

Pre-Petition Investigation Primer

Introduction:

This guide was prepared by the Office of Public Defense Services (OPDS) and is intended to provide an overview of child welfare investigations conducted by the Oregon Department of Human Services (DHS) for defense attorneys and civil legal aid providers. The information provided is not exhaustive and should not be considered legal advice. For detailed information concerning child welfare investigations, DHS policy and procedures, and applicable law please consult the DHS Child Welfare Procedure Manual, the Oregon Administrative Rules (OAR), and applicable sections of the Oregon Revised Statutes (ORS).

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I. DEFINITIONS RELEVANT TO PRE-PETITION INVESTIGATIONS (OAR 413-015-0115)

- 1) **Abuse:** For purposes of screening a report of "abuse" of a child subject to ORS419B.005, "abuse" means any of the following, except that "abuse" does not include reasonable discipline unless the discipline results in one of the conditions described in this subsection:
 - a. **Mental Injury:** observable and substantial impairment of the child's mental or psychological ability to function. Caused by cruelty to the child, taking into account the child's culture.
 - b. **Neglect:**
 - i. Negligent treatment or maltreatment of a child, including, but not limited to, the failure to provide adequate food, clothing, shelter, or medical care that is likely to endanger the health or welfare of the child;
 - ii. Buying and selling a person under 18 years of age pursuant to ORS 163.537;
 - iii. Allowing a person under 18 years old to enter or remain upon premises where methamphetamine is manufactured;
 - iv. Unlawful exposure to a controlled substance or the unlawful manufacturing of a cannabinoid extract, which results in substantial risk of harm to the child's health or safety.
 - c. **Physical abuse:** Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given for the injury.
 - d. **Sexual Abuse:** as defined in ORS Chapter 163, including rape, sodomy, sexual penetration, incest, sexual abuse, and/or sexual exploitation.
 - e. **Threat of harm:** subjecting child to substantial risk of harm to child's health or welfare.
- 2) **Child Protective Services (CPS):** branch of DHS charged with investigating the circumstances of children or young adults who may be unsafe after a report of abuse is received.
- 3) **CPS Assessment:** an investigation into a report of abuse pursuant to ORS 419B.020 or ORS 418.205 – 418.327. The purpose of the assessment is to determine if there is reasonable cause to believe abuse occurred and ensure safety through protective action plans, initial safety plans, or ongoing safety planning.
- 4) **Conditions for Return:** 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.
- 5) **Designated Medical Professional:** Pursuant to ORS 418.747(9), a physician, physician assistant, or nurse practitioner who has been designated by the local multi-disciplinary team and trained to conduct child abuse medical assessments (as defined in ORS

418.782), and who is regularly available to conduct these medical assessments.
Permitted to designate another medical professional to conduct the same.

- 6) **Domestic Violence:** a pattern of coercive behavior, which can include physical, sexual, economic, and emotional abuse that an individual uses against a past or current intimate partner to gain power and control in a relationship.
- 7) **Face to face:** in person interaction.
- 8) **Family Engagement Meeting (FEM):** A “family-focused intervention facilitated by professional staff that is designed to build and strengthen the natural caregiving system for the child.” The purpose of the family engagement meeting is to establish a plan that provides for the safety, attachment, and permanency needs of the child. Required as part of an on-going safety plan.
- 9) **Harm:** any kind of impairment, damage, detriment, or injury to an alleged victim's physical, sexual, psychological, cognitive, or behavioral development or functioning. "Harm" is the result of abuse and may vary from mild to severe.
- 10) **ICWA:** the Indian Child Welfare Act of 1978, 25 U.S.C. §1901¹
- 11) **Impending Danger Safety Threat:** family condition, behavior or circumstance that meets all five safety threshold criteria (see below), but is not immediate, obvious, or occurring at outset of CPS assessment. Threat is identified and understood through investigating and understanding family functioning.
- 12) **Indian:** any person who is a member of or eligible for membership in an Indian tribe or who is an Alaskan native and a member of a Regional Corporation as defined in 43 U.S.C. § 1606. 25 U.S.C. § 1905.
- 13) **Indian Child:** any unmarried person who is under age 18 and either
 - a. Is a member or citizen of an Indian tribe; or
 - b. Is eligible for membership or citizenship in an Indian tribe and is the biological child of a member or citizen of an Indian tribe. 25 U.S.C. §1905
- 14) **Imminent physical damage or harm:** impending and certain physical harm will occur to the Indian child unless a protective action plan can be put in place or an emergency removal is initiated.
- 15) **Initial Contact:** first face-to-face contact between a CPS worker and a family.
- 16) **Initial safety plan:** documented set of actions or interventions during CPS assessment to protect a child or young adult from an impending danger safety threat.
- 17) **Observable:** specific, real, can be seen and described. Observable does not include suspicion or gut feeling.
- 18) **ODDS:** Office of Developmental Disabilities Services.
- 19) **On-going safety plan:** a documented set of actions or interventions that manage the safety of a child or, when applicable, a young adult after DHS has identified one or more

¹ Indian Child Welfare Act, 25 U.S.C. §1901, 1903
http://www.dhs.state.or.us/policy/childwelfare/icwa/icwa_1978.pdf

impending danger safety threats at the conclusion of a CPS assessment or anytime during ongoing work with a family.

