Information Services (OIS) Service Desk or other appropriate organizational unit to make changes in the Department's Electronic Information System.

**Statutory/Other Authority:** ORS 418.005

**Statutes/Other Implemented:** ORS 418.005

**History:**

[CWP 1-2021, amend filed 01/04/2021, effective 01/04/2021](#)

CWP 2-2012, f. & cert. ef. 4-4-12

CWP 26-2011(Temp), f. 10-5-11, cert. ef. 10-6-11 thru 4-3-12

CWP 2-2005, f. & cert. ef. 2-1-05

CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04

CWP 1-2003, f. & cert. ef. 1-7-03

SOSCF 18-2000, f. & cert. ef. 8-4-00



### Key Concepts: *“Present Danger and Impending Danger”*

Threats of danger are manifested differently. Threats of danger may occur as present danger or impending danger.

As used in the Oregon Child Welfare Safety Model the term **Present Danger** refers to an immediate, significant and clearly observable harm or threat of severe harm occurring to a child in the present and requiring immediate CPS protective response, called a protective action.

**Present Danger** exists at the highest safety threshold. Present danger is also the easiest to detect because it is totally transparent and happening right in front of you. Threats of danger that are consistent with the present danger threshold include conditions such as:

### Present Danger Threshold

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



As used in the Oregon Child Welfare Safety Model, the term **Impending Danger** refers to a state of danger in which family conditions, behaviors, attitudes, motives, emotions and/or situations are out of control. While the danger may not be currently active, it can be anticipated to cause harm to a child at any time.

Commonly, impending danger threats to child safety are not obvious. They also are not occurring at the onset of CPS intervention or in a present context but are identified and understood more fully upon an assessment and evaluation of individual and family functioning and conditions. Without safety intervention, impending danger threats could reasonably lead to harm.

Our ability to explain the specifics of what we've observed as a threat of danger requires a full and effective study of the family.

### Identifying Impending Danger

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- Threatening family conditions that are not obvious, active or occurring when you first arrive.
- Conditions are out of control and likely to cause harm to a child in the near future (which is any time during the next several days).
- If something is not happening before your eyes -- like present danger threats -- it will take time and effort to understand individual and family dynamics.
- By conducting effective assessments, impending danger can be exposed and understood.

Therefore, the Oregon Child Welfare Safety Model requires CPS workers to complete a safety analysis at the conclusion of the CPS assessment in order to determine impending danger and to establish safety management plans to assure protection.

For more information about **Present** and **Impending Danger**, you are encouraged to reference the Child Welfare Procedure Manual, Chapter 2, Assessment, Section 5, A&B, and Chapter 3,





Section 14, A. The Procedure Manual can be found at  
[http://www.dhs.state.or.us/caf/safety\\_model/index.html#pm](http://www.dhs.state.or.us/caf/safety_model/index.html#pm)

**Definitions from Oregon Child Welfare Administrative Rule that support these concepts are as follows:**

**Harm** means any kind of impairment, damage, detriment, or injury to a child's physical, sexual, emotional, or mental development or functioning. Harm is the result of child abuse or neglect and may vary from mild to severe.

**Out of control** means family behaviors, conditions, or circumstances that can affect a child are unrestrained, unmanaged, without limits or monitoring, not subject to the influence or manipulation within the control of the family, resulting in an unpredictable and chaotic family environment.

**Protective action** means an immediate, same day, short-term plan sufficient to protect a child from a safety threat in order to allow completion of the CPS assessment.

**Safety threat** means family behavior, conditions, or circumstances that could result in harm to a child.

**Severe Harm** means 'substantial,' as used in ORS 419B.005; immobilizing impairment; life-threatening damage; or significant or acute injury to a child's physical, sexual, psychological, or mental development or functioning.

**Unsafe** means there is a safety threat to which the child is vulnerable and there is insufficient parent or caregiver protective capacity to protect a vulnerable child from the identified safety threats.

**Vulnerable Child** means a child who is unable to protect him or herself. This includes a child who is dependent on others for sustenance and protection. A vulnerable child is defenseless, exposed to behavior, conditions, or circumstances that he or she is powerless to manage, and is susceptible and accessible to a threatening parent or caregiver. Vulnerability is judged according to physical and emotional development, ability to communicate needs, mobility, size, and dependence.

## Oregon Safety Model Practice Comparison Matrix

Terms	Definition, Concept, or Activity		Practice Change	
	<i>Previous</i>	<i>Oregon Safety Model</i>	<i>Previous Practice</i>	<i>Oregon Safety Model</i>
Initial contact	Initial Safety Assessment	"Initial contact" means the first face-to-face contact between a CPS worker and a family. The initial contact includes face-to-face contact with the alleged child victim, his or her siblings, parent or caregiver, and other children and adults living in the home; accessing the home environment; identifying safety threats; and determining if a protective action is needed.	Make face to face contact or document attempted efforts to contact alleged victim, primary parent/caregiver and siblings and other children living in the home.	Have face to fact contact or document attempts to have contact with alleged victim, parent/caregiver, siblings, and all children and adults living in the home. Contact, if possible, with the alleged victim is required in response timeframe. If contact is not possible within assigned response time, document efforts and continue to make efforts to contact throughout the assessment.
Safety Threats (Impending and present danger)	Safety Threats	16 universal safety threats. "Safety threat" means family behavior, conditions, or circumstances that could result in harm to a child	Many safety threats are not as precise.	16 universal safety threats that focus on family behavior, condition and/or circumstance. The Oregon Safety Model impending safety threats guide assists the worker in applying "safety threshold criteria (imminence, observable, severity and out of control). Child vulnerability is considered in the context of the specific safety threat.
Vulnerable Child	Child Vulnerabilities.	"Vulnerable child" means a child who is unable to protect him or herself. This includes a child who is dependent on others for sustenance and protection. A vulnerable child is defenseless, exposed to behavior, conditions, or circumstances that he or she is powerless to manage, and is susceptible and accessible to a	Vulnerability was not used in a dynamic way within the context of evaluating the safety threats and parent/caregiver willingness and ability to protect.	Vulnerability is used dynamically within the context of safety threats and parent or caregiver can and will protect.

## Oregon Safety Model Practice Comparison Matrix

Terms	Definition, Concept, or Activity		Practice Change	
	<i>Previous</i>	<i>Oregon Safety Model</i>	<i>Previous Practice</i>	<i>Oregon Safety Model</i>
Vulnerable Child (continued)		threatening parent or caregiver. Vulnerability is judged according to physical and emotional development, ability to communicate needs, mobility, size, and dependence. Vulnerability is not judged by age.		
Parent/Caregiver can and will protect	Protective capacities	<p>The CPS worker must determine whether a parent or caregiver can or cannot and will or will not protect the child against identified safety threats.</p> <p>(a) If the CPS worker determines that the parent or caregiver can and will protect the child, then the child is safe, and the CPS worker must continue the activities required to sufficiently complete the CPS assessment.</p> <p>(b) If the CPS worker determines that the parent or caregiver cannot or will not protect the child, the CPS worker must initiate a protective action.</p> <p>This begins the process of looking at parental protective capacity.</p>	Protective capacity was considered during the CPS assessment process, but was not fully evaluated in a comprehensive way to develop change strategies and an action plan.	The Parent/Caregiver willingness and ability to protect is considered in a dynamic way at the conclusion of the CPS assessment process when safety related information has been gathered to determine whether or not the child is safe or unsafe.

## Oregon Safety Model Practice Comparison Matrix

Terms	Definition, Concept, or Activity		Practice Change	
	<i>Previous</i>	<i>Oregon Safety Model</i>	<i>Previous Practice</i>	<i>Oregon Safety Model</i>
Protective Action	Initial Safety Plan	“Protective action” means an immediate, same day, short-term plan sufficient to protect a child from a safety threat until the completion of the CPS assessment.	The “initial safety plan” was the first set of actions or interventions that describe how a child’s safety is achieved by eliminating or managing a safety threat.	The protective action is put in place to restore safety for the child while the CPS worker is completing the CPS assessment and gathering more detailed safety related information. The protective action is never in place after the CPS assessment is completed. If ongoing safety intervention is needed, the protective action is reviewed and a sufficient ongoing safety plan is developed.
Safety Analysis	Safety Decision	The Safety Analysis is completed after all the necessary safety related information is gathered for the CPS assessment, including disposition.	N/A	The purpose of completing the safety analysis when all safety related information is gathered is to fully and accurately understand and explain how safety threats are occurring in the family and to determine the necessary level of ongoing safety intervention required to assure child safety. The safety analysis conclusion is that the child is safe or that the child is unsafe.

## Oregon Safety Model Practice Comparison Matrix

Terms	Definition, Concept, or Activity		Practice Change	
	<i>Previous</i>	<i>Oregon Safety Model</i>	<i>Previous Practice</i>	<i>Oregon Safety Model</i>
CPS Disposition	CPS Disposition	As part of completing the CPS assessment, the CPS worker must determine whether there is reasonable cause to believe child abuse or neglect occurred. The possible determinations are: (a) "Founded," which means there is reasonable cause to believe that child abuse or neglect occurred. (b) "Unfounded," which means no evidence of child abuse or neglect was identified or disclosed. (c) "Unable to determine," which means there are some indications of child abuse or neglect, but there is insufficient data to conclude that there is reasonable cause to believe that child abuse or neglect occurred.	Determining the CPS Disposition has not changed, but the disposition previously was a major factor in determining whether services were provided and a safety plan was developed.	The CPS Disposition is the determination of whether or not abuse or neglect occurred.  The safety analysis conclusion that a child is safe or unsafe determines whether services are provided and a safety plan is developed.
Ongoing Safety Plan	Initial Safety Plan	"Ongoing safety plan" means a documented set of actions or interventions that manage a child's safety after the Department has identified one or more safety threats and determined the parent's or caregiver's protective capacities are insufficient to protect a child. An ongoing safety plan can be in-home or out-of-home and is adjusted when necessary to provide the least intrusive interventions.	Develop and initial safety plan when a safety threat exists considering risk influences and caregiver protective capacity.	Develop when, after safety analysis, at the conclusion of the CPS assessment when the CPS worker concludes that the child is unsafe. A child safety meeting is used to develop the ongoing safety plan by reviewing the protective action, determining the least intrusive interventions and confirming the suitability of safety service.  *Is a written document with specific

## Oregon Safety Model Practice Comparison Matrix

Terms	Definition, Concept, or Activity		Practice Change	
	<i>Previous</i>	<i>Oregon Safety Model</i>	<i>Previous Practice</i>	<i>Oregon Safety Model</i>
Ongoing Safety Plan (continued)				<p>criteria for sufficiency.</p> <p>*Is approved by a supervisor.</p> <p>*Is a dynamic plan, is reviewed every thirty days, and changes as protective capacity changes (+ or -).</p> <p>*Is also reviewed at specific points in time (see 413-080-0055(1)(b)(A thru E))</p>
Child Safety Meeting	Team Decision Meeting (TDM)	"A Child Safety Meeting" is a facilitated meeting held at the conclusion of a CPS assessment for the purpose of developing an ongoing safety plan.	TDM held prior to or shortly after out-of-home placement.	<p>Child Safety Meeting held to develop the ongoing safety plan at conclusion of CPS assessment.</p> <p>Used to determine the least intrusive interventions to manage child safety.</p> <p>Must rule out in-home safety plan as feasible before establishing out-of-home safety plan.</p>

## Oregon Safety Model Practice Comparison Matrix

Terms	Definition, Concept, or Activity		Practice Change	
	<i>Previous</i>	<i>Oregon Safety Model</i>	<i>Previous Practice</i>	<i>Oregon Safety Model</i>
Protective Capacity Assessment	A parent's or caregiver's strengths or abilities to manage existing safety threats, prevent additional safety threats from arising, or stop risk influences from creating a safety threat.	The behavioral, cognitive, and emotional characteristics that can specifically and directly be associated with a person's ability to care for and keep a child safe.	Assess protective capacity during CPS assessment to determine ability to manage safety threats, prevent additional safety threats, stop risk influences.	<p>1. During CPS assessment, justify a parent or caregiver's ability and willingness to protect a child and participate in an ongoing safety plan if safety threat is identified.</p> <p>2. Building on the information gained during the CPS assessment, the ongoing worker assesses parent's protective capacity in three domains, behavioral, cognitive, and emotional and determines the impact on the parent's ability to care for and keep a child safe. The assessment is completed in the context of a <i>collaborative relationship</i> with the parent to identify what must change.</p> <p>3. During ongoing case management protective capacity is assessed at each contact with the parents. It is dynamic and changing, and, as the family progresses, impacts changes in the safety plan and how Child Welfare intervenes to manage child safety.</p>



## Oregon Safety Model Practice Comparison Matrix

Terms	Definition, Concept, or Activity		Practice Change	
	<i>Previous</i>	<i>Oregon Safety Model</i>	<i>Previous Practice</i>	<i>Oregon Safety Model</i>
Oregon Family Decision Meeting (OFDM)	The statutory Family Decision Meeting that must be considered after 30 days of out-of-home placement. The OFDM is described in ORS 417.365 to 417.375. The purpose of the OFDM is to establish a plan that may include a permanency plan, concurrent permanency plan, placement recommendation, and service recommendation and agreements, which provide for the safety, attachment, and permanency needs of the child.	The family decision-making meeting as defined in ORS 417.365, and is a family-focused intervention facilitated by professional staff that is designed to build and strengthen the natural care giving system for the child. The purpose of the family decision-making meeting is to establish a plan that provides for the safety, attachment, and permanency needs of the child.	Considered or held 30 to 60 days after out-of-home placement	Considered or held 30-60 days after out-of-home placement. Focus is specific on gathering family's ideas on ways to achieve expected outcomes and manage child safety. Family's ideas are incorporated into the case plan to the extent they will achieve those outcomes. Minimal change, but provides the meeting participants with the specific criteria for expected outcomes, safety plans, child safety.

## Oregon Safety Model Practice Comparison Matrix

Terms	Definition, Concept, or Activity		Practice Change	
	<i>Previous</i>	<i>Oregon Safety Model</i>	<i>Previous Practice</i>	<i>Oregon Safety Model</i>
Case Plan	"Service Plan" means the services and activities designed to achieve goals for child safety, a permanent home, and child well-being.	"Case plan" means a goal oriented, time limited individualized plan for the child and the child's family, developed by the Department and the parents or legal guardians, that identifies the family behaviors, conditions, or circumstances, safety threats to the child, and the expected outcomes that will improve the protective capacity of the parents or legal guardians. The family plan described in ORS 417.375(1) is incorporated into the case plan to the extent that it protects the child, builds on family strengths, and is focused on achieving permanency for the child within a reasonable time.	Varies throughout the field. May include change goals in a Service Plan or Service Agreement. Various forms utilized throughout the state.	Case plan developed out of the work of the Protective Capacity Assessment. Identified the diminished protective capacities that need to change in order for parent to protect and care for a child.  Aligns several parts of overall plan including expected outcomes (long term changes), conditions for return (safety threshold for child returning home), ongoing safety plan, visitation plan, permanency and concurrent permanency plan.
Action Agreement	"Service Agreement" means a written, signed statement developed jointly by the Department, the legal parents or legal guardians, and other family members when appropriate that identifies change	"Action Agreement" means a written document developed between the Department and a parent or legal guardian that identifies one or more of the services or activities in which the parent or legal guardian will participate to achieve an expected outcome.	Focus on general safety, permanency, and child well-being goals.	Focus on agreement to engage in services and activities to achieve specific (expected) outcome identified in the case plan.  Is directly linked to one or more expected outcomes.

## Oregon Safety Model Practice Comparison Matrix

Terms	Definition, Concept, or Activity		Practice Change	
	<i>Previous</i>	<i>Oregon Safety Model</i>	<i>Previous Practice</i>	<i>Oregon Safety Model</i>
Action Agreement (continued)	goals based upon strengths and child needs, states clear expectations, identifies permanent and concurrent plans, and establishes services and timeframes.			

## Oregon Safety Model Practice Comparison Matrix

Terms	Definition, Concept, or Activity		Practice Change	
	<i>Previous</i>	<i>Oregon Safety Model</i>	<i>Previous Practice</i>	<i>Oregon Safety Model</i>
Conditions for return	None	"Conditions for return" mean 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.	<p>No current definition or term.</p> <p>No defined practice or policy.</p> <p>Practice is unique to the case, court, branch, unit, caseworker.</p> <p>No defined way for parents to know when a child will return home</p>	<p>Is not dependent upon the parents completion of services or <b><i>achieving</i></b> outcomes</p> <p>Is a set of behaviors, conditions or circumstances that must be present to manage safety in the home with supports and services to the parents.</p> <p>Is not dependent upon the parent's completion of services or <b><i>achieving</i></b> outcomes.</p> <p>Is a part of the case plan, and made available to parents, court, and parties to the case.</p> <p>Is the benchmark for a caseworker in making the safety decision to return a child to the parents' home.</p>

## Oregon Safety Model Practice Comparison Matrix

Terms	Definition, Concept, or Activity		Practice Change	
	<i>Previous</i>	<i>Oregon Safety Model</i>	<i>Previous Practice</i>	<i>Oregon Safety Model</i>
Documentation and use of the case plan	147 form series	333 form series, which is the documentation of the child's case plan	<p>147a Initial Sub Care 147b Initial Non-sub care 147c Six month sub care 147d Six-month Non-sub care</p> <p>Used for reporting to court (in part) and administrative review</p>	<p>Is the comprehensive written documentation of Child Welfare case plan.</p> <p>Is developed with the family as much as possible.</p> <p>Is the written document that guides casework for each particular family.</p> <p>Is focused on the unique circumstances of the family.</p> <p>Is reviewed every 90 days.</p> <p>333a used for cases when safety threat and child out of home</p> <p>333b when safety threat, child in home with safety plan, but court gives child welfare custody.</p> <p>333c when safety threat, child in home with safety plan, parents retain custody.</p> <p>Used for documentation and administrative review.</p>

## Oregon Safety Model Practice Comparison Matrix

Terms	Definition, Concept, or Activity		Practice Change	
	<i>Previous</i>	<i>Oregon Safety Model</i>	<i>Previous Practice</i>	<i>Oregon Safety Model</i>
Measuring Progress			Documented on the 147b or 147d but not a clearly defined process in rule.	<p>Documented on the 333 series in narrative text measuring progress on the expected outcomes of the case plan. Specific domains used to measure progress, such as:</p> <ul style="list-style-type: none"> <li>• Status of Safety Threats</li> <li>• Progress toward enhancing protective capacities</li> <li>• Provision and use of services</li> <li>• Willingness and readiness to change</li> <li>• Safety Management</li> </ul> <p>Meet with the family at least every 90 days to review progress in meeting expected outcomes, documented in either case notes or a case plan update.</p>
Case Closure			Determined by court, change goals may change during the course of a case, through additional service agreements.	<p>Caseworker recommends case closure to the court when the parent has achieved or made significant progress toward the expected outcomes, and can sustain child safety in the home. Measured by specific criteria:</p> <ul style="list-style-type: none"> <li>• Caseworker observations of the child and the parents in the home</li> <li>• Receipt of evaluations and reports from service providers</li> </ul>

## Oregon Safety Model Practice Comparison Matrix

Terms	Definition, Concept, or Activity		Practice Change	
	<i>Previous</i>	<i>Oregon Safety Model</i>	<i>Previous Practice</i>	<i>Oregon Safety Model</i>
Case Closure (continued)				<ul style="list-style-type: none"> <li>• Reports from participants in the ongoing safety plan</li> <li>• Measured progress on the extent the expected outcomes have been achieved</li> <li>• Consultation with others participating with the family to sustain child safety.</li> </ul>
Confirming Safe Environments (in out-of-home care)			Multiple sets of policies and rules that require different elements for assessment or confirmation by different child welfare staff (Face-to-face contact, Safety Standards, CPS assessment, Licensing Requirements, Adoption approval, and others)	<p>Assessment of a prospective caregiver based on standardized criteria. The determination is based upon what we learn about a family and our assessment of the quality and safety a caregiver <i>will</i> give to a child; a projection of safe care in the future.</p> <p>This is a shared responsibility among all CW staff, particularly the assigned caseworker and certification staff when children are placed in the home. Confirming safety is an assessment of the quality of care and safety of the child or children who are currently in the home. It is an ongoing assessment process, because the environment is dynamic and changes as children and circumstances change; it is not static.</p>



