

OREGON LAW COMMISSION

Date: April 1, 2013
9:30 am

Oregon Civic Justice Center
Melvin Henderson-Rubio Hearing Room
Salem, OR

MEMBERS PRESENT: Lane Shetterly, Chair
Prof. Bernie Vail, Vice Chair
Mark Comstock
Hardy Myers
Judge Stephen Bushong
Rep. Chris Garrett
Sen. Floyd Prozanski
Assistant AG Sarah Villanueva (for AG Rosenblum)

MEMBERS EXCUSED: John DiLorenzo, Jr.
Scott Shorr
Prof. Symeon Symeonides
Julie McFarlane
Prof. Susan Gary
Justice Martha Walters
Chief Judge Rick Haselton

STAFF PRESENT: Prof. Jeff Dobbins, Executive Director
Wendy Johnson, Deputy Director and General Counsel
Bealisa Sydlik, Legislative Counsel
Lisa Ehlers, Legal Assistant
Sarah De La Cruz, Law Clerk

GUESTS: Michelle Castro
Michael Casper
Charles Hinkle
Maurita Johnson
Shannon Storey

MEASURE/ISSUES HEARD:
Review and Approval of the Legislative Concepts and Reports
Juvenile Records, SB 622
Uniform Unsworn Foreign Declarations Act, HB 2833

Speaker	Comments
Shetterly	Call the meeting to order.
Johnson	Explains Act: HB 2833 Allows a person to make a declaration overseas that is not done in front of a notary. This is what is done on the Federal level. We do have ORCP 1, but that only covers affidavits. Dexter

Johnson and other LC staff do recommend we move forward with an amendment so we are not overlapping with ORCP 1, but we can catch what ORCP 1 doesn't cover. Scott Shorr has already amended the report to reflect this. One example of this is the Bar Exam application.

Shetterly

Yes we do need this. Discussion?

Comstock

Motion HB 2833 be presented as conceptually amended by Wendy Johnson and report as amended by Scott Shorr.

Shetterly

Objections? None. Motion carried.

Juvenile Records.

Johnson

Reviews bill purpose again.

Main purpose was to define the legal file and the social file and who has access to these two files. The term social file is unique to juvenile court and has history, mental and physical health, updates on family etc. but is not part of the case file. The Work Group decided to call it the supplemental confidential file. Juvenile Department and OYA need their own history and prognosis file and state that file will continue to be confidential. We have the -1 amendments and OYA amendments. The -1s are a gut-and-stuff. OYA's amendment is not yet approved by Work Group but it does what they wanted it to achieve.

Norris-Lampe

Available for questions

Johnson

Walk through bill.

Starts with definitions. Defines person, prospective appellate attorney, record of the case, and supplemental confidential file. Clarified CRB finding, transcripts, etc. Clarified what is part of the record of the case. Exhibits are treated differently and we clarified that it will be part of the record of the case and added phrase supporting documentation. Defined supplemental case file, gave it a name, and basically this is the holding place for other things not in the record of the case. Records as defined, does include electronic records. ECourt will handle the rest of what goes with electronic records. Section 2 allows judges to take exhibits and issue notices. This is existing practice, but is a little messy, so this cleans it up so it is clear. Also made it clear as to what you are relying on by offering a list.

Section 3 is the heart of the bill. Lists out who has inspection rights and copy rights to the record of the case and the supplemental confidential file. Guardian Ad Litem has been missing in the record of the case section. Service providers are added to record of the case, they already have been receiving the supplemental confidential file and it seemed like something that was missing. Prospective appellate attorneys were also added. Copy rights added for CASAs. At the bottom of page 11, we would like to delete that paragraph with -1s. Special note on parties of the case, we are keeping the status quo here. Parties of delinquency cases get copy of notice and pleadings. We didn't come up with consensus about what parents should have access to.

Sub Issue: psychological evaluations of parents, bill reflects no change on this, consensus could not be reached.

Supplemental confidential file regarding who can inspect and have copies. Rights to inspect were given to parent or guardian in dependency cases. Same with Guardian Ad Litem. Parents don't have access in delinquency cases unless the youth consented or the judge granted access.

