JUVENILE CODE REVISION:
Summons

(MAJORITY REPORT)

HB 2272

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From
The Offices of the Executive Director
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and
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Report Approved as Amended at
Oregon Law Commission Meeting on
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STATEMENT OF THE PROBLEM AREA:

In 2001, the Oregon Legislature enacted Oregon Laws 2001, chapter 622, a procedural code for juvenile court dependency cases. The bill was proposed by the Oregon Law Commission's Juvenile Code Revision Work Group and is now codified at ORS 419B.800 to ORS 419B.929. Because of an error in drafting, Section 31 of the legislation, now codified as ORS 419B.917, requires, in effect, that parent(s) be served with a *separate* summons to appear for each hearing (or stage) in a termination-of-parental-rights proceeding.[1] Although, before 2001, the Multnomah County juvenile court (and, perhaps, one or two other counties) had imposed such requirements through local court rule, most of the juvenile courts in the state did not. The Juvenile Code Revision Work Group did not intend that the new procedural code mandate the local rule requirements. To the contrary, the Work Group intended that the code recognize and incorporate the summons practices of all counties in the state.[2] Furthermore, due process does not require repeated service of summons in termination-of-parental-rights proceedings. *See generally, e.g., State ex rel Juv. Dept. v. Bryant*, 84 Or App 571, 735 P2d 5 (1987). The cost for the requirement of separate summons to the state for each hearing is substantial.

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[1] ORS 419B.917, which also applies to proceedings to establish juvenile court jurisdiction, provides, in pertinent part, as follows:

> (1) If a child is before the court and a person who is required to be summoned has been summoned and has failed to appear for any dates, including but not limited to trial dates for which the person has been summoned, and the petitioner is ready to proceed, the court may proceed with case in the person's absence. * * *.

[2] *Former* ORS 419B.515, which governed summons requirements in termination-of-parental-rights cases before its repeal by Oregon Laws 2001, chapter 622, provided that the juvenile court could terminate parental rights, "only after service of summons," which contained

> "a statement to the effect that the rights of the parent or parents are proposed to be terminated in the proceeding and that *if the parent or parents fail to appear at the time and place specified in the summons, the court may terminate parental rights and take any other action that is authorized by law.*"

(Emphasis added). Until its repeal, *former* ORS 419B.515 was construed and applied by juvenile courts throughout the state to require that summons be served (along with a copy of the termination petition) only once – *i.e.*, when the proceeding was initiated. Although the summons could simply direct the parent to appear for trial on the petition on a date certain, more often than not, it directed the parent to admit or deny the allegations of the petition, either by written answer or at a "preliminary" or "show cause" hearing held for that purpose. If the parent contested the petition, the juvenile court scheduled the trial on the petition, and, in some counties, scheduled pre-trial hearings. If a parent, who had notice of the trial date, failed to appear for trial, and the parent's attorney had no explanation for the parent's absence, the juvenile court – pursuant to *former* ORS 419B.515 – proceeded with the adjudication of the termination petition in the parent's absence. *See, e.g., State ex rel Juv. Dept. v. Bryant*, 84 Or App 571, 735 P2d 5 (1987).

HISTORY OF THE PROJECT:

In 1997, the Oregon State Bar created the Juvenile Law Section and directed the new section to review the procedural statutes governing juvenile court dependency cases. The following year, the Oregon Law Commission, in cooperation with the Bar's Juvenile Law Section, created a Juvenile Code Revision Work Group, chaired by Senator Kate Brown (also an Oregon Law Commissioner). The 2001 Legislature enacted the code of juvenile court dependency procedures proposed by the Juvenile Code Revision Work Group (approved by the Oregon Law Commission and recommended to the legislature), and it also enacted other legislation developed by the Work Group, including procedures for post-adjudication relief in juvenile delinquency cases. When the "summons" problem discussed above became apparent, the Work Group established a Sub-Work Group (known as the Continuing HB 2611 Sub-Work Group) to develop proposed legislation to correct it. The Sub-Work Group[3] spent many months on this project, and the resulting bill (LC 402), which is discussed below, was approved by the full Juvenile Code Revision Work Group on December 9, 2002. On December 18, 2002, LC 402, a minority report authored by Judge Terry Leggert, and a majority report authored by Michael Livingston were presented to the Commission. The Commission approved LC 402 for pre-session filing purposes subject to a session amendment to permit notification by oral order on the record for each stage (or hearing) subsequent to the initial summons of the case. In short, the Commission agreed with the proposal to permit an oral order described in the minority report. LC 402 is not HB 2272; it does not presently reflect the necessary "oral order" amendment but will be amended.