## Oregon Safety Model Practice Comparison Matrix

Terms	Definition, Concept, or Activity		Practice Change	
	<i>Previous</i>	<i>Oregon Safety Model</i>	<i>Previous Practice</i>	<i>Oregon Safety Model</i>
Confirming Safe Environments (in out-of-home care) (continued)				<p>Specific assessment criteria are applied during the required contacts with the foster parent, relative caregiver, or provider.</p> <p>Specific actions required subsequent to the monthly contact/assessment to confirm the safety of the child, or initiate support for the substitute caregiver, or take action to ensure the child's safety.</p>
Placement Support Plan (out-of-home care)		"Placement support plan" means a documented set of actions or resources that is developed to assist a relative caregiver or foster parent to maintain conditions that provide safety and well-being for children or young adults in the home.	Currently caseworkers are using safety plans in substitute care, although there is no policy governing the use of safety plans, and when one is or is not appropriate.	<p>Safety plans are not used in substitute care. If child safety cannot be assured in the out-of-home placement, action must be taken to move the child.</p> <p>A Placement Support Plan is a mechanism to support to a substitute caregiver who needs assistance in maintaining a safe environment.</p> <p>The Placement Support Plan is initiated by the certifier.</p>

## Oregon Safety Model Practice Comparison Matrix

Terms	Definition, Concept, or Activity		Practice Change	
	<i>Previous</i>	<i>Oregon Safety Model</i>	<i>Previous Practice</i>	<i>Oregon Safety Model</i>
Family Support Services (FSS)	Preventive/Restorative (P/R) services	Services provided when no safety threat to a child	P/R services used with both voluntary and safety related cases	<p>Voluntary services with specific eligibility criteria for each type of FSS service case:</p> <ul style="list-style-type: none"> <li>*Voluntary Placement Agreement</li> <li>*Voluntary Custody Agreement</li> <li>*Post Adoption/Post Guardianship</li> <li>*Former foster child requests ILP</li> <li>*Court referral of pre-adjudicated delinquent</li> <li>*In home family support services (very limited, with specific criteria)</li> </ul> <p>Use Case Plan 333d for voluntary services with child in home</p> <p>Use Case Plan 333e with Voluntary Custody or Voluntary Placement</p> <p>If time-limited agreements would serve as an effective tool to move the case forward a Service Agreement can be used with FSS cases. In most instances the signed case plan will be the written agreement with the family (and the signed Voluntary Custody Agreement or Voluntary Placement Agreement in applicable cases)</p>

# 2021 Child Welfare Data Book

Prepared by  
Office of Reporting, Research, Analytics, and Implementation  
Oregon Department of Human Services

September 2022  
Data is correct as of the date of publication



*“Safety, health and independence for all Oregonians”*

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# Fast Facts for FFY 2021

## Child Protective Services

- The Oregon Child Abuse Hotline (ORCAH)'s total contacts (calls and cross-reported police reports) answered during Federal Fiscal Year (FFY) 2021 (October 2020-September 2021), was 162,185.
- Of those ORCAH contacts, a total of 78,775 screening reports were documented.<sup>1</sup>
- A total of 42,876 received reports were assigned for CPS assessment.<sup>2</sup> A total of 34,407 CPS assessments were completed, which includes reports that were assigned in the previous year.<sup>3</sup>
- Of all completed CPS assessments, 7,352 were founded for abuse and involved 10,766 victims. Of those victims, 1,983 (18.4%) were removed from their homes.
- Of all victims, 41.5 percent were 5 years old and younger.
- Of all types of abuse incidences, the threat of harm was the most frequently identified type of abuse (46.8 percent), followed by neglect (35.4 percent).
- At 42.3 percent, parent/caregiver alcohol or drug abuse issues represented the most common family stress factor when child abuse was present.
- The next most common stressors were domestic violence (32.5 percent) and parent/caregiver involvement with law enforcement agencies (19.7 percent).

## In-Home Family Services

- During FFY 2021, a total of 6,304 children received case management and safety services while being served in their homes.
- Of the total served in-home, 36.3 percent received additional services.

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<sup>1</sup> This number reflects all potential reports of child abuse that are screened by ODHS (Child Welfare and the Office of Training, Investigation and Safety) and includes a variety of notifications.

<sup>2</sup> All references to assigned CPS assessments also include child abuse reports assigned by Office of Training, Investigation and Safety (OTIS) for investigation.

<sup>3</sup> Reports assigned for CPS assessment can be combined with a currently open CPS assessment, changing the count of CPS assessments. Further, when this combination happens, it can impact the time period in which the now-linked report shows up in.

## Foster Care

### Total Served

- A total of 8,620 children spent at least one day in foster care such as family foster care, professional treatment programs, psychiatric residential treatment, pre-adoptive placements, developmental disability placements, or independent living.
- Of the total children served in foster care, 65.4% were White, 18.6% were Hispanic, 7.1% were Black or African American, 4.7% were American Indian or Alaska Native, 2.7% did not have race/ethnicity recorded, and 1.5 were Asian or Pacific Islander.<sup>4</sup>
- A total of 1,201 youth received independent living program services.
- Of all children leaving foster care, 54.3% were reunited with their families.

### Average Daily Population

- An average of 5,665 children were in foster care daily. Of these:
  - An average of 4,159 children were in family foster care. Of those, 49.8 percent (about 2,072 children) were placed with relatives.
  - An average of 596 children were on trial home visit.
  - An average of 135 children and young adults were served in treatment foster care through Child Welfare Behavioral Rehabilitation Services programs or Oregon Health Authority psychiatric treatment settings.
  - The remaining average of 775 children were in other types of foster care placements such as developmental disability placements, pre-adoptive placements, and independent living.

### Point in Time

- Of the 5,516 children in care on September 30, 2021, 58.3 percent (3,213) had two or fewer placements.

## Adoption & Guardianship Program

- A total of 683 children had adoptions finalized. Of these, 74.2% were White, 17.0% were Hispanic, 4.8% were Black or African American, 2.2% were American Indian or Alaska Native, 0.6% were Asian or Pacific Islander and 1.2% had no race/ethnicity recorded.
- Of those adopted, 326 had siblings and of those, 299 (91.7%) were adopted by the same family.

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<sup>4</sup> Race categories are defined in compliance with REAL-D (OAR 943-070-0010) and U.S. Census Bureau standards and are gathered through self-identification. Children may have multiple races. The primary race is the first one identified. If a child self-identifies as Hispanic in addition to other races, their race category will be Hispanic (any race).

- A total of 356 children exited foster care to guardianship. Of these children, 66.0% were White, 18.0% were Hispanic, 7.3% were American Indian or Alaska Native, 6.2% were Black or African American, 1.1% were Asian or Pacific Islander, and 1.4% had no race/ethnicity recorded.



# Child Protective Services

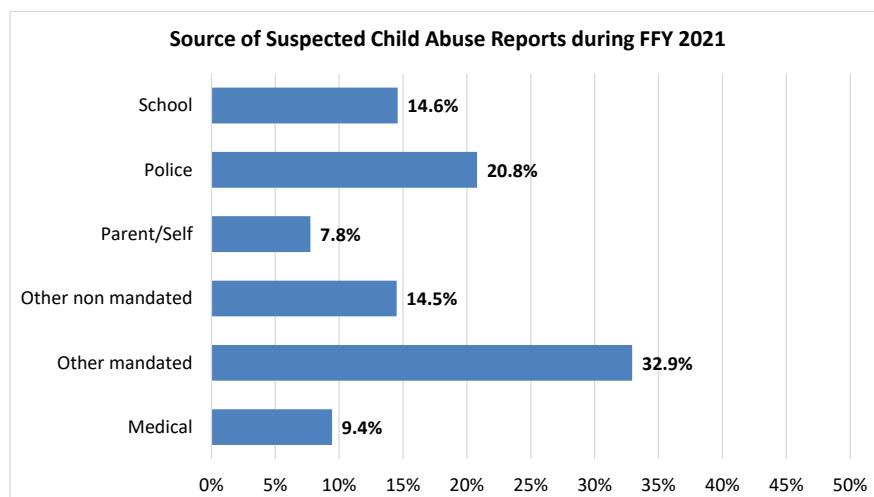
## Screening Reports and Reporters of Suspected Child Abuse

Oregon Child Abuse Hotline (ORCAH) serves as one of the primary points of contact for children in Oregon at risk for or experiencing abuse. The 24-hour hotline receives, and screens reports of child abuse statewide, and provides guidance and subject matter expertise to callers and partners to ensure child safety. The hotline also assigns reports for Child Protective Services (CPS) assessments when allegations of abuse meet criteria for assignment and to ensure child safety. Additionally, the hotline serves Oregonians through cross-reporting to local law enforcement, completes required notifications with multiple community partners and refers to services when appropriate.

ORCAH receives calls, cross-reported police reports, and as of March of 2022, electronic reports from Child Welfare caseworkers when a new allegation on an open case or assessment needs to be screened. These are collectively referred to as “contacts.” A portion of these contacts resulted in a documented screening report (either assigned or closed at screening), or a case note on an open case. The remaining contacts are generally callers seeking information or providing information that is not related to concerns for alleged abuse or open cases. ORCAH’s total contacts answered during FFY 2021 was 162,185. Of those contacts received, 78,775 resulted in a screening report being documented, an increase of 0.2 percent from the prior year.

During FFY 2021:

- Public and private officials required by law to report suspected child abuse made up 77.7 percent of the screening reports received by Child Welfare.
- Of all reports, 35.4 percent came from schools and law enforcement agencies.

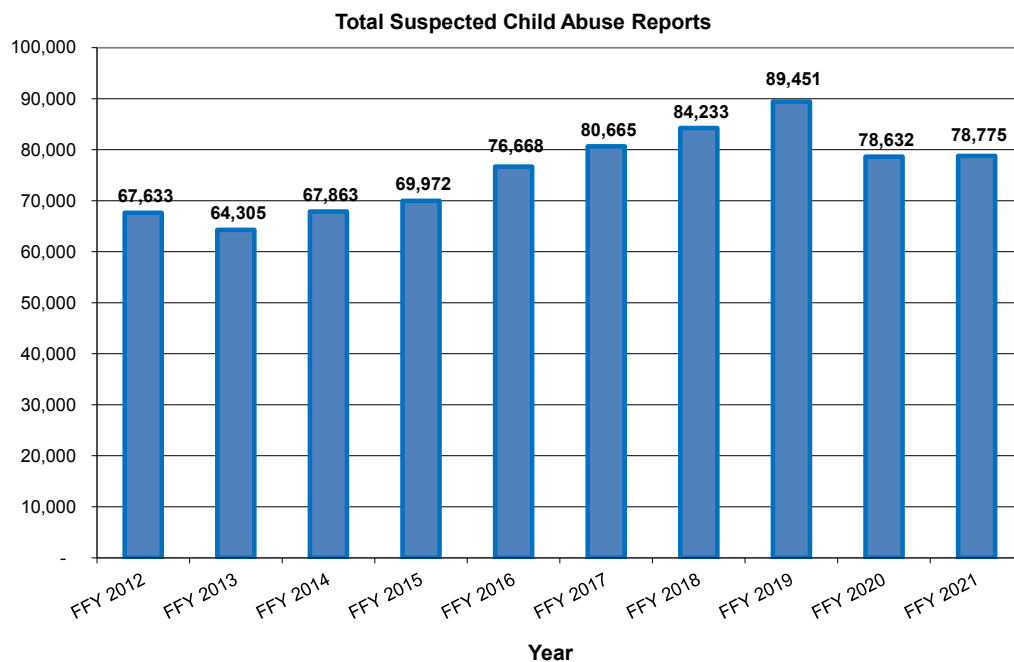


## Response Time for CPS Assessments

Oregon Child Welfare has three response times: Within 24 hours, within 72 hours, and within 10 business days (when there is no danger posed to the child). Over 59 percent (59.3) were assigned a response time of *within 24 hours*. These response times are determined based on an analysis of the potential that the child is in present danger (requiring a within 24-hour response time).

## Reports Assigned for CPS Assessments

Of the 78,775 screening reports received, 42,876 were assigned for CPS assessment.



During the year, 34,407 CPS assessments were completed. Of this total, 7,352 (21.4 percent) resulted in a founded disposition. The 7,352 CPS assessments with founded dispositions represent 9.3 percent of the total abuse reports. Once there is a founded disposition, the children for whom there is reasonable cause to believe they were abused are considered victims of child abuse.

## Victims of Abuse

During FFY 2021, there were 10,766 unduplicated child abuse victims. Most child victims remained in their own homes (81.6 percent), while 18.4 percent of child victims were removed from their homes. For those remaining in their homes, this is an increase of 1.4% over FFY 2020.

Of the total victims, 13.5 percent remained home with an in-home safety plan and 68.1 percent remained in their homes, but Child Welfare determined that it was not necessary to open a case to keep the child(ren) safe.

The following data show the key demographics of children who were victims of child abuse during FFY 2021.

**FFY 2021 Victims by Age and Gender**

Age	Boys	Girls	Total	Percent of Total
<1	601	578	<b>1,179</b>	11.0%
1	343	284	<b>627</b>	5.8%
2	341	318	<b>659</b>	6.1%
3	327	301	<b>628</b>	5.8%
4	321	355	<b>676</b>	6.3%
5	372	331	<b>703</b>	6.5%
6	335	290	<b>625</b>	5.8%
7	267	299	<b>566</b>	5.3%
8	307	309	<b>616</b>	5.7%
9	282	271	<b>553</b>	5.1%
10	271	234	<b>505</b>	4.7%
11	259	274	<b>533</b>	5.0%
12	217	318	<b>535</b>	5.0%
13	244	336	<b>580</b>	5.4%
14	199	314	<b>513</b>	4.8%
15	156	323	<b>479</b>	4.4%
16	142	290	<b>432</b>	4.0%
17	125	232	<b>357</b>	3.3%
<b>Total</b>	<b>5,109</b>	<b>5,657</b>	<b>10,766</b>	<b>100.0%</b>

During FFY 2021, a total of 4.3 percent of victims were of more than one race/ethnicity. However, the following data for Oregon displays the child's first recorded race/ethnicity. The Disproportionality Index (DI) is also shown.

**Disproportionality Index (DI) and Representation by Race for Victims of Child Abuse for FFY 2021 Compared to Oregon's Child Population**

Race	# of Oregon's Children*	% of Oregon's Children	# of Victims of Child Abuse	% of Victims of child abuse	DI** 1=Proportionate
Black or African American	32,405	3.8%	493	4.6%	1.2
Asian/Pac Islander	50,175	5.8%	171	1.6%	0.3
White	570,938	66.3%	6,251	58.0%	0.9
Hispanic (any race)	194,742	22.6%	1,333	12.4%	0.5
American Indian or Alaskan Native	12,518	1.5%	400	3.7%	2.6
Unable to Determine	n/a	0.0%	2,118	19.7%	n/a
<b>Statewide Total</b>	<b>860,778</b>	<b>100.0%</b>	<b>10,766</b>	<b>100.0%</b>	

\*Population data is always a year behind. Population data is from Puzzanchera, C., Sladky, A. and Kang, W. (2021). "Easy Access to Juvenile Populations: 1990-2020." Online. Available: <http://www.ojjdp.gov/ojstatbb/ezapop/>.

\*\*Disproportionality Index (DI) is calculated by taking the percent by race of victims of child abuse and dividing it by the percent by race in Oregon's child population. Values less than 1 mean underrepresentation. Disproportionality statement example if the DI for Black or African American children is 1.2: The percent of Black or African American children that were victims of child abuse is 1.2 times higher than the percent of Black or African American children in Oregon's child population.

The following table displays the disproportionality index (DI) three-year trend. The DI outcomes remain stable for each race/ethnicity category over the three-year period except for a slight decrease for victims in the Hispanic (any race) category and an increase for victims in the American Indian/Alaskan Native category.

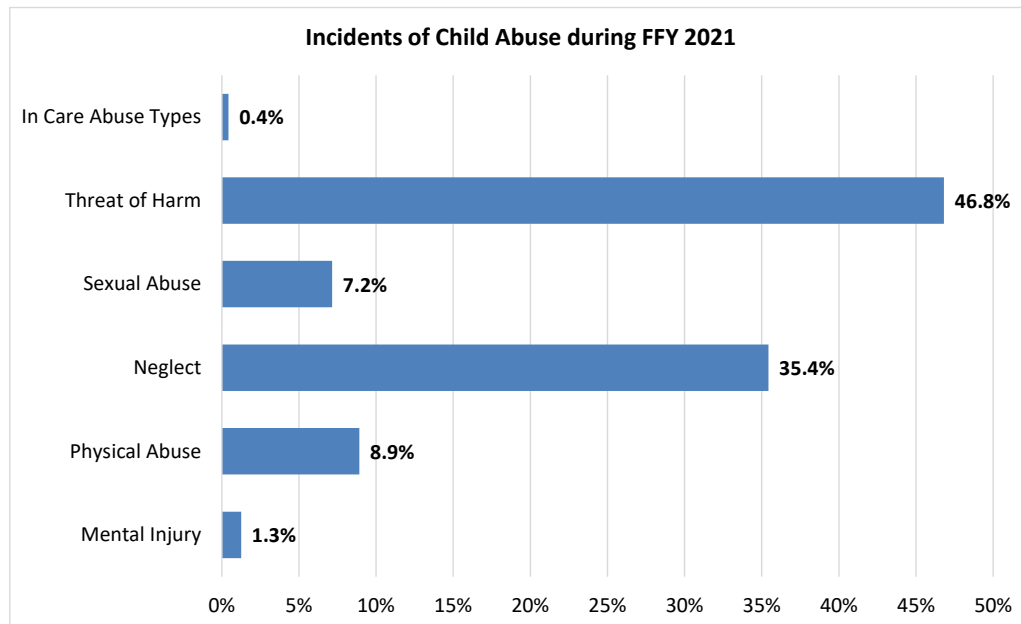
**Victims of Child Abuse FFY 2019 - FFY 2021 by Race/Ethnicity and Disproportionality Index (DI)**

Race/Ethnicity	FFY 2019		FFY 2020		FFY 2021	
	%	DI	%	DI	%	DI
Black or African American	4.5%	1.2	4.6%	1.2	4.6%	1.2
Asian/Pac Islander	1.6%	0.3	1.9%	0.3	1.6%	0.3
White	58.0%	0.9	58.5%	0.9	58.0%	0.9
Hispanic (any race)	13.9%	0.6	12.9%	0.6	12.4%	0.5
American Indian or Alaska Native	2.9%	1.9	3.6%	2.3	3.7%	2.6
Unable to Determine	19.1%	n/a	18.5%	n/a	19.7%	n/a

## Types of Abuse Incidents

Each type of abuse experienced by a victim in a founded CPS assessment counts as an incident of child abuse. The number of incidents is larger than the number of victims because victims may have suffered more than one type of abuse or may have been involved in more than one founded CPS assessment. Between FFY 2020 and FFY 2021, the total number of incidents of child abuse decreased by 5.4 percent.

Threat of Harm is the largest category of child abuse at 46.8 percent, followed by neglect, at 35.4 percent of all incidents of abuse.



Effective January 1, 2020, the following new abuse types were added: Abandonment in Care, Financial Exploitation in Care, Involuntary Seclusion in Care, Neglect in Care, Physical Abuse in Care, Sexual Abuse in Care, Verbal Abuse in Care, and Wrongful Restraint in Care.

Some abuse types decreased from the previous year. Mental injury decreased the most by 21.7% and neglect decreased by 17.0%.

**FFY 2021 Incidents of Child Abuse**

Abuse type	Number	Change From Last Year
Mental Injury	177	-21.7%
Physical Abuse	1,261	-10.9%
Neglect	5,011	-17.0%
Sexual Abuse	1,012	23.6%
Threat of Harm	6,621	3.0%
Abandonment in Care	0	n/a
Financial Exploitation in Care	0	n/a
Involuntary Seclusion in Care	6	n/a
Neglect in Care	32	128.6%
Physical Abuse in Care	11	57.1%
Sexual Abuse in Care	0	n/a
Verbal Abuse in Care	8	n/a
Wrongful Restraint in Care	5	66.7%
<b>Total Incidents</b>	<b>14,144</b>	<b>-5.4%</b>

## People Identified as Responsible for Abuse

People identified as responsible for child abuse are most often family members, making up 93.1 percent. Of family members, mothers and fathers represent 72.3 percent.

