CIRCUIT COURT OF THE STATE OF OREGON
FOURTH JUDICIAL DISTRICT
MULTNOMAH COUNTY COURTHOUSE
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TESTIMONY REGARDING SB 356 – NOTICE & COMMENT FROM NONCUSTODIAL PARENTS
SB 371 -- ATTORNEYS FOR CHILDREN – PILOT
SB 385 – PARENTING TIME CONFERENCE
SB 736 – CUSTODY & PARENTING TIME DEFINITIONS

Before the Senate Judiciary Committee of the Oregon Legislature
March 6, 2019

Submitted by:
Maureen McKnight, Circuit Court Judge
Multnomah County

Chair Prozanski, Vice-Chair Thatcher, and Members of the Committee:

My name is Maureen McKnight and I am a Circuit Court Judge in Multnomah County. I have served in the Family Law Department there the last 17 years after practicing family law exclusively as an attorney for 22 years. I am the immediate past Chief Judge of that department, a member of the court's Statewide Family Law Advisory Committee, and a member of the Custody and Parenting Time Legislative Workgroup that met during this interim. I speak today only for myself, except regarding SB 371 on the pilot for Attorneys for Children, about which I speak for all 14 judicial officers of the Multnomah County Family Law bench.

I had intended to testify in person but a family emergency necessitated my travel out of state on Monday afternoon this week. I appreciate your considering my written remarks instead.

SB 356 — Notice/Comment by Noncustodial Parent

I support this bill.

In my experience, most judges believe they have the authority to require these terms already so clarifying that authority will confirm the majority practice and assure judges who are uncertain about their power. Moreover, it is sound, child-focused policy: requiring notice and input for certain decision-making by the custodial parent is an appropriate method of encouraging co-parenting without limiting the role of the custodial parent

SB 371 — Attorneys for Children Pilot

I – and my colleagues on the Multnomah Family Court -- strongly support this bill as well.

As a member of the Custody and Parenting Time Workgroup that looked at this issue this past interim, I believe this is the most fundamental child-focused initiative to address the ever-recurring debate about parental rights in child custody and parenting time disputes. Amplifying the voices of children by appointing advocates for them assures that a trained third party participates in the negotiations and, if necessary, provides argument and evidence to the judge that is child-focused. Under ethical rules, the attorney would argue for the child's "express wishes" unless that child is very young, in which situation the attorney argues for "best interests."

The judicial officers from the Multnomah Family Court support this bill because we know that attorneys for children are effective. We have operated a basic program for the last 20 years. We have seen parents gain insight from children's attorneys about how their children have been impacted either by certain events or conflicts and/or how strongly children wish their parents would change specific behaviors or attitudes about the other parent. We know that children having attorneys greatly increases settlement in high-conflict cases, in matters involving teenagers, and in cases with young parents not experienced in a child's developmental needs. Chief Family Law Judge Susan Svetkey, who launched and administers our program, has written her separate testimony on this bill urging its passage.

Why do we need this bill if ORS 107.425 already allows the court to appoint an attorney for a child? Because only our county has been able to approach even partial implementation of the current statute (which has been on the books for two decades) and even that implementation has had to be secondary to the regular courtroom work of the judge who operates it with her staff. Children and parents can wait a long time and hearings are set over since the administrative work to run this project is understandably subordinated to the press of daily dockets. What this bill would do is both pilot administrative support for such an initiative and also allow the court to evaluate its effectiveness with data instead of the anecdotal reports of attorneys, judges, and families. Piloting it in a split of urban, rural, and a mixed county will help brainstorming issues that arise with a small lawyer pool and even explore how technology might benefit these appointments.

I believe the appropriate entities to oversee this pilot are the Oregon Judicial Department's Office of the State Court Administrator and the Office of Public Defense Services. The former has experience in the policy work involving children and families, as well as at data and evaluation background. The latter has the experience in practice standards and already addresses and trains court-appointed attorneys, including those representing children in child dependency matters where children are actually parties.

