

**JUVENILE CODE REVISION:  
Telephone Testimony**

**REPORT  
(SB 67)**

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From  
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# **Juvenile Code Revision Work Group Telephone Testimony Report**

## **I. Introductory Summary**

ORS 45.400, relating to telephone testimony, was revised by the 2001 legislature. Of significance to juvenile proceedings is that the language of ORS 45.400(1), describing the proceedings to which telephone testimony is authorized, was amended to delete “juvenile dependency proceeding or termination of parental rights proceeding.” Instead, ORS 45.400(1) provides for telephone testimony “in any civil proceeding.” Thus, telephone testimony is no longer specifically authorized in juvenile court proceedings. This proposed legislation would restore language permitting telephone testimony in juvenile court proceedings under ORS chapter 419B, subject to the same safeguards applicable to civil trials.

## **2. History of the Project**

This proposal was first considered by the Juvenile Code Revision Work Group on January 18, 2002, and referred to a Sub-Work Group led by Ted Meece, Department of Justice, AAG. The Sub-Work Group has approved this proposal. The members include the following: Linda Guss, AAG (General Counsel, DHS); Lisa Kay, Juvenile Rights Project attorney; Amy Holmes Hehn, Multnomah County district attorney; Judge Terry Leggett (Marion County); Michael Livingston, AAG (Appellate); Leslie Nelson, attorney at Metropolitan Public Defenders Services Inc. of Portland; and Timothy Travis, attorney at Juvenile Court Improvement Project. Members of the full Juvenile Code Revision Work Group<sup>1</sup> also expressed their support of the bill at the August 16, 2002 meeting.

## **3. Statement of the Problem Area**

Elimination of telephone testimony from juvenile proceedings, if enforced, would cause a major change in current practice, particularly in rural areas. It is common for expert witnesses, particularly medical doctors, psychologists and drug and alcohol counselors, to be permitted to testify by telephone. Without telephone testimony, such experts would be required to spend hours away from their practices to attend court hearings. The court has discretion to deny such accommodation, when the court finds that personal attendance is critical to the fact-finding process.

The Sub-Work Group believes that the change affecting juvenile court was inadvertent and was caused by the enactment in the same legislative session of

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<sup>1</sup> Senator Kate Brown, an Oregon Law Commissioner, chairs the Juvenile Code Revision Work Group.

ORS 419B.800 through 419B.929 (Juvenile Court Dependency Procedure). Those provisions distinguish juvenile court proceedings from civil proceedings by specifically providing that the Oregon Rules of Civil Procedure do not apply to juvenile court proceedings. See ORS 419B.800(1). ORS Chapter 419B makes no direct reference to ORS 45.400 making it either applicable or not, but 45.400(1) specifically deletes any reference to juvenile proceedings, leaving the section as referring only to "civil proceedings." Moreover, ORS 419B.884(2)(a) continues to contemplate that telephone testimony is available, requiring that a motion to take a deposition be supported by an affidavit explaining why telephone testimony at the time of the hearing would not be possible.

#### **4. Objective of the Proposal**

The objective is to clarify the scope of ORS 45.400. Telephone testimony continues to be taken in juvenile court, despite the ambiguity created by the simultaneous enactment of Oregon Laws chapters 398 and 622 by the 2001 Legislature. Passage of this legislation would make it clear that, where appropriate, telephone testimony continues to be a valuable cost-saving tool of juvenile court procedure. This amendment is uncontroversial and was unanimously adopted by the Juvenile Code Revision Work Group