- 20) **OTIS:** Office of Training, Investigations and Safety.
- 21) **Out of Control:** family behaviors, conditions, or circumstances that can affect safety of a child or, when applicable, a young adult, are unrestrained, unmanaged, without limits or monitoring, not subject to influence or manipulation within the control of the family, resulting in an unpredictable and chaotic family environment.
- 22) **Parent:** biological or adoptive mother or legal father of a child. Also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father. Does not include unwed biological fathers whose paternity has not been established.
- 23) **Plan of Care:** written plan for a substance-affected infant and infant's family that is focused on "meeting health needs and substance disorder treatment needs." The plan is developed in collaboration with the family, healthcare provider, community agencies, and DHS.
- 24) **Present danger safety threat:** immediate, significant, and clearly observable family behavior, condition, or circumstance occurring in the present tense, already endangering or threatening to endanger a child or, when applicable, a young adult. The family behavior, condition, or circumstance is happening now, and it is currently in the process of actively placing a child or, when applicable, a young adult in peril.
- 25) **Protective Action Plan:** an immediate, same day, short-term plan, lasting a maximum of 10 calendar days, sufficient to protect from a present danger safety threat.
- 26) **Protective Capacity:** Behavioral, cognitive, and emotional characteristics that can specifically and directly be associated with a person's ability and willingness to care for and keep a child or, when applicable, a young adult safe.
- 27) **Protective Custody:** taking a child into DHS custody pursuant to 419B.150.
- 28) **Reasonable Cause:** see ORS 419B.150; subjectively and objectively reasonable belief, given all of the circumstances and based on specific and articulable facts.
- 29) **Reasonable Suspicion: [in the context of a DHS investigation]** a reasonable belief given all of the circumstances, based upon specific and describable facts, that the suspicious physical injury may be the result of abuse.
- 30) **Safe:** an absence of present danger safety threats and impending danger safety threats.
- 31) **Safety Services:** actions, assistance, and supervision provided by safety service providers to manage the identified present danger safety threats or impending danger safety threats.
- 32) **Safety Service Provider:** a participant in a protective action plan, initial safety plan, or ongoing safety plan whose actions, assistance, or supervision help a family in managing safety.
- 33) **Safety Threshold:** the point at which family behaviors, conditions, or circumstances are manifested in such a way that they are beyond being risk influences and have become

an impending danger safety threat. The criteria are used to determine if an impending safety threat exists. In order to reach the "safety threshold" the behaviors, conditions, or circumstances must meet all of the following criteria:

- a. Imminent;
 - b. Out of control;
 - c. Affect a vulnerable child or young adult;
 - d. Specific and observable; and
 - e. Have the potential to cause severe harm.
- 34) **Severe Harm (ORS 419B.150(1)(c)):** Life threatening damage or significant or acute injury to a person's physical, sexual, or psychological functioning.
- 35) **Substance Affected Infant:** an infant (defined as a child less than one year old), regardless of whether abuse is suspected, for whom prenatal substance exposure is indicated at birth and subsequent assessment by a health care provider identifies signs of substance withdrawal, a Fetal Alcohol Spectrum Disorder diagnosis, or detectable physical, developmental, cognitive, or emotional delay or harm that is associated with prenatal substance exposure. Prenatal substance exposure is determined by a positive toxicology screen from the infant or the mother at delivery or credible information the mother had an active untreated substance use disorder, during the pregnancy or at the time of birth.
- 36) **Substitute Care (419A.004(33)):** an out-of-home placement directly supervised by DHS (or other child-caring agency), including placement in a foster family home, group home, child-caring agency as defined in ORS [418.205](#) or other child caring institution or facility.
- a. "Substitute care" does not include care in:
 - i. A detention facility, forestry camp or youth correction facility
 - ii. A family home that the court has approved as a ward's permanent placement, when a child-caring agency as defined in ORS [418.205](#) has been appointed guardian of the ward and when the ward's care is entirely privately financed
 - iii. In-home placement subject to conditions or limitations;
 - iv. A facility or other entity that houses or provides services only to youth offenders committed to the custody of the Oregon Youth Authority by the juvenile court; or
 - v. A youth offender foster home as that term is defined in ORS [420.888](#).
- 37) **Suspicious Physical Injury:** ORS 419B.023
- a. Burns or scalds;
 - b. Extensive bruising or abrasions on any part of the body;
 - c. Bruising, swelling, or abrasions on the head, neck, or face;
 - d. Fractures of any bone in a child under the age of three;
 - e. Multiple fractures in a child of any age;
 - f. Dislocations, soft tissue swelling, or moderate to severe cuts;

- g. Loss of the ability to walk or move normally according to the child's developmental ability;
- h. Unconsciousness or difficulty maintaining consciousness;
- i. Multiple injuries of different types;
- j. Injuries causing serious or protracted disfigurement or loss or impairment of the function of any bodily organ; or
- k. Any other injury that threatens the physical well-being of the child.

II. POLICY AND RULE-MAKING AUTHORITY

Oregon enacted statutes requiring mandatory abuse reporting and investigations to further the goals of “facilitating the use of protective social services to prevent further abuse, safeguard and enhance the welfare of abused children, and *preserve family life when consistent with the protection of the child by stabilizing the family and improving parental capacity.*” ORS 419B.007. DHS is expressly authorized to “make all necessary rules and regulations for administering child welfare services.” ORS 418.005. As such, the direction provided by the DHS Child Welfare Procedure Manual (“DHS Manual”) is specifically authorized by law and are codified in the Oregon Administrative Rules (“OARs”).

Legal References: [DHS Child Welfare Procedure Manual](#), Chapter 2 (Screening); [OAR 413-015-0200 - 0230](#); [ORS 418.005](#); [419B.007](#) (Policy); [419B.015](#) (Report form and content); [419B.017](#) (Time limits for notification between law enforcement agencies and Department of Human Services); [491B.019](#) (Investigation of report involving school); [419B.020](#) (Duties of department or law enforcement agency receiving report); [419B.023](#) (Duties of person conducting investigation under ORS 419B.020).

