



# OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION

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February 14, 2018

Representative Jeff Barker, Chair  
Representative Andy Olson, Vice-Chair  
Representative Jennifer Williamson, Vice-Chair  
House Committee on Judiciary  
Oregon State Legislature  
900 Court Street NE  
Salem, OR 97301

Re: Testimony in support of HB 4009

Dear Chair Barker, Vice-Chairs Olson and Williamson, and Members of the Committee:

The Oregon Criminal Defense Lawyers Association urges your support of HB 4009. This bill makes two important changes to the juvenile code. First, it aligns the standard for taking a child into protective custody without a court order with the United States Constitution.<sup>1</sup> Second, it permits “legal orphans”—children who are wards of the juvenile court awaiting adoption—to be reunified with their families under limited circumstances when the court determines is in the best interests of the child.

The U.S. Supreme Court characterized “the interest of parents in the care, custody, and control of their children” to be “perhaps the oldest of the fundamental liberty interests recognized by this Court.”<sup>2</sup> However, Oregon’s standard for removing children from parents without court oversight is inadequate and fails to comply with the Constitution. Removal from parents is not a benign intervention; it is a traumatic experience that can cause lasting and significant harm to children and should only be used when absolutely necessary.<sup>3</sup>

In some cases, children spend years languishing in the foster care system awaiting adoption. For these “legal orphans,” every attempt must be made to develop permanency with a safe family. HB 4009 would permit a juvenile court to reinstate parental rights in the rare case where it is in the child’s best interest

# OCDLA

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and the parent has remedied the conditions or conduct that led to initial court involvement.

OCDLA members represent parents and children involved in the juvenile court system. In 2016, 3965 children entered the foster care system.<sup>4</sup> Many of these children and their parents were represented by OCDLA members who work tirelessly to protect constitutional rights and promote positive outcomes.

In order for the dependency system to function well, there must be shared accountability, among all branches of government, for both child welfare outcomes throughout the system and for the protection of the rights of children and families. HB 4009 preserves accountability, promotes families, and keeps children out of foster care when they can be at home safely.

Thank you for your consideration of these important issues and your recognition of OCDLA as an important partner in improving the juvenile court system.

Sincerely,

Members of Juvenile Law Committee  
Oregon Criminal Defense Lawyers Association

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<sup>1</sup> *Nathan v. Dept. of Human Svs.*, 288 Or. App. 554 (2017); *Kirkpatrick v. Cty. of Washoe*, 843 F.3d 784 (9<sup>th</sup> Cir. 2016).

<sup>2</sup> *Troxel v Granville*, 530 U.S. 57 (2000).

<sup>3</sup> Church & Sankaran, *Easy Come, Easy Go: The Plight of Children who Spend Less than Thirty Days in Foster Care*, 2016; Mitchell, *The Neglected Transition*, 2016; Schneider et al., *What Happens to Youth Removed from Parental Care: Health and Economic Outcomes for Women with a History of Out-of-Home Placement*, 2009; Doyle, *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 2007.

<sup>4</sup> Oregon Child Welfare Data Set OR.03 Children Entering and Exiting Foster Care, [https://rom.socwel.ku.edu/Oregon\\_Public/AllViews.aspx?R=6103](https://rom.socwel.ku.edu/Oregon_Public/AllViews.aspx?R=6103).