**FFY 2021 Number of Founded Child Abuse Victims  
by Responsible Person's Relationship to Victim**

Responsible Person's Relationship to Victim	Number	Percent
<b>Familial</b>		
Father	5,586	37.9%
Mother	5,051	34.3%
Unmarried partner of parent	1,906	12.9%
Other Relative (non foster parent)	954	6.5%
Nonrelative foster parent	97	0.7%
Legal guardian	71	0.5%
unspecified	23	0.2%
Relative foster parent	17	0.1%
<b>Total Familial</b>	<b>13,705</b>	<b>93.1%</b>
<b>Nonfamilial</b>		
Other	576	3.9%
Unknown or missing	298	2.0%
Child daycare provider	68	0.5%
Friends or neighbors	31	0.2%
Group home or residential facility staff	27	0.2%
Other professionals	14	0.1%
<b>Total Nonfamilial</b>	<b>1,014</b>	<b>6.9%</b>
<b>Grand Total</b>	<b>14,719</b>	<b>100.0%</b>

## Family Stress Factors

Leading family stress factors of abused children are substance use, domestic violence, and parental involvement with law enforcement. Many families also have significant financial stress or unemployment issues. Some parents may have a diagnosis of mental illness or were abused as children. There usually are several stress factors in families of child abuse victims.

**Family Stress Factors as a Percent of Founded Abuse**

<b>Stress Factor</b>	<b>FFY 2020</b>	<b>FFY 2021</b>
Parent/caregiver substance use	41.0%	42.3%
Domestic violence	31.7%	32.5%
Parent/caregiver involvement with LEA	20.1%	19.7%
Parent/caregiver mental illness	13.7%	14.2%
Child mental/physical/behavior disability	12.1%	12.6%
Parent/caregiver history of abuse as child	10.9%	11.2%
Family financial distress	10.4%	8.2%
New baby/pregnancy	5.7%	6.9%
Inadequate housing	6.8%	6.1%
Head of household unemployed	5.7%	5.1%
Child developmental disability	2.5%	2.5%
Social Isolation	1.9%	2.3%
Parent developmental disability	1.6%	1.7%
Heavy child care responsibility	1.5%	1.5%

## Fatalities Related to Child Abuse

There were 18 children who died from causes related to abuse during FFY 2021.

- There were 17 fatalities with at least one parent as the identified person responsible. The relationships of the person responsible to the child in all 18 fatalities were:
  - The mother alone in three fatalities.
  - The father alone in five fatalities.
  - The mother and father in seven fatalities.
  - The mother and the mother's live-in significant other in one fatality.
  - The father and the father's live-in significant other in one fatality.
  - The relative caregiver's live-in significant other in one fatality.
- There were 12 victims (66.7 percent) that were age 5 and younger, demonstrating the vulnerability of this age group. Eight victims were younger than one year old.

- Two children had an open Child Welfare case at the time of the fatality.<sup>5</sup>
- Seven children had an open CPS assessment at the time of the fatality.
- Three children were in ODHS custody at the time of death. The maltreatment resulting in the death occurred prior to ODHS custody for all three children.
- Six children's families received family preservation services in the five years preceding the fatality.
- Thirteen fatalities were the result of neglect. Four fatalities were caused by physical abuse. One fatality was caused by both physical abuse and neglect.

**Child Fatalities Due to Child Abuse**

<b>Period</b>	<b>Abuse</b>	<b>Neglect</b>	<b>Abuse &amp; Neglect</b>	<b>Total</b>
FFY 2021	4	13	1	<b>18</b>
FFY 2020	1	14	1	<b>16</b>
FFY 2019	6	17	0	<b>23</b>
FFY 2018	4	20	20	<b>26</b>
FFY 2017	10	20	0	<b>30</b>
FFY 2016	3	15	1	<b>19</b>
FFY 2015	7	17	3	<b>27</b>
FFY 2014	5	7	1	<b>13</b>
FFY 2013	4	5	1	<b>10</b>
FFY 2012	8	6	3	<b>17</b>

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<sup>5</sup> An open case refers to a family's case assigned to a caseworker after completion of a CPS assessment to manage child safety and provide services.



***International  
Implications in  
Divorce and Custody  
Matters - Personal  
Jurisdiction  
Considerations***

**292 Or.App. 146  
424 P.3d 774**

**In the MATTER OF the MARRIAGE OF  
Fatima Mohammad ALBAR, Petitioner-  
Respondent,  
and  
Hazim Yousef NAJJAR, Respondent-  
Appellant.**

**A161561**

**Court of Appeals of Oregon.**

**Argued and submitted June 16, 2017.  
May 31, 2018**

George W. Kelly, Eugene, argued the cause and  
filed the brief for appellant.

No appearance for respondent.

Before Armstrong, Presiding Judge, and Tookey,  
Judge, and Shorr, Judge.

SHORR, J.

[292 Or.App. 148]

Father appeals a judgment granting custody of children and awarding child support to mother. We address three of father's assignments of error.<sup>1</sup> In his first assignment of error, father argues that the trial court erred when it determined that he had waived his objection to the court's personal jurisdiction. We conclude that father did not waive his objection to personal jurisdiction but the court had jurisdiction over father on other grounds, and we affirm the court's jurisdictional determination on that alternative basis. In his third assignment of error, father argues that the trial court erred when it determined his child support obligation based on a calculation of mother's income that excluded monetary gifts from her family. We conclude that the court erred in that respect. In his seventh assignment of error, father argues that the court erred when it made his parenting time conditional on the children's agreement. We conclude that the

court erred in that respect as well. Accordingly, we reverse and remand for the trial court to recalculate father's child support obligation and amend its parenting plan. As a result of that reversal, we also reverse the trial court's denial of attorney fees to father. Otherwise, we affirm.

#### I. FACTS AND PROCEDURAL HISTORY

The pertinent facts are undisputed. Father and mother are both citizens of Saudi Arabia. They were married there, had children there, and eventually moved with their children to Oregon under student visas to pursue post-graduate degrees. Later, father repudiated the marriage under Islamic law and obtained a divorce certificate from a local Islamic center. Eventually, father's visa expired and he moved back to Saudi Arabia, while mother remained in Oregon with the couple's minor children. Father has not returned to the United States since that time and has resided in Saudi Arabia and the United Arab Emirates.

Several years after father returned to Saudi Arabia, mother filed a petition for dissolution of marriage in Oregon

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in which she sought custody of the children and child support. Father's first filed response to mother's petition was captioned "Response to Petition for Dissolution of Marriage" and "Special Appearance." In that response, father objected that the trial court lacked personal jurisdiction over him because he had insufficient contacts with Oregon. In addition, father objected that the court lacked subject matter jurisdiction over mother's dissolution petition because the couple was already divorced. Finally, father responded to various allegations in mother's petition and requested an award of attorney fees and costs, all "without waiving [father's] affirmative defenses \* \* \* [including] jurisdictional objections."

Father subsequently moved to dismiss mother's petition based on his contention that the trial court lacked personal jurisdiction over him. The

court determined that father's initial response constituted a "general appearance" that "called upon the power of [the] court." As such, the court held that father had "waived his opportunity to object to personal jurisdiction." The court then found that it had personal jurisdiction over

[424 P.3d 777]

father based on that waiver and went on to grant various aspects of mother's petition.

Following trial, the court granted custody to mother, allowed father to contact or visit with the children in Oregon subject to their agreement, and imposed on father a monthly child support obligation of \$1,412.

## II. ANALYSIS

### A. Personal Jurisdiction

In his first assignment of error, father contends that the trial court erred when it concluded that he had waived his objection to personal jurisdiction. Father argues that "the end result—a judgment that created a personal obligation (child support)—must be reversed." While we determine that father did not waive his objection to the court's personal jurisdiction, we nevertheless conclude that the court had personal jurisdiction over father for the purpose of entering the support order.

[292 Or.App. 150]

#### 1. Father did not waive his objection to personal jurisdiction.

Father argues that he did not waive his objection to the trial court's personal jurisdiction over him because he responded "specifically to object to jurisdiction," which was included in his first responsive pleading, and both his response to allegations in mother's petition and his request for fees and costs were made "without waiving his jurisdictional defenses."

Objections based on personal jurisdiction are governed by ORCP 21. Although father's response in this case raised additional defenses, responded to allegations, and sought fees and costs, ORCP 21 A provides that "[n]o defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion." Similarly, ORCP 21 G(1) provides that, when, as here, a responsive pleading is filed, a defense of lack of personal jurisdiction is not waived if it is "included" in the responsive pleading, without expressly limiting the other claims, defenses, or responses that may also be included in that same pleading. *See Adams and Adams*, 173 Or. App. 242, 251, 21 P.3d 171 (2001) ("In essence, ORCP 21 G(1) operates as a 'raise it or waive it' requirement [for defenses based on personal jurisdiction].").

Our prior opinions and ORCP 21 broadly permit parties to object to personal jurisdiction in an initial responsive pleading without first making a special appearance solely to challenge jurisdiction. *See Dept. of Human Services v. M. C.-C.*, 275 Or. App. 121, 124 n. 1, 365 P.3d 533 (2015), *rev. den.*, 358 Or. 611, 369 P.3d 386 (2016) ("As a result of the adoption of the ORCPs, a party \* \* \* need not enter a special appearance in order to raise issues regarding personal jurisdiction \* \* \* but must still raise such issues at the earliest possible time."). *Compare Pacific Protective Wear Distributing Co., Inc. v. Banks*, 80 Or. App. 101, 105, 720 P.2d 1320 (1986) ("[A] defendant may now attack personal jurisdiction before trial as part of a general appearance." (Citing ORCP 21 G(1).)), *with O'Connor and Lerner*, 70 Or. App. 658, 661-62, 690 P.2d 1095 (1984) ("Before moving to dismiss wife's motion for lack of personal jurisdiction, husband moved separately to dissolve

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a temporary restraining order and for a writ of assistance. \* \* \* [A]fter invoking the power of the court, \* \* \* husband may not contend he has not submitted to the personal jurisdiction of the court."). In this case, father challenged the trial court's exercise of personal jurisdiction at the first

opportunity. Father did not respond to mother's petition for dissolution of marriage or otherwise appear before the court in that matter before objecting, in his first responsive pleading, to the court's exercise of personal jurisdiction. Accordingly, father did not waive his objection to the court's jurisdiction over him by raising it along with other responses and requests, as permitted by ORCP 21 A and G, at the "earliest possible time" in his first responsive pleading.

2. *The trial court had personal jurisdiction over father.*

A valid judgment imposing a personal obligation on a defendant may be entered only by a court having personal jurisdiction over the defendant. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291, 100 S.Ct. 559, 62 L.Ed. 2d 490 (1980). Effective personal jurisdiction is subject to

[424 P.3d 778]

both statutory and constitutional requirements. First, a long-arm statute must, under the circumstances presented, confer jurisdiction; second, the court's assertion of jurisdiction must not offend the defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution. *State ex rel. Sweere v. Crookham*, 289 Or. 3, 6, 609 P.2d 361 (1980).

Although the trial court here erred by concluding that father had waived his objection to the court's personal jurisdiction over him, we nevertheless conclude on the merits that the court had personal jurisdiction over father to establish a child support order.<sup>2</sup>

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a. Oregon's long-arm statutes confer personal jurisdiction over father.

Under ORCP 4 L, Oregon's primary long-arm statute, jurisdiction exists "in any action where prosecution of the action against a defendant in this state is not inconsistent with the Constitution

of this state or the Constitution of the United States."<sup>3</sup> As we will discuss, personal jurisdiction over father in this case is consistent with constitutional standards. Accordingly, ORCP 4 L provided the trial court with long-arm jurisdiction over father for the purpose of resolving his obligations arising from mother's petition for dissolution of marriage.

Because father lives outside of Oregon, his child support obligations in this case are governed by Oregon's Uniform Interstate Family Support Act (UIFSA), a long-arm statute which establishes, in relevant part,

"(1) In a proceeding to establish or enforce a support order \* \* \*, a tribunal of this state may exercise personal jurisdiction over a nonresident \* \* \* if:

"\* \* \* \* \*

"(c) The individual resided with the child in this state; [or]

"\* \* \* \* \*

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"(e) The child resides in this state as a result of the acts or directives of the individual[.]"

ORS 110.518 ; see also ORS 110.510(1) ("A tribunal of this state shall apply [Oregon's UIFSA] to a support proceeding involving \* \* \* [a]n obligee, obligor, or child residing in a foreign country."); *State ex rel. Simons v. Simons*, 265 Or. App. 557, 559, 336 P.3d 557 (2014) ("When, as here, the parties reside in different states, a proceeding for the establishment or enforcement of a child support obligation is also subject to [UIFSA].").

[424 P.3d 779]

Here, the record demonstrates, and the parties do not dispute, that father and mother resided in

Oregon with the children for several years before father returned, on his own accord, to Saudi Arabia. Further, the children resided in Oregon solely because father and mother moved here with the children—that is, the children reside here as a result of father's and mother's "acts or directives." Accordingly, the trial court in this case had statutory authority to assert jurisdiction over father for the purpose of establishing a child support order based on ORS 110.518(1)(c) — because father resided here with the children—and ORS 110.518 (1)(e) —because the children lived here due to father's acts and directives.

b. Personal jurisdiction over father is consistent with due process.

Having determined that the trial court had authority to exercise personal jurisdiction over father under ORCP 4 L and ORS 110.518(1)(c) and (e), we turn to whether such jurisdiction comported with the guarantees of due process. A court may exercise personal jurisdiction over a nonresident consistent with constitutional due process guarantees only if the nonresident has purposefully established sufficient "minimum contacts" with the forum state "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. State of Washington* , *Office of Unemployment Compensation and Placement* , 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945).

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Based on federal case law construing the due process requirements for personal jurisdiction, the Oregon Supreme Court has explained that "the inquiry as to whether specific jurisdiction exists has three aspects":

"First, the defendant must have purposefully directed its activities at this state. Second, the litigation must 'arise out of or relate to' at least one of those activities. That particular activity must be a but-for cause of the litigation and provide a

basis for an objective determination that the litigation was reasonably foreseeable. Finally, the exercise of jurisdiction must otherwise comport with fair play and substantial justice."

*Robinson v. Harley-Davidson Motor Company* , 354 Or. 572, 594, 316 P.3d 287 (2013) (internal citations omitted).

Applying the foregoing analysis to this case, we conclude that the trial court had personal jurisdiction over father for the purpose of adjudicating this case because father had sufficient minimum contacts with Oregon and because jurisdiction under the facts of this case comports with "traditional notions of fair play and substantial justice." *Id* .

A person has sufficient minimum contacts with a forum where his or her "conduct and connection with the forum State are such that he [or she] should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp* ., 444 U.S. at 297, 100 S.Ct. 559. The inquiry into "whether a forum state may assert specific jurisdiction over a nonresident defendant 'focuses on the relationship among the defendant, the forum, and the litigation.' " *Walden v. Fiore* , 571 U.S. 277, 281, 134 S.Ct. 1115, 188 L.Ed. 2d 12 (2014) (quoting *Keeton v. Hustler Magazine, Inc.* , 465 U.S. 770, 775, 104 S.Ct. 1473, 79 L.Ed. 2d 790 (1984) ). In this case, there is a connection between father, Oregon, and this litigation, such that we can conclude that father had sufficient minimum contacts with Oregon for the purpose of this suit.

First, father purposefully and substantially directed his activities at Oregon. Father and mother chose to move to Oregon with their children and establish a life here. The couple raised their children here, and lived, studied, and worked here. Father's life was centered in Oregon for many

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years before he returned to Saudi Arabia. Those are precisely the kinds of purposeful contacts that support jurisdiction over father by the Oregon courts. *Compare Adams* , 173 Or. App. at 247-48, 21 P.3d 171 (relevant contacts by the nonresident husband for determining personal jurisdiction included fact that the husband and the wife moved to Oregon and raised a family here, among other connections), *with Kulko v. Superior Court of California* , 436 U.S. 84, 97-98, 98 S.Ct. 1690, 56 L.Ed. 2d 132 (1978) (jurisdiction by California court over the father—a New York resident—for child support determination unreasonable where the father "acquiesced" to the mother and child

[424 P.3d 780]

moving to California and communicated with the wife and child there but otherwise had no meaningful contacts with California).

Second, this case arises directly out of father's contacts with Oregon. Father unilaterally left Oregon, while mother and children remained in Oregon, and mother petitioned for divorce here. Mother's petition arises directly out of the couple's marital and familial relationship as it existed in Oregon. Indeed, that relationship establishes a clear but-for link between father's contacts with Oregon and the current litigation, as the litigation only arose here because the marital and familial relationship was so firmly established here. What is more, the nature and extent of father's contacts with Oregon lead to an objective determination that father reasonably should have anticipated that any litigation arising from his marital or familial relationship would arise here.

Father relies on *Horn and Horn* , 97 Or. App. 177, 775 P.2d 338, *rev. den.* , 308 Or. 465, 781 P.2d 1214 (1989), to support his argument that he had insufficient minimum contacts with Oregon to support jurisdiction over him. In *Horn* , the family lived in Oregon before moving to California, after which they ceased to have any meaningful contacts with Oregon. After several years of living in California, the marriage broke up and the mother and children moved back to Oregon, while the father remained in California.

The mother initiated dissolution proceedings in Oregon in which she sought determinations related to custody, child support, and division of personal property. At that time, father had communicated with the family in Oregon but otherwise had no meaningful

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connections with the state. We concluded that father's contacts with Oregon were "insufficient to establish jurisdiction." *Id.* at 180, 775 P.2d 338.

Father argues that *Horn* is "essentially identical" to this case and compels the same outcome here. But *Horn* is distinguishable. In that case, the family severed ties with Oregon and moved to California. At that point, there was no reason for either parent to expect that Oregon courts retained jurisdiction over potential marital disputes simply by virtue of the fact that the family had once resided there. The mother's unilateral decision to then return to Oregon after her separation from the father likely reestablished jurisdiction in Oregon over her, but her choice did not reestablish contacts with Oregon on the father's behalf.

In the present case, by contrast, father chose to leave Oregon on his own accord while the rest of the family remained behind. We acknowledge that father has had few, if any, meaningful contacts with Oregon since that time. But that does not diminish his long history of significant and meaningful contacts with the state while he lived here with his family, which includes raising his children here immediately prior to leaving.

We have never directly addressed, in determining whether Oregon courts have jurisdiction over a nonresident parent, whether that parent's unilateral decision to leave the state supports the conclusion that that parent lacks minimum contacts with Oregon going forward. But other states have addressed that issue and concluded that the contacts formed with the state while the family lived there were sufficient to satisfy due process guarantees even if the nonresident party had effectively severed all ties with the state. For



example, in *Panganiban and Panganiban*, 54 Conn. App. 634, 736 A.2d 190, *cert. den.*, 251 Conn. 920, 742 A.2d 359 (1999), a Connecticut case, the appellate court found that the trial court had jurisdiction to impose support on a nonresident spouse who had unilaterally left the state. The Connecticut court determined that the

"defendant's contacts with Connecticut prior to leaving were substantial and certainly give rise to specific jurisdiction. The financial orders arise out of the dissolution

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of a marriage that was entered into in this state, and Connecticut is the place where the defendant conducted the daily activities of his marital life[.] \* \* \* Therefore, the trial court properly concluded that the defendant had sufficient contact with Connecticut to justify the exercise of personal jurisdiction over him.

"\* \* \* [I]t is unquestionably reasonable for this state to hale the defendant into court with respect to financial obligations related to his marriage. To hold otherwise would mean that once a married person left the state, no Connecticut court could

[424 P.3d 781]

exercise in personam jurisdiction over that person in a dissolution action brought by the spouse left behind if the departing spouse had no contact with Connecticut between the time of departure and the time that the dissolution action was brought. Such a bizarre result is not warranted under the circumstances of this case."

*Id.* at 640-42, 736 A.2d 190.

In a similar case out of North Dakota, *Catlin and Catlin*, 494 N.W.2d 581 (N.D. 1992), the state supreme court determined that the trial court had personal jurisdiction over a nonresident spouse based on sufficient minimum contacts with the state during the marriage. The court affirmed the trial court's jurisdictional determination, concluding that

"[husband] had established significant contacts with North Dakota while living here which satisfied due process requirements, and that those contacts were directly related to the action for divorce and child custody. \* \* \* He was married here, fathered a child there, and spent the first years of his son's life here. North Dakota was the last state in which the family lived before [husband's] temporary [military] assignment in Turkey, and [wife] returned to live in North Dakota after leaving Turkey.

"\* \* \* \* \*

"We also see no relevance in the fact that [husband] voluntarily terminated his contacts with the state. The result of such an argument would be that defendants could render themselves immune from suit in the state by merely packing up and leaving. It is hard to imagine the chaos which would ensure in domestic relations law if one party could

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defeat jurisdiction merely by exiting the state before the summons is served."

*Id.* at 590.



We similarly conclude that father established significant, purposeful, and continuing contacts with Oregon when he lived here with mother and their children. Those contacts make it reasonable to hale father into court here to determine his financial obligations arising out of mother's petition for dissolution of marriage. Father cannot avoid the jurisdiction of our courts in this matter simply by voluntarily terminating his contacts with the state.