III. SCREENING & REFERRING REPORTS ([OAR 413-015-0211](#), *DHS Manual Chapter 2*)

A. Reports to the Child Abuse Hotline

Reports of abuse, neglect, or child mistreatment generally come to the attention of DHS through reports to the Child Abuse Hotline from individuals, schools, organizations, law enforcement and other mandatory reporters. Mandatory reporters² are required to report child abuse to either the child abuse hotline, the local child welfare office, or to law enforcement. ORS 419B.015(1)(a). The child abuse hotline is staffed 24 hours per day, 7 days per week. When a report is made to the hotline, a screener will interview the reporter to conduct initial information gathering concerning the allegations. OAR 413-015-0211. The screener must document the information in OR-Kids³. OAR 413-015-0210. The screener will then review the child welfare history for the family and determine whether to refer the report for a Child Protective Services (“CPS”) assessment and whether a cross-report to law enforcement is required. OAR 413-015-0211; ORS 419B.015.

B. Criteria for Referrals for a Child Protective Services Assessment

² See, ORS 419B.010(1) (requiring “[a]ny public or private official,” which includes attorneys, to make a report if the official has “reasonable cause to believe that any child with whom the official comes in contact has suffered abuse or that any person with whom the official comes in contact has abused a child,” unless that information is privileged under provisions of the Oregon Evidence Code or ORS 419B.231(6), which governs privileged communications between a parent and their court-appointed guardian ad litem. Further, an attorney is not required to make a report under this section by reason of information communicated to the attorney in the course of representing a client if disclosure of the information would be detrimental to the client.”

³ OR-Kids is Oregon’s child welfare electronic information system.

Screeners are required to refer the following kinds of reports for a CPS assessment (OAR 413-015-0211(4)):

1. Reports of abuse where:
 - a) The alleged perpetrator is the legal parent of the child;
 - b) The alleged perpetrator lives in the child's home;
 - c) The alleged perpetrator may have access to the child and the parent or caregiver is unable or unwilling to protect the child; or
 - d) The alleged abuse involves an Oregon Youth Authority (OYA)-certified home.
2. Reports of abuse involving a home certified by DHS or the Office of Developmental and Disability Services (ODDS).
3. The screener determines that the report would be the fourth or greater consecutive report closed at screening involving the same child or household, and there is at least one child in the house who is less than five years old.
4. A tribe, Law Enforcement Agency (LEA), or Office of Training, Investigation and Safety (OTIS) requests assistance from CPS with an abuse investigation, and a screening supervisor agrees that CPS assistance is appropriate.⁴

C. Criteria for Cross-Reporting ([OAR 413-015-0305](#))

Cross reports to additional agencies or parties are required in the following circumstances:

1. Information must be forwarded to the Office of Training, Investigation, and Safety where a screener receives a report alleging abuse that concerns a childcare agency, a proctor foster home, an ODDS licensed group home, an educational provider, an ODDS licensed host home, or a childcare facility. OAR 413-015-0215.

INDIAN CHILD WELFARE ACT ("ICWA")¹ CASES: SCREENING & REFERRALS

DHS Manual, Chapter 2, § 5

Screeners must inquire whether the subject child is an Indian child by asking the origins of both biological parents as well as biological relatives. If the screener learns that the child has Native/tribal ancestry and can confirm membership, enrollment, or eligibility for membership or enrollment in a tribe, this information must be documented. When the screener receives information that the subject child may be an Indian child and a tribe is identified, DHS must send a copy of the confidential screening report to the tribe within 24 hours after the screening decision is complete. It is important to note that DHS does not have automatic authority or jurisdiction to conduct assessments of certain tribal families. For example, Burns Paiute Tribe and Confederated Tribes of Warm Springs have exclusive jurisdiction over Tribal families who reside on their reservations. The tribe may confer permission to DHS to conduct assessments, however.

⁴ NB: HB 4214 imposes additional requirements upon DHS to determine whether a child is an Indian Child prior to taking the child into protective custody, as well as additional notification requirements when the State takes protective custody of a child. See, https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2020S1OrLaws0014.pdf for the complete text of the Bill. ICWA imposes more stringent requirements in nearly every aspect of child welfare investigations, dependency cases and termination of parental rights proceedings. For detailed information regarding ICWA, please consult the Indian Child Welfare Act of 1978, 25 U.S.C. §1901.

2. DHS must notify the attorney for the child, the CASA assigned to the child, the parents of the child and the parents' attorneys within three business days of receiving a report alleging abuse or maltreatment of a child in substitute care. ORS 419B.015(3). A strict reading of ORS 419B.015(3) imposes a duty upon DHS to notify the above parties that a report was received but does not require DHS to disclose details concerning the report, and expressly prohibits DHS from disclosing any identifying information concerning the reporter. ORS 419B.015(3)(b). Additionally, ORS 419B.015(3)(c) permits DHS to refrain from disclosing the report to the parents or parents' attorneys "if the notification may interfere with an investigation or assessment or jeopardize the child's or ward's safety."
3. Screeners must cross-report certain categories of reports to law enforcement. OAR 413-015-0300-0305; DHS Manual Chapter 2, §5. These include: sex trafficking involving a child or young person on an open CPS case; current suspicious physical injury; or when a crime is suspected to have occurred at a home certified by child welfare, ODDS, or OYA or to a child living in such home. Cross reporting occurs on the same day in cases of moderate to severe physical abuse, visible injuries; sexual abuse; or suspicious or unexpected death of a child. OAR 413-015-0305(1), 413-015-0211(9)(a).

