



OJD PRESENTATION - AGENDA

April 1 – 4, 2019

Day 1	Overview of the Judicial Branch
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Day 2	Oregon Tax and Circuit Court Programs
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Day 3	OJD Budget and Policy Option Packages
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Day 4	Public Testimony
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Oregon Tax Court: *Who We Are*

Regular Division

- Established 1961
- One statewide elected judge
- Hears appeals from Magistrate Division and some direct claims
- Appeals go to Supreme Court



Magistrate Division

- Established 1995 – replaces DOR hearings
- Three appointed magistrates
- Informal proceedings – mediation available
- Most parties represent themselves or use CPAs or other non-lawyers
- Resolves 90% of cases without further appeal





Oregon Tax Court: *Who We Serve*

Who appeals?

- Mainly individual taxpayers and small businesses
- Some multistate, international businesses
- Great majority are self-represented (36%) or have a representative who is not an attorney (CPA, company employee, family member)
- County assessors, Department of Revenue are typically defendants but sometimes are plaintiffs
- Average time to decision is about 7.4 months

Each decision is **written, reasoned, and published**

- Helps taxpayers understand how the law applies to them
- Builds a body of cases for future guidance
- Available without charge on Judicial Department website



Oregon Tax Court: *What We Do*

Sole jurisdiction over matters arising under **state tax laws**

- State law excludes liquor taxes, fuel taxes, worker compensation, unemployment, others
- State law excludes local taxes unless administered by DOR

Docket:

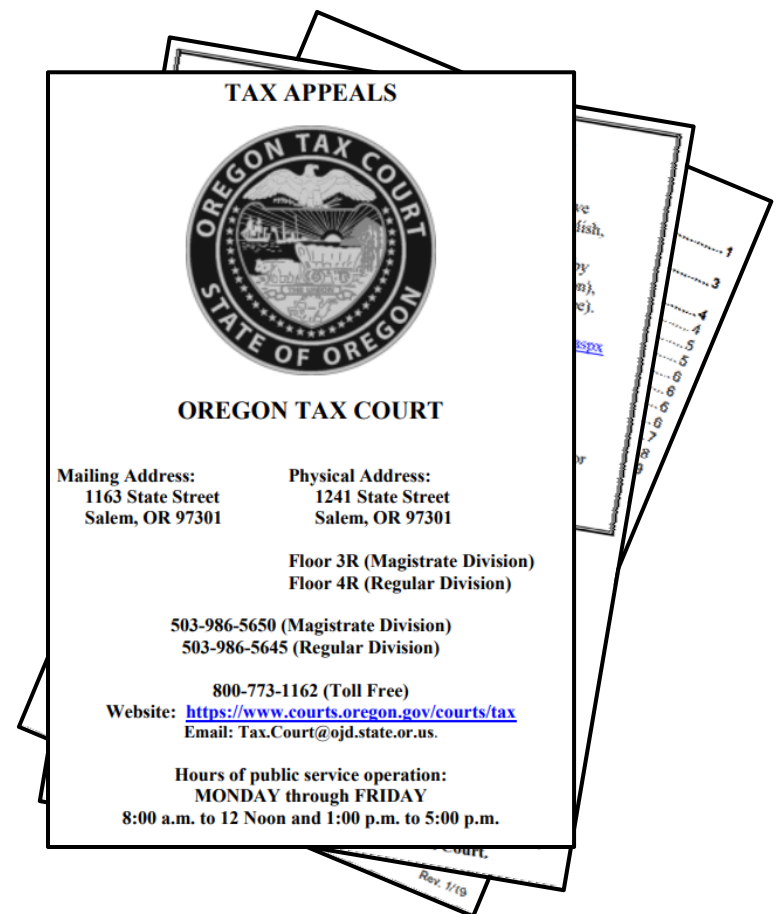
- 1/3 income and excise taxes
- 2/3 property tax

Number of appeals varies:

- Law changes (Measure 50, stable income tax law → recent decline in appeals)
- Economic cycle (50% spike between 2006-08 and 2008-10)
- Audit and enforcement practices
- 813 appeals 2016-18; **average 974** since 2012

Oregon Tax Court: *Access to Justice*

- **Handbook for Litigants** covers 35 FAQs from “How do I file a complaint?” to “What are the trial procedures?”
- Court is working on **YouTube videos** for self-help (*Thanks to the Bar for production help!*)
- Court is in line to put its forms online in **OJD Guide & File** to make filing easier and less confusing
- **Phone proceedings** are available and common
- Magistrate Division offers **mediation**



Oregon Tax Court: *Our Mission*



I believe that all Oregonians should be proud of our Tax Court. A specialized, judicial-branch tax court helps inspire public confidence in our system of tax laws. Other states recognize this and look to our court as a model. We believe deeply in applying our specialized tax expertise impartially, and in making our court accessible to everyone who needs it.