Third, we conclude that the exercise of personal jurisdiction over father under the facts of this case comports with "traditional notions of fair play and substantial justice." That issue turns on a number of factors, including the burden on the defendant of litigating in a foreign jurisdiction; the plaintiff's interest in obtaining convenient and effective relief; the interest of the forum state in adjudicating disputes and vindicating the rights of its citizens; the interstate judicial system's interest in the efficient resolution of controversies; and the shared interest of the several states in furthering fundamental social policies. *World-Wide Volkswagen Corp.* , 444 U.S. at 292, 100 S.Ct. 559. The foregoing analysis is "not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite 'affiliating circumstances' are present." *Kulko* , 436 U.S. at 92, 98 S.Ct. 1690 (quoting *Hanson v. Denckla* , 357 U.S. 235, 246, 78 S.Ct. 1228, 2 L.Ed. 2d 1283 (1958) ).

Turning to this case, we first acknowledge that litigating this action in Oregon is likely inconvenient and burdensome for father, who lives abroad. *See Adams* , 173 Or. App. at 249, 21 P.3d 171 (acknowledging that the nonresident husband faced burdens by litigating in Oregon, including "increased costs, time, and inconvenience" compared to litigating where he resided). But, not only does mother face the same burden if child support matters are litigated elsewhere, father's burden is outweighed by the other interests at stake. Mother and the children have a compelling interest in obtaining convenient relief in Oregon where they reside.

And Oregon has a strong interest in establishing and enforcing child support

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actions on behalf of children who reside here. *See Kulko* , 436 U.S. at 100, 98 S.Ct. 1690 (explaining that states have "substantial interests in protecting resident children and in facilitating child-support actions on behalf of those children"); *Adams* , 173 Or. App. at 249, 21 P.3d 171 (determining in a child support case in which the mother and children live in Oregon and the father lives in California that "Oregon's interest in providing a forum is substantial"). Indeed, all states share a collective interest in ensuring that parents provide for and support their minor children, and that common policy concern

[424 P.3d 782]

is furthered when a court's jurisdictional reach extends to nonresident parents who unilaterally leave the state where the family resides. Accordingly, although father in this case has had limited contacts with Oregon since moving out of the state and has an interest in litigating elsewhere, other factors demonstrate the ultimate reasonableness and fairness of resolving child support issues here.

In sum, we conclude that the trial court had jurisdiction over father for the purpose of establishing a child support order. The court had statutory long-arm authority under ORCP 4 L and ORS 110.518(1)(c) and (e), and jurisdiction under these circumstances was consistent with the requirements of due process. Although the court erroneously concluded that it had jurisdiction over father based on waiver, we affirm on the foregoing alternative basis.

### B. Child Support

As part of his third assignment of error, father argues that the trial court erred when it calculated his child support obligations. Specifically, father assigns error to the court's failure to consider

mother's periodic gift income from her family when calculating child support.

When a trial court calculates a parent's child support obligations, it must rely on a number of factors, including both parents' income. ORS 25.275(1) ; *Carleton and Carleton* , 275 Or. App. 860, 866, 366 P.3d 365 (2015) ("To calculate the child support amount, the trial court must determine each parent's income as provided by OAR 137-050-0715."). "Income" is a defined term meaning the "actual or potential gross income of a parent." OAR 137-050-0715(1).

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"Actual income" includes, among other things, "gifts." OAR 137-050-0715(4)(e).

Here, it is undisputed that mother received periodic cash gifts from her family. Mother testified that, "every few month[s]," she received between \$10,000 and \$20,000 from her family and that she had used a gift of \$167,000 from her family as a partial payment for her home. It is unclear from the record the sum total of those gifts, when those gifts began, and if or when they ceased. Mother testified that she received her last gift approximately five months before the trial. When the trial court calculated mother's income for the purpose of determining father's child support obligations, it failed to determine the total amount of mother's gift income and did not factor that income into its calculations.

The trial court did consider whether mother's gift income should apply as a rebuttal factor supporting a downward deviation in father's support obligation but ultimately decided that those gifts "should not be applied as rebuttal factors." See ORS 25.280 (stating that the presumption that a child support obligation determined by statutory formula is correct may be rebutted by a finding that "the application of the formula would be unjust or inappropriate in a particular case"). Although that ruling indicates that the court considered mother's gift income to some extent when setting child support, father objected specifically to the court's failure to

include the gifts as an element of mother's total gross income when the court initially calculated father's presumptive support obligation.

We conclude that the trial court should have considered mother's gift income as an element of mother's gross income when calculating father's child support obligation. Mother periodically received large cash gifts from her family on at least a semiregular basis. Gifts of that nature are a component of mother's gross income, which bears directly on father's child support obligation. Cf. *Leif and Leif* , 246 Or. App. 511, 516, 519, 266 P.3d 165 (2011) (determining that the father's cash inheritance was a gift and the trial court "properly included the inheritance when calculating father's gross income to determine his presumptive child support obligation"). Accordingly, we reverse and remand the judgment

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awarding child support to mother for the court to recalculate father's child support obligation taking into account all of mother's income as defined by OAR 137-050-0715.<sup>4</sup>

[424 P.3d 783]

### C. Parenting Time

In his seventh assignment of error, father argues that the trial court erred when it allowed the children to decide whether father could have contact or visit with them. Father argues that the court's order makes his parenting time conditional on the children's agreement, which is impermissible under Oregon law.

A trial court's decision on parenting time is a matter of discretion that we review accordingly. *Murray and Murray* , 287 Or. App. 809, 814, 403 P.3d 473 (2017). A court abuses its discretion if its ruling does not "lie within the range of legally permissible outcomes." *Olson and Olson* , 218 Or. App. 1, 16, 178 P.3d 272 (2008). Here, the trial court allowed father parenting time, including "telephone and/or Skype contact with the

children" and "in-person visits with the children when he is in Oregon" subject to "the children's agreement" or "as agreed by the children." That is, the court made father's parenting time conditional on whether and when the children wanted to see or speak to him.

We have previously established that a noncustodial parent's parenting time cannot be left up to the custodial parent. In *Stewart and Stewart*, 256 Or. App. 694, 695-96, 302 P.3d 818 (2013), we concluded that the trial court erred when it "let husband make the decision" regarding the wife's parenting time. We explained that it is "the court's task, not husband's, to develop a parenting plan, including appropriate quality parenting time, in the best interest of the children." *Id.* at 696, 302 P.3d 818.

Based on *Stewart*, it would have been impermissible for the trial court in this case to make father's parenting time conditional on mother's agreement. There is

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no substantive difference between that and what the court actually did, which was to make father's parenting time conditional on the children's agreement. The children's ability to effectively deny father's parenting time under the current order is especially problematic in this case, where mother has sole custody of the children and father lives in a different country with limited ability to communicate with the children. We conclude, therefore, that the court's order making the children's agreement a precondition to father's parenting time was not within the range of legally permissible outcomes. Accordingly, we reverse and remand for the trial court to develop a parenting plan that does not make father's parenting time contingent upon the children's agreement.

#### D. Attorney Fees

Finally, because we must reverse and remand the trial court's judgment as discussed above, we also reverse the trial court's supplemental judgment

denying father an award of attorney fees, which was based on that judgment.

Portion of general judgment awarding child support to mother and setting parenting time reversed and remanded; otherwise affirmed. Supplemental judgment denying attorney fees to father reversed.

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Notes:

<sup>1</sup> We reject father's second, fourth, fifth, and sixth assignments of error without written discussion.

<sup>2</sup> Under *Outdoor Media Dimensions, Inc. v. State of Oregon*, 331 Or. 634, 659-60, 20 P.3d 180 (2001), we may, as a matter of discretion, "affirm the ruling court on an alternative basis when certain conditions are met." Here, each of the conditions is met. First, whether the trial court had jurisdiction over father is purely a question of law, and there is evidence in the record to support the alternative basis for affirmance. *See Adams*, 173 Or. App. at 245, 21 P.3d 171 ("Jurisdiction is a question of law that we review accordingly."). Relatedly, father could not have created a different record in the trial court that could affect our analysis as we conclude that the trial court had jurisdiction on the facts father presented. Second, as we discuss at 292 Or. App. at 158-59, 424 P.3d at 781-82, the trial court did, in fact, have personal jurisdiction over father for the purpose of establishing a child support order. Third, the court's basis for asserting jurisdiction over father was both erroneous—in that it was based on a legally incorrect determination that father had waived his challenge to jurisdiction—and "unnecessary in light of the alternative basis for affirmance"—in that the court had personal jurisdiction over father whether or not he waived his jurisdictional challenge.

<sup>3</sup> ORCP 4 K provides long-arm jurisdiction in "certain marital and domestic actions." Under that subsection, jurisdiction exists

"[i]n any action to enforce personal obligations arising under ORS

chapter 106 or 107, if the parties to a marriage have concurrently maintained the same or separate residences or domiciles within this state for a period of six months, notwithstanding departure from this state and acquisition of a residence or domicile in another state or country before filing of such action; but if an action to enforce personal obligations arising under ORS chapter 106 or 107 is not commenced within one year following the date upon which the party who left the state acquired a residence or domicile in another state or country, no jurisdiction is conferred by this subsection in any such action."

ORCP 4 K(2). The Oregon courts would not have jurisdiction over father under that subsection because father left Oregon and established both residence and domicile in another country more than one year before mother petitioned to dissolve the marriage in Oregon.

<sup>4</sup> As part of his third assignment of error, father argues that the trial court erred in denying him discovery regarding mother's gift income and in denying father's motion for a continuance of the trial to seek such discovery. Because this case is being remanded to address the gift-income issue, we need not resolve those issues here.

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**308 Or.App. 619  
481 P.3d 932**

**Shirley VAUGHN, Petitioner-Appellant,  
v.  
Donald VAUGHN, Respondent-  
Respondent.**

**A167919**

**Court of Appeals of Oregon.**

**Submitted January 4, 2019.  
January 21, 2021**

Benjamin M. Karlin filed the brief for appellant.

Lynn Shepard filed the brief for respondent.

Before DeHoog, Presiding Judge, and Aoyagi,  
Judge, and Kamins, Judge.

DeHOOG, P. J.

[481 P.3d 933]

[308 Or.App. 620]

Daughter, an adult, appeals a judgment dismissing her petition under ORS 109.010 for support from father, a resident of Nebraska, after the trial court granted father's motion to dismiss for lack of personal jurisdiction. On appeal, daughter argues that there is a statutory basis for personal jurisdiction and that extending jurisdiction over father would comport with due process and the United States Constitution. Father contends that he lacks the requisite minimum contacts with Oregon for the trial court to have jurisdiction over him. We agree with daughter and, accordingly, reverse.

When reviewing the dismissal of a matter for lack of personal jurisdiction, and, as here, "the historical facts are undisputed, we review for legal error the trial court's determination whether those facts establish personal jurisdiction over" the nonresident party. *Swank v. Terex Utilities, Inc.*, 274 Or. App. 47, 50, 360 P.3d 586 (2015),

*rev. den.*, 358 Or. 551, 368 P.3d 26 (2016). We begin by summarizing those facts.

Daughter was born in 1993, and father adopted daughter in 1996, while he was married to mother. The family lived together in Oregon until mother and father divorced in 2000. Father remained in Oregon and paid support for daughter until 2002, at which point he moved to Nebraska. He has lived in Nebraska since 2002. While in Nebraska, father continued to make support payments for daughter until 2014, when daughter no longer qualified as a "[c]hild attending school" under ORS 107.108.<sup>1</sup> At that time, citing daughter's mental health disabilities, mother initiated a proceeding in Oregon against father in an attempt to modify their divorce judgment and obtain support for daughter as an adult under ORS 109.010.<sup>2</sup> *Vaughn and Vaughn*, 275 Or. App. 533, 534, 365 P.3d 620 (2015). The trial court

[308 Or.App. 621]

dismissed the case for lack of personal jurisdiction. *Id.* at 535, 365 P.3d 620. On appeal, we reversed and explained:

"Personal jurisdiction continues for a motion that is captioned in relation to the dissolution judgment, but we do not imply, nor decide, that it is proper to seek relief under ORS 109.010 as if it were a matter modifying a past dissolution judgment. *See* ORS 107.135(1)(a) (vacation or modification of a judgment for 'minor children and \* \* \* children attending school'). Nor do we decide whether it might be necessary for a party to initiate a separate proceeding to seek support for an adult child under ORS 109.010 and, necessarily, effect anew personal jurisdiction for that proceeding."

*Id.* at 537, 365 P.3d 620 (omission in original). On remand, no support was ordered.



This family comes before us again after daughter initiated a separate proceeding to establish a support order under ORS 109.010.<sup>3</sup> Father disputed personal jurisdiction and moved to dismiss daughter's petition. *See* ORCP 21 A(2) (authorizing motions to dismiss for "lack of jurisdiction over the person"). In response to father's motion, daughter argued, in part, that the court had personal jurisdiction under ORCP 4 B and ORS 110.518. ORCP 4 provides that an Oregon court "has jurisdiction over a party" under specific circumstances. ORCP 4 B, in turn, provides that a court has jurisdiction over a party "[i]n any action which may be brought under statutes or rules of this state that specifically confer grounds for personal jurisdiction over the defendant." Daughter argued that ORS 110.518(1)(c) and (d) conferred such grounds as to father. ORS 110.518(1) —part of Oregon's codification of the Uniform Interstate Family Support Act (UIFSA)—provides a list of instances where,

[481 P.3d 934]

"[i]n a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual." ORS 110.518(1)(c) and (d), respectively, provide that a court may exercise jurisdiction in that context when "[t]he individual resided with the child in this state" or "[t]he individual

[308 Or.App. 622]

resided in this state and provided prenatal expenses or support for the child."<sup>4</sup> Father argued that, under ORCP 4 K(2),<sup>5</sup> asserting personal jurisdiction over him was improper and would violate his due process rights because he lacked the requisite contacts with the State of Oregon.

The trial court granted father's motion. Apparently accepting that daughter had established that the terms of ORS 110.518(1)(c) and (d) were satisfied, the court nonetheless rejected daughter's argument that those statutes

conferred jurisdiction, reasoning that the 2001 commentary to the UIFSA serves as legislative history and that it cautions that "an 'overly literal construction' of the statute could possibly overreach due process." The court then determined that father "does not have sufficient minimum contacts with Oregon to make it fair to require him to defend the case in Oregon." In reaching that conclusion, the court noted that the facts of this case are similar to those presented in *Horn and Horn*, 97 Or. App. 177, 775 P.2d 338 (1989). The trial court subsequently issued a general judgment dismissing daughter's petition, which daughter now appeals.

On appeal, the parties reprise the arguments that they made in the trial court. In support of her argument that jurisdiction is valid under ORCP 4 B and ORS 110.518, daughter argues that the trial court overlooked aspects of the relevant UIFSA commentary. Daughter acknowledges that the commentary to the UIFSA cautions against " 'overly literal construction[s]' " of the statute, but she contends that the relevant commentary—specifically the commentary accompanying the 2008 amendments to the UIFSA—also contemplates extending jurisdiction in circumstances such as those present here. Daughter separately argues, as she did in the trial court, that personal jurisdiction is proper in this matter under the "catchall provision" of ORCP 4 L. *See*

[308 Or.App. 623]

*Robinson v. Harley-Davidson Motor Co.*, 354 Or. 572, 576-77, 316 P.3d 287 (2013) (referring to ORCP 4 L as a "catchall provision"). Under ORCP 4 L, an Oregon court has jurisdiction over a party "in any action where prosecution of the action against a defendant in this state is not inconsistent with the Constitution of this state or the Constitution of the United States" even if jurisdiction is not established under any other basis provided in ORCP 4. According to daughter, exercising personal jurisdiction over father satisfies due process because this case arises from the relationship that father had with daughter in Oregon, and, she argues, father unilaterally left

the state knowing that he was leaving his daughter and associated obligations behind in Oregon.

In response, father reprises his argument that, because this is a matter regarding support, the applicable section of ORCP 4 is ORCP 4 K rather than ORCP 4 B. And, according to father, ORCP 4 K "terminates personal jurisdiction one year after a respondent leaves the state." As a result, father argues, daughter's argument that ORCP 4 B and ORS 110.518 allow for jurisdiction here "creates a direct conflict" with ORCP 4 K. In father's view, ORS 110.518 is constrained by ORCP 4 K, and, because jurisdiction is not valid under ORCP 4 K, the trial court did not err. Father further argues that extending jurisdiction under ORS 110.518 would be, as the commentary to the 2008 amendments to the UIFSA cautions against, an " 'overly literal construction' " of the statute that would run afoul of due process. Relying on federal and state case law construing the general limits of due process, father argues that he

[481 P.3d 935]

does not have sufficient contacts with Oregon to warrant an exercise of personal jurisdiction over him. Based on that case law, he argues that ORCP 4 L provides no broader justification for personal jurisdiction and points out that daughter has cited no cases that rely on ORCP 4 L as a basis for "expand[ing] jurisdiction in domestic cases."

As noted, we review whether a court has personal jurisdiction over a nonresident party as a question of law. *Albar and Najjar*, 292 Or. App. 146, 151 n. 2, 424 P.3d 774, rev. den., 363 Or. 677, 427 P.3d 1088 (2018). "A valid judgment imposing a personal obligation on a defendant may be entered only by a court having personal jurisdiction over the defendant." *Id.* at 151, 424 P.3d 774. A "plaintiff has the burden of alleging and

[308 Or.App. 624]

proving facts sufficient to establish personal jurisdiction." *Munson v. Valley Energy*

*Investment Fund*, 264 Or. App. 679, 700, 333 P.3d 1102 (2014) (internal brackets and quotation marks omitted). "In determining whether an Oregon court has long-arm jurisdiction over a nonresident defendant, we look to ORCP 4." *Swank*, 274 Or. App. at 49, 360 P.3d 586. "Personal jurisdiction may be 'general' under ORCP 4 A, 'specific' under one of the provisions in ORCP 4 B through K, or 'specific' under the 'catchall' provision of ORCP 4 L." *Id.* at 49-50, 360 P.3d 586. Even if the conditions in one of the sections of ORCP 4 are met, we must nonetheless consider whether extending jurisdiction in that instance would comport with due process. *See Albar*, 292 Or. App. at 153, 424 P.3d 774 (examining whether "jurisdiction comported with the guarantees of due process" after determining that the trial court had jurisdiction over father under ORCP 4 L and ORS 110.518 ); *see also Biggs v. Robert Thomas, O.D., Inc.*, 133 Or. App. 621, 626, 893 P.2d 545 (1995) (although "subsections B through K are patterned after court decisions identifying fact situations in which jurisdiction is proper in the light of due process standards," in such instances, "it is incumbent upon the court to ensure that the exercise of personal jurisdiction comports with due process requirements").

Accordingly, we begin our analysis with ORCP 4 which, in relevant part, provides:

"Personal jurisdiction. A court of this state having jurisdiction of the subject matter has jurisdiction over a party served in an action pursuant to Rule 7 under any of the following circumstances:

"\* \* \* \* \*

"B Special jurisdiction statutes. In any action which may be brought under statutes or rules of this state that specifically confer grounds for personal jurisdiction over the defendant.

"\* \* \* \* \*



"K Certain marital and domestic relations actions.

"K(1) In any action to determine a question of status instituted under ORS chapter 106 or 107 when the plaintiff is a resident of or domiciled in this state.

[308 Or.App. 625]

"K(2) In any action to enforce personal obligations arising under ORS chapter 106 or 107, if the parties to a marriage have concurrently maintained the same or separate residences or domiciles within this state for a period of six months, notwithstanding departure from this state and acquisition of a residence or domicile in another state or country before filing of such action; but if an action to enforce personal obligations arising under ORS chapter 106 or 107 is not commenced within one year following the date upon which the party who left the state acquired a residence or domicile in another state or country, no jurisdiction is conferred by this subsection in any such action.

"K(3) In any proceeding to establish parentage under ORS chapter 109 or 110, or any action for declaration of parentage where the primary purpose of the action is to establish responsibility for child support, when the act of sexual intercourse which resulted in the birth of the child is alleged to have taken place in this state.

"L Other actions. Notwithstanding a failure to satisfy the requirement of sections B through K of this rule, in any action where prosecution of the

action against a defendant in this state is not inconsistent

[481 P.3d 936]

with the Constitution of this state or the Constitution of the United States."

(Boldface omitted.)

