

Testimony on SB 304
Before the Senate Health Care and Human Services Committee
April 8, 2013

PRESENTED BY: MICHAEL LIVINGSTON, JUVENILE COURT PROGRAMS
OFFICE OF THE STATE COURT ADMINISTRATOR

I appear on behalf of the Oregon Judicial Department and our juvenile court judges who have raised objections to and concerns about SB 304.

BILL SUMMARY

The bill, as introduced, does the following:

(1) Amends ORS 419B.192 to provide that:

(a) when a child in a juvenile court dependency proceeding needs to be placed or continued in substitute care and a nonrelated foster parent of the child who has a caregiver relationship with the child under ORS 419B.116 is available as a placement option, DHS must place the child with the unrelated foster parent if a current home study finds no evidence of unsuitability;

(b) if DHS determines that the unrelated foster parent is unsuitable, the agency must provide the juvenile court with the home study, and, if, after reviewing the home study, the court finds no evidence of unsuitability, the child must be placed with the unrelated foster parent;

(c) DHS may not make the race of the child or the unrelated foster parent being considered as a placement option a consideration; and

(d) a nonrelated foster parent “being considered as a placement option” under these provisions “is considered a party to the proceedings under ORS 419B.875.”

(2) Amends ORS 419B.192 to include a definition of “home study.”

(3) Amends ORS 419B.875 to make nonrelated related foster parents “under consideration as a placement option for a child * * * under ORS 419B.192(1)”

parties to dependency proceedings under ORS 419B.100 and termination-of-parental rights proceedings under ORS 419B.500;

(4) Amends ORS 419B.116 to eliminate the requirement that the relationship between a nonrelated foster parent must continue for 12 months before it qualifies as a “caregiver relationship.”

(5) Amends ORS 419B.349 to eliminate the court’s authority to review a child’s placement with a nonrelated foster parent who has established a caregiver relationship with the child and to direct a different placement if the placement with the nonrelated foster parent is not in the child’s best interests.

(6) Amends ORS 419B.185, 419B.337, and 419B.449 to conform with the amendments to ORS 419B.192.

PROBLEMS THE BILL WOULD CREATE FOR JUVENILE COURTS

1. **The bill is ambiguous on key points.** Ambiguities in the bill will result in inconsistent practices across the state and are likely to prompt litigation and appeals. Those ambiguities include the following:
 - When and how is a nonrelated foster parent’s “caregiver relationship” to be determined? What does “being considered as a placement option” mean?
 - Does a nonrelated foster parent become a “party” automatically, once the circumstances giving rise to the “care giver relationship” exist? How long does the nonrelated foster parent’s “party” status continue? Does it continue while an appeal is pending challenging a court order denying placement of the child with a nonrelated foster parent?
 - What happens if the child is with a nonrelated foster parent who has a caregiver relationship with the child, the court orders the case plan changed from reunification to adoption, guardianship or placement with a fit and willing relative, and DHS wants to continue the child in substitute care for a while in the home of the potential adoptive parent, guardian, or fit and willing relative before fully implementing the plan?

- 2. The bill limits the court's authority to respond to changes in the child's circumstances, even when the child's best interests would be better served by a change of placement, effectively elevating the rights of the nonrelated foster parent over those of the child.** Under current law – ORS 419B.349 – the court has authority, notwithstanding a child's commitment to DHS, to review the child's placement in substitute care and, if "the court determines that the placement is not in the best interest of the child," the court is authorized to "direct" DHS to place the child in a different placement. The bill would prohibit the court from doing that when the child's current placement is with a nonrelated foster parent who has established a caregiver relationship with the child. The bill also would prohibit moving a child from a placement with a nonrelated foster parent who has established a caregiver relationship with the child (solely because the child has been in that foster home for 6 months) to the home of a relative with whom the child has had a loving and positive relationship for many years who now can care for the child, even though the child's counselors, the child's CASA, and the child's attorney all agree that the child should be with the relative and not with the nonrelated foster parent. The bill assumes, in effect, that it is always better – regardless of the circumstances -- for a child to be in substitute care with a nonrelated foster parent who has established a caregiver relationship with the child than to be in substitute care with anyone else.
- 3. Party status for unrelated foster parents will result in a substantial fiscal impact for OJD.** Under the bill, a caregiver relationship would exist between a nonrelated foster parent and a child who has been in the unrelated foster parent's home for 6 months, or, if the child is under 6 months old, for half the child's life. And, because of that relationship, the nonrelated foster parent – when being considered as a placement option – becomes a party to the dependency proceeding, and to the termination-of-parental-rights proceeding, if there is one. As discussed above, it is unclear just what constitutes being considered as a placement option, and it would not be unreasonable to say that the foster care option always is under consideration. The bill does not limit the issues that can be raised by a nonrelated foster parent who becomes a party, and, if siblings are placed in different foster homes, there could be more than one such party in a case. The number of cases in which nonrelated foster parents would become parties under the bill is not known at this time, but we believe that CRB and/or DHS could provide that information. In any event, the nonrelated foster parent party status authorized by the bill would increase the number, length, and complexity of the hearings and appeals in juvenile court dependency and termination-of-parental-rights cases at a time when courts already have crowded dockets and also would increase the likelihood that court time would be

spent on matters extraneous to the reunification of children with parents, or the implementation of a permanent plan for the child other than reunification. We believe that a nonrelated foster parent's participation as a party in these proceedings would add at least 2 hours to the court time required for the case, and that is probably a conservative estimate.

4. **Policy considerations.** The bill establishes a preference for placement (or continued placement) of children with nonrelated foster parents, rather than family members.

THE BILL DOES NOT CORRECT ANY IDENTIFIED DEFICIENCIES IN CURRENT LAW

Under current law, all foster parents are entitled to notice of hearings in the cases of children in their care, and they have a right to attend those hearings and be heard during the hearings. In addition, a foster parent who has cared for a child for 12 consecutive months may be made a party to the proceeding by satisfying the requirements for intervention under ORS 419B.116 (2) through (6), and, regardless of how long the foster parent has cared for a child, he/she may seek rights of "limited participation" in the case under ORS 419B.116 (7) through (9). See ORS 419B.875(6).