Hon. Robert Manicke, Tax Court Judge



Oregon Circuit Courts

- General Jurisdiction
- Courts of Record
- 27 Judicial Districts
- 175 Circuit Court Judges
- 1,213 Circuit Court Staff across the state
- Over 750,000 cases filed each year
- More than 1.8 million documents eFiled each year

Additional Circuit Court Functions



Access

- Assist self-represented individuals through in-person and self-help services
- Provide ADA and language services for Oregonians
- Coordinate with county leadership for structural accessibility at court locations



Leadership

- Preside over statutory advisory committees (criminal justice, family law, court security / emergency preparedness), appoint members
- Propose Supplemental Local Rules (SLRs) to structure local processes in accordance with Chief Justice's statewide Uniform Trial Court Rules (UTCs)



Civic Engagement

- Coordinate with state and local public officials to improve efficiencies and outcomes
- Engage in civic education with local community organizations & schools
- Recruit & train volunteers, mediators, and Citizen Review Board (CRB) members for dispute resolution & case oversight



Administration

- **Presiding Judges:** Oversee local docket management and court operations; appoints trial court administrator
- **Trial Court Administrators:** Manage daily operations of circuit court programs and services



Statutory Responsibilities Presiding Judge

(See primarily ORS Chapters 1, 3, 8; UTCR 1.050; CJOs 03-028; 03.029)

Collectively:

- Advise the Chief Justice on budget and court administration matters

Within Their Respective Courts:

- Exercise administrative authority and supervision consistent with power delegated by the Chief Justice
- Assign cases and administrative work to other judges (docket / calendar control)
- Appoint or remove a trial court administrator under the personnel plan approved by the Chief Justice
- Ensure proper management of local budget and use of staff resources through the Trial Court Administrator
- May appoint an advisory committee on court security
- Establish a local Criminal Justice Advisory Council
- Establish a local Family Law Advisory Committee
- Provide leadership in implementing arbitration and mediation programs
- Maintain public outreach activities on judicial administration and local court information
- Oversee local rulemaking, including making Supplemental Local Rules (SLRs) and issuing Presiding Judge Orders (PJOs)
- As directed by the Chief Justice, establish court hours and public service hours for the judicial district



Statutory Responsibilities Trial Court Administrator

(See primarily ORS Chapters 7, 8, and 10)

Collectively:

- Keep the seal of the court and affix it in all cases required by law
- Record court proceedings
- Keep records, files, books, and documents pertaining to the court
- File all documents delivered for filing in any action or proceeding in the court
- Attend terms of the court; administer oaths; receive jury verdicts
- Under the court's direction, enter its orders and judgments
- Authenticate, by certificate or transcript, the records, files, proceedings, or other documents filed with the court
- Take and certify the proof and acknowledgment of a conveyance of real property or any other written instrument authorized or required to be proved or acknowledged
- Designate a person to act as transcript coordinator for the court

Other Major Responsibilities (as directed by the presiding judge):

- Manage the trial court's budget and resources
- Ensure consistent and equitable administration of Judicial Department rules, policies, and procedures at the local level
- Recruit, supervise, and manage circuit court staff directly or through subordinate supervisors
- Manage and direct the trial court's administrative programs and operations
- Maintain positive working relationships with other government agencies and the community
- Implement procedures to allow a person called for jury service to serve for one day or for one trial if selected to serve
- Coordinate with county leadership to ensure adequate facilities
- Coordinate local efforts with the Judicial Department's legislative, access, and public outreach initiatives

Circuit Court Case Types



- Civil
- Family
- Juvenile
- Civil Commitment
- Criminal

Oregon Docket Management Initiative: *Time to Disposition Standards*

■ Guiding Principles

- Should be realistic *and* aspirational
- National Center for State Courts (NCSC) Model Time Standards
- Current Oregon time standards used as base
- No departure from model standards unless particular and articulated reason
- No modification simply to achieve better statistical results