To be clear, we note that the issue presented on appeal is not, as father suggests, limited to whether ORCP 4 K confers jurisdiction. As the text of ORCP 4 illustrates, ORCP 4 K acts to grant specific jurisdiction under certain circumstances; it does not serve to *limit* the existence of jurisdiction to those circumstances. *See Swank* , 274 Or. App. at 49-50, 360 P.3d 586 (specific jurisdiction may be appropriate "under one of the provisions in ORCP 4 B through K, or 'specific' under the 'catchall' provision of ORCP 4 L"). Thus, we disagree with father's characterization of ORCP 4 K(2) as "terminat[ing]" jurisdiction after a year. Although it is true that ORCP 4 K(2) will not confer personal jurisdiction over a nonresident party more than a year after that party has left the state, that does not preclude an exercise of jurisdiction where otherwise appropriate. *See Horn* , 97 Or. App. at 179, 775 P.2d 338 (noting that ORCP 4 K(2) did not apply "because husband did not live in Oregon within one year of the date when

[308 Or.App. 626]

wife filed the petition" for dissolution and explaining that "[j]urisdiction existed, if at all, under ORCP 4 L"); *see also State ex rel. Circus Circus Reno, Inc. v. Pope* , 317 Or. 151, 156, 854 P.2d 461 (1993) ("[W]here the plaintiff alleges facts bringing his or her case within a specific provision of ORCP 4 B through K, jurisdiction will be found; lacking such facts, court will consider application of ORCP 4 L." (Citing *State ex rel. Hydraulic Servocontrols v. Dale* , 294 Or. 381, 384-85, 657 P.2d 211 (1982).)). In other words, daughter's reading of ORCP 4 B and ORS 110.518

does not create a direct conflict with ORCP 4 K as father suggests.<sup>6</sup>

Moreover, ORCP 4 K has no bearing on daughter's petition for support under ORS 109.010. By its terms, ORCP 4 K(2) applies to actions under ORS chapters 106 and 107, whereas daughter's action arises under ORS chapter 109. And, as father acknowledges, "[a]ny obligation under ORS 109.010 arises at a different time and under different circumstances and, presumably, after any ORS 107 obligations have concluded." Thus, although ORCP 4 K(2) does not grant specific jurisdiction over father in this matter, that fact does not resolve the question whether the trial court could lawfully exercise jurisdiction over him.<sup>7</sup>

With that clarification, we turn to daughter's argument that the court has personal jurisdiction pursuant to ORCP 4 B and ORS 110.518. Daughter argues that ORS 110.518 "specifically confer[s] grounds for personal jurisdiction over" father under ORCP 4 B, because father resided with her in Oregon and resided in Oregon while paying support for her. ORS 110.518(1)(c), (d). As a preliminary matter, it does appear that the undisputed facts of this case satisfy both ORS 110.518(1)(c) and (d). Father, daughter, and mother resided together as a family in Oregon from 1996 until 2000. After the divorce, father remained in Oregon

[308 Or.App. 627]

until 2002 and paid support for daughter during that time. Therefore, daughter has established that this case satisfies the specific requirements of ORCP 4 B and ORS 110.518.

However, as the trial court correctly understood, our analysis does not end there. We must ensure that extending jurisdiction under those provisions "comport[s] with the guarantees of due process." *Albar*, 292 Or. App. at 153, 424 P.3d 774. Father's argument mirrors the trial court's ruling in identifying two sources of authority—the intended scope of the UIFSA and related case law—that, in father's view, demonstrate that an exercise of

jurisdiction here would violate father's due process rights.

As noted, father argues that the commentary to the UIFSA recognized that adhering

[481 P.3d 937]

to the literal terms of the statute might not always comply with due process. And, as the trial court observed, the commentary to the UIFSA informs its meaning in a manner much like legislative history would, because the Oregon legislature adopted the uniform statute as a whole.<sup>8</sup> See *State of Oregon DCS v. Anderson*, 189 Or. App. 162, 176, 74 P.3d 1149, rev. den., 336 Or. 92, 79 P.3d 313 (2003) (relying on commentary to an earlier version of UIFSA to inform the meaning of the corresponding Oregon statute and noting that "[w]hen a statute has been enacted in response to federal legislation, that legislation is relevant to determining the intended meaning of the state enactment").

We disagree, however, that the specific commentary that father points to dictates the outcome of this case. In our view, both father and the trial court appear to have overlooked the most relevant aspects of the UIFSA commentary.<sup>9</sup> As daughter notes, the commentary specifically

[308 Or.App. 628]

contemplates the factual scenario present in this case. The commentary explains:

"Subsections [(1)(c) through (1)(f)] identify specific fact situations justifying the assertion of long-arm jurisdiction over a nonresident. Each provides an appropriate affiliating nexus for such an assertion, when judged on a case-by-case basis with an eye on procedural and substantive due process. Further, each subsection does contain a possibility that an overly literal construction of the terms of the statute will overreach

due process. For example, subsection [(1)(c)] provides that long-arm jurisdiction to establish a support order may be asserted if 'the individual resided with the child in this state.' The typical scenario contemplated by the statute is that the parties lived as a family unit in the forum state, separated, and one of the parents subsequently moved to another state while the other parent and the child continued to reside in the forum. \* \* \*

Uniform Interstate Family Support Act (Last Amended or Revised in 2008) with Prefatory Note and Comments, *reprinted in* 43 Family Law Quarterly 75, 98 (2009) (brackets reflect the UIFSA equivalent in ORS 110.518 ).

Although that commentary observes that an "overly literal" application of the UIFSA may overstep due process, it goes on to describe what has occurred in this case as the "typical scenario contemplated by the statute." Father, daughter, and mother lived together as a family in Oregon for at least four years.<sup>10</sup> Two years after father and mother divorced in 2000, father moved to another state, Nebraska, while mother and child continued to reside in Oregon. Notably, when considering similar circumstances in *Albar* , we held that jurisdiction under ORS 110.518 was appropriate. In that case, the mother and the father were both citizens of Saudi Arabia, and they married and had children there. *Albar* , 292 Or. App. at 148, 424 P.3d 774. The family then moved to Oregon and resided together in this state. *Id.* The father and mother eventually separated, and the father returned to Saudi Arabia when his visa expired. *Id.* The mother, however, remained with the parties' minor children in Oregon. *Id.* Several years after the father had left the country, the mother initiated a proceeding

[308 Or.App. 629]

for dissolution of marriage, custody, and child support. *Id.* at 149-50, 424 P.3d 774. We

concluded that the trial court "had statutory authority to assert jurisdiction over [the] father for the purposes of establishing a child support order based on ORS 110.518 (1)(c) —because [the] father resided here with the children—and ORS 110.518(1)(e) —because the children lived

[481 P.3d 938]

here due to [the] father's acts and directives."<sup>11</sup> *Id.* at 153, 424 P.3d 774. As in *Albar* , we conclude here that ORS 110.518, the relevant Oregon portion of the UIFSA, was intended to provide a statutory basis for jurisdiction under the present circumstances.

We further conclude that the applicable case law demonstrates that extending jurisdiction under ORS 110.518 does not violate father's due process rights. In making that determination, we apply the standard set forth by the United States Supreme Court. *Albar* , 292 Or. App. at 153-54, 424 P.3d 774 (applying the "minimum contacts" standard announced in *International Shoe Co. v. State of Washington, Office of Unemployment Compensation and Placement* , 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945) ). The Oregon Supreme Court has consolidated the federal standard into a three-part inquiry:

"First, the defendant must have purposefully directed its activities at this state. Second, the litigation must arise out of or relate to at least one of those activities. That particular activity must be a but-for cause of the litigation and provide a basis for an objective determination that the litigation was reasonably foreseeable. Finally, the exercise of jurisdiction must otherwise comport with fair play and substantial justice."

*Robinson* , 354 Or. at 594, 316 P.3d 287 (internal quotation marks and citations omitted).

[308 Or.App. 630]

Again, we rely on our decision in *Albar* to conclude that the exercise of jurisdiction is appropriate in this case. After having concluded in *Albar* that ORS 110.518 provided a statutory basis for jurisdiction, we further concluded that jurisdiction was appropriate under ORCP 4 L and the limits of due process because the litigation arose out of the father's contacts with Oregon, those contacts were constitutionally sufficient, and the exercise of jurisdiction otherwise comported with fair play and substantial justice. *Id.* at 153-54, 424 P.3d 774. We noted that, in living as a family and working here, the father purposefully directed contacts with Oregon before returning to Saudi Arabia. *Id.* at 154-55, 424 P.3d 774. Additionally, the litigation arose directly out of the "marital and familial relationship as it existed in Oregon." *Id.* at 155, 424 P.3d 774. Finally, we reasoned that it was fair to extend jurisdiction over the father, despite the burdens associated with his residence abroad, because the mother and the children had a compelling interest in obtaining relief where they resided, and because "Oregon has a strong interest in establishing and enforcing child support actions on behalf of children who reside here." *Id.* at 158-59, 424 P.3d 774.

This case does not meaningfully differ from *Albar*. Here, father created purposeful contacts in Oregon when he resided with daughter for at least four years and then supported her while remaining in Oregon for an additional two years after his divorce from mother. He unilaterally left Oregon for Nebraska while mother and daughter stayed in Oregon, and this litigation arose from the familial relationship that he had left behind. As we stated in *Albar*, "[f]ather cannot avoid the jurisdiction of our courts in this matter simply by voluntarily terminating his contacts with the state." *Id.* at 158, 424 P.3d 774. Lastly, although litigating in Oregon may be burdensome for father because he now lives out of state, we conclude, as we did with respect to the father in *Albar*, who lived abroad, that the balance of fairness and substantial justice lies with resolving the child support issues here in Oregon.<sup>12</sup> See *id.* at 159, 424 P.3d 774.

[481 P.3d 939]

[308 Or.App. 631]

Finally, we address the trial court's reliance on *Horn* and resulting conclusion that jurisdiction was not appropriate here, both of which father defends. Once more, we look to *Albar*. In *Albar*, the father argued that jurisdiction was not proper because his case was " 'essentially identical' " to *Horn*. *Id.* at 156, 424 P.3d 774. We summarized that, in *Horn*,

"the family lived in Oregon before moving to California, after which they ceased to have any meaningful contacts with Oregon. After several years of living in California, the marriage broke up and the mother and children moved back to Oregon, while the father remained in California. The mother initiated dissolution proceedings in Oregon in which she sought determinations related to custody, child support, and division of personal property. At that time, [the] father had communicated with the family in Oregon but otherwise had no meaningful connections with the state."

*Albar*, 292 Or. App. at 155-56, 424 P.3d 774. In determining that *Horn* was distinguishable, we noted that the family in that case had "severed ties with Oregon and moved to California \* \* \* [and] [t]he mother's unilateral decision to then return to Oregon after her separation from the father likely reestablished jurisdiction in Oregon over her, but her choice did not reestablish contacts with Oregon on the father's behalf."<sup>13</sup> *Id.* at 156, 424 P.3d 774. Here, father's case, like the father's in *Albar*, is distinguishable in significant part from *Horn* because it was father's unilateral action in leaving the state in 2002 that resulted in his breaking off significant contact with Oregon. Therefore, father's decision to limit his contact with Oregon "does not diminish his long history of significant and meaningful contacts with the

state while he lived here with his family, which includes raising [daughter] here." *Id.*

[308 Or.App. 632]

In light of the family's history in Oregon and father's unilateral decision to cut his ties to this state, the trial court was authorized by statute to exercise personal jurisdiction over father, ORS 110.518(1)(c) and (1)(d), and that exercise of jurisdiction would not violate father's due process rights. Accordingly, the trial court erred in concluding otherwise and dismissing daughter's petition for support.

Reversed and remanded.

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Notes:

<sup>1</sup> Subject to other requirements, ORS 107.108 allows for child support when the child is attending school and "[i]s 18 years of age or older and under 21 years of age." ORS 107.108(1)(a)(B).

<sup>2</sup> ORS 109.010 provides that "[p]arents are bound to maintain their children who are poor and unable to work to maintain themselves; and children are bound to maintain their parents in like circumstances."

<sup>3</sup> Similar to the posture of the proceeding that was before us in 2015, we are only tasked with determining whether the court had personal jurisdiction over father in this proceeding, and we offer no opinion on the merits of daughter's efforts to establish a support order under ORS 109.010.

<sup>4</sup> As daughter also notes, under the UIFSA, a "[c]hild" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent." ORS 110.503(1).

<sup>5</sup> As we discuss below, ORCP K(2) extends personal jurisdiction over certain domestic

relations actions, but only for up to a year after a person has left Oregon and acquired a residence or domicile outside the state.

<sup>6</sup> To the extent that father argues that ORCP 4 K(2) provides a temporal limit for specific jurisdiction in all domestic cases or is otherwise representative of the limits of due process and fundamental fairness in domestic cases, we find no support for that contention in the text of the rule or anywhere else.

<sup>7</sup> We note that, unlike ORCP 4 K(2), ORCP 4 K(3) does grant jurisdiction in actions under ORS chapter 109. However, that rule extends only to actions concerning parentage, which is not at issue here. As a result, ORCP 4 K(3) also has no bearing on daughter's action for support under ORS 109.010.

<sup>8</sup> Video Recording, House Committee on Judiciary, SB 604 A, May 12, 2015, at 25:15 (comments of Kate Cooper Richardson, Director of Oregon Child Support Program), <http://olis.leg.state.or.us> (accessed Dec. 23, 2020) (Oregon legislature was tasked with adopting the 2008 version of the UIFSA verbatim, with minor stylistic changes, in order to maintain federal funding).

<sup>9</sup> The trial court relied on the commentary to the 2001 amendments to the UIFSA. However, at the time of the order, Oregon had adopted the 2008 amendments to the UIFSA in 2015. Or. Laws 2015, ch. 298, §§ 1-103. We, therefore, rely on the commentary to those later amendments, which both parties discuss on appeal.

<sup>10</sup> It is not apparent from the record whether or for how long the three lived as a family before father adopted daughter.

<sup>11</sup> Our holding with respect to ORS 110.518 in *Albar* is consistent with the application of the UIFSA in other jurisdictions. *See Hudson County Department of Family Services v. Mateo*, 2020 WL 1170806 at \*1-\*3 (N.J. Super. Ct. App. Div., March 11, (2020)) (New Jersey courts had specific jurisdiction over father in action for child support under New Jersey's version of the UIFSA,



because, in part, father resided with the children in the state before moving to Delaware); *see also In Re Gunn* , 2015 WL 150078 at \*3 (Tex. App., Jan. 8, (2015) ) (Texas courts had jurisdiction over father in an action to establish parentage and obtain support under its version of the UIFSA when mother, father, and child resided together in Texas before father left Texas permanently to reside in Tennessee, reasoning, in part, that father's "extended physical presence in Tennessee does not diminish those contacts with Texas that gave rise to the suit for child support").

<sup>12</sup> To the extent that father might argue that *Albar* is distinguishable in that regard because that case concerned an action for support under ORS chapter 107, not ORS 109.010, such an argument would appear to be based on the notion that it would be unfair for a state to maintain jurisdiction over the father of an adult child, even though the father had directed purposeful contacts in the state when the child was a minor. However, the UIFSA explicitly contemplates child support orders for adult children, and ORS 110.518(1)(c) and (d) are not limited to minor children. *See* ORS 110.503(1). Any further argument in that regard would be an argument going to the merits of establishing a child support order under ORS 109.010, which are not within the scope of this appeal and as to which we express no opinion.

<sup>13</sup> Although our decision in *Horn* predated the commentary and changes to the UIFSA we discuss above, 308 Or.App. at 627-28, 481 P.3d at 936-37, we note that the facts of *Horn* are analogous to an example provided later in the commentary of a case in which the "literal" application of the statute might raise due process concerns.

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***Legislative Updates -  
Then and Now: Tips  
to Ensure Your  
Practice is in  
Statutory Compliance***



# **COMMON STATUTORY/RULE-BASED ERRORS IN FAMILY LAW PLEADINGS**

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Erin A. Fennerty  
(October 2022)

## 1. Certificates of Residency

Authority: *Former* UTCR 8.010(1): “Together with the original petition, the attorney for a petitioner, or if unrepresented, a petitioner, must file with the trial court administrator a certificate of residency establishing that one or both of the parties currently resides in the county in which the petition is being filed.”

Common Error: In 2012, UTCR 8.010(1) was changed to delete this requirement. Certificates of residency are no longer required; however, some practitioners continue to file them as separate, stand-alone pleadings.

Tip / Update: Update form pleadings so that allegations with respect to where the parties reside (for purposes of establishing venue pursuant to ORS 107.086) are included as part initiating pleading.

Example:

23 24 25 26	3.  Both parties have been residents of and domiciled in Oregon for at least six (6) months immediately prior to filing this Petition for Dissolution of Marriage (hereinafter “Petition”).  Both parties currently reside in the county in which the this Petition is being filed.
----------------------	---

## 2. Certificates re: Pending / Existing Child Support Proceedings

Authority: ORS 107.085(3): “The petitioner shall include with the petition a certificate regarding any pending support proceeding and any existing support order. The petitioner shall use a certificate that is in a form established by court rule and include information required by court rule....”

*Former* UTCR 8.090: “A certificate regarding pending child support proceedings and/or existing child support orders and/or judgments, in substantially the same form as specified in Form 8.090 in the UTCR Appendix of Forms, shall be included with motions and petitions....”

*Current* UTCR 8.090(2): ““In any motion or petition...., a filer must include a certificate stating whether any pending child support proceeding, or child support order or judgment, exists between the parties. The certificate must be placed at the end of the motion or petition, immediately above the declaration line.”

Common Error: In 2017, UTCR 8.090 was amended to delete the requirement that the certificate of pending child support proceedings and/or existing child support orders be filed as a separate, stand-alone document. However, some practitioners continue to file such certificates as separate pleadings.

**Tip/Update:** Update form initiating pleadings so that they conform with the requirements of the *current* UTCR 8.090

Example:

8	
9	<b>Certificate of Pending / Existing Child Support Proceedings</b>
10	There are no PENDING child support proceedings in Oregon, or any other state.
11	There are no EXISTING child support order or judgment in Oregon, or any other state.
12	WHEREFORE, Petitioner prays for a judgment:
13	1. Dissolving the marriage of the parties;
14	2. Granting relief in conformance with the allegations of this Petition; and
15	3. Granting other appropriate equitable relief.
16	DATED this 12 <sup>th</sup> day of July, 2021.
17	
18	Of Attorneys for Petitioner
19	
20	By: _____
21	E-mail:
22	Trial Attorney
23	<b>I hereby declare that the facts and information set forth in this Petition for Dissolution of</b>
24	<b>Marriage are true to the best of my knowledge and belief, and that I understand it is made</b>
25	<b>for use as evidence in court and subject to penalty for perjury.</b>
26	

### 3. Vital Statistics Form

**Authority:** ORS 432.183(1): “...A report of dissolution of marriage or dissolution of domestic partnership shall be prepared by the petitioner for dissolution or the petitioner’s legal representative on a form prescribed by the state registrar and submitted to the clerk of the court with the petition for dissolution.”

**Common Error:** Despite the plain language of the statute, many practitioners fail to file the required vital statistics record of dissolution form at the same time that they file a petition for dissolution.

*Tip/Update:* File the requisite form at the time of filing the petition. The current version of the record of dissolution form is attached to these material, and a link to an online, fillable form can be accessed at:

[www.courts.oregon.gov/forms/Documents/Record%20of%20Dissolution%20OHA%2008.14.pdf](http://www.courts.oregon.gov/forms/Documents/Record%20of%20Dissolution%20OHA%2008.14.pdf)

#### **4. Information Regarding the Existence of Certain Proceedings**

*Authority:* ORS 107.085(2)(c)(D): “The petitioner shall state the following in the petition... Whether there exists in this state or any other jurisdiction a protective order between the parties as authorized by ORS 30.866, 107.700 to 107.735, 124.005 to 124.040, 163.730 to 163.750 or 163.760 to 163.777, or any other order that restrains one of the parties from contact with the other party or with the parties' minor children.”

*Common Error:* In 2015, ORS 107.085(2)(c) was amended to add subsection (D), requiring that initiating pleadings include disclosure of the existence of orders that restrict contact between the parties, and/or restrict contact between a party and the parties’ minor children. However, some practitioners continue to file initiating documents that do not contain the requisite information.

*Tip / Update:* Update form pleadings so that allegations with respect to the existence of protective orders are included as part of the initiating pleading.