Myers

Page 6 Line 3 of -1s – provides consents with an s. Also provide consent to versus consents to? Troubling language.

Sydilk

Could strike “provides” at the end of line 3 and amend consent to consents on line 7.

Johnson

Continued with review.

CASAs are added to who has inspection rights to the supplemental file. Copy access also added for courts and CASAs. Deleted return of copies to court because with efile and eCourt, files just aren't returnable. Destruction of files is required. Subsection 4 of this section deals with state actors (DOJ, OYA, etc.) just moved over.

Section 4 existing statute; moving transcripts to this section.

Line 28 & 29 page 12 references the people provided in .255.

Section 4(3). Conceptual amendment by DOJ will pick up appellate court arguments on video or audio.

Section 5, line 30, page 12 -1s, 419.257 is repealed. OYA amendments will go here if we decide to go with that,

Section 6 amends existing guardianship statute. Requiring a guardianship summary along with report, but no other change.

Section 7-10 not substantive

Section 11 makes it clear that this will apply to proceedings after effective date, not retroactive.

Shetterly	Questions?
Myers	No definition of service providers? Can you give us an example?
Johnson	Not defined in existing law. It's too difficult to define because there are too many. Usually medical or educational.
Shetterly	Might be worth adding to the report so it is clear what we are talking about.
Comstock	Section 3 of the -1s, top of page 5, sub (m), I wanted to make sure it includes deputy district attorneys and attorney generals.
Johnson	This is the language in the existing law. That has not really been asked before.
Sydlik	It appears differently, there is not consistency. Further clarification would be good.
Shetterly	Any problem in practice? None. Let's leave it for now, but if it becomes a problem we can go from there.
Comstock	On conceptual amendment to delete the "any other persons" to have copy rights. Is that intended to limit the discretion of the judge?
Johnson	On printed bill at end of those who have copy rights (page 3 line 23). The group wanted to include those that had inspection rights to maybe be able to have copy rights if the judge granted them. Work Group decided to delete at all 3 places. Place that now speaks to discretion page 8, line 6 of the -1s which restores it back to the status quo.
Comstock	It seems to me that the judge is best one who is able to decide who should have access to copy rights. Does this bill limit what the judge can do?
Johnson	This judge would keep the status quo.

Myers	Would the effective dates in section 11 affect the pending case?
Johnson	The bill is not retroactive.
Myers	Would restoration of language apply to case on appeal?
Hinkle	No, because of commenced on or after.
Casper	From DOJ. Some pending cases are mandamus proceedings. It is possible it could come under this.
Shetterly	Mr. Hinkle?
Hinkle	Applauds effort to make the statute more readable, but this still leaves waters muddled. Abdication of legislature responsibility by allowing judge to decide what this means. The legislative branch needs to decide if the judge has discretion. Waller came down on both sides on the does it give me power question. DOJ came down on the yes side. To further confusion, look at OYA amendments. On back of page 4 mentions that no information disclosed without authority of court. Is that an affirmative grant of authorization? If so, why delete the 3 sections Ms. Johnson talked about. Page 9 -1s top line. Another affirmative grant of authority to the court to consent to release? OLC either wants the court to have authority or not. This is a bit ambiguous and needs to be clarified.
Johnson	OYA and Juvenile Department have always believed they can release documents if the youth consents or the court requires them. The Work Group has different opinions and did not want to touch the judge issue on whether they have authority or not.
Myers	Different opinions on the policy or what the words mean?
Johnson	Both. There are a number of judges who read that statute as providing them no authority.
Myers	Seems like a critical call by OLC as to whether judges have authority to grant whatever step is sought. If that is our position,

	we should make it as clear as possible.
Johnson	Group didn't have opportunity to come up with possible middle ground on this issue. Work Group focused on parties and who should be getting access.
Shetterly	Is it best for Judges to make the decisions?
Johnson	Should legislature put parameters on judge's discretion?
Symeonides	Any other interested person? This would suggest to the judges that there would be some parameters.
Hinkle	This is still ambiguous. Press is responsible, but should they gain access? My amendments would restore language and put back the authority to the judge.
Shetterly	DOJ believes that as the bill is, the judges do have discretion. Where do practitioners fall?
Storey	As written court has discretion but we would like it to be more clear. Caveat – other practitioners may disagree, but as a parent's attorney, this is how I read it.
Myers	If OLC goes with unfettered, it will need to be clarified at some point. Work Group does not yet have this language.
Johnson	We might run into Work Group opposition if we take a stand on this. The Work Group wanted to save the bill for the other important points and tackle this issue later.
Shetterly	Put bill in as is and agree we're punting, put in with judge's discretion, or is this bill ready to go forward with this issue remaining?
Dobbins	Go with -1s while insulating access question and think about presenting or letting others do a -2.
Shetterly	I'm not comfortable having an OLC bill go forward like that.

