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TESTIMONY REGARDING FAMILY VISITATION DURING DEPLOYMENT – SB 1055
In Support of Dash 3 Amendments

Before the House Judiciary Committee
May 30, 2017

Submitted by:
Maureen McKnight, Chief Family Court Judge
Multnomah County Circuit Court

Chair Barker and Members of the Committees:

My name is Maureen McKnight and I am the Chief Family Court Judge in Multnomah County. I have been on the family law bench for 15 years and specialized in family law for 22 years before taking the bench. I'm speaking today only for myself and not for the Oregon Judicial Department or any one else.

I am writing to support the Dash 3 amendments to SB 1055, primarily because I believe that some Oregon Judges will struggle with the legal analysis under the bill as drafted. The **approach proposed in the Dash 3 amendments is:**

- **the most consistent with current law while accommodating the special interests of service-members and their children,**
- **most likely to provide attorneys a clear approach for evaluating cases and advising deploying parents, non-military parents, and family members, and**
- **the least likely to be challenged, and thus avoid delay and distraction for imminently or recently deployed service-members**

I want to state at the outset that I am a former military dependent of 23 years and keenly aware from first-hand experience of the effect on children caused by the absence of a parent in military service. My father was a career U.S. Navy Officer and until I started middle school, he was on sea duty with the Supply Corps for 6 months out of every year. It being the late 1950s and early 1960s, I did not have regular telephone calls with my father when he was at sea, much less email, FaceTime, or other video contact that is available today. Although I was, and remain, very proud of my father's service to this country, my sister and I missed him terribly.

That personal experience grounds my very strong support for ensuring the strongest bonds possible between children and their military parents. I support the intent of the legislation, and all of the Dash 2 amendments except for the terms addressing temporary visitation for family members (page 4 of the Dash 2 amendments). I believe that Oregon Judges will be split in their rulings about the bill's approach, with some troubled by the lack of guidance in the Dash 2s or

the constitutionality of its approach. And "troubled" means an uncertain backdrop against which attorneys would advise deploying parents and family members as well as delays in issuing opinions and even possible appeals. We need clarity in our judicial guidelines to apply most effectively the legislative policy set out.

It is no accident that there are majority and minority views in the appellate cases decided nationally. Accommodating the realities of military families in a legal discipline focused on a child's best interests is definitely not easy. But framing the issue as one in which one legal parent (the deploying parent) is seeking to delegate his/her time with the child to other family members is ultimately not helpful. Nor is viewing the dispute solely as one between the parents, and thus (arguably) avoiding the constitutional imperatives of *Troxell v. Granville,* 530 U.S. 57 (2000). The bottom line is that the Dash 2s would give enforceable rights to third parties – including the possibility of contempt of court for the non-military parent -- without any stated deference whatsoever to the wishes of a legal and fit parent. While in the majority of cases the parents are likely to agree about the relative having contact during the deployment, there will be situations in which the non-deployed parent has objections. I believe some Judges will find that failing to accord that objection any deference *at all*, which is what the bill as drafted and the Dash 2s appear to do as well, will be a struggle for these Judges.

What the Dash 3 amendments do is apply existing legal analysis to the military deployment context. And the Dash 3s also add a factor, specific to a deployment scenario, that would be a basis for the Court to overcome the wishes of the nonmilitary parent. In operation, we would have:

<u>Parents in Agreement re Relative's Visitation</u>

- A family member who would be awarded visits would have an "ongoing personal relationship" with the child, which means a relationship with substantial continuity for a least one year, through interaction, companionship, interplay and mutuality. ORS 109.119(8)(e)
- The parents would agree on a schedule of visits or other contact for this relative
- A stipulated judgment would set out an agreed-upon visitation schedule

<u>Parents *Not* In Agreement re Relative's Visitation</u>

- Either parent (but very probably the deploying parent) would file a motion for a relative with an "ongoing personal relationship" with the child to have specific visits during deployment
- Unless resolved in mediation, the Judge would:

★ Presume *both* parents are acting in the child's best interests and

- Consider factors set out in ORS 109.119(4)(a) to see if those factors – *or any other factor* – rebut that presumption regarding a parent:
  - Whether the relative is or recently was the child's primary caretaker
  - Whether circumstances detrimental to the child exist if visits for the relative are denied
  - Whether the objecting parent has fostered, encouraged, or consented to the relative's relationship with the child
  - Whether granting the relative visits would substantially interfere with the (temporary) custody arrangement
  - Whether the objecting parent has unreasonably denied or limited contact between the child and the relative
- Consider the additional factor set out in the Dash 3s, i.e.,

- Whether awarding visits to the relative will facilitate the child's contact with the deployed parent

The current statute requires a "clear and convincing" standard of proof for third party visits but in the deployment scenario, particularly given the temporary nature of the order, I would support a the lower standard of a simple preponderance. *See next page.*

I believe this deference for *both* parents' decision-making is significant. It is also significant that the objection of the non-military parent can be *overcome* by the simple weight of the evidence addressing statutory (and other factors) that include facilitation of the deployed parent's contact. Based on my experience, I believe this approach would satisfy any judicial discomfort and provide a clear and familiar structure of legal analysis while also serving the goal of the proponents.

I very much appreciate the opportunity to provide my input. Thank you for considering my thoughts.

Respectfully submitted,

Maureen McKnight

MAUREEN McKNIGHT, Circuit Court Judge

cc: Members of the House Judiciary Committee
Kingsley Click and Phil Lemman, State Court Administrator's Office
Josh Nasbe, House Judiciary Counsel