New Time Standards

- Post-Conviction Relief
- Violations
- Post-Judgment Family
- Administration of Estates
- Adult Protective Proceedings
- Juvenile Dependency
- Juvenile Delinquency



Civil Case Types

Civil Case types include

- Contract Disputes
- Tort Claims
- Landlord-Tenant (FEDs)
- Small Claims
- Procedural Matters (Contempt)



The following are also civil cases, but data is tracked separately

- Family
- Juvenile
- Civil Commitment

Civil

- Average 145,683 filings per year (2013-2018)

- Average Time to Disposition (2018)
 - *Contract Disputes and Tort Claims*: 265 days
 - *Landlord-Tenant*: 45 days
 - *Small Claims*: 100 days
 - *Procedural Matters*: 118 days





Resource Constraints Create Docket Management Challenges

- Statutory timeframes in criminal, juvenile, and other case types can make it challenging to schedule and adhere to trial dates in civil cases

- Trials can take days or weeks; majority are of limited duration

- Complex civil cases take many months to prepare
 - Discovery is frequently voluminous
 - Witnesses often have limited availability & travel from great distances
 - Continuances increase costs to litigants and witnesses
 - Litigants often need access to advanced technology during trials



Case Resolutions Without Trials

■ **Judicial Settlement Conferences**

- Saves resources by resolving cases without trial
- Low-cost alternative to private mediation
- Typically requires only a few hours of judicial involvement

■ **Mediation and Alternative Dispute Resolution (ADR)**

- Flexible and efficient way to help parties reach agreement
- Uses retired judges and trained private mediators

■ **Arbitration**

- Required by statute for claims involving less than \$50,000
- Preserves right to jury trial; not requested in most cases
- Costs typically capped by court rules

Civil Justice Improvements

Task Force Report

- Conference of Chief Justices: *Call to Action*
- Oregon Task Force: 16 members
 - Judges, Trial Court Administrators, Attorneys, Oregon State Bar CEO
- Review and Discussion Process
- New Uniform Trial Court Rules
- Best Practices and Recommendations





Fee Deferral and Waiver

Two-year project involving all stakeholder groups allowed OJD to simplify and streamline the process

- Increased access to the courts for litigants by simplifying the application process
 - Clarified the rules for more statewide processing consistency
 - Created statewide forms; available in OJD Guide and File (interactive)
 - Reduced amount of paperwork necessary to apply
- Updated the Standards Governing Fee Deferral and Waiver applications (CJO 18-024 eft. June 1, 2018)
- Developed statewide business processes for courts

Filing fees range from
\$5 - \$1,119

OJD granted
approximately **13,000**
requests for deferral or
waiver in 2018



Funding is Critical

- Landlord / tenant and small claims resolved within statutory deadlines
- Tort and other claims resolved in ways that meet community expectations and comply with constitutional rights to jury trial without undue delay
- Business disputes resolved quickly to protect employees and employers from financial hardship or unnecessary harm
- Tenants and landlords protected from lack of housing or income
- Costs associated with complex civil litigation do not create a barrier to justice
 - Courts must be available to efficiently resolve discovery and other pretrial matters
 - Trials must be scheduled in a reasonable timeframe
 - Limited court resources should not necessitate continuances
- *Litigants need to be and feel heard – Procedural Justice*

Family Law Matters in Oregon Courts

- Domestic Relations
- Juvenile
- Probate & Protective Proceedings



Domestic Relations



■ **New cases filed in 2018:**

- ❑ 21,162 Dissolution / Unmarried Parent cases
- ❑ 15,890 Domestic Violence and other Protection cases
- ❑ 7,125 Adoption / Child Support / 3rd Party Rights cases

■ **Families' needs are time sensitive:**

- ❑ a custodial parent needs authority to enroll a child in school, or seek treatment
- ❑ property divisions and title assignments can be time sensitive for tax related benefits
- ❑ parents ability to travel with their children can be affected
- ❑ immediate protections for victims of violence and stalking

What is Different About Domestic Relations Work?

