

Youth, Rights & Justice

ATTORNEYS AT LAW

Oregon House of Representatives
Committee on Judiciary
Testimony in Support of HB 4009
February 14, 2018

Chairman Barker and Representatives of the Committee, Youth, Rights and Justice (YRJ) would like to thank you for the opportunity to testify in support of HB 4009 and the amendments.

This bill's focus is on the importance of family. As originally written it modified two important points in Oregon's child welfare process—children's entry into foster care through removal by the Department of Human Services or law enforcement, and the ability of children to exit foster care by reuniting with parents whose rights have been terminated, when reunification is in the best interests of the child.

Reinstating Parental Rights

In its focus to expedite permanency for children, modern child welfare practice has created the unique and troubling problem of “legal orphans.” Legal orphans are children whose parents' rights have been terminated but who remain in foster care, unadopted and without any legal family.ⁱ These children represent the biggest failure of the child welfare system—children taken from their families and sent out into the world as adults alone.

National data shows that 83% of all adoptions out of the child welfare system occur within the first 18 months after a parent's rights have been terminated.ⁱⁱ Oregon data tells us that, of those children who were freed for adoption in 2015, 45% were adopted within twelve months of their parents' rights being terminated, meaning 55% remained legal orphans a year after their parents' rights were severed.ⁱⁱⁱ The consequences of this pattern are that, in 2016, 333 youth aged out of foster care without a permanent home.^{iv} Children of color are again disproportionately represented: The Department of Human Services reports data that shows that American Indian/Alaska Native children are overrepresented in the population of children who age out of foster care at a rate 3.76 times that of

their presence in the general population, and that for African American/Black children, that rate is 2.51.^v

Over the past three decades, YRJ has handled at least a dozen cases where, after a parent's rights have been terminated, the parent has ameliorated the issues that rendered them unfit, while the child is still waiting in foster care, unadopted. In those cases, there is no legal recourse available to children's attorneys or the Department of Human Services to request that the court consider the changed circumstances of the family and determine whether a reinstatement of parental rights would be appropriate. Without such a remedy, the children in these cases have continued to bounce between foster homes, and eventually age out of the child welfare system without a permanent legal connection.

Our inability to reunite a child with her rehabilitated parent has not only been frustrating to us, but was noted by the Oregon Court of Appeals. In a recent case, where that court also found its hands tied by the current law, the court stated that this issue "may well be appropriate to address to the legislature."^{vi} The court noted that, as a matter of public policy, and in light of the goals of the juvenile dependency code, "setting aside a termination judgment that no longer serves the best interests of a child makes sense."^{vii}

National leaders, including the National Council for Juvenile and Family Court Judges and Casey Family Programs, have endorsed reinstatement of parental rights as an important tool that states can use to increase the number of children who find permanent homes and decrease the number of legal orphans created by state child welfare systems.^{viii}

With the amendments, HB 4009 allows for the Department of Human Services or a youth over 12¹ to ask the court to reinstate a parent's rights. The court will grant this request if four criteria have been met: 1) the conduct or conditions that led to the termination of parental rights have been ameliorated; 2) the parent wants their rights to be reinstated; 3) it is in the best interest of the child (which requires the court to consider the ward's health, safety, permanency, age, maturity and ability to express her preferences); and (4) if the youth is over 14, the youth consents to the reinstatement. HB 4009 with the -2 amendments *does not* allow

¹ Importantly, the bill also allows a youth under 12 to make the same request, after a showing of good cause. Good cause might include, but should not be limited to, situations where the rights of a parent to an older sibling have been reinstated, the special needs of the child, the time the child has spent in substitute care, the number of substitute care placements the child has had, or where DHS and the child jointly file for reinstatement.

anyone—a biological parent, a child, or DHS—to disrupt an existing adoption or disrupt the adoption process.

Through HB 4009, Oregon has the opportunity to join sixteen other states,^{ix} including Washington, California, and Colorado, that have passed legislation allowing for parental rights to be reinstated. Similar legislation in those states has increased the number of permanency options available to children waiting in foster care and gives judges the means necessary to reunite a child with their parent when it is in her best interest. As stated by one child’s attorney in California: “The option is not taken advantage of often, but when it is employed, it makes all for the difference for our clients.”