D. Timeframes for Assessment Response: If the screener determines that a report is appropriate for referral for a CPS assessment, the screener must then determine the appropriate response timeframe for the CPS assessment to commence. OAR 413-015-0211(5). Timeframes are as follows:

1. Within 24 hours: report indicates present danger
Present danger is defined as "dangerous family conditions that are 'in process' of occurring at the time of the report. DHS Manual, Chapter 2, §3. 'In process' at screening means that what is being reported is "occurring now or will continue to be active before intervention can occur during the next calendar day."
Id. Three safety threshold criteria must be met in order to meet to the present danger standard:
 - a) Immediate, meaning the dangerous situation has either recently happened but there has been no change in circumstances; that the danger is occurring in the present tense; or that the

**FAMILY SUPPORT SERVICES:
REPORTS AND TIMELINES**

In addition to screening reports of alleged child abuse, neglect, or mistreatment, the Child Abuse Hotline also fields requests for Family Support Services that involve requests for placement, requests for independent living program services, requests for post-adoption or guardianship services, and requests for voluntary services. OAR 413-015-0213. Local child welfare offices must respond to requests for Family Support Services within ten days of receiving the referral from the Hotline.

condition is regularly occurring and will likely occur again in the next few days.

- b) Significant, meaning severe harm has occur or has occurred to the child(ren) at issue.
- c) The danger is clearly observable. Id.

The DHS Manual further delineates how quickly within a given timeframe a CPS worker should respond to particular kinds of reports. See, CPS Manual, Chapter 3. For example, assessments of reports involving serious physical injury to a child or current non-accidental injuries should be investigated within 0-2 hours of receiving the report. Id.

2. Within 72 hours: report indicates impending danger

Impending danger is defined as “dangerous family conditions that represent situations/circumstances, caregiver behaviors, emotions, attitudes, perceptions, and intentions that place a child in a continuous state of danger.” DHS Manual, Chapter 2, §3. Unlike present danger, the conditions in the report are not actively occurring but there is reason to believe that the danger will occur or re-occur within the next few days or weeks. Id. The impending danger standard will be met when five criteria are present:

- a) *Observable*: behaviors, conditions, circumstances that pose a danger
- b) *Vulnerable*: the child or children are dependent upon others for protection
- c) *Imminent*: the dangerous conditions, behaviors, or circumstances will become active within the next couple of weeks, due to a reported pattern of the condition.
- d) *Out of control*: the conditions within the family could reasonably affect a child and are not known to be restrained or managed without outside intervention.
- e) *Severity*: physical, mental or emotional injury that has already occurred and potential for “harsh effects” based on the above criteria. Id.

3. Within 10 business days: no present or impending danger indicated in report

Examples include past reports of child abuse from a child already in substitute care; alleged perpetrator is deceased; child fatality and no other children in the home. Id.

E. Criteria for Closing Reports at Screening

Reports are closed at screening when a screener determines that a report is required to be documented in OR-Kids, but not referred for a CPS assessment. OAR 413-015-0211(7). A report must be closed at screening if any of the following criteria are met (DHS Manual, Chapter 2, §3.):

1. The report details information describing behaviors, conditions or circumstances that pose a risk to a child but do not meet the definition of abuse.
2. The report describes abuse by a third party who does not reside with the alleged victim.
3. The screener receives any of the following information but determines the information reported would not be assigned for further assessment:
 - a) Report concerning an expectant mother with no children in the home and the past or current behaviors, conditions or circumstances may endanger a newborn (though the screener may send a hospital alert mother).
 - b) Notification from a case worker that a youth or child is identified as a sex trafficking victim
 - c) Notification of a substance affected infant and the report does not meet criteria for assignment.
4. Reports concerning a child living outside of Oregon.

IV. CPS ASSESSMENT

A. CPS Assessment Initial Activities – Prior to Contact with Family (*OAR 413-015-0415; DHS Manual, Chapter 3, § 3, ORS 419B.023*)

CPS assessments into reports of child abuse or maltreatment are intended to investigate six domains in order to determine if a “present” or “impending safety threats” exist. DHS Manual, Chapter 3, §3. Those areas are:

- i. Extent of maltreatment
- ii. Circumstances surrounding the maltreatment
- iii. Child functioning
- iv. Adult functioning
- v. Parenting practices
- vi. Disciplinary practices

Legal References: OAR 413-015-0400 – 0485 (CPS Assessment); DHS Child Welfare Procedure Manual, Chapter 3; ORS [419B.023](#) (Duties of person conducting investigation under ORS 419B.020); [ORS 419B.026](#) (Required findings for investigation conducted under 419B.020); ORS [418.747](#) (County Teams for investigation); ORS [419B.028](#) (photographing children during investigation)

At the conclusion of the assessment, CPS must decide whether sufficient information exists to justify further intervention in the family’s life, either through working with the agency on a voluntary basis or through court intervention. *Id.* As described below, CPS workers may intervene into a family’s circumstances in a number of ways during the course of the assessment, including medical evaluations, taking protective custody of a child, and establishing in home or out-of-home protective action and safety plans while the assessment is under way. OAR 413-015-0432. It is the stated policy of DHS that protective action and safety plans (discussed *infra*) must utilize the least intrusive intervention. OAR 0413-015-0432(2)(d).

1. Records Review

Prior to making initial contact with a family, CPS workers are directed to review records associated with the family in order to gain information related to current safety threats, history of abuse, protective capacity, family support systems, the above six domains, and issues concerning worker safety. OAR 413-015-0415; DHS Manual Chapter 3, §3. CPS workers must review records that include documentation in the referral, historical records on the family and child(ren) maintained by DHS, and self-sufficiency records, and also make diligent efforts to contact child welfare agencies in any other state in which the family has resided. Id.

CPS workers must also address prior allegations that could not be assessed because family whereabouts were unknown by making inquiries regarding the prior allegations during their interviews and considering the information gathered about those allegations when determining current child safety. Id.