■ Volume of “Return” Cases

- ❑ “New” case filing data does not begin to capture the true volume and time associated with the work
- ❑ Bulk of work is post-judgment (i.e., enforcement & modification)

■ Urgency of Hearings

- ❑ Statutory timelines
- ❑ Timelines based on child’s needs (protection, relocation, school change, etc.)
- ❑ Interstate judicial consultations to decide which state will act

■ High Rates of Self-Representation

- ❑ 80% of Oregon family law cases have at least one litigant without an attorney
- ❑ Huge challenge for judges and court staff
 - Document review and return multiple times
 - Unprepared litigants
 - Delays



Urgency on Family Law Matters



The pressures of family dynamics and how families function put an urgency on family law matters before the court...orders need to be in place before school starts, adoptions need to be finalized before the end of the year, and school holiday and summer vacation schedules need to be worked out.

Oregon Courts Leverage Resources to Help Families

■ **Ancillary Services and Collaborations:**

- Facilitation Services
- Informal Domestic Relations Trials
- Unbundled Legal Services
- Parent Education
- Appropriate Dispute Resolution Services
- Custody & Parenting Time Mediation
- Settlement Conferences
- Co-location of staff from nonprofit agencies
- Lawyer in the Library
- Collaborations with the Oregon State Bar, Child Support Program, Legal Aid of Oregon



CourtCare – childcare for court customers



Funding is Critical

Families, domestic violence victims, and others, need timely court access to minimize trauma

□ Courts must have reliable infrastructure

- Computers and facilitation staff to assist with form selection & review
- Court services via phone, email, and the Web
- Court-connected mediation
- Judges available to address emergency situations
- Courts and phones open during normal business hours, especially during lunch hours
- Facilitators and counter service staff available to ensure the correct forms are used and to answer basic questions

Juvenile Cases in Oregon Courts – 2018



2018 Juvenile Case Data

- 4,399 dependency petitions filed
 - 25,894 hearings
- 1,541 termination of parental rights petitions
 - 2,107 hearings
- 37 permanent guardianships
 - 76 hearings
- 23 emancipations
 - 32 hearings
- 20 voluntary proceedings
 - 42 hearings
- 4,158 delinquency petitions
 - 14,131 hearings



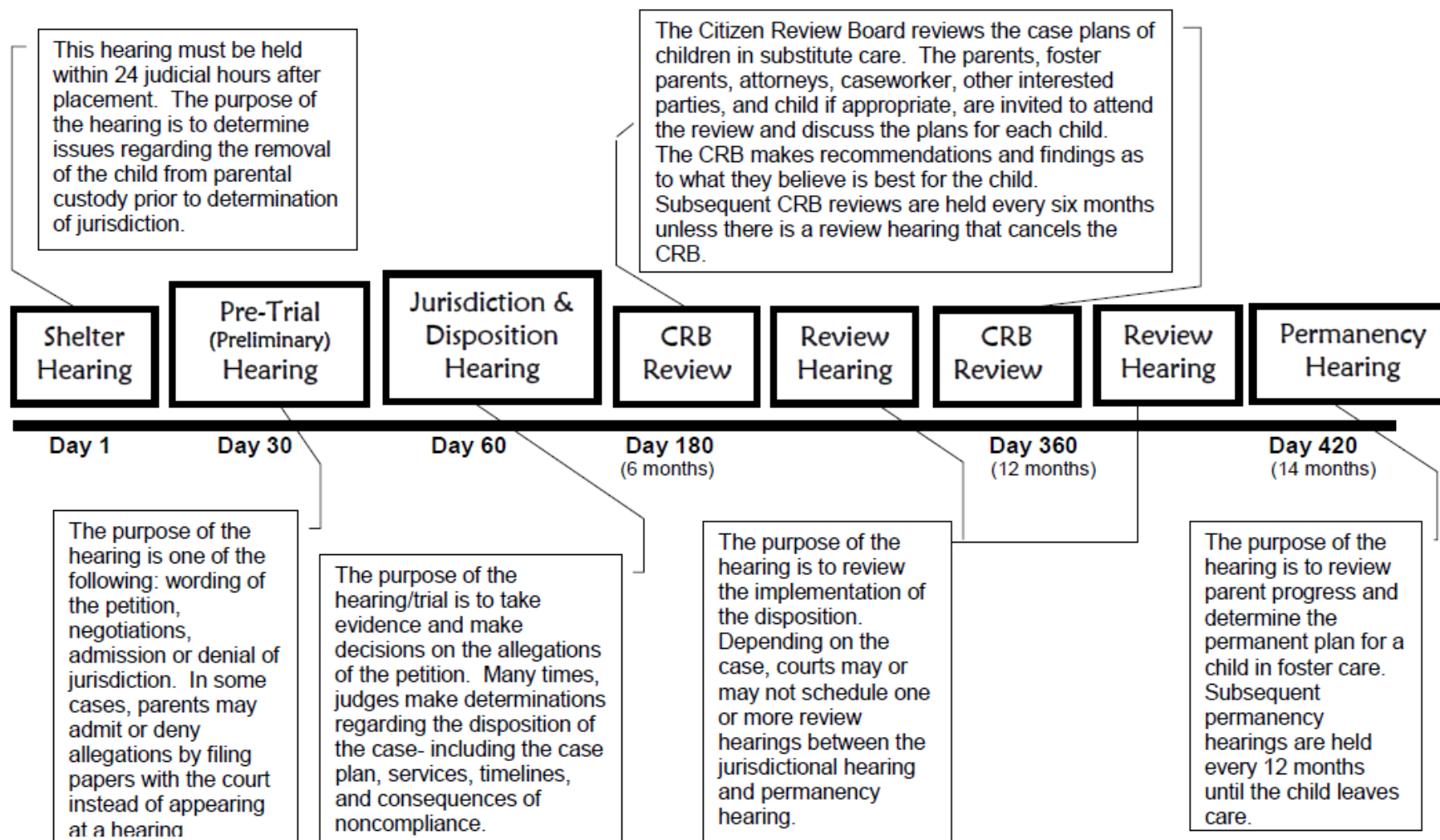
The Number of Dependency Filings Does Not Explain the Workload

