JUVENILE CODE REVISION:
Summons

(MINORITY REPORT)

HB 2272

Prepared by
Judge Terry Leggert
Marion County Circuit Court Judge

From
The Offices of the Executive Director
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and
Assistant Executive Director
Wendy J. Johnson

Report Approved as Amended at
Oregon Law Commission Meeting on
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1. Introductory Summary

I support the Juvenile Code Revision Work Group's Summons bill generally, but I am concerned with one provision and thus submit this minority report. I propose amending Section 5 from requiring a "written order" to requiring a "written order or oral order on the record."

2. History of the Project

During the last legislative session, the Juvenile Law Code Revision Work Group of the Oregon Law Commission submitted legislation changing some procedures in juvenile court related to dependency cases. Prior to the 2001 changes, some courts entered default judgments/orders in juvenile dependency and termination of parental rights proceedings, grafting from the Oregon Rules of Civil Procedure (ORCP) process in civil cases. There was some concern that a process should be codified in the juvenile code because the appellate courts too had been struggling with whether the ORCP procedures apply generally in juvenile cases. In addition to addressing the ORCP issue, the 2001 legislation was intended to clarify and to make uniform the process for entering default orders. Inadvertently, the legislation codified a practice only occurring in Multnomah County that does not work in other counties, creating procedures that were not previously required. This bill is an attempt to rectify that problem.

3. Statement of the Problem Area and Proposed Amendment to Bill

My only concern with the proposed bill relates to the form of notice required to take a default after a parent's non-appearance. It codifies a practice regarding notice to parents that is not required by the Oregon or U.S. Constitutions, changing practice in many state courts and costing money to implement.

My concern relates to the form of notice the court must give a parent who appears in court after a summons issued and the case is being set over for a trial. Under such circumstances, the parent has appeared pursuant to a summons that informed the parent how they must respond and the consequence that if the parent fails to appear the court will terminate their parental rights.

My practice has been to orally inform parents at every court appearance, of the need to remain in contact with their attorney, of the date of their next court appearance, and that if they fail to appear the court will enter a default judgment terminating their rights without holding a hearing. Such an oral order would not be legally sufficient notice under the bill draft; rather, the bill requires that courts prepare a written order to be served on the parent in court stating the same information. I propose an amendment to the bill that would give courts the choice of either giving the parent an oral order on the record, or giving the parent a written order.

4. Reasoning for Proposed Amendment to Bill

1. I believe that a judge giving a parent an oral order in court is more effective than handing the parent an order. The parent may or may not read something which is handed to them. It is not unusual for a parent to receive multiple written documents when they appear in court, and this notice would be one of several pieces of paper they may not review carefully. Further, if the parent does not speak English, an interpreter is in court and would translate what a judge says. Any written order that is prepared and handed to the parent would be in English, as required by statute. The court interpreter may not interpret a written order later because the court interpreter is paid to interpret court proceedings and not events outside of the courtroom. Even if the interpreter does interpret the forms, the emphasis by the interpreter may be different than the one a judge places in court.

2. I do not believe that we should enact a statute which requires more notice than is required by the state or federal constitutions. I have spoken with Assistant Attorney General, Mike Livingston, and several lawyers who specialize in civil procedure and due process, who all agree that a written order is not required to satisfy due process. Furthermore, none of the Work Group members who advocate for the written order requirement have presented any law that would demonstrate that this level of notice is required. In fact, the detail of notice provided before the court hearing is extensive and the parties are represented by counsel. There is no question that there is a high level of process in place throughout this statutory scheme for parents. In fact, there is more process than is required at least by the federal constitution. For example, the United States Supreme Court has ruled that a parent is not even entitled to court appointed counsel in a termination of parental rights case. See Lassiter v. Department of Social Services, 452 U.S. 18 (1981). Yet, in Oregon, we provide attorneys for parents in every termination case and in most dependency proceedings.

3. Requiring the court to prepare, serve, enter, and file an order in every case in which the parent appears and the case is set over, is time consuming and costly. It requires someone to prepare the order, serve the order, enter the order, and file the order. A separate order is required in each child's file, and most parents have more than one child in which these proceedings are pending. If a mandatory written order process were required to comply with constitutional law, I would not argue about doing it, but since it is not, the system cannot afford to do this work. We are already reeling from the effects of state budget problems. Providing for the option of an oral order allows courts to use written orders when they want to and when courts have the luxury of more staff. In the meantime, courts should be able to advise parents verbally in court on the record.