2. Interview Collateral Contacts

CPS workers must contact collateral sources who may have additional information concerning the referral, as well as any other information contained in the record-review, such as self-sufficiency workers. DHS Manual Chapter 3, §3. OAR 413-015-0415 advises CPS workers to contact the following categories of persons as part of their investigation:

- a) Individuals who have regular contact with the alleged victim;
- b) Doctors or others who have evaluated or maintain records on the alleged victim;
- c) People who are in an established personal or professional relationship with the parent or caregiver and who can judge the quality and nature of the parent or caregiver behavior and functioning; and
- d) People who have records or information about the parent or caregiver as a result of their involvement with, or exposure to, the parent or caregiver. If a collateral source is unable or unwilling to make records available to CPS, CPS is directed to consult with the district attorney's office to obtain a court order for such records.⁵

⁵ NB: DHS is now represented by the Office of the Attorney General across the state.

When evaluating whether CPS has conducted an adequate investigation into allegations concerning a family, practitioners are advised to consider whether CPS neglected to interview any individual who would logically have relevant information concerning parental capacity and child safety, such as relatives, childcare providers, neighbors, or teachers.

3. Inter-Agency Coordination and Referral:

The DHS manual states that CPS must also coordinate with other government entities who may have information necessary to complete the assessment or who require notification based on their role, and specifically if a child is alleged to have suffered harm at a facility for which the entity has oversight responsibility. DHS Manual, Chapter 3, §3; OAR 413-015-0415. Such entities include the Office of Training, Investigation and Safety (OTIS), Office of Child Care (OCC), Oregon Youth Authority (OYA), Office of Developmental Disabilities Services (ODDS), Parole or Probation (if a parent is subject to parole, post-prison, or probation supervision), community mental health programs, or Adult Protective Services. OAR 413-01500415; DHS Manual, Chapter 3, §3.

In cases involving allegations of physical or sexual abuse, the CPS worker must also notify the county Multi-Disciplinary Team (MDT) to coordinate investigation of the allegations, pursuant to ORS 418.747. MDT teams are interdisciplinary teams authorized to investigate allegations of child abuse. *Id.* An MDT team generally consists of prosecutors from the county District Attorney's office, law enforcement personnel, CPS workers, school officials, county health department personnel, county mental health department personnel with expertise in child mental health, child abuse intervention center workers (if available), juvenile department representatives, and others trained in child abuse. *Id.* MDT teams are required to

Substance Abuse Affected Infant Protocol: DHS Manual, Chapter 3 §25

When DHS receives a report of a substance abuse affected infant, CPS is required to gather specific information relating to the nature and extent of the effects of substance exposure on the infant, the infant's on-going medical needs, the extent of the mother's substance use, including history of use, treatment history or history of refusal to enter treatment, domestic violence history, and any history of mental illness or cognitive limitations. The Manual additionally directs the CPS worker to assess the parent's "protective capacity" and parenting skills. A plan of care must be developed in conjunction with the infant's health care workers. The plan of care should include the health or medical needs of the infant, the "physical, social, and emotional health and substance disorder treatment needs" of the caregivers, and services and supports to improve the parents' caregiving capacity.

partner with at least one physician, physician assistant, or nurse practitioner who is trained to conduct child abuse assessments. Id. Assessments concerning physical and sexual abuse are funneled to these designated medical providers via the MDT team. Please see ORS 418.747 for further description of the MDT role and protocol.

Domestic Violence Protocol:

DHS Manual Chapter 3, Appendix 3.8

The DHS Manual encourages a trauma-focused approach to assessments concerning allegations of domestic violence. It notes that Oregon utilizes the Safe & Together Model in conjunction with the Oregon Safety Model for assessing the impact of domestic violence behavior on a child. For a detailed description of the intersection of these two models, and their applicability to CPS assessments, see DHS Manual Chapter 3, Appendix 3.8.

B. Initial Contact with Subject Child(ren) and Family (*OAR 413-015-0420; DHS Manual Chapter 3, §4.*)

CPS workers must make initial contact with the family or subject child within the assigned response time. OAR 413-015-0420. The DHS Manual outlines the type of contacts that a CPS worker is required to at least attempt to complete, at the initial contact. DHS Manual Chapter 3, §3. The steps required are as follows:

1. **Interview and observe the alleged victim and any other children.** The parents of the child must be notified first, unless notification would compromise safety. The CPS worker is required to make diligent efforts to locate the child(ren) at home, school, day care, or any other place the worker believes the child(ren) would be found.
2. **If the child is located at home, but the parents or caregivers are not present,** the CPS worker must evaluate whether there is reasonable cause to believe the child(ren)'s health or safety is endangered by the conditions of the home or that supervision is inadequate.
 - a) If the CPS worker determines that either of the above two conditions are met, the worker must consult with a supervisor and notify law enforcement.
 - b) If the above two conditions are not met, the CPS worker must wait until the parent is present in the home to interview the child(ren).
3. **If the CPS worker is denied access to the alleged victim or the home, and the referral indicates that the alleged victim may be unsafe in the home,** CPS must request law enforcement assistance to conduct further assessment and take protective custody, if warranted. Absent information that the alleged victim is unsafe, CPS may exercise any of the following options:
 - i. Attempt to contact collateral contacts;

- ii. Continue to attempt to gain cooperation from the family or caregivers;
- iii. Seek law enforcement assistance;
- iv. Consult a CPS supervisor, the district attorney, assistant attorney general, or juvenile department to explore court intervention;
- v. Seek protective custody from the juvenile court.