- As of January 1, 2019, there were 15,124 active juvenile dependency cases being managed by Oregon courts.
- On average, judges manage 10 parties and attorneys for dependency proceedings.
- Judges must take DHS court reports and CRB Findings & Recommendations home to review each night before the next day's full hearings docket because there is not time available during the day.

***The time needed to
meaningfully hear from all
parties and others puts
extreme time constraints
on the court's docket.***



Oregon's Juvenile Dependency Court Proceedings



The times noted above for court proceedings are the maximum times permitted by state and federal law. Courts may schedule proceedings earlier than the times noted due to the special circumstances of a case and parent progress with the case plan.



Funding is Critical

Children should not be removed from their homes for a longer period than necessary, families must be reunited as soon as safely possible, and when reunification is not an option, children should be adopted or in a permanent living situation

- Shelter hearings must occur within 24 hours of removal.
- Families need an opportunity to explain why state intervention is or is not necessary; this is a critical component of a fair justice process, and it takes time to allow parents and children to be heard.
- Courts must dismiss cases or establish jurisdiction without delay.
- When services are necessary, they should start as soon as possible to give the family time to make progress before the required permanency hearing.
- Courts must be available to review cases to ensure that children do not languish in the system, and that children are receiving appropriate attention and services while in substitute care.
- Judges need time to work with all system participants to create efficient and effective methods for overseeing and resolving cases.

Citizen Involvement in Juvenile Dependency Cases

Citizen Review Board (CRB) is Oregon's citizen foster care review board

- In 2018 the CRBs conducted 4,434 reviews involving 6,138 children
- 63 boards statewide with nearly 300 volunteers
- Citizen review is an important check and balance to Oregon's foster care system
- Citizen volunteers are independent, bring diverse backgrounds, offer a common sense perspective to foster care cases, and a review environment that is typically less formal than a court hearing
- In 2017, an independent evaluation of CRB found judges overwhelmingly value the CRB as a check and balance to the foster care system and believe CRB findings and recommendations help them conduct more thorough hearings





Juvenile Court Improvement Program (JCIP)

■ **A Collaborative Approach, Local JCIP Model Courts**

- work to improve outcomes for children and families involved in child welfare cases
- recognize that juvenile court, child welfare, and community stakeholder systems are inter-related and that effective change affects all systems
- are laboratories for discovering new ways to eliminate barriers to permanency; some experiments will work, some won't
- practice continuous quality improvement (CQI)

■ **Examples of state level collaborative efforts:**

- JCIP & DHS project to increase the number of children adopted within one year of becoming legally free
- Differentiated Case Management (DCM) project
- Multi-disciplinary educational programs
- ICWA Compliance and Qualified Expert Witness trainings
- Budget note to Improve the Effectiveness and Efficiency of the Juvenile Dependency System

