

**To:** Chair, Rep. Jeff Barker and members of the House Judiciary Committee  
**From:** Wendy Johnson, Deputy Director and General Counsel, Oregon Law Commission  
**Re:** SB 622 amendments—legislative history  
**Date:** May 14, 2013

#### **-10 Amendment from Youth, Rights and Justice**

At the House Judiciary Committee hearing on May 7, 2013, Youth, Rights and Justice presented a -10 Amendment to SB 622. There were no objections to that amendment on the record. The amendment simply delays the effective date of the catch-all, "Any other person allowed by the court" to July 2014 rather than January 2014. That catch-all provision is used 4 times in the bill in Section 3. The delay will allow more time for the appellate courts to rule on pending litigation regarding access by others to juvenile court records, including the press.

#### **-7, -8, and -9 Amendments—Withdrawn by Oregon Judicial Department**

At the hearing on May 7, 2013, the Oregon Judicial Department (OJD) noted that they also had three amendments (-7, -8, and -9) to the bill that they were considering, but OJD did not present them officially at the hearing. Instead, OJD asked for more time to discuss them. The Committee agreed to bring the bill back next week and allow time for OJD to work with the Commission. Since the hearing, the Judicial Department has decided to withdraw all three earlier proposed amendments and instead proposes only the -11 amendment.

#### **-11 Amendment from the Oregon Judicial Department**

The new -11 amendment before you addresses exhibits maintained by parties and not the court. It adds a cross reference to ORS 7.120 in Section 3 of the bill to make it clear that the court need not keep exhibits maintained by parties but that those exhibits are still a part of the record of the case. The goal of the -7 amendment was to clarify this issue but the -7 amendment created other problems too; thus, the -11 amendment replaces the -7 amendment. The amendment is viewed as a friendly clarifying amendment from the Judicial Department.

#### **A Note on the Withdrawn -9 Amendment-- Privilege**

The Law Commission's Work Group discussed the issue of privilege of "history and prognosis" material several times. In the end, the work group and the commission both agreed that such material "will continue to be privileged--whether maintained in the supplemental confidential file or whether they ultimately become part of the record of the case. Attaching history and prognosis material to a motion will not make the material lose its privileged status." See page 14 of Work Group Report. The -9 amendment would have changed that policy decision by no longer providing privilege protection if "history and prognosis" records were a part of the record of the case. OJD has withdrawn that amendment. That is, the content will still dictate whether a record is privileged-- not the location. Like present law, the privilege issue should not come up often-- generally only with discovery issues in tort cases and family law cases when others want to access the confidential and privileged juvenile records. If they are "history and prognosis" records, they will continue to be privileged.

In short, the -10 and -11 amendments are before the Committee. The Commission is neutral on these two amendments.