WRITTEN TESTIMONY ON HB 3363

TO: The Honorable Chair Barker and Judiciary Committee Members

FROM: Allan F Knappenberger
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PURPOSE OF WRITTEN TESTIMONY:

I am a CASA volunteer. I prepared, with assistance from Megan Schultz, the original draft of HB 3363 that went to Legislative Counsel and thereafter communicated with Legislative Counsel regarding certain changes Counsel suggested. The result is the draft in front of this Committee.

HB 3363 proposes amendments to ORS Chapter 419B. I have received a letter to Representative Andy Olson with objections to HB 3363 prepared by the Honorable Daniel R. Murphy of Linn County. My written testimony below is a response to Judge Murphy's objections.

RESPONSE TO FISCAL IMPACT OBJECTIONS

(a) The first objection is that substantial litigation will be needed to (1) define the bill's new provisions; (2) define its new terminology; and (3) deal with unanswered procedural questions. The claim that the bill will cause substantial litigation is speculation without reasonable facts demonstrating an impact to support such claim. This bill was prepared to be unambiguous so as to limit the need for judicial intervention for interpretation purposes. No bill can stop an attorney from asking the court to review a section of any law, and to suggest that this bill will promote "substantial" litigation is hyperbole. There is no new terminology as all of the substantive language in the bill is found elsewhere in Chapter 419B. There are no reasonable facts demonstrating an impact to support the objection that procedural questions are left unanswered by the bill. When making procedural changes, the bill is requesting amendments within an existing statute, and the amendments blend in with the other procedural aspects of the existing statute. Finally, the proposed amendments are clear enough such that Judge Murphy is able to object to them.

(b) The second fiscal objection is that the bill will create a permanency hearing which will be useless, but will have a "substantial" impact on the system. What the bill does is mandate that a permanency hearing occur earlier than is now required in order to

move the process more quickly in getting a permanency status for the children who enter the system at ages 0-3. The vulnerability of these children and the harm done by a lack of permanency is evident not only through common sense, but has been pointed out to this Committee in other oral and written testimony. The irony of the objection is that in some cases the bill will eliminate hearings because if the progress, or lack thereof, of parents is brought before the court earlier than is now required, it could lead to a speedier resolution to a case by either a return to parents or a change of the permanency plan, thereby creating a positive fiscal impact.

RESPONSE TO POLICY OBJECTIONS

(a) Regarding Section2.(3)(a) objections.

The purpose of 3(a) is to prevent unnecessary delay in the overall proceedings. Too often the process is delayed because issues related to parents' conduct which have been known from the beginning were never made a part of the original petition, and jurisdiction was never established on such matters; further, the parents were never required in the disposition order to perform services related to these issues because no jurisdiction was established. Now midway through the process, someone decides that these issues should be made jurisdictional. As a result, an amended petition is filed to include these issues and a hearing has to be scheduled. Rather than scheduling a hearing date in the distant future, this section allows the issues in the amended petition to be heard at a hearing already scheduled for another matter. To make sure the parents are given due process, the new section provides that:

(1) the issues that make up the amendments must relate to matters where the parents have previously received information pursuant to the discovery section of the dependency code, i.e., ORS 419.B.881;

(2) in lieu of having discovery, the issues in the amendments must be similar to, or the same as, allegations that were previously dismissed from the petition, which means that the parents have previously had discovery on these issues from earlier in the process; and

(3) the party seeking the amended petition to be heard at an upcoming hearing must give the parents at least 10 days notice of such party's intent to have the matter heard at the upcoming hearing. What is implicit in this new section is that a parent would still have the right to ask the court for a continuance regarding the amended petition hearing under the applicable statutes in ORS Chapter 419B.

This new section regarding the conditions that must be met before an amended petition can be heard is very clear. It allows the process to move forward more efficiently and with a more expedited purpose to get a resolution to the permanent placement of the children, which is the overall goal of the entire dependency statute (ORS Chapter 419B).

(b) Regarding Section2.(3)(b) objections.

As noted above, in order for an amendment to be heard under the procedure set forth in the new section, the issue(s) being addressed must not be new, meaning that the parents already have had prior information of the State's concern on these issues and the parent has to have been provided with the documents related to the concern. If 7 days is not enough time to prepare, the parent's attorney can request a continuance. As a practical matter, counsel representing the parents generally do not begin preparation for the case until less than 7 days prior to a hearing regardless of the amount of notice given.

(c) Regarding Section 3.(1)(g)-(i) objection.

The objection that the conditions of the parents is not normally the issue in dependency cases regarding a termination matter and that instead conditions of the children are, is not accurate. This amendment adds certain conduct and conditions to be considered by the court in determining if a parent's rights should be terminated. A review of subsections (1)(a)-(h) of ORS 419B.504(1) which precedes the requested amendments ((1)(g)-(i)) also deals with conduct of the parents (not the children) in every instance. The type of conduct and conditions of the parents the amendment seeks to have the court consider at a termination hearing are very specific so as to leave no room for interpretation. Any claim that these amendments would cause substantial litigation is an obvious exaggeration given the context of the amendments and their specificity and clarity.

(d) Regarding Section 3.(2) objections.

If there is a constitutional question raised by this section, it would be in the area of due process for the parents. The first sentence of this new section codifies the appellate court's position on what time period the state must demonstrate the unfitness of a parent. The second sentence of this new section is favorable to the parents from a due process standpoint. The new section will withstand constitutional scrutiny.

(e) Section 4.(2)(b) objections.

The purpose of this new section is to require the court to expedite the process of achieving permanency for children ages 0-3. The court has the power under the permanency hearing statutes to change the plan if the parents are not reasonably progressing and also to return the children to the parents (without dismissing the case) if there are no safety risks. The court also has the option to schedule another permanency hearing to review the progress, or lack thereof, by the parents in order to continue to move towards a permanent placement for the children. Because ages 0-3 children are so vulnerable in this developmental stage and a permanent placement mitigates any damages the children undergo, the benefit to the children and society as a whole outweigh any CRB review overlap. Of note, both Arizona and

California have laws requiring a hearing at least every six months, and Arizona has a "Baby Court" to deal specifically with children ages 0-3. Moreover, the CRB statute (in ORS Chapter 419A) allows the court to waive a CRB review if a court hearing has taken place within 60 days of the next scheduled CRB review.

(f) The "piece meal" Amendment Objection.

The overall strategy of the objection to this bill is to distort the affects of the bill in an effort to get this Committee to oppose it and then to suggest that a complete rewrite is a better solution. CASA supports a complete rewrite of Chapters 419 A&B. However, this process would take not less than 2-4 years to complete, assuming there could be a reasonable consensus of all groups who would have a vested interest in a complete rewrite. It would take considerable funds and organization to accomplish this rewrite and to get it put into a bill where objections thereto could be reasonably compromised in the legislative process in order to be passed. Meanwhile, during this lengthy time period, children continue to be removed from homes at an increasing rate and are subject to flaws in the judicial system and its procedures which this bill is addressing in part. The idea of abandoning the present children so a complete rewrite can be accomplished for the benefit of future children is not an acceptable alternative.

Dated this 18th day of March, 2013

Allan F. Knappenberger
Concerned CASA Volunteer