Strategies to Improve the Effectiveness and Efficiency of the Juvenile Dependency System (2017 HB 5006 A Budget Note)

- OJD coordinated this effort with courts, DOJ, PDSC, and DHS to work collaboratively
 - Each local court convened a multidisciplinary team to review and examine practices, assess their system, and develop three areas for improvement
 - All courts worked to implement one of the following:
 - Improve shelter hearings: consistent scheduled times each day & parents have an opportunity to meet with their attorney prior to the shelter hearing
 - Develop and implement effective settlement opportunities
 - Develop local policies that prioritize juvenile dependency matters on court dockets
 - Improve timeliness to permanency – finalize adoptions within a year of child being legally free



Local court multidisciplinary teams include: DHS, DOJ, PDSC, DAs, CRBs, CASAs, treatment providers for mental health and alcohol/drug, and foster parents, juvenile departments, and others....

Family Dependency Treatment Courts

HB 2258

- Most families in dependency court are impacted by substance abuse
- Family Dependency Treatment Courts address the needs of substance abusing parents involved in the child welfare system
- Parents have access to a continuum of evidence-based alcohol, drug, and mental health services
- Families have access to housing and child care resources
- Frequent interaction with judges improves outcomes
- Increases likelihood of successful reunification
- Cross-system teams coordinate strategy at the case level
- Child safety and well-being maintained



Probate & Protective Proceedings

■ Guardianship Cases

- Over 2,200 new cases filed per year
- More than 14,500 protected persons

■ Conservatorship Cases

- Nearly \$1 billion in assets monitored by the courts

■ Probate Cases

- Estate – General: 4,955
- Small Estate: 4,270
- Trust: 380
- Doc. Recording: 42



“While Oregon is following the national trend, driven by the aging baby boomer generation, Oregon's 65-and-older population is growing faster than the nation as a whole.” The Oregonian June 21, 2018

Oregon Courts recognize and respond to vulnerable persons

■ Current efforts:

- ❖ Data gathering and reporting
- ❖ Statewide training for court visitors
- ❖ Guardianship Monitoring Program
- ❖ Fiduciary Certification and Education Requirements
- ❖ Judicial Education
- ❖ Court-appointed attorneys for protected persons (currently unfunded)
- ❖ Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)





As recent news stories have shown, judges in protective proceedings are in the unique position of assessing the needs and protecting the rights of persons who often cannot speak for themselves.

In juvenile cases there are many safeguards in place to protect children in a complex system.

The impact on a protected person in a guardianship are as high or may even be higher where

- guardianships may last the rest of a person's life;
- require a protected person to live in a locked facility;
- require the person to submit to medical procedures; and
- involve end of life decisions and withdrawal of life support.



Civil Commitment

ORS Chapter 426

The process by which a circuit court judge determines, by clear and convincing evidence, whether a person has a mental illness and is in need of treatment.

Although a civil commitment is not a criminal conviction, it can involve detention in a locked facility before the hearing as well as after the hearing. Oregon statutes and the Oregon Constitution require due process rights including appointment of counsel for the person who is the subject of the civil commitment proceeding.

Average 8,328 civil commitment cases filed in circuit courts each year (2013-2018)

Circuit Court Judges:

1. Hold hearings outside of the courthouse – often at a hospital or where the person resides.
2. Hold hearings within 5 judicial days.
3. Determine pre-hearing detention of the person.
4. After the hearing, make specific and detailed factual findings and rulings based upon the evidence which includes expert testimony, investigative reports, medical records, and examiner reports
5. If the court finds a civil commitment is necessary, by clear and convincing evidence,
 - a. Determine and make findings about whether the person will remain in the community or be ordered committed to the Oregon Health Authority,
 - b. Establish a period of commitment not to exceed 180 days (A period of assisted outpatient treatment shall not exceed 12 months).



Funding is Critical

to protect our vulnerable citizens:

- Well-trained staff to audit annual accountings and review guardians' reports
- Adequate docket time and judicial staffing to address emergency issues as they arise
- Availability of court appointed attorneys to represent protected persons and those who are facing civil commitment proceedings
- Multi-disciplinary training on appropriate remedies and least restrictive alternatives
- Adequate means to gather and report data