

**Testimony on HB 3363-3
Before the House Judiciary Committee
April 9, 2013**

**PRESENTED BY: MICHAEL LIVINGSTON JUVENILE COURT PROGRAMS
OFFICE OF THE STATE COURT ADMINISTRATOR**

I appear on behalf of the Oregon Judicial Department and our juvenile court judges who have raised objections to and concerns about the changes in law and practice that would result from the enactment of Sections 4 and 5 of the -3 amendments to HB 3363.

SUMMARY

SECTIONS 4 and 5 of the proposed -3 amendments to HB 3363 would require full juvenile court "review" hearings in a significant number of dependency cases in which the individual child's circumstances do not warrant such a hearing, would burden already overcrowded juvenile court dockets and would result in a substantial fiscal impact on the Judicial Department's budget. In addition, amending the juvenile dependency code to require such hearings is unnecessary because, under current law:

- These cases are regularly reviewed by the Citizens Review Board whose findings and recommendations are reported to the juvenile court.
- If the attorney for a child wants a full juvenile court "review" hearing in a particular case and requests one, the court is required to hold the hearing.
- The juvenile court is required to conduct a "permanency" hearing in any case when requested to do so by a party – including the CASA – unless there is "good cause" for not holding the requested hearing.

HOW SECTIONS 4 & 5 CHANGE CURRENT LAW

Current law requires that the Department of Human Services (DHS) file a report with the local Citizen Review Board (CRB) concerning any child "whose case is being regularly reviewed by" the Board and requires that the CRB's "***first review * * * be no more than six months after the child * * * is placed in substitute care and [that] subsequent reviews * * * take place no less frequently than every six months thereafter until the child * * * is no longer within the jurisdiction of the [juvenile] court, no longer in substitute care or until an adoption proceeding becomes final.***" See ORS 419A.106(1) and 419B.446. "[B]y rule of the court or on an individual case basis," the juvenile court "may relieve the local [CRB] of its responsibility to review a case if a complete judicial review has taken place within 60 days prior to the next scheduled [CRB] review." ORS 419A.106(1). A "complete judicial review" could be, for example, a "full" review hearing under ORS 419B.449, or a "permanency" hearing under ORS 419B.476.

After reviewing a case, the local CRB is required to issue written findings and recommendations, many of which are substantially the same as those the juvenile court would make at a permanency hearing. Compare ORS 419A.116 and ORS 419B.476 (2). Participants in CRB reviews include the child's parents and their attorneys, the DHS case worker, the child's attorney, and the child's foster parents, and "***[n]o later than 10 days after receiving the findings and recommendations[,] * * * a party adversely affected by the findings and recommendations may request judicial review.***" ORS 419A.116(4). The juvenile court is required to review the CRB's written findings and recommendations within 10 days of receiving them and, "[i]f the court finds it appropriate," the court "***may on its own motion schedule a review hearing.***" ORS 419A.120. (A copy of the findings and recommendations form used by local CRB's across the state is attached to this written testimony. The form includes a section captioned "COURT RESPONSE TO CRB FINDINGS AND RECOMMENDATIONS.")

Sections 4 and 5 of the -3 amendments would require that the juvenile court conduct initial 6-month review hearings under ORS 419B.449 in all cases involving children who were under the age of 3 at the time of placement in substitute care, unless the court had "held a complete judicial review" 60 days before the 6-month mark, "or will make a complete judicial review within 90 days" thereafter. Among other things, Sections 4 and 5 would effectively eliminate the initial CRB review in this category of cases.

SECTIONS 4 & 5 ARE UNNECESSARY AND DO NOT CORRECT ANY IDENTIFIED DEFICIENCY IN CURRENT LAW

In most, if not all, of the counties in Oregon, except Multnomah County, the CRB now reviews the cases to which Sections 4 and 5 would apply, and, as discussed above, the juvenile court reviews the CRB's findings and recommendations in those cases and, based on those findings and recommendations, may schedule a review hearing if the court concludes that one is needed. In addition, under current law, if, at any time, the attorney for a child wants a full juvenile court "review" hearing in a particular case and requests one, ***the court is required to hold the hearing.*** See ORS 419B.449. And, ORS 419B.476 (2) requires that the juvenile court conduct a "permanency" hearing in any case when requested to do so by a party – including the CASA – unless there is "good cause" for not holding the requested hearing – same findings. For these reasons, current law is adequate to ensure court of review in these cases when such review is warranted.

THE UNNECESSARY ADDITIONAL HEARINGS REQUIRED BY SECTIONS 4 & 5 WOULD BURDEN ALREADY OVERCROWDED CALENDARS

We estimate that Sections 4 and 5, if enacted would require approximately 1200 additional court review hearings, resulting in increased pressure on already overcrowded juvenile court calendars and a substantial fiscal impact on the Judicial Department's budget. (Attached to this written testimony is a letter from the Honorable Daniel Murphy, the Presiding Judge of the Linn County Circuit Court, summarizing his concerns about the effects of these amendments.)