- 4. Observe and document injuries and signs of abuse**, consistent with ORS 419B.028 (photographing children during investigation); photograph and document any present danger, safety threat, or impending safety threat. The CPS worker is encouraged to seek parental consent and assistance, when possible and appropriate (notably, the Manual does not provide further guidance on how to evaluate whether parental presence may be appropriate or what steps to take if the parent is not present). The CPS worker “must consider” including another worker or support person to act as a witness and to make the child(ren) comfortable.
- 5. Notify parents and caregivers of the interview on the same day that an interview of the subject child(ren) occurs.**
- 6. Face to face interview with non-offending parent or caregiver.** Adults living in the home must be provided with notice that a criminal history check may be conducted on them and each parent or caregiver must be given a pamphlet describing the CPS assessment process, court process, and rights.
- 7. Face to face interview with the alleged perpetrator, if such person is the custodial parent, caregiver, or person residing in the home.** If the alleged perpetrator does not reside in the home or is not a parent or caregiver, this interview can be conducted at a later time during the assessment process (if approved by CPS supervisor).
- 8. Obtain a medical assessment of the child if the CPS worker determines it necessary.** (OAR 413.015-0415(10)), ORS 419B.023(2).
 - a) The CPS worker must discuss the need for medical examination or treatment with the parent, seek their cooperation bringing the child to a medical facility, and request that the parent sign an authorization for the use and disclosure of information related to the examination.
 - b) If the parent does not consent to medical treatment, and is not cooperative with the above, the CPS worker is authorized to take the child into protective

custody without a court order for the purpose of obtaining medical treatment within the assigned assessment timeframes.⁶

- c) The CPS worker is also authorized to seek a court order for protective custody in cases where:
 - i. The parent refuses medical treatment or examination;
 - ii. The worker believes the parent may flee with the child(ren)
 - iii. Delaying treatment could result in severe harm.
- d) If the CPS worker observes a suspicious physical injury and has reasonable suspicion that the injury is the result of abuse, the worker must follow MDT protocol pursuant to ORS 418.747, including photographing the injuries and ensuring that a designated medical professional conducts an assessment within at least 48 hours. ORS 419B.023, 419B.028.

9. Mental Health Assessments and Access to Confidential Information. Notably, as part of the assessment, CPS workers are directed to ask parents to sign releases of information to enable DHS to obtain confidential information from physicians, mental health providers, school employees, and/or other treatment or service providers. DHS Manual, Chapter 3, §21. Likewise, OAR 413-015-0415(11) requires CPS workers to make a referral for a psychological or psychiatric evaluation of a parent, caregiver, or child by a mental health professional when the worker deems it necessary to *“assure safety, determine treatment needs, or assist in analyzing safety-related information when during the CPS assessment the CPS worker identifies a specific condition or behavior that requires professional evaluation.”* The CPS worker must obtain consent from the parent or caregiver, or court order, prior to making the referral.

C. Safety Planning (OAR [413-015-0425](#), [413-015-0428](#), [413-015-0432](#), DHS Manual Chapter 3, §5)

Determine if a present danger safety threat or impending danger safety threat exists.

In conducting assessments, workers must observe the home environment and document the condition of the living space as relevant to safety threats. DHS Manual, Chapter 3, §5; OAR 413-015-0425, 28; see also DHS Manual, Chapter 3, Appendix 3.1-3.5. The CPS worker must also observe the physical and emotional condition of the alleged victim, the reactions of the parents when confronted with information related to

⁶ Given parents’ and their children’s “well-elaborated constitutional right to live together without governmental interference,” “government officials are ordinarily required to obtain judicial authorization before removing a child” from their parents’ custody. *Demaree v. Pederson*, 887 F3d 870, 878 (9th Cir 2018). Only in “narrow circumstances” in which a government official has “reasonable cause to believe that the child is likely to experience serious bodily harm in the time that would be required to obtain a warrant” may the government official take custody of the child without a warrant or court order. *Id.*

the report, and interactions between family members. Id. Please see OAR 413-014-0422 for detailed guidance regarding how CPS workers must conduct interviews and observations as part of the assessment process.

- 1. Protective Action Plans and Safety Plans** During the course of the assessment, the CPS worker determines whether present danger safety threats or impending danger safety threats (as defined above) exist that require immediate intervention by the agency in the form of Protective Action Plans and Safety Plans. OAR 413-015-0432; DHS Manual Chapter 3, §5(A). Safety plans are written documents between the parent or caregiver and DHS. Id. The DHS manual emphasizes the safety plans are to be developed with the input of the parent. Id. The parent may end the plan at any point; however, if DHS perceives that the child is not safe without the plan, DHS must file a petition in court. Id.

- 2. Criteria for All Safety Plans** All safety plans should include the child(ren)'s parent or caregivers, safety service providers, and/or tribe. DHS Manual Chapter 3, §7. Any safety plan must be written out in a document shared with the parent(s) or caregivers and provide:
 - a) A detailed explanation of the conditions giving rise the safety threat;
 - b) How the safety threat will be managed either in or out of the home and why;
 - c) How the plan will be monitored.
 - d) In home plans require:
 - i. A "home-like setting" where the child(ren) and parent or caretaker can reside;
 - ii. The cooperation of at least one parent;
 - iii. A "calm" setting that allows for access by safety service providers and related activities; and,
 - iv. "Safety activities and resources" available to implement the plan. If these criteria are not met, then DHS will implement an out-of-home safety plan. The safety plan should identify the safety service providers utilized. Id.

- 3. Protective Action Plans:** Protective Action Plans ("PAP") are utilized when the CPS worker determines that a present danger threat exists. OAR 413-015-0435. DHS Manual, Chapter 3, §7. The requirements for a PAP are intended to manage the safety threat while the CPS assessment is on-going. Id. Due to the perceived severity of the danger, the plan must be in place before the worker leaves the home. Id. It cannot remain in place longer than ten calendar days and will not remain in place at the close of the DHS assessment. Id. Depending on the circumstances, protective actions plans may involve the child residing in or out of the home, according to the criteria listed above governing when an in-home plan

may be implemented. Id.