I strongly support this bill and (what I believe are) the -1 amendments. After 40 years of practice as a family law attorney and judge, and participation in numerous Bar and legislative workgroups over these decades, I truly believe this approach is the most meaningful, and child-focused, step in Family Law reform this body can take.

SB 385 — Parenting Time Monitoring

I also support this bill, although the Attorneys for Children pilot is a higher priority.

I was aware from other judicial work of an approach by Arizona and a few other states to provide a sort of triaging or preliminary inquiry into parenting-time problems experienced by parents. The bill as drafted closely matches one state's approach but (what I believe are) the -1 amendments would be a better, and less costly, approach for Oregon. Instead of an on-the-record evidentiary inquiry by a referee or other judicial officer, I'm suggesting an informal, non-recorded conference with trained court staff to identify problems, suggest trial solutions, report back progress, and if necessary, report a recommendation to the judge. This would be a step after mediation, if mediation were unsuccessful, and under my proposal, at the option of the county.

Often the problem isn't what the schedule is, but whether it is followed and if not, why not. The parents' effort to try a few alterations to the parenting plan and report back to a Parenting Time Conference Officer can sometimes resolve the issue. If not, the judge would be allowed to read the officer's recommendation but not required to give it any specific weight and the parties would retain their right to a full enforcement or modification hearing before the court. So this would be a last-step effort to problem-solve with a trained member of court staff on what are sometimes small, sometimes big, issues about parenting time not happening as ordered. Not every county would implement this step but it would be an option for those with the volume or interest. If it were done in my county and were successful in even half the cases about parenting time disputes, I estimate I would gain at least two full work days/month, and I am one of 10 Family Court judges.

SB 736 — Definitions of Custody & Parenting Time

I support the intent of this bill and agree with the definitional language, However, I believe we need a little more time to explore potential unforeseen consequences in using that language in more than 50 existing statutes.

Much of the bill appropriately reinforces that "parenting time" is the day-to-day time with the child that *each* parent has. But because since 1987 that term has been intended to address only the time of the parent *without* custody (i.e., without the major decision-making power), the bill's insertion of the "parenting time" language across the board creates multiple situations changing the operation of particular legal procedures, law enforcement response, or court workload in ways that may not be intended.

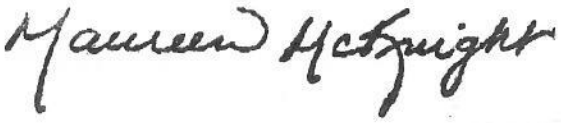
I found 21 particular sections that I believe might be problematic. I will highlight just two here:

- Page 18, lines 23 and 24. This section would codify a very major policy change – I believe unintentionally -- by rebuttably presuming that a parent found to have committed abuse against the other parent as defined by the Family Abuse Prevention Act (FAPA) is unfit for *any* parenting time with the joint children. The FAPA itself does not presume that and instead – after intensive multi-disciplinary stakeholder negotiations -- authorizes appropriate parenting time *if in the best interests of the children*, requiring also that adequate provisions be made for the safety of the child and custodial parent and setting out a number of statutory alternatives such as supervision and exchanges at neutral, public places.
- Page 25, Section 21. This section would expand the statutory Order of Assistance to enforce parenting time. An Order of Assistance is a court order for a sheriff to physically remover the child from one parent and deliver the child to the other parent. Current law limits this remedy – which Family Court judges use sparingly – to situations necessary to restore a child to his or her primary home, and often to get the child back in school. Even then, we often encourage other remedies first because return-by-sheriff can be very traumatic for young children and quite useless with older ones. But under the bill, any amount of missed parenting time, even one hour, would be grounds to seek such an order, and in FAPA cases, to mandate the order. This is a very significant change in policy I believe merits more discussion, even aside from the substantially increased workload for the court and sheriff offices.

SB 736's definitions <u>are</u> needed and helpful. It is only the blanket incorporation that needs further attention.

Thank you very much for considering my remarks.

Respectfully submitted,



MAUREEN McKNIGHT, Circuit Court Judge

cc: Members of the Senate Judiciary Committee
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Addie Smith, Senate Judiciary Counsel