Daniel R. Murphy
Presiding Judge

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CIRCUIT COURT OF THE STATE OF OREGON
TWENTY THIRD JUDICIAL DISTRICT
LINN COUNTY

March 5, 2013

Representative Andy Olson
Oregon Legislature
Salem, Oregon

SENT BY EMAIL ONLY

Re: HB 3363

Dear Andy:

I have serious concerns about HB 3363 which appears to be sponsored by the CASA program. It is a good program but this bill has significant problems. This kind of legislative reform should be studied by an interdisciplinary group in between sessions so that a much less flawed bill could be considered by the Legislature.

Fiscal Impact:

This bill will require a substantial amount of litigation to define its new provisions, new terminology and sort out the procedural questions it leaves unanswered. In addition it creates a permanency hearing in some cases which is not likely to be of much use but will have a substantial impact on court dockets, court expenses, indigent defense expenses, and prosecution expenses in addition to case worker time in DHS. There is no proposed funding here to pay for these added costs. Our courts are already stretched to the limit on these cases. Adding new hearings and new requirements without new funding is irresponsible. It will only force courts to delay or neglect cases that do not have this statutory direction and cause injustice in other areas of the law.

Policy:

Section 2. (3)(a) provides for amending the petition at any time in some fashion which is not clearly defined related to the original allegations in the petition. This is first confusing

in that it is not clear what the intent is about the scope of such amendments. It is procedurally flawed as it appears to allow amending jurisdiction at any time in the case which can violate due process and will be extremely confusing in the administration of the case. After jurisdiction is taken, under the current system, new allegations and new bases for jurisdiction may only be brought before the court through a new petition. This keeps it clear what the jurisdictional basis is in a case and protects all parties. This should be preserved. This section should be removed from the bill.

Section 2. (3)(b) allows hearing on new allegations within 7 days of notice thereof. This is an unreasonable amount of time in many cases to adequately prepare for trial. A longer period should be provided (not less than 30 days) if this section 2 is retained in any fashion, which again I am urging against.

Section 3(1)(g) - (i) contains language which is confusing. The "conditions" of a parent are not normally the issue in a dependency case. Rather the conditions of the child are. This is a rather wide open category and lacks any limitation or definition. It will likely invite a large amount of trial court litigation and appellate litigation to define these terms and their parameters which will be extremely difficult to do.

Section 3(2) – there is some question about its constitutionality.

Section 4 (2)(b) requires a permanency hearing within six months of jurisdiction or six months after removal, whichever is earlier for children under 3. This will coincide with the first CRB Review and will not be a good use of resources over all to have these two reviews at the same time. More importantly under current law it is highly unlikely that a court could change the plan from reunification to something else at the six month mark. The current state of appellate law would not support this. (That appellate law reflects the entire statutory scheme in this area of the law; this bill does not alter that scheme sufficiently to render that body of appellate law inapplicable.) A permanency hearing should only be held with the court is considering the changing of a plan or the implementation of a plan. While I have serious reservations that it will accomplish anything of value as an alternative if the intent of this legislation is to keep a focus on progress in the case then this statute should be scheduling a Review Hearing at six months, not a permanency hearing.

In general this bill is not well worded. It raises too many questions that will need to be interpreted and defined. This will cause significant litigation at both the trial and appellate level and it is not apparent what good policy purpose any of it will actually serve.

The other problem with this bill and any other bill which seeks to amend the Juvenile Code (Chapter 419B in particular) in a piecemeal fashion is increasingly problematic. The Juvenile Code, originally revised in 1959 has been amended hundreds of times over the years and now lacks the organization and conceptual integrity it once had. What we need is a comprehensive re-write of the entire code using a well organized

structure and consistent method and theory. Continuing to piecemeal amend in this fashion only makes a code that is currently very difficult to work with all the more so.

I urge OJD to oppose this bill. JCIP is beginning a process through the JELI Forms and Code workgroup to begin the process for a code re-write. This is the ultimate solution to genuine problems with the code.

Sincerely yours,

Daniel R. Murphy

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