- 4. Initial and On-going safety Plans:** Initial and on-going safety plans are utilized to address impending, but not actively occurring, safety threats. OAR 413-015-0437, 0450; DHS Manual, Chapter 3, §7.
- a) An initial safety plan can remain in place throughout the CPS assessment but cannot continue after the assessment concludes. Id.
 - b) An on-going safety plan is intended to remain in place after the initial CPS assessment is complete, i.e., at the conclusion of the initial safety plan if DHS concludes that the child is unsafe and that continued DHS intervention is merited. Id. If an on-going safety plan is utilized, DHS must:
 - i. Involve the family in a Family Engagement meeting;
 - ii. Inform the parents or caregivers of the conditions for return and re-evaluate the terms of the initial safety plan; and,
 - iii. Arrange for visitation between the child and the child’s family if an out of home, on-going safety plan is utilized. OAR 413-015-0460.
- 5. Separation of Parent and Child as Part of Safety Plan:** Any safety plan premised on the alleged offending parent leaving the family home or the child leaving the home – *in the absence of court intervention* – is limited to 10 calendar days with a possible one-time 30 calendar day extension. Id. These time frames apply even if the parent(s) voluntarily agrees to leave the home or have the child leave the home. Id.

V. JUVENILE COURT ACTION & PROTECTIVE CUSTODY

OAR 413-015-0455 anticipates that a CPS worker will seek juvenile court intervention if they determine court oversight is necessary to ensure the subject child(ren) are safe and that the family receives services. Specifically, DHS is directed to file a petition if the safety threat cannot be mitigated within the time frame(s) outlined in the previous section. Id. Notably, the DHS manual directs that CPS must consider the “attachment and trauma impacts for the child and parent” and make efforts to minimize the impacts before pursuing a petition. DHS Manual, Chapter 3, §14.

Legal References: ORS [419B.100](#) (Jurisdiction); [419B.150](#) (When protective custody authorized); [419B.157](#) (Jurisdiction attaches at the time of custody); [419B.165](#) (Release of child taken into custody); [419B.168](#) (Procedure when child not released); [419B.175](#) (Initial disposition of child taken into protective custody); [419B.183](#) (Speedy hearing required); [419B.185](#) (Evidentiary hearing); [419B.192](#) (Placement of child or ward); [419B.809](#) (Petition); [419B.878](#) (Applicability of Indian Child Welfare Act); OAR 413-015-0455; DHS Manual, Chapter 3, §14

Generally, the DHS manual advises that a petition must be filed in court when, within the prescribed timeframes:

- i. In-home criteria are not likely to be met;
- ii. The present danger still exists;
- iii. There is insufficient information to determine whether there is present or impending danger;
- iv. The parent does not agree with the plan. Id.

A. Protective Custody

DHS must immediately file a petition in juvenile court any time the agency takes a child into protective custody, unless the child is thereafter released to the parent pursuant to ORS 419B.165.⁷ OAR 413-015-0455. If possible, DHS should apply for a protective custody order from the Court, prior to removing the child. Id.

Whenever a child is taken into custody and not released to his or her parents, ORS 419B.168 directs that the Court must hold a shelter hearing within 24-hours of removal (excluding weekends). DHS workers, counselor and peace officers are authorized to take children into protective custody. ORS 419B.150. When a child is taken into protective custody, ORS 419B.175 authorizes the entities taking protective custody to release the child to custody of a parent, guardian, or other responsible person, release the child on their own recognizance if appropriate, or place the child in shelter care. Jurisdiction of the juvenile court attaches at the time the child is taken into protective custody. ORS 419B.157.

B. Protective Custody Without a Court Order

Pursuant to 419B.150 and OAR 413-015-0455, DHS is authorized to take a child into protective custody without a court order in the following circumstances:

1. Where there is reasonable cause to believe there is an imminent threat of severe harm to a child;
2. Reasonable cause to believe the child poses an imminent threat of severe harm to self or others; or

The Due Process Clause of the 14th Amendment of the United States Constitution protects the fundamental right of parents to make decisions as to care, custody, and control of their children. Troxel v. Granville, 120 S.Ct. 2054, 2064 (2000). There is a presumption that fit parents act in the best interest of their children. Id. at 2061. So long as a parent adequately cares for his or her children, there is generally no reason for the state to interject itself into the private realm of the family in order to question the ability of the parent to make sound decisions concerning how they raise their children. Id. The construction and application of the provisions of ORS chapter 419B always implicate the due process rights of parents. Dept. of Human Services v. J.R.F., 351 Or 570 (2012).

⁷ 419B.165 directs that DHS “shall” release the child to the custody of his or her parent or “other person responsible in this state” except: 1. Where the court has issued a protective custody order or 2. Where the person taking the child into protective custody has probable cause to believe that the welfare of the child or others may be immediately endangered by the release of the child.