PROPOSED SOLUTION TO THE PROBLEM:

In order to correct the problem created by ORS 419B.917, the Juvenile Code Revision Code Work Group has drafted legislation (to be introduced in the 2003 Legislative Session) to: (1) recognize and authorize, in modified form, the summons practices used in all counties of the state; (2) clarify the summons requirements for proceedings to establish permanent guardianships; and (3) conform and simplify the provisions of ORS 419B.812, 419B.815, 419B.818, and 419B.839. The proposed substantive amendments are described below. The key provisions are in Sections 3, 5, and 10 of the bill.

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[3] **Members**

Ted Meece, Chair	AAG, Oregon Department of Justice
Linda Guss	AAG, Oregon Department of Justice
Amy Holmes Hehn	D.A., Multnomah County
Lisa Kay	Attorney, Juvenile Rights Project
Michael Livingston	AAG, Oregon Department of Justice
Leslie Nelson	Attorney, Metropolitan Public Defenders
Timothy Travis	Attorney, State Court Administrator's Office

SECTION 1 **–** Amends ORS 419B.812, relating to the issuance of summons. Adds juvenile departments to the list of persons and entities who may issue summons.

SECTIONS 3 and 5 **–** Establishes the same summons requirements for proceedings to terminate parental rights and to establish permanent guardianship. Also establishes that summonses must require parents to respond in one of three ways: (1) personally appear for hearing on the merits of the petition, at a specified time and place; (2) personally appear at a specified time and place to admit or deny the allegations of the petition; or (3) file a written answer to the petition within 30 days. If the summons requires the parent to attend a hearing to admit or deny the allegations of the petition or to file a written answer, it also must inform the parent that, if the parent contests the petition, the court – by written or oral order provided to the parent personally or by mail – will require the parent to attend the next hearing in the proceeding.[4] Both the summons and court order must inform the parent that, if the parent fails to appear as directed for any hearing related to the petitions, the court may grant the petition in the parent's absence without further notice.

SECTION 7 **–** Provides a sample "form" for the summons required in termination and permanent guardianship proceedings.

SECTION 9 **–** Identifies those who must be served with a summons in a proceeding to establish jurisdiction.

SECTION 10 **–** Applies the summons requirements of sections 3 and 5 to jurisdictional proceedings.

SECTION 13 **–** Provides that, notwithstanding sections 3 and 5, "on timely motion of a person showing good cause, a court may permit the person, instead of appearing personally, to participate in any hearing related to a petition * * * in any manner that complies with the requirements of due process." Provides that a person seeking to re-schedule a hearing must appear personally at the time and place "specified in the order or summons to request the change" or, in the motion requesting the change, include an address to which notice of the new date will be sent.

CONCLUSION:

The foregoing amendments: (1) correct the problems created by ORS 419B.917; (2) establish summons requirements for proceedings for permanent guardianship; (3) are consistent with the holding of the court in *State ex rel Juv. Dept. v. Kopp*, 180 Or App 566, 43 P3d 1197 (2002) (construing *former* ORS 419B.515); (4) comply with the requirements of the Due Process Clause; and (5) will save the state money.

[4] See attached minority report by Judge Terry Leggert that explains why both a written order or an oral order should be legally sufficient.