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

In the Matter of

(Childs Name)

Court Number: _____

CITIZEN REVIEW BOARD (CRB)
FINDINGS & RECOMMENDATIONS

a Child/ren

Board Number: _____

Date Entered Care: _____

Date of Review: _____

Date of Jurisdiction: _____

Permanency Plan: _____

DHS Number: _____

Concurrent Plan: _____

Date of Birth: _____

Board Members Present:

Others Present: (Case Worker), DHS; (Field Manager), CRB (Field Staff Title).

Information Considered by the Board:

Basis for Jurisdiction: =

ICWA Status: =

Summary of Situation: =

The Board Made the Following Findings and Recommendations at the Review:

FINDINGS:		Yes	No
1.	DHS made reasonable efforts to prevent or eliminate the need for removal of the (Child/ren) from the home. =	≡	≡
2.	DHS has made diligent efforts to place the (Child/ren) with a relative or a person who has a caregiver relationship. =	≡	≡
3.	DHS has ensured that appropriate services are in place to safeguard the (Child/ren) safety, health and well being. =	≡	≡
4.	DHS made reasonable efforts to provide services to make it possible for	≡	≡

FINDINGS:		Yes	No
	the (Child/ren Name) to safely return home. =		
5.	DHS made reasonable efforts in accordance with the case plan to place the (Child/ren) in a timely manner, and complete the steps necessary to finalize the permanent placement, including an interstate placement if appropriate. =	≡	≡
6.	The parents have made sufficient progress to make it possible for the (Child/ren) to safely return home. =	≡	≡
7.	DHS has made sufficient efforts in developing the concurrent permanency plan. =	≡	≡
8.	DHS is in compliance with the case plan and court orders. =	≡	≡
9.	The permanency plan is the most appropriate plan for the (Child/ren). =	≡	≡
10.	There is a continuing need for placement. =	≡	≡

Additional Finding(s):

- a. =
- b. [Next Review Due Date]
- c. [Next PHER]

RECOMMENDATIONS:

- 1. =
- 2. [Future scheduling recommendation to avoid duplicate review]

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Board Member	Date	<i>(Field Staff Title)</i>
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Pursuant to state law, DHS must notify the Citizen Review Board within 17 days of receipt of this report when the division does not intend to implement the above recommendations. The division may notify the CRB by completion of the forms provided for that purpose. Mail the form to: Citizen Review Board, _____.

Parents may request the court to conduct a review hearing.

DHS CASE # _____

(CHILD/CHILDREN) NAME: _____

COURT # _____

**COURT RESPONSE
TO CRB FINDINGS AND RECOMMENDATIONS**

This CRB date of _____ was reviewed and dated this _____ day of _____, 20_____.

JUVENILE COURT JUDGE/REFEREE

The Court is setting a hearing beginning at the hour of _____, on the _____ day of _____, 20 _____, before the HONORABLE _____, located in Courtroom No. _____ of the _____

The Court is entitled to conduct the PL 105-89 permanency hearing at any time. Believing it to be timely, the Court will conduct that hearing as set forth above.

Appropriate legal notification to all parties informing them of the Court's intent to determine a permanent plan for the child/ren at the hearing must be sent. In those counties where DHS sends the notice, DHS shall assure the court of proof of notice. DHS shall submit a current case plan to all parties and the Court 3 days prior to the hearing.

No hearing needs to be set in this case at this time.

The Court requests that the CRB review this case early (month) _____ 20 _____. If possible, please give the CRB two months or more to schedule.

Other: _____

cc: _____	Mother	_____	DHS	
_____	Father	_____	Attorney for the child/ren	_____
_____	CRB	_____	Attorney for the mother	_____
_____	Docket Desk	_____	Attorney for the father	_____
_____	Deputy District Attorney	_____	Other	_____
_____	CASA	_____	Other	_____
_____	Juvenile Justice Division	_____	Other	_____

Daniel R. Murphy
Presiding Judge



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541-967-3848

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

April 4, 2013

Representative Andy Olson
Oregon Legislature
Salem, Oregon

SENT BY EMAIL ONLY

Re: HB 3363 / Juvenile Dependency ("CASA bill") – Corrected / Review Hearing Issue

Dear Andy:

I am advised that the six month Review hearing requirement originally in HB3363 is being pursued for adoption. I also understand that some of the other onerous provisions have been taken out.

I am particularly concerned about the fiscal impact of requiring a Review hearing six months after removal in every case and in every situation. This is not realistic and in many cases will serve little or no purpose. In many cases there is nothing to be achieved at a permanency hearing that soon in the case.

I hope the Legislature will all courts to continue to exercise discretion here and set cases when they really need to be set. I add that CASA's and other parties always have the right to request a Review hearing at any time and in our county they have not made this request frequently.

Thank you for considering my thoughts and let me know if you have any questions.

Sincerely yours,

Daniel R. Murphy

Daniel R. Murphy
Circuit Judge
Cell: 541-974-0567