

SB 371 -2 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 3/6

WHAT THE MEASURE DOES:

Directs the Department of Justice to administer three pilot programs: one in a rural area, one in an urban area, and one in an urban-rural area, that appoint legal counsel for children in contested domestic relations cases. Authorizes the department to promulgate regulations regarding specified court-appointed counsel qualifications. Requires the department to establish criteria to determine when a child requires counsel and the parties require financial assistance to pay for the child's counsel. Requires the department to determine reasonable compensation for the court-appointed children's counsel. Requires the department to administer a grant program to pay the fees, costs, and expenses of court-appointed children's counsel. Directs the court to enter an order allowing court-appointed legal counsel access to the child and relevant documents in the case. Instructs court-appoint counsel to: interview or observe the child as soon as practicable after appointment; make reasonable efforts to obtain relevant information; determine what services the family needs to resolve any disputes; make appropriate recommendations to the parties; seek relief in court to serve the best interest of the child; and determine whether disputes can be resolved by agreement. Requires the court to submit an annual report on the pilot program to the Legislature Assembly. Effective January 1, 2020, but provides the Department authority to take action to effectuate the requirements of the measure upon passage. Repeals the measure on January 2, 2025.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-2 Reassigns the responsibilities of this pilot to the Office of Public Defense Services (OPDS). Clarifies that attorneys are to be provided in contested custody and parenting time cases. Requires the Oregon State Bar to convene a group of experts to develop performance standards for attorneys representing children in disputed custody and parenting time cases. Changes the characteristics to be considered by OPDS when determining minimum qualifications for children's attorneys to include relevant experience and knowledge of child development. Clarifies that the Oregon Judicial Department will collaborate with OPDS to determine which children require court-appointed counsel. Requires OPDS to hire a project manager to coordinate implementation, data collection, and attorney oversight in each pilot county. Clarifies that this pilot shall not interfere with court's current ability to appoint counsel under ORS 107.425. Effective July 1, 2020 but provides OPDS the authority to take action to effectuate the requirements of the measure upon passage.

BACKGROUND:

In the 2016 interim, the Senate Committee on Judiciary convened a workgroup to explore concerns related to Oregon custody and parenting time statutes. The work group was composed of advocates, expert practitioners, judges, and affected stakeholders. To complete its work, the work group surveyed current Oregon law and practice, state statutes nationwide, relevant case law, and academic research on best practices for child custody and parenting-time disputes and decisions. The results of that workgroup are a slate of measures designed to aid judges in their decision-making processes, balance the interests of parties, and protect the best interest and safety of children in these proceedings and decision-making processes.

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Under current law, the court may upon its own or the motion of a party appoint counsel for a child in a custody dispute. ORS 107.425(6). If the request for counsel is made by a child, the court must appoint an attorney. ORS 107.425(6). Under this provision, a reasonable fee may be charged against the parties but public funds cannot be used to compensate the attorney. ORS 107.245(6). The law is silent as to how these attorneys are identified, the qualifications they must possess, and the standards under which they practice.

Senate Bill 371 is the product of the interim workgroup on child custody and parenting time. It creates a pilot program to provide qualified and compensated court-appointed counsel in all disputed domestic relations cases in three counties.