*Example:*

13 14 15 16 17 18 19 20 21 22 23 24 25 26	<div style="text-align: center; margin-bottom: 10px;">6.</div> The other information required by ORS 107.085 and ORS 109.767 is: <div style="margin-left: 20px;">(A) Wife knows of no other domestic relations suit, support proceeding, or support order involving dependents of the parties’ marriage that is pending or exists in any court in this state or any other jurisdiction.  (B) Wife knows of no protective order between the parties, or any other order that restrains one of the parties from contact with the other party or with the parties’ minor child.  (C) The parties have not participated as a party, witness, or in any other capacity, in any other proceeding concerning the custody of or parenting time or visitation with their minor child.  (D) Wife knows of no proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions.</div>
--	--

## **5. Notices to be Attached to Initiating Pleadings and/or Served with Summons**

*Authority:* ORS 107.092: “The clerk of the court shall furnish to both parties in a suit for legal separation or for dissolution, at the time the suit is filed, a notice...entitling a spouse to continue health insurance coverage.”

UTCRC 8.010(1): “Petitioners, when serving respondents, must attach to the petition a copy of the Notice to Parties of A Marriage Dissolution as required by ORS 107.092.”

ORS 107.093 & 109.103: “After a petition...is filed...and upon service of summons and petition upon the respondent as provided in ORCP 7, a restraining order is...in effect against the petitioner and the respondent until a final judgment is issued, until the petition...is dismissed, or until further order of the court.... A copy of the restraining order issued under this section shall be attached to the summons”

ORS 36.185: “All civil disputants shall be provided with written information describing the mediation process, as provided or approved by the State Court Administrator, along with information on established court mediation opportunities. Filing parties shall be provided with this information at the time of filing a civil action. Responding parties shall be provided with this information by the filing party along with the initial service of filing documents upon the responding party.”

ORS 107.089: “If served with a copy of this section as provided in ORS 107.088, each party in a suit for legal separation or for dissolution shall provide to the other party copies of the following documents in their possession or control....”

*Common Error:* Although required, some practitioners are not attaching the requisite Notice Re: Insurance; Statutory Restraining Order; and mediation information to their petition or summons, as may be appropriate. In addition, some practitioners are using out-of-date forms of these documents, as well as the optional Statutory Notice re: Discovery.

*Tip / Update:* Up-to-date versions of the ORS 107.092 Notice Re: Insurance, ORS 107.093/109.103 Statutory Restraining Order, and ORS 107.089 Statutory Notice re: Discovery can all be found on the Forms Center of the Oregon Judicial Department’s website. As each county differs with respect to the mediation options available in their jurisdiction, the most up-to-date version of the notice required by ORS 36.185 should be obtained from the court clerk’s office. Finally, some counties require additional notices be served on a respondent when a family law case is initiated (i.e. notice regarding mandatory parenting education class), so make sure to review your Supplemental Local Rules for these requirements.

*Example:* The current versions of the ORS 107.092 Notice Re: Insurance, ORS 107.093/109.103 Statutory Restraining Order, and ORS 107.089 Statutory Notice re: Discovery are attached to these materials.

## **6. Uniform Support Declarations – Filing in Modification Actions & Current Forms**

*Authority:* UTCR 8.010(4): “Except as provided in paragraph (c) of this subsection, in all proceedings under ORS chapter 107, 108, or 109 wherein child support or spousal support is requested by either party, each party must file a Uniform Support Declaration (USD) in the form specified at [www.courts.oregon.gov/forms](http://www.courts.oregon.gov/forms) and serve it on the other party.”

UTCR 8.050(2): In judgment modification proceedings, “...when support is requested by either party, each party must complete and file a Uniform Support Declaration (USD), as set out below.

(a) The party seeking modification to support must file a USD with the motion and serve it under subsection (3) of this rule.

(b) If an order to show cause issues, the opposing party must file a USD and serve it on the party seeking modification of support. Unless an SLR provides to the contrary, the USD must be filed and served within 30 days of service of the order to show cause.

(c) Any USD must be completed as provided under UTCR 8.010(4), in the form specified at [www.courts.oregon.gov/forms](http://www.courts.oregon.gov/forms).”

*Common Error:* When filing motions to modify that include a request to modify support, some practitioners neglect to file the moving party’s USD at the same time the initiating modification pleadings are filed. Also, some practitioners are using out-of-date versions of the USD.

*Tip / Update:* For modification proceedings involving support, update internal process checklists to make sure the client completes a USD, and that USD is filed at the same time the initiating pleadings for the modification are filed. Also, practitioners should make sure they are using the most up-to-date version of the USD.

*Example:* The current version of the USD is attached to these materials; and a link to the document can be accessed at:

[www.courts.oregon.gov/forms/Documents/Uniform%20Support%20Declaration.pdf](http://www.courts.oregon.gov/forms/Documents/Uniform%20Support%20Declaration.pdf)

## **7. Orders to Show Cause in Parenting Time Enforcement Proceedings.**

*Authority:* ORS 107.434(1)(b): In expedited parenting time enforcement cases, forms for “[a]n order requiring the parties to appear and show cause why parenting time should not be enforced in a specified manner...must include: (A) A notice of the remedies imposable under subsection (2) of this section and the availability of a waiver of any mediation requirement; and (B) A notice in substantially the following form:

---

When pleaded and shown in a separate legal action, violation of court orders, including visitation and parenting time orders, may also result in a finding of contempt, which can lead to fines, imprisonment or other penalties, including compulsory community service.

---

**Common Error:** Some practitioners use orders to show cause for parenting time enforcement proceedings that do not contain the required statutory language.

**Tip / Update:** Update form parenting time enforcement orders to show cause so that they include the requisite statutory language.

**Example:**

\* \* \* \*

#### NOTICE ABOUT REMEDIES

In addition to any other remedy the Court may impose to enforce the provisions of a judgment relating to the parenting plan, the Court may:

- A. Modify the provisions relating to the parenting plan by:
  - 1. Specifying a detailed parenting time schedule;
  - 2. Imposing additional terms and conditions on the existing parenting time schedule; or
  - 3. Ordering additional parenting time, in the best interests of the child, to compensate for wrongful deprivation of parenting time;
- B. Order the party who is violating the parenting plan provisions to post bond or security;
- C. Order either or both parties to attend counseling or educational sessions that focus on the impact of violation of the parenting plan on children;
- D. Award the prevailing party expenses, including, but not limited to, attorney fees, filing fees and court costs, incurred in enforcing the party's parenting plan;
- E. Terminate, suspend or modify spousal support;
- F. Terminate, suspend or modify child support as provided in ORS 107.431; or
- G. Schedule a hearing for modification of custody as provided in ORS 107.135(11).

When pleaded and shown in a separate legal action, violation of court orders, including visitation and parenting time orders, may also result in a finding of contempt, which can lead to fines, imprisonment or other penalties, including compulsory community service.

\* \* \* \* \*

#### NOTICE ABOUT MEDIATION

Mediation of the parenting plan enforcement issues may be required in your county. A separate Order will be issued if mediation is required.

The Court may waive the mediation requirement if one of the parties can show a good reason. You may file a written request asking that the Court waive mediation. Forms are available through the Oregon Judicial Department at <http://www.ojd.state.or.us/familylaw> and through your local Circuit Court.



## 8. **Judgement Notice Re: Health Insurance**

Authority: UTCR 8.020(2): “Every proposed order or judgment that includes a provision concerning child support must include notice that, if services are provided by the Division of Child Support, the obligor and obligee must inform the administrator, as defined in ORS 25.010(1), in writing of any change in private health insurance enrollment status within 10 days of the change.”

Common Error: UTCR 8.020 was amended in 2014 to add the requirement that every order or judgment that includes a provision concerning child support include notice of the obligation to inform DCS of a change in public health insurance enrollment status when services are provided by them. However, some practitioners continue to file judgments and orders that do not contain the requisite notice.

Tip / Update: Update form judgments and orders so that they include the requisite notice.

Example:

17 ||

18 ||

19 ||

20 ||

21 ||

\* \* \* \* \*

**NOTICE ABOUT CHANGE IN PRIVATE HEALTH INSURANCE (UTCR 8.020)**

If collection services are provided by the Division of Child Support (“DCS”), both the obligated parent and the obligee must inform DCS in writing of any change in private health insurance enrollment status within ten (10) days of the change.

## 9. **Lack of Information in Money Awards**

Authority: ORS 18.042(1),(2): “(1) The judgment document for a judgment in a civil action that includes a money award must contain a separate section clearly labeled as a money award... (2) The separate section required by subsection (1) of this section must include all of the following:...(b)...to the extent known by the judgment creditor...(B) The year of birth of each judgment debtor; (C) The final four digits ...of the Social Security number of each judgment debtor; (D) The final four digits of the driver license number of each judgment debtor and the name of the state that issued the license.”

Common Error: It is not uncommon that the money award sections of Judgments specify “filed pursuant to UTCR 2.130” or to “refer to CIF” with respect to the debtor’s date of birth, social security number, and driver’s license number. While UTCR 2.130 requires that certain confidential personal information only be provided in a Confidential Information Form this does not apply to money awards.

Tip / Update: Endeavor to ascertain the judgment debtor’s year of birth, the last four numbers of their social security number, and the last four numbers and state of issuance of their driver’s license and include that information in the money award section of judgments. If the information truly cannot be obtained, specify “unknown”.

With respect to obtaining an individual's driver's license information and their date of birth, that is easy to obtain from the DMV as follows:

Obtaining Driver License and Address Information – You can create an account with the Oregon DMV to access useful information for your client and the opposing party such as Oregon driver license number (aka customer number), address, date of birth, full name, and vehicle information (license plate, VIN, registration dates, make, model, etc.).

You may use the online access to search for a person by their customer number or search for a vehicle with the license plate or VIN. If you do not have that preliminary information, a phone call to DMV is necessary and may provide all of the information you need. There is a small fee (typically \$.25 for online access and \$1.50 for phone access) for every request made.

To register for an account, simply complete a Record Inquiry Account Application found at <https://www.oregon.gov/odot/Forms/DMV/6037fill.pdf>. The form can be submitted via email, email, or fax. There is a \$70 application fee that gets applied to the first invoice. This logon is specific to one person, not an entity as a whole. Shared logons are not to be created or used.

Example:

22	Judgment Debtor Name, Address,	John Doe
23	Year of Birth, Driver's License	1234 Main Street, Apt. 1
24	and Social Security No.	Springfield, OR 97478
25		DOB: xx/xx/1996
		SSN: xxx-xx-6443
		OR DL: xxx7885

# **RECORD OF DISSOLUTION OF MARRIAGE, ANNULMENT OR REGISTERED DOMESTIC PARTNERSHIP**

136-

State file number:

The petitioner or legal representative of the petitioner is responsible for completing the personal information on this form and shall present this form to the clerk of the court with the petition. In all cases the completed record shall be a prerequisite to the granting of the final judgment.

Case number: \_\_\_\_\_  
Judgment type:      ☐ Dissolution of marriage      ☐ Annulment      ☐ Dissolution of registered domestic partnership(RDP)

**Spouse /  
Partner A**

1. Spouse/Partner A – Legal name: *(first, middle, last, suffix)*      2. Last name at birth: *(not required for RDP)*  
3. Residence or legal address: *(street and number)*      *(city or town)*      *(county)*      *(state)*  
4. Other legal last names used:  
5. Date of birth: *(mm/dd/yyyy)*      6. Birthplace: *(state, territory or foreign country)*

**Spouse /  
Partner B**

7. Spouse/Partner B – Legal name: *(first, middle, last, suffix)*      8. Last name at birth: *(not required for RDP)*  
9. Residence or legal address: *(street and number)*      *(city or town)*      *(county)*      *(state)*  
10. Other legal last names used:  
11. Date of birth: *(mm/dd/yyyy)*      12. Birthplace: *(state, territory or foreign country)*

**Marriage /  
Declaration**

13. Date of marriage / filing of RDP declaration: *(mm/dd/yyyy)*      14. Date couple last resided in same household: *(mm/dd/yyyy)*  
15a. Place of marriage/RDP: *(city, town or location)*      15b. County:      15c. State or foreign country:  
16. Number of children under 18 in this household as of the date in item 14:  
Number: \_\_\_\_\_ None      17. Petitioner:  
☐ Spouse/Partner A    ☐ Spouse/Partner B    ☐ Both

**Attorney**

18a. Name of petitioner's attorney: *(print)*      18b. Address: *(street and number or rural route number, city or town, state, ZIP code)*  
19a. Name of respondent's attorney: *(print)*      19b. Address: *(street and number or rural route number, city or town, state, ZIP code)*

**Judgment**

20. Marriage/RDP declaration of the above named persons was dissolved on: *(mm/dd/yyyy)*      21. Date judgment becomes effective: *(mm/dd/yyyy)*  
22. Number of children under 18 whose physical custody was awarded to:  
\_\_\_\_ Spouse/Partner A    \_\_\_\_ Spouse/Partner B    \_\_\_\_ Joint (shared custody)    \_\_\_\_ Other *(specify)* \_\_\_\_\_ ☐ No children  
23. County of decree:      24. Title of court: **Circuit**  
25. Signature of court official:      26. Title of court official:      27. Date signed: *(mm/dd/yyyy)*

Information below will not appear on the certified copies of the record.

**Spouse /  
Partner A**

**Spouse /  
Partner B**

28. Spouse A's Social Security number: <i>(not required for RDP)</i>				29. Spouse B's Social Security number: <i>(not required for RDP)</i>			
30. Number of this marriage/RDP – first, second, etc.:		31. If previously married or in a RDP date last marriage/RDP ended:		32. Hispanic origin: Cuban, Mexican, Puerto Rican	33. Race(s): Black, White, etc.	34. Education – Specify only highest grade completed:	
Marriage	RDP	By death, divorce, dissolution or annulment <i>(specify below)</i>	Date: <i>(mm/dd/yyyy)</i>	List all that apply <i>(specify below)</i>	List all that apply <i>(specify below)</i>	Elementary/Secondary: <i>(grades 0-12)</i>	College: <i>(1-4 or 5+)</i>
30a.	30b.	31a.	31b.	32a.	33a.	34a.	34b.
30c.	30d.	31c.	31d.	32b.	33b.	34c.	34d.



**Department of Consumer and Business Services  
Division of Financial Regulation**

P.O. Box 14480, Salem, OR 97309-0405  
Phone: 503-947-7980, Fax: 503-378-4351  
350 Winter St. NE, Salem, OR 97301-3883  
Email: [dfr.mail@oregon.gov](mailto:dfr.mail@oregon.gov)  
[dfr.oregon.gov](http://dfr.oregon.gov)

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## **Notice to parties in a suit for marriage dissolution or legal separation regarding continuation of health coverage**

If you or your spouse have filed for divorce or legal separation and currently hold group health insurance coverage through your spouse, your coverage may end when the court grants your divorce or separation. Oregon law offers options that may enable you to continue your coverage. This notice outlines continued coverage options available under Oregon law. Federal law, commonly known as COBRA, may also enable you to continue coverage. *Note:* You must act promptly to continue coverage.

Applying for individual coverage may also be an option. Insurers can no longer deny enrollment to individuals because of health or pre-existing conditions. You may be eligible to enroll in a plan through [healthcare.gov](http://healthcare.gov) or directly from an insurer. If you apply for coverage through [healthcare.gov](http://healthcare.gov), you may qualify for financial assistance.

For more information about Oregon and federal law, consult your health insurer, the plan administrator for your insurance coverage, the employer through whom your insurance is provided, or your attorney.

### **The following is a summary of options under Oregon law:**

- 1. Continuation of existing coverage for a divorced or legally separated spouse who is 55 years of age or older** (ORS 743B.343 to 743B.345). If you are a divorced or legally separated spouse and if you are 55 years of age or older when the dissolution or legal separation occurs, you may continue your existing group coverage until you obtain other group coverage or become eligible for Medicare. In order to continue coverage, you must do both of the following:
  - A. You must notify the group health insurance plan administrator in writing of the dissolution or legal separation within 60 days of the entry of the decree of divorce or legal separation.
  - B. You must elect to continue and pay for the group coverage. You must make the election on a form provided by the plan administrator.

*Note:* This provision applies only if your coverage is provided through an employer who employs 20 or more employees or if your coverage is provided by a group health insurance plan that covers 20 or more employees.

- 2. Continuation of existing coverage for a divorced spouse when federal law does not provide for continued coverage** (ORS 743B.347). If you are not able to continue your group health coverage under federal law (COBRA), you may continue your existing group coverage upon dissolution of your marriage for a period not exceeding nine months. The following requirements apply:
  - A. You must have been continuously covered by the group policy for at least three months prior to your divorce.
  - B. You must ask the insurer or the group policyholder, in writing, to continue your coverage. You must also pay the required premiums.
  - C. You must make your request by the latter of the following dates:
    - (1) Ten days after the date that your coverage under the group policy as a qualified family member ends;
    - or
    - (2) Ten days after the date on which the employer or group policyholder gives notice of the right to continue coverage.

**3. Apply for individual coverage.** If you were covered by a group health plan and you lost that coverage because of a legal separation or divorce, you may qualify for a special enrollment and be eligible to purchase an individual plan through healthcare.gov or from an insurer. To qualify for this special enrollment:

(1) Apply through healthcare.gov and pay your premium within 60 days of the date you lost your group coverage;

or

(2) Apply for individual coverage from an insurer within 60 days of the date you lost your group coverage.

**Remember:** The longer you wait to apply, the later your coverage will start. Financial help is available only if you apply for insurance through healthcare.gov. Your insurance agent can also help you apply through healthcare.gov.

*Prepared by Oregon Division of Financial Regulation, Department of Consumer and Business Services, under ORS 107.092.*

*Revised Nov. 3, 2016. Distributed by the Office of the State Court Administrator.*

## Appendix F – Statutory Restraining Order

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**[Attach to Summons per ORS 107.093(5)]**

**NOTICE OF STATUTORY RESTRAINING ORDER  
PREVENTING THE DISSIPATION OF ASSETS  
IN DOMESTIC RELATIONS ACTIONS**

REVIEW THIS NOTICE CAREFULLY. **BOTH PARTIES MUST OBEY EACH PROVISION OF THIS ORDER TO AVOID VIOLATION OF THE LAW.** SEE INFORMATION ON YOUR RIGHTS TO A HEARING BELOW.

TO THE PETITIONER AND RESPONDENT:

PURSUANT TO ORS 107.093 and UCR 8.080, Petitioner and Respondent are restrained from:

1. Canceling, modifying, terminating or allowing to lapse for nonpayment of premiums any policy of health insurance, homeowner or renter insurance, or automobile insurance that one party maintains to provide coverage for the other party or a minor child of the parties, or any life insurance policy that names either of the parties or a minor child of the parties as a beneficiary.
2. Changing beneficiaries or covered parties under any policy of health insurance, homeowner or renter insurance, or automobile insurance that one party maintains to provide coverage for the other party or a minor child of the parties, or any life insurance policy.
3. Transferring, encumbering, concealing, or disposing of property in which the other party has an interest, in any manner, without written consent of the other party or an order of the court, except in the usual course of business or for necessities of life. This paragraph (3) does not apply to payment by either party of:
  - a. Attorney fees in this action;
  - b. Real estate and income taxes;
  - c. Mental health therapy expenses for either party or a minor child of the parties; or
  - d. Expenses necessary to provide for the safety and welfare of a party or a minor child of the parties.
4. Making extraordinary expenditures without providing written notice and an accounting of the extraordinary expenditures to the other party. The paragraph (4) does not apply to payment by either party of expenses necessary to provide for the safety and welfare of a party or a minor child of the parties.

AFTER FILING OF THE PETITION, THE ABOVE PROVISIONS ARE IN EFFECT IMMEDIATELY UPON SERVICE OF THE SUMMONS AND PETITION UPON THE RESPONDENT. IT REMAINS IN EFFECT UNTIL A JUDGMENT IS ISSUED, UNTIL THE PETITION IS DISMISSED, OR UNTIL FURTHER ORDER OF THE COURT.

**PETITIONER'S/RESPONDENT'S RIGHT TO REQUEST A HEARING**

Either petitioner or respondent may request a hearing to apply for further temporary orders, or to modify or revoke one or more terms of the automatic mutual restraining order, by filing with the court the Request for Hearing form available at [www.courts.oregon.gov/forms](http://www.courts.oregon.gov/forms).

## Appendix D – Statutory Restraining Order

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**[Attach to Summons per ORS 109.103(5)]**

**NOTICE OF STATUTORY RESTRAINING ORDER  
PREVENTING THE DISSIPATION OF ASSETS  
IN DOMESTIC RELATIONS ACTIONS BETWEEN UNMARRIED PARENTS**

REVIEW THIS NOTICE CAREFULLY.  
**BOTH PARTIES MUST OBEY EACH PROVISION OF THIS ORDER  
TO AVOID VIOLATING THE LAW.**  
SEE INFORMATION ON YOUR RIGHT TO A HEARING BELOW

**TO THE PETITIONER AND RESPONDENT:**

Under ORS 109.103(5) and UTCR 8.080, neither Petitioner nor Respondent may:

**Insurance Policies**

(1) Cancel, modify, terminate, or allow to lapse for nonpayment of premiums, any policy of health insurance that one party maintains to provide coverage for the other party or a minor child of the parties, or any life insurance policy that names either of the parties or a minor child of the parties as a beneficiary.