Norris-Lampe	Not speaking to policy debate. There are significant law improvements this party will provide. Clarifying 2 parts of the record, who has access, etc.
Myers	Yes, real substance. It would be a shame to wait 2 more years because of this particular issue. The Work Group can come in and voice their opinions.
Shetterly	I agree. We need to make a policy decision.
Comstock	I would like to not adopt the conceptual amendments. I want it clear that court has discretion to provide documents to any other persons allowed by the court. Restoring authority authorization language.
Shetterly	Objections to adopting the -1s with conceptual amendments with the authority language? None
Hinkle	Procedural matter – access to transcript or audio recording. If the hearing is public so anyone can be present, it doesn't make sense not to allow an interested party to get a copy of the transcript. I feel my amendment regarding this should be noncontroversial.
Shetterly	Discussed by Work Group?
Johnson	No.
Casper	It would be quite controversial to DHS. There are lots of reasons to not give transcripts at anyone's requests, especially those who did not attend the hearing. Constitution does not require it. However, with Mr. Hinkle as a party, they should get it. This should be at court's discretion.
Myers	DOJ position to a non-party who attends hearing gaining access to a transcript?
Casper	No position beyond judge's discretion.
Norris-Lampe	Keep status quo in Section 3 is what judges on our Work Group

want.

Johnson

Page 2 of the -1, line 5 - transcripts are part of the record of the case which would be at judge's discretion to allow access. This would be the Work Group's preference.

Comstock

Moves with -1 amendment and with conceptual amendment of any other person language giving you the judge's authority.

Shetterly

Also on page 6 deletes provides line 7 consents. Page 12 -1s to address appellate and incorporate in Section 5 the restated version of ORS 419A.257 from OYA.

Johnson

Also, type-o's on page 8 – Line 24: m, n, o-p; line 26 and 28: make sure it covers subsection 4.

Comstock

Include these conceptual amendments in my motion.

Dobbins

Section 3 q. add everyone

Myers

With adding appellate video or audio of ORAL arguments. Add oral.

Comstock

Also move report be adopted to accompany SB 622 as amended

Hinkle

If OLC says orders in juvenile courts can be secret, can say that for criminal, etc. which is unconstitutional. Should propose to voters that no court is secret except juvenile. Dias case is an empty promise. I can't find out when or what is being heard by courts. Dispositive court order?

Comstock

Doesn't the record of the case include orders and judgment?

Hinkle

Yes, but can't be disclosed except with the consent of the court. If you can do that, then why can't you do that to a death penalty case. The Constitution does not allow for secret juvenile courts.

Myers

Work Group feedback?

Johnson	Not discussed at all. Practice would probably change and not much would be included in orders and judgments, if we would change that. This issue wasn't addressed though.
Casper	Constitution doesn't require the release of orders and judgments.
Shetterly	Mr. Hinkle has raised good constitution arguments, but we are not going to change status quo on this when we haven't heard the other side. Objections? None. We will go ahead with Mr. Comstock's motion. Further discussion? Objections? None. Motion carried.
Johnson	Thanks to Lisa Norris-Lampe for being my partner of this project.
Shetterly	Thanks to everyone for attending. Meeting adjourned 11:15am.

Submitted By,

Reviewed By,

Lisa Ehlers
Legal Assistant

Wendy Johnson
Deputy Director and General Counsel

EXHIBIT SUMMARY

SB 622 Proposed Amendments from OYA and Juvenile Department
SB 622-1 Amendment
Memo from Charles Hinkle regarding SB 622
Response from LC regarding HB 2833 and HB 2834