3. Reasonable cause to believe there is an imminent threat that the child's parent or guardian will cause the child to be beyond the reach of the juvenile court before the court can order the child to be taken into protective custody.
4. If there is reason to know that the child is an Indian child, the child may be taken into protective custody without a court order only when it is necessary to prevent imminent physical damage or harm to the child.
5. To ensure compliance with ORS 419B.023 (medical assessment and photographing of child) where the child has observable injuries and CPS has reasonable suspicion that such injuries resulted from abuse. *Id.*

C. Court-Ordered Protective Custody

DHS may seek a protective custody order (or removal order, in common parlance) by submitting a declaration to the court detailing why protective custody is necessary and the least restrictive means available to protect the child in one of the following circumstances (ORS 419B.150):

1. Protect the child from abuse;
2. Prevent the child from inflicting harm on self or others;
3. Ensure the child remains within the reach of the juvenile court if either of the above two conditions are present;
4. If there is reason to know that the child is an Indian child, prevent imminent physical damage or harm;
5. Allow for photographing of suspicious injuries and ensure a medical assessment is completed pursuant to ORS 419B.023(2), but only for the time necessary to complete these tasks. See also, 419B.028

The Court is authorized to order that DHS take protective custody of a child when, after reviewing DHS's declaration, the court determines that protective custody is necessary and the least restrictive means to protect the child(ren) from abuse; prevent the child(ren) from inflicting harm on themselves or others; ensure the child remain within the reach of the juvenile court; ensure the safety of a runaway child; or prevent imminent physical damage or harm to an Indian child. ORS 419B.150(6). The court must likewise determine that protective custody is in the best interest of the child. Id.

D. Shelter Hearing

Whenever child(ren) are taken into protective custody, or are about to be taken into custody, and placed in shelter care, the child and/or parent has the right to a hearing on whether protective custody is authorized. ORS 419B.185. This hearing is commonly referred to as a shelter hearing. The parent(s) and child(ren) have the right to present evidence at the hearing (and at any subsequent review hearing) to demonstrate that the child(ren) can be safely returned home without risk of further physical or emotional harm, endangering or harming others, or not remaining within the reach of the juvenile court. Id. The court is required to make written findings as follows, pursuant to ORS 419B.185:

1. Whether the child is an Indian Child;

2. Whether DHS made reasonable efforts, or, if the child is an Indian child, active efforts, to prevent the need for removal and make it possible for the child to safely return home. The Court must include in its written findings a brief description of such efforts, keeping the safety and health of the child(ren) as the paramount concern.
3. If the court finds that no services were provided to the family, but that the provision of services would not have eliminated the need for protective custody, then the requirement of reasonable or active efforts will be considered met;
4. Whether the provision of reasonable services can prevent or eliminate the need to separate the family.

DHS is required to present written documentation to the court detailing the efforts made to alleviate the need for removal, including efforts to provide services that would allow the child to safely return or remain at home; the efforts made to locate relatives with whom the child can be placed pursuant to ORS 419B.192; and why protective custody is in the best interest of the child. ORS 419B.185. The court may receive any relevant evidence at the hearing, without regard to the competency of such evidence. Id.

VI. Jurisdictional Standard

Pursuant to ORS 419B.100, the juvenile court has exclusive, original jurisdiction in any case involving a person under 18 years age who:

1. Is beyond the control of the parent, guardian, or custodian;
2. Whose behavior endangers self or others;
3. Whose condition and circumstances endanger the welfare of the child or of others;
4. Who is dependent for care and support on a public or private child caring agency that requires the services of the court in planning for the best interest of the person;
5. Whose parents or other person(s) having custody of the person have:
 - a) Abandoned the person
 - b) Failed to provide education as required by law
 - c) Subjected the person to cruelty, depravity, or unexplained injury
 - d) Failed to provide the person with the care, guidance, and protection necessary for the physical, mental, or emotional well-being of the person;
6. Who is a runaway;
7. Who has filed a petition for emancipation;
8. Who is subject to a dispositional order pursuant to ORS 419B.411.

In [Dept of Human Services v. A.F., 243 Or App 379, 385–88\(2011\)](#), the Court of Appeals explained the jurisdictional standard as follows:

[F]or the juvenile court to have jurisdiction over a child pursuant to ORS 419B.100(1)(c), the child's condition or circumstances must give rise to a threat of serious loss or injury to the child. The threat must be current. State v. S.T.S.,

236 Or.App. 646, 654, 238 P.3d 53 (2010) (the state must prove “that there is a *current* risk of harm and not simply that the child's welfare was endangered at some point in the past” (emphasis in original)). And, there must be a reasonable likelihood that the threat will be realized. State ex rel. Juv. Dept. v. Vanbuskirk, 202 Or.App. 401, 405, 122 P.3d 116 (2005) (reasoning that the “key inquiry in determining whether ‘condition[s] or circumstances’ warrant jurisdiction is whether, under the totality of the circumstances, there is a reasonable likelihood of harm to the welfare of the child”).

VII. REQUIRED DISPOSITIONS AT THE CLOSE OF CPS INVESTIGATIONS

Any investigation of child abuse undertaken pursuant to ORS 419B.020 must result in a finding that the report is founded/substantiated, unfounded/unsubstantiated, or cannot be determined. ORS 419B.026; OAR 413-015-1005-1010, OAR 413-015-0470. Parents, caregivers, and non-custodial parents must be provided with verbal notification of the assessment disposition and whether DHS will provide services as a result of the assessment.

- A. Founded/substantiated:** reasonable cause to believe the alleged abuse occurred.⁸
- B. Unfounded/unsubstantiated:** no evidence that the alleged abuse occurred
- C. Unable to determine:** some indication that the abuse occurred, but insufficient evidence to meet the reasonable cause standard. This disposition may be used only when:
 - 1. The family is unable to be located;
 - 2. Insufficient information to support a founded or unfounded disposition and:
 - a) The alleged victim will not or cannot provide consistent information; or
 - b) Inconsistent information gathered from collateral contacts/family.

⁸ In making a “founded disposition,” DHS does not determine whether a child is actually at risk of harm from abuse or neglect by a particular individual, as that determination is ultimately for the court to make. Instead, “DHS simply evaluates whether it is reasonable to think that” a child is at risk of abuse or neglect by a particular individual. Querbach v. Dept. of Human Services, 308 Or App 131, 136 (2020) (citing A.F. v. Oregon Dept. of Human Services, 251 Or App 576, 583-84 (2012)).