**Insurance Beneficiaries**

(2) Change beneficiaries or covered parties under any policy of health insurance that one party maintains to provide coverage for a minor child of the parties, or any life insurance policy.

**EFFECTIVE DATE:**

The above provisions are in effect immediately upon service of the *Petition* and *Summons* on the respondent. They remain in effect until a final judgment is issued, until the petition is dismissed, or until further order of the court.

**RIGHT TO REQUEST A HEARING**

Either Petitioner or Respondent may request a hearing to modify or revoke one or more terms of this restraining order by filing with the court the *Request for Hearing re: Statutory Restraining Order* form available at [www.courts.oregon.gov/forms](http://www.courts.oregon.gov/forms).



## **DISCOVERY NOTICE**

### **COPY FOR PETITIONER/RESPONDENT**

**NOTE: Petitioner/Respondent - a copy of ORS 107.089 may be served on the other party.  
If you do serve the other party, you must provide proof of service to the court.**

O.R.S. § 107.089/ 2013 OREGON REVISED STATUTES, CHAPTER 107 – MARITAL DISSOLUTION, ANNULMENT AND SEPARATION; MEDIATION AND CONCILIATION SERVICES; FAMILY ABUSE PREVENTION

#### **107.089. Documents parties in suit must furnish to each other; effect of failure to furnish.**

(1) If served with a copy of this section as provided in ORS 107.088, each party in a suit for legal separation or for dissolution shall provide to the other party copies of the following documents in their possession or control:

(a) All federal and state income tax returns filed by either party for the last three calendar years;

(b) If income tax returns for the last calendar year have not been filed, all W-2 statements, year-end payroll statements, interest and dividend statements and all other records of income earned or received by either party during the last calendar year;

(c) All records showing any income earned or received by either party for the current calendar year;

(d) All financial statements, statements of net worth and credit card and loan applications prepared by or for either party during the last two calendar years;

(e) All documents such as deeds, real estate contracts, appraisals and most recent statements of assessed value relating to real property in which either party has any interest;

(f) All documents showing debts of either party, including the most recent statement of any loan, credit line or charge card balance due;

(g) (A) Certificates of title or registrations of all automobiles, motor vehicles, boats or other personal property registered in either party's name or in which either party has any interest. (B) For all automobiles, motor vehicles and boats described in subparagraph (A) of this paragraph, documentation evidencing the vehicle identification number or other unique identifying number;

(h) Documents showing stocks, bonds, secured notes, mutual funds and other investments in which either party has any interest;

(i) The most recent statement describing any retirement plan, IRA pension plan, profit-sharing plan, stock option plan or deferred compensation plan in which either party has any interest; and

(j) All financial institution or brokerage account records on any account in which either party has had any interest or signing privileges in the past year, whether or not the account is currently open or closed.

(2)(a) Except as otherwise provided in paragraph (b) of this subsection, the party shall provide the

information listed in subsection (1) of this section to the other party no later than 30 days after service of a copy of this section.

(b) If a support hearing is pending fewer than 30 days after service of a copy of this section on either party, the party upon whom a copy of this section is served shall provide the information listed in subsection (1)(a) to (d) of this section no later than three judicial days before the hearing.

(3)(a) If a party does not provide information as required by subsections (1) and (2) of this section, the other party may apply for a motion to compel as provided in ORCP 46.

(b) Notwithstanding ORCP 46 A(4), if the motion is granted and the court finds that there was willful noncompliance with the requirements of subsections (1) and (2) of this section, the court shall require the party whose conduct necessitated the motion or the party or attorney advising the action, or both, to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees.

(4) If a date for a support hearing has been set and the information listed in subsection (1)(a) to (d) of this section has not been provided as required by subsection (2) of this section:

(a) By the obligor, the judge shall postpone the hearing, if requested to do so by the obligee, and provide in any future order for support that the support obligation is retroactive to the date of the original hearing; or

(b) By the obligee, the judge shall postpone the hearing, if requested to do so by the obligor, and provide that any support ordered in a future hearing may be prospective only.

(5) The provisions of this section do not limit in any way the discovery provisions of the Oregon Rules of Civil Procedure or any other discovery provision of Oregon law.  
(1995 c. 800 § 5; 1997 c. 631 § 402; 1997 c. 707 § 33; 2013 c. 171 §1).

ORS § 107.089, 107.089. Documents parties in suit must furnish to each other under certain circumstances; effect of failure to furnish.

Note: no change to above statutory language as of 2013.

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF \_\_\_\_\_

\_\_\_\_\_  
Petitioner

Case No: \_\_\_\_\_

and

**UNIFORM SUPPORT  
DECLARATION**

\_\_\_\_\_  
Respondent

CSP No.: \_\_\_\_\_

Unmarried children age 18, 19, or 20 years old (per ORS 107.108)

I am the ☐ petitioner ☐ respondent ☐ other: \_\_\_\_\_

1. Number of children

- a. Joint minor children (children of the parties together) \_\_\_\_\_
- b. Joint adult children (age 18, 19, or 20) \_\_\_\_\_
  - i. Joint adult children attending school ☐ unknown \_\_\_\_\_
- c. Non-joint minor children (children of only one party) \_\_\_\_\_
- Number of overnights the joint children spend with me (per year) \_\_\_\_\_
  - i. Current order, judgment, or written agreement \_\_\_\_\_
  - ii. Proposed \_\_\_\_\_

2. Sources of income

Wages/Salary: (monthly, before taxes)		
\$_____ per hour	_____ hours/week	
<b>Subtotal A:</b>		\$ _____

(Complete table below with monthly averages, before taxes. Explain "other" amounts)

Tips:		Bonuses/Commission:	
Workers Comp:		Interest:	
Social Security:		Annuity:	
Unemployment:		Trust:	
Disability:		Dividends:	
TANF:		Other:	
Other:		Other:	
Other:		Other:	
Expense reimbursement/per diem allowance that reduces personal living expenses:			
<b>Subtotal B:</b>			\$ _____

**Gross monthly income TOTAL** (add Subtotal A + B) \$ \_\_\_\_\_

3. Spousal/partner support

- a. Received by me (from anyone) \$ \_\_\_\_\_
- b. Paid by me (to anyone) \$ \_\_\_\_\_

4. Health insurance

- a. Premium to cover just me \$ \_\_\_\_\_

- b. Premium paid for joint children \$ \_\_\_\_\_
- c. Out of pocket medical costs paid for joint children \$ \_\_\_\_\_
- d. Subsidies received for health insurance costs \$ \_\_\_\_\_
- e. Oregon Health Plan (or other public health insurance) ☐ yes ☐ no
5. Other
- a. Union dues \$ \_\_\_\_\_
- b. Social Security or Veteran's Benefits received for children \$ \_\_\_\_\_
- i. Person with disability is: ☐ child ☐ me ☐ other parent
- c. Childcare expenses for joint children (12 or younger) \$ \_\_\_\_\_
- i. City or ZIP where child care is provided: \_\_\_\_\_
- ii. Does anyone else share the cost of childcare? ☐ yes ☐ no
1. Name: \_\_\_\_\_ Amount: \$ \_\_\_\_\_
6. Rebuttal factors
- (The amount of child support is based on statewide guidelines. The guideline amount can be rebutted (challenged) under OAR 137-050-0760, click here to read the rule: [https://www.doj.state.or.us/wp-content/uploads/2017/08/050\\_0760.pdf](https://www.doj.state.or.us/wp-content/uploads/2017/08/050_0760.pdf))*
- ☐ I am challenging the guideline amount (explain rebuttal factors): \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

---

### **Attachments**

- ☐ 4 most recent pay stubs
- ☐ Benefit statements
- ☐ Most recent tax return
- ☐ Copies of currently effective spousal/partner support, child support, and parenting time orders or judgments
- ☐ Proof of health insurance premiums and any subsidies received
- ☐ Proof of out of pocket medical expenses
- ☐ Proof of childcare expenses
- ☐ Evidence supporting any rebuttal factors for child support

---

**I hereby declare that the above statements are true to the best of my knowledge and belief. I understand they are made for use as evidence in court. I understand I am subject to penalty for perjury.**

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

\_\_\_\_\_

Name (printed)

\_\_\_\_\_

Contact Address

\_\_\_\_\_

City, State, ZIP

\_\_\_\_\_

Contact Phone

---

---

*(Serve the other party and all adult children who have not filed a Waiver of Further Appearance)*

**Certificate of Mailing**

I certify that on *(date)*: \_\_\_\_\_ I placed a true and complete copy of this  
*Declaration and Attachment (if necessary)* in the United States mail to *(name)*: \_\_\_\_\_  
\_\_\_\_\_ at *(address)*: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (printed)

## Uniform Support Declaration Attachment

You must complete this attachment if either party seeks:

- spousal/partner support **OR**
- deviation from the child support guidelines

These are the total household expenses you must pay each month for yourself only - not for others in your household. Any other annual, quarterly, or other periodic payments should be converted to a monthly average.

DO NOT LIST ANY EXPENSE IF IT IS DEDUCTED FROM YOUR WAGES

### 1. **FIXED COSTS:**

Description	Monthly Amount
<b>A. RESIDENCE:</b>	
Mortgage or Rent	
Second Mortgage/Home Equity Loan	
Property Taxes and Insurance (if not included in mortgage)	
<b>B. UTILITIES: (<i>averaged over the year</i>)</b>	
Electricity	
Gas	
Water/Sewer	
Trash/Recycling	
Telephone/Cell Phone	
Cable/Internet	
<b>C. TRANSPORTATION:</b>	
Car Payments	
Fuel	
Bus pass/Van pool/Etc.	
Other (specify):	
<b>D. INSURANCE:</b>	
Life	
Automobile	
Medical/Dental	
Other (specify):	
<b>E. Food and Household Items</b>	
<b>F. Unreimbursed health costs, including medications</b>	
<b>G. Court/Agency-ordered Support Payments in other cases</b>	
<b>TOTAL FIXED COSTS:</b>	

## 2. DEBTS:

Name of Creditor (who debt is owed to)	Balance Due	Monthly Payment
<b>TOTAL MONTHLY DEBT PAYMENTS:</b>		

☐ Additional page attached

**3. Total Fixed Costs + Monthly Debts = \$**\_\_\_\_\_

**4. Other factors you want the court to consider:**



# Update Your Pleadings!

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Practice Tips for Professionals

Ryan Carty (Carty Law, P.C.)  
October 2022

I. General Conventions

- A. Supplemental Local Rules
- B. Judgment Titles
- C. Certificates of Readiness (UTCRC 5.100)

II. Form School

- A. Money Awards
- B. Application for Full Child Support Program Services
- C. Post-judgment exchange of income information (spousal support cases only)
- D. ORS 107.093 statutory restraining orders
- E. Requirements for Parenting Time Order Modifications
- F. Judgment Change to Automatically Terminate Authority of Agent

## **I. General Conventions**

### **A. Supplemental Local Rules**

It should go without saying, but the wise (and responsible) practitioner should read relevant provisions of an individual county's Supplemental Local Court Rules (SLRs) prior to undertaking any work in said county. And for those who regularly practice in particular counties, a review of the SLRs may reveal changes you were unaware of. Remember, nearly all the chapters in each county's SLRs have at least some tangential application to domestic relations proceedings. In fact, only a handful of chapters have nothing at all to do with family law (e.g., Chapter 4 (Criminal Cases), Chapter 9 (Probate), Chapter 15 (Small Claims), and Chapter 16 (Violations)).

Do you have questions about filing documents in a particular jurisdiction? Check out the SLRs! Need to know how scheduling works? The SLRs probably contain the guidance you're looking for? Are you confident your Show Cause Order is correctly formatted to fit the standards of the county in which you're filing it? The SLRs are absolutely the first place you should be looking (e.g., some counties require a blank for adding the hearing date and time, while others expressly forbid this practice.).

It's worth taking five minutes to make sure your forms and practice conventions match local expectations so you appear minimally competent to the individuals reviewing your pleadings.

### **B. Judgment Titles**

Practitioners commonly title their judgments incorrectly. Oregon Revised Statutes reference three types of judgments in domestic relations proceedings (i.e., limited, general, and supplemental). A limited judgment is entered prior to a general judgment. A general judgment is entered at the conclusion of an initial case. A supplemental judgment is entered after a general judgment. While these conventions may seem elementary, practitioners regularly file documents titled "General Judgment" when a case already has such a judgment entered in the record. As a practical matter, a case can only have one General Judgment (although it's entirely appropriate to have a General Judgment (Corrected), General Judgment (Amended), General Judgment (2<sup>nd</sup> Amended), etc., if necessary).

Some local courts require the heading of a proposed judgment or order to reflect whether the document is stipulated. It should go without saying, but practitioners should take care to avoid

titling a judgment “as stipulated” unless both parties agree on every single detail and have both signed (or otherwise affirmed – for example, verbally on the record) the judgment. Judges continue to report seeing “Stipulated” judgments that aren’t actually stipulated. But then the question becomes – how should one appropriately designate the stipulated nature of the document? Consider the following suggestion:

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

IN THE MATTER OF THE MARRIAGE OF: )  
MARGE SIMPSON, )  
 ) CASE NO.  
PETITIONER, )  
 ) **GENERAL JUDGMENT**  
and ) **(Dissolution of Marriage)**  
 )  
HOMER SIMPSON, )  
 ) **Stipulated**  
 )  
RESPONDENT. )

### C. Certificates of Readiness

UTCR 5.100 requires that all judgments or orders submitted to the court (with limited exceptions) must include a so called “Certificate of Readiness”. The certificate must:

- Follow the space for judicial signature; and
- Be dated and signed;
- Describe the manner of compliance with any applicable service requirement; and
- Identify the reason the judgment is ready for judicial signature or otherwise states that any objection is ready for resolution in substantially the following form:

*“This proposed order or judgment is ready for judicial signature because:*

*“1. [ ] Each party affected by this order or judgment has stipulated to the order or judgment, as shown by each party’s signature on the document being submitted.*

*“2. [ ] Each party affected by this order or judgment has approved the order or judgment, as shown by each party’s signature on the document being submitted or by written confirmation of approval sent to me.*

*“3. [ ] I have served a copy of this order or judgment on each party entitled to service and:*

*“a. [ ] No objection has been served on me.*

*“b. [ ] I received objections that I could not resolve with a party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved.*

*“c. [ ] After conferring about objections, [role and name of objecting party] agreed to independently file any remaining objection.*

*“4. [ ] Service is not required pursuant to subsection (3) of this rule, or by statute, rule, or otherwise.*

*“5. [ ] This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims’ Assistance Section as required by subsection (5) of this rule.*

*“6. [ ] Other: \_\_\_\_\_.”*

Don’t overlook the “Other” line. If there’s any concern about whether the court will sign the judgment or order, explain to the court why doing so is appropriate.

## **II. Form School**

### **A. Money Awards**

ORS 18.042(4) requires that child support money awards identify whether the judgment requires payment through the Department of Justice Department of Justice (i.e., “pay to DOJ”). Practitioners should update their money awards similar to the following:

Judgment Amount:

#### **Child Support**

Father shall pay Mother \$\_\_\_\_ per month for the support of the parties’ child beginning on \_\_\_\_\_ and continuing on the first day of each month thereafter until a child attains the age of eighteen (18) years or ceases to qualify as a “child attending school” as defined in ORS 107.108, whichever shall last occur.

Pay through Department of Justice (DOJ) under Title IV-D of the Federal Social Security Act:

☐ Yes ☐ No

Another option might be something like this:

Judgment Amount:

**Child Support**

Father shall pay Mother \$\_\_\_\_ per month for the support of the parties' child beginning on \_\_\_\_\_ and continuing on the first day of each month thereafter until a child attains the age of eighteen (18) years or ceases to qualify as a "child attending school" as defined in ORS 107.108, whichever shall last occur.

*Payment of child support shall be through the Department of Justice under Title IV-D of the Federal Social Security Act.*

**B. Application for Full Child Support Program Services**

Although not required by statute it is best practice to include an optional application for full child support program services in any judgment that includes a child support money award that will be paid through the DOJ. Doing so eliminates the necessity for one of the parties to apply for program services following entry of the judgment and ensures the case qualifies for inclusion in the Title IV-D federal funding program. For example:

***Optional: APPLICATION FOR FULL CHILD SUPPORT PROGRAM SERVICES***

By signing below, I apply for child support services, including enforcement, from the Child Support Program (CSP). If you never received TANF, tribal TANF or AFDC in any state, an annual \$35 fee will apply if over \$550 is collected and distributed to the family each year.

\_\_\_\_\_  
Petitioner Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Respondent Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Adult Child Signature

\_\_\_\_\_  
Date

**C. Post-judgment exchange of income information (spousal support cases only)**

ORS 107.408 sets forth an affirmative obligation for parties to a spousal support judgment to engage in post-judgment exchanges of income tax information (i.e., first and second pages of

the party's most recently filed state and federal income tax returns, or other income records for the last calendar year if income tax returns have not been filed). The statute limits such requests to once every two years (but note: the statute doesn't limit the first such request to two years after entry of a spousal support judgment). The statute allows written requests for the required income tax information without either party filing a motion to modify with the court. Any party requesting documents pursuant to this statute is required to simultaneously provide their own income tax documents.

As a practical matter, however, failure to comply with this statute does not subject a party to contempt sanctions. This leads to a potential enforcement issue. What is the legal mechanism for a party to enforce a statutory provision unless it is captured in the underlying spousal support judgment?

ORS 30.015 provides that contempt of court means the following acts, done willfully:

- (a) Misconduct in the presence of the court that interferes with a court proceeding or with the administration of justice, or that impairs the respect due the court.
- (b) Disobedience of, resistance to or obstruction of the court's authority, process, orders or judgments.
- (c) Refusal as a witness to appear, be sworn or answer a question contrary to an order of the court.
- (d) Refusal to produce a record, document or other objection contrary to an order of the court.
- (e) **Violation of a statutory provision that specifically subjects the person to the contempt power of the court.** Emphasis added.

In other words, *failure to comply with the document exchange provisions set forth in SB 492 is not, on its face, an act of contempt* because there is no express wording in the statute subjecting the non-complying party to the court's contempt power. An example of statutory drafting that creates a cause of action for contempt can be found in ORS 107.093 (i.e., statutory



restraining order). That statute provides that “a party who violates a term of a restraining order issued under this section is subject to imposition of remedial sanctions under ORS 33.055.”

With that in mind, practitioners should carefully consider whether to include wording in their support judgments that captures the statutory requirement to exchange documents post-judgment. By doing so, practitioners can (if so desired) create a more powerful enforcement mechanism down the road (i.e., contempt) if a party fails to comply with the terms of the statute. For example:

### **Mandatory post-judgment exchange of financial documents**

**7.5 Exchange of documents.** Either party may submit a written request to the other party for copies of the first and second pages of the other party’s most recently filed state and federal income tax returns. A party in receipt of such a request shall comply with it. If the party in receipt of the request has not filed income tax returns for the last calendar year, the other party shall instead provide copies of his or her W-2 statements, year-end payroll statements, interest and dividend statements, and all other records of income earned or received by that party during the last calendar year.

7.5.1 A written request under this section may be made once every two years.

7.5.2 Neither party shall be required to file a request for modification of this judgment to make a written request under this section.

7.5.3 A party providing documents under this section may redact all account numbers, personally identifying information, and contact information, including but not limited to personal addresses and employer addresses, from the documents provided, except for the name of the party.

7.5.4 A party making a request under this section shall simultaneously provide to the nonrequesting party copies of the requesting party’s same documents. The nonrequesting party shall have no obligation to provide documents under this section unless the request is accompanied by copies of the requesting party’s same documents.

#### **D. ORS 107.093 statutory restraining orders**

ORS 107.093 was changed to include an additional item of restraint as follows:

***Restraining Order – Authority as Agent.** Husband and Wife are restrained from exercising authority as an agent for the other party under a power of attorney, a health care representative for the other party, or an attorney-in-fact for the other party unless the legal document granting authority to act as the other party’s agent specifically provides that such authority shall continue notwithstanding the statutory order of restraint set forth in ORS 107.093.*

#### **E. Requirements for Parenting Time Order Modifications**

ORS 107.174 previously required that the parties to a parenting time judgment could submit a signed and notarized stipulation to the court and that, if having done so, the court ***shall*** order such modification. ORS 107.174 was revised by the legislature to remove the notarization requirement and replace it with a declaration made “under penalty of perjury or made under oath or affirmation.” In other words, your standard declaration wording is sufficient for this purpose.

Many practitioners have historically included in their form parenting plans wording similar to the following:

***Changes to the Parenting Schedule.** The parents are encouraged to be flexible and work together to agree to changes to this plan as their children get older or family circumstances change. Agreed upon changes will be temporary and will not be enforced by the court unless the change is written down, dated, signed by both parents under penalty of perjury or made under oath or affirmation, and submitted to the court to make the stipulation a part of the court’s file.*

Note the change to allow for a declaration. If the parties prefer to waive the requirement for the declaration entirely, instead state that “the requirement of ORS 107.174 that the parents’ signatures on the stipulation be declared under penalty of perjury or made under oath or affirmation is hereby waived.”

#### **F. Judgment Change to Automatically Terminate Authority of Agent**

ORS 107.115 requires that a judgment of annulment or dissolution of a marriage ***shall:***

*“Terminate the authority of an agent under a power of attorney pursuant to ORS 127.156, a health care representative pursuant to ORS 127.545 (5)(c)(B) or an attorney-in-fact pursuant to ORS 127.722.*

This termination is in addition to the revocation of any will or transfer on death deed that was already required by previous iterations of the statute. Practitioners should update their dissolution judgments to include:

***Termination of Authority of Agent.*** *Any authority granted to the now former spouse as an agent of the other party pursuant to a power of attorney, a health care representative, or an attorney-in-fact shall be deemed revoked. ORS 127.156, ORS 127.545 (5)(c)(B), and ORS 127.722.*

# ***Family Law Appellate Case Review***

# Family Law Update, 2021-22

## Court of Appeals Judge Ramón A. Pagán

OSB FAMILY LAW CONFERENCE 2022

### A. **Dissolution/Child Custody/Property/Support:**

Hanley Engineering v. Weitz & Co.,  
321 Or App 323 (2022)  
Foreign Judgments

Plaintiffs obtained a judgment in Idaho in 2010. The judgment was domesticated to Oregon the same year. 10 years later, plaintiffs sought a certificate of extension of judgment under ORS 18.182(1). The trial court granted the motion to extend the judgment. Defendants argued that because in Idaho the judgment was expired, Oregon could not extend the judgment under the full faith and credit clause.

Held: Once a judgment is domesticated under ORS 24.115(3), Oregon's law as to that judgment applies.

Affirmed.

Vaughn and Vaughn,  
308 Or App 619 (2021)  
Child Support, Personal Jurisdiction

Daughter, an adult with disabilities, filed a petition for support under ORS 109.010 and served father in Nebraska. The trial court dismissed for lack of personal jurisdiction over father, agreeing with him that he lacked sufficient contact with Oregon. Evidence established that father had contact with Oregon until several years prior to the petition being filed, including paying child support to child. COA had previously found that when mother filed a motion to modify support to extend to the adult child due to her disability the trial court had personal jurisdiction. But that conclusion was based on the fact that mother had moved to modify an already pending Oregon matter. Vaughn and Vaughn, 275 Or App 533 (2015). Now, daughter filed an independent petition that was not attached to a pending matter.

Held: Citing ORS 110.518(1)(c) and (d) (UIFSA) and ORCP 4, as well as cases dealing with due process arguments and service, trial court erred in dismissing the matter as exercising personal jurisdiction was appropriate under the UIFSA and father's due process rights were not violated. Father had created purposeful contacts with Oregon,

and then continued those contacts by maintaining support.  
Reversed.

Sachi and Sachi,  
310 Or App 700 (2021)  
Appellate Procedure

Mother appealed a supplemental judgment regarding custody and parenting time. However, mother did not provide the appellate court with transcripts of the proceedings, making review impossible.  
Affirmed.

Luttrop and Luttrop,  
311 Or App 554 (2021)  
Marital Property and SSD Payment

In dissolution proceeding, parties argued over a lump sum SSD payment awarded to husband. Wife argued the payment was marital property subject to equitable distribution. Husband argued 42 US 407(a) prohibited any attachment to the money in any proceeding, including dissolution.

Trial court agreed with husband and ruled the payment was not marital property subject to distribution.

Held: citing Herald v. Steadman, 355 Or 104 (2014), the COA concluded that the trial court correctly interpreted 407(a) to preclude considering an SSD payment such as this as marital property. " Congress had manifested its intent to prohibit state courts from considering Social Security benefits in dividing marital property."

Affirmed.

Strand v. Garvin  
312 Or App 47 (2021)  
Child Custody

Mother filed a petition for custody while father was in prison. Father was served while in prison. Mother filed a motion for default judgment on the 31st day after service. The motion for default judgment was granted the same day it was filed. Father had, in fact, timely mailed a response but it arrived after the deadline. Father filed a motion for relief from the default judgment several months (but less than a year) later. The trial court denied the motion with no findings but simply stated that father could move to modify parenting time under 107.135.

Father filed a motion to modify, including exhibits and letters and a proposed order to show cause form complying with the relevant UTCR and local rules. The motion was simply marked "DENIED" with no findings or explanation.

Held: Trial court's summary denial of father's motions deprived him and the court of meaningful review. Court expressed dismay at the way the court handled the matter generally, but, in any event, said it could not review the reasoning for summarily denying a motion to modify without some explanation.

Reversed.

Cargal and Long-Cargal  
306 Or App 526 (2020)  
Spousal Support

Trial court dismissed husband's motion to modify spousal support. Husband was disabled, had a child support order from Arizona, and claimed his circumstances had changed spousal support should be terminated. Husband's expert at the hearing established that husband's disability was present before the last judgment, and so before any other evidence could be presented, wife argued that the motion should be dismissed because there was no change in circumstances. The trial court granted the motion on those grounds, before husband could complete his presentation of evidence.

Held: The COA reversed, stating "That is, although the evidence before the trial court demonstrated that husband's disease and potential physical limitations were apparent before the spousal support award was determined, the existence of those conditions alone does not necessarily foreclose development of evidence that could explain that the award did not sufficiently contemplate the extent of how husband's disease would manifest itself years later or how the disease affected his ability to earn an income."

Reversed.

Skinner and Skinner,  
314 Or App 394 (2021)  
Spousal Support Interest

Narrow issue: parties divorced in 2014 with spousal support award. Wife appealed and the COA reversed. On remand, trial court increased wife's maintenance support award. Wife submitted a supplemental judgment that included interest on the increased spousal support, which was noted as "prejudgment interest."

Held: citing Chase and Chase, 354 Or 776 (2014), the COA concluded that spousal support payments are judgment obligations, and interest under ORS 82.010(2)(b) is a statutory penalty for the obligor's failure to pay a judgment when due. Thus, such interest cannot be imposed to compensate for prejudgment loss.

Reversed. NB: REVIEW ALLOWED BY THE OSC, 369 OR 338.



Elbright and Elbright:  
315 Or App 95 (2021)  
Marital Property

Husband acquired property at issue pre-marriage. Husband's sister lived in the house for periods of time. Husband promised sister he would give her the house, and at one point told wife he had. However, husband had also told wife he was going to bequeath the house to her upon his death and that it was part of their retirement planning. The trial court found the sister issues to be a "sham" to avoid having to split the property, and awarded that value to husband, creating an imbalance that was rectified by giving wife the entirety of the marital residence. The court also found extensive commingling of assets with the property.

Held: Deferring to the trial court's findings of fact, the COA affirmed the distribution, finding that the evidence supported the trial court's conclusions, and, upon finding that the sister arrangement was a sham, the appropriate distribution was to treat it as marital property.

Affirmed.

Stancliff and Stancliff:  
320 Or App 369 (2022)  
RELO

Trial court rejected father's request to relocate with child to Illinois for a job opportunity. Trial court relied heavily on how much the move to Illinois would interfere with mother's parenting time, and also found that father's job prospect would not ameliorate his financial difficulties.

Held: COA reiterated that the standard is: When a trial court is charged with determining whether a child may move with one parent to a new location, "the court may consider only the best interests of the child and the safety of the parties." *Cooksey*, 203 Or. App. at 167, 125 P.3d 57.

Lower court reversed for focusing entirely on the geographic proximity and how moving would affect mother's parenting time, and did not articulate how the other 107.137 factors played a part. Also, the trial court based its decision on speculative fact findings that were not supported by the record, in particular father's financial opportunities in Illinois.

Reversed.

Brush and Brush

319 Or App 1, 2022

Property distribution

At issue was wife's inheritance. Wife was awarded inheritance that did not mention her husband. She kept it separate from the marital estate (to avoid creditors). Husband had multiple failed business ventures. Lower court appears to have punished wife for keeping the money separate, concluding that it was just and proper to have her pay husband from that inheritance. COA said that puts wife in catch-22: she's damned if she mingles the inheritance, and now damned if she doesn't. Error to include the inheritance in marital property.

Reversed.

Piller and Piller

318 Or App 836 (2022)

Division of deferred compensation accounts

Parties divorced in 2004 with a judgment saying that wife would get half of husband's PERS retirement account (about 190k). Wife didn't file a QDRO for 15 years. Husband argued that she was only entitled to half of the amount at the time of the divorce and none of the benefits thereafter.

Using the PERS statutes in effect at that time, the COA found that the rules in place at the time of the 2004 judgment would have allowed wife to receive benefits.

Husband also argued that the court used an incorrect rate of return for investments. The COA rejected that argument because the trial court did not have evidence of the rate of return for the years in question. Because the trial court relied on a QDRO expert to determine an appropriate rate of return with what little information it had, the COA held that the court did not abuse its discretion.

Affirmed.

Wilkins and Wilkins,

318 Or App 798 (2022)

Spousal Support

Trial court included per diem allowance from husband's work to be used to calculate his income for the purposes of spousal support. Evidence showed he used the money for lodging, gas, and food for his job that included extremely frequent travel.

Trial Court also declined to use "earning capacity" of wife to calculate her income. That is, the court imputed her income to minimum wage for child support, but not for spousal support.

Held: Because the court did not have evidence to find that the per diem was available as a resource for spousal support, it should not have been included in the income calculation. This was distinguishable from other cases, such as Bailey and Bailey 248 Or App 271 (2012) where the COA found that expense reimbursement *could* be available as a resource, particularly when it was used to help pay dissolution expenses, for tickets to football games, etc. None of those types of facts existed here.

Trial court also abused its discretion when it did not consider wife's earning capacity when calculating spousal support. Trial court did not explain why.

Reversed.

## **B. Common Law Domestic Partners:**

Nusbaum and Stone:

321 Or App 358 2022 (DRO)

Common Law Domestic Partners

Court issued property distribution ruling and appellant challenged on two grounds:

First, appellant argued the court used a just and proper approach rather than "intent of the parties" in dividing property.

Second, appellant argued that IDRT was inappropriate for common law domestic partnership.

Held: The argument regarding using just and proper was rejected because the lower court stated that it was basing its decision on the intent of the parties. The second argument was rejected because, even if it was error to use an IDRT for common law domestic partners, there was no prejudice to either party as they both presented their evidence and arguments to the court.

Affirmed

## **C. FAPA/EPPDAPA/SAPO:**

EH v. Byrne,

311 Or App 415 (2021)

SAPO

At issue was whether petitioner and respondent were "family or household members" such that ORS 163.763(1)(a) would preclude issuing a SAPO. Evidence established that the parties had consensually kissed prior to the incidents at issue.

Held: consensual kissing does not establish sexually intimate relationship for the purposes of SAPO or FAPA. Also it was objectively reasonable for petitioner to fear for her safety after she had been raped by respondent, rejecting arguments that the lack of

contact after the rape dissipated the reasonableness of her fear.  
Affirmed.

KRM v. Baker:

321 Or App 313 (2022)

FAPA:

Main issue: court rejected a settlement agreement that contemplated dismissing the FAPA.

FAPA issued, contested hearing scheduled. At the contested hearing, the parties agreed to a civil no contact concurrent with a DR case. The court accepted the agreement but stated it would dismiss the fapa upon receipt of the civil no contact. Later, Petitioner stated she did not want to dismiss the fapa. Court then rejected the agreement and stated it was not going to dismiss and enforce that agreement.

Held: Citing ORS 107.716(3)(a) and 107.718, the court found that a trial court has discretion to dismiss a fapa or not, even if the parties want it dismissed. There are exceptions to ORS 107.104(1)(b) for enforcing settlement agreements, including when it would violate public policy.

Affirmed.

Ferguson v. Burdette

310 Or App 49 (2021)

EPPDAPA

Trial court continued an EPPDAPA order. Petitioner's claimed disability was anxiety disorder that caused her to have sleep problems.

Held: Anxiety disorder that affected petitioner's sleep did not qualify as a disability under EPPDAPA. Even though petitioner has a mental impairment, testimony about having nightmares or other sleep problems failed to differentiate petitioner from general population.

Reversed.

Gladd v. Lucarelli,

310 Or App 835 (2021)

FAPA

Respondent, who had history of threatening petitioners, made threats over the phone and later knocked violently on her door. Trial court continued the order after the contested hearing.

Held: considering the context of the violent nature that respondent kicked and beat petitioner's door, the evidence was sufficient to find a credible threat.

Affirmed.

## **D. DEPENDENCY/TPR/DHS/ICWA:**

### Matter of NCH

311 Or App 102 (2021)

ICWA

Question presented is narrow: does ICWA apply to dependency case where the child's mother is a descendant member of the Karuk Tribe and child is eligible to become a member as well. "An "Indian child" is "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian Tribe and is the biological child of a member of an Indian tribe." 25 USC § 1903(4).

The trial court ruled that ICWA did not apply because a tribal expert testified that the Karuk Tribe had tiered membership, and, under that system, mother and the child were in a lower tier and ICWA should not apply.

Held: Despite the Tribe's expert testifying about the tiered membership and the Tribe's opinion that ICWA should not apply, the plain language of the statute along with the maxim that we liberally construe the statutes towards ICWA applying, the trial court erred and ICWA applied.

Reversed.

### Matter of ARM

313 Or App 503 (2021)

Guardianship/Dependency

Children were under jurisdiction of the court in dependency proceeding. Grandfather moved to be named their guardian under the probate statutes. Parents opposed, arguing grandfather could not do so while the court had wardship. Trial court changed permanency plan from reunification to guardianship, placed children with grandfather, granted guardianship, and dismissed juvenile petition.

Held: In Kelley v. Gibson, 184 Or App 343 (2002) COA had held that guardianship in dependency proceedings must occur through the juvenile code, and not the probate code. Amendments to relevant statutes in 2003 did not alter that outcome.

Reversed.

### Matter of DA

314 Or App 385

ICWA and Dependency

Trial court changed permanency plan from reunification to guardianship, and placed the children with a relative in Texas. Both parents challenged the "active efforts"

of DHS towards reunification, and father challenged the placement in Texas as violating 25 USC 1915(b).

Held: COA affirmed the change in permanency without discussion but wrote on the placement in Texas and ICWA.

Citing 25 USC 1915(b), father argued that Texas was not "within reasonable proximity" to his home. The COA concluded that reasonable proximity requires a focus on the special needs of the child, and in this instance the placement in Texas was the most family like setting (it was the only available relative) and the Tribe supported the placement. Further, the fact that the plan is now guardianship, what is reasonable proximity may be seen differently because it must be reasonable in relation to the permanency plan.

#### Matter of YSD

368 OR 627 (2021)

Dependency:

Issue: parents here temporarily from California. DHS sought wardship, and mother argued that 109.741 under the UCCJEA precluded Oregon from keeping jurisdiction.

Held: 109.741 does give a home state preference but does not apply in emergencies under ORS 109.751. However, beyond emergency jurisdiction, the court was not empowered to order mother to engage in activities to regain custody, and those portions of the judgment were vacated.

#### Matter of SM

316 Or App 327 (2021)

Dependency

Father and mother had two children around 10 and 11 years old. Evidence established that they had sexually abused a teenager over a period of time, including providing the teen with cannabis and alcohol. Parents also attempted more relations with another teen unsuccessfully.

Trial court held that father presented a threat to the young children based on the pattern of abuse with teen girls.

Held: First, even though wardship was eventually terminated, the matter was not moot because of the consequence in a DR case. Court also rejected argument that because there was a custody decision in the related DR case, it was moot. Court reasoned that parents may modify custody and so the consequence still existed.

The record did not establish a nexus between the sexual abuse of the teenagers and risk of harm to the children. Court reiterated that there had to be some link and just being found guilty as a sex offender was not enough. In this case the children were never

aware of the abuse and it never directly affected them. Court also rejected a presumption of risk to the children, as DHS had argued.

Court also rejected the "thinking errors and belief systems" argument by DHS. That is, because of the findings of sexual abuse, there was evidence that father had thinking and judgment problems that posed a risk to the children.

In short, categorical risk is not enough, there must be a factual tether to the children at issue.

Reversed.

#### Matter of SL

320 Or App 434 (2022)

Dependency

First, Mootness: Lower court terminated wardship after appeal was filed, DHS argues that moots appeal. Rejected as there are collateral consequences to the finding of jurisdiction, including affecting future DR cases involving custody and parenting time with the child.

Second, Sufficiency: Father argues the evidence was insufficient.

Mother and father had a couple of shoving matches, and the children witnessed one. Otherwise, the children witnessed verbal arguments between the parents.

"The evidence shows that parents' relationship involved verbal disputes and pushing and shoving; that father and mother argued or fought on at least four occasions; that father was "bit" by mother on one of those occasions, and his arms were scratched by her on another; that during the June 2021 incident, father "pushed" mother and she "fell down lightly scuffing" her knee or elbow, and there was "some broken glass" in the driveway; and that, on at least two of the four occasions, the children witnessed parents' fighting.

Though that evidence might be sufficient to show that parents had an "ongoing volatile and/or unsafe relationship with" each other, and that their relationship exposed the children to *some* harm, we do not think it is sufficient to show that parents' relationship posed a nonspeculative threat of *serious* loss or injury to the children that is reasonably likely to occur."

Notably the court rejected arguments that it is common for children to intervene and that in this case an intervention could lead to injury. A court may not rely on generalizations or speculation to establish jurisdiction.

Reversed.



Querbach v. DHS:  
369 Or 786 (2022)  
Judicial review from DHS finding of abuse

Father appeals an order upholding a DHS "founded" finding of abuse. The main issue is whether the finding "reasonable cause to believe" is akin to probable cause or reasonable suspicion. Trial court held that the standard was more akin to probable cause.

Reasonable cause," for purposes of those rules, has the same meaning as it does in ORS 419B.150(1)(b): "a subjectively and objectively reasonable belief, given all of the circumstances and based on specific and articulable facts." OAR 413-015-0115(58).

COA found that the reasonable suspicion is more appropriate.

Supreme Court concludes that the standard is more akin to reasonable suspicion, and upholds COA decision stating as much:

"the "founded" determinations are not determinations that petitioner *in fact* abused the children in the ways that were alleged, but rather that DHS had "reasonable cause to believe" that he had done so—meaning that, given the evidence in the record, an objectively and subjectively reasonable person could believe that petitioner had abused the two children in the ways alleged. Accordingly, to hold that DHS's "founded" determinations are not supported by substantial evidence, ORS 183.484(5)(c), as petitioner claims, this court would have to conclude that the record developed in the circuit court would not permit a reasonable person to find that there is a reasonable basis for believing that the reported abuse had occurred."

Affirmed in part and reversed in part.

## E. **Guardianship:**

Mouktabis v. Amarou  
314 Or App 130 (2021)  
Guardianship

GAL is not empowered to act in a manner that could be considered the "practice of law." Daughter sued mother through GAL, father. Daughter lost in the trial court and father filed a notice of appeal as her GAL. Appellate Commissioner gave father 30 days to get legal representation or the appeal would be dismissed. Father sought reconsideration. COA held that GAL does not have the power to act as an attorney.

Dismissed.

Matter of Louie

317 Or App 378 (2022)

Funds of the Protected Party

Trial court held that guardian, who was the protected party's husband, had to pay for attorney fees using his own funds because the funds were the "funds of a person subject to a protected proceeding"

Held: Under ORS 108.020, 108.040, 108.060, a spouse is not liable for the obligations of their spouse, and thus their property cannot be used to pay the debts of the other spouse.

"ORS 107.105, on which the probate court did rely, does not lead to a different conclusion. That statute, which refers to the "marital estate," by its plain text, applies only to "marital annulment, dissolution or separation." ORS 107.105(1). By its terms, it provides a mechanism for determining ownership of property as between two spouses as they unwind a marriage. It does not provide a mechanism for permitting a third-party to the marital relationship to treat the funds or property of one spouse as the funds or property of the other spouse during a marriage. It therefore does not provide legal authority for treating the separate funds of Andrew as Jasmine's own funds for purposes of ORS 125.095."

Reversed.