Next Steps: Standard for Removal

Although the amendments to the bill remove section 1 of the original HB 4009 draft, which modified the Oregon standard for the removal of a child from the care of her parents, that issue remains of critical importance to Oregon children and families. Currently, the Oregon removal standard is out of step with what Fourth and Fourteenth Amendments of the United States Constitution require.

At Youth, Rights and Justice we see all too often how the current standard for removal without a court order, along with the current statutory barriers to obtaining a protective custody order, leave Oregon families vulnerable to inappropriate state intrusion, disrupted attachment and unnecessary trauma.

This bears out in the numbers. Not only does Oregon have a rate of removal that is above the national average,^x but Oregon’s removal practices, among other factors, have created a foster care population where children of color are disproportionately represented at alarming rates. By the Department of Human Services’ own reporting, American Indian/Alaska Native children are overrepresented in foster care at a rate 3.25 times that of their presence in the general population, and for African American/Black children, that rate is 1.8.^{xi} Because of numbers like these, the New York Times has labeled modern child protective services “the New Jane Crow.”^{xii}

For these reasons, we hope that an interim workgroup that includes members of this committee, the Governor’s Office, the Department of Justice, the Department of Human Services, CASA, the Oregon District Attorney’s Association, Tribes, law enforcement, and community partners, among others, can convene. We also hope that this workgroup will actively seek the guidance and

advice of the real experts—parents and children who have experienced the Oregon removal process.

Youth, Rights & Justice would like to thank this committee for taking on the important issues addressed by HB 4009, and for all of its important work on behalf of Oregon’s most vulnerable children and families.

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Founded in 1975, Youth, Rights & Justice is a non-profit law firm located in Portland, Oregon, that provides client-centered legal representation for children, youth, and parents in the child welfare and juvenile justices system. Youth, Rights & Justice also represents children, youth, and parents in delinquency and dependency cases heard by the Oregon Court of Appeals and Oregon Supreme Court, in addition to staffing an educational advocacy program. It is our mission to improve the lives of vulnerable children and families in the courts, legislature, schools and community.

ⁱ Susan Getman and Steve Christian, *Reinstating Parental Rights: Another Path to Permanency?*, 26 *Protecting Children* 58, 59 (2011), http://www.hunter.cuny.edu/socwork/nrcfcpp/info_services/download/Reinstating%20Parental%20Rights_Another%20Path%20to%20Permanency.pdf

ⁱⁱ U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, *The AFCARS Report 5* (2017), <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport24.pdf>

ⁱⁱⁱ Department of Human Services, *Oregon Child Welfare Data Set PA.12 Adopted in less than 12 months of TRP (of those TPR 12 months ago)* January 2016-December 2016, https://rom.socwel.ku.edu/Oregon_Public/Login.aspx?H=4448

^{iv} Department of Human Services, *Oregon Child Welfare Data Set OR.07, Youth Exiting Foster Care on/after Turning 18* January 2016-December 2016, https://rom.socwel.ku.edu/Oregon_Public/Login.aspx?H=4450

^v Department of Human Services, *Oregon Child Welfare Data Set OR.07, Youth Exiting Foster Care on/after Turning 18* (comparison by race) January 2016-December 2016, https://rom.socwel.ku.edu/Oregon_Public/Login.aspx?H=4453

^{vi} *Dept. of Human Services v. K.W.*, 273 Or App 611, 359 P3d 539 (2015).

^{vii} *Id.* at 625 n 4.

^{viii} Casey Family Programs, *How have states implemented parental rights restoration and reinstatement?*, Feb. 5, 2018, <https://www.casey.org/how-have-states-implemented-parental-rights-restoration-and-reinstatement/>, National Council of Juvenile and Family Court Judges, *Technical Assistance Bulletin, Forever Families: Improving Outcomes by Achieving Permanency for Legal Orphans* 19, http://www.ncjfcj.org/sites/default/files/LOTAB_3_25_13_newcover_0.pdf.

^{ix} Alaska Stat. § 47.10.089(h); Cal. Welf. & Inst. Code § 366.26; Col. Rev. Stat. § 19-3-612; Delaware Del. Ann. Code Tit. 13, § 1103; Ga. Ann. Code § 15-11-323; Haw. Rev. Stat. §§ 560:1-401, 5-201, 5-210; 705 Ill. Comp. Stat. 405/2-28 & 405/2-34; La. Child. Code Ann. Art. 1051; Sec. 16. 22 Me. Rev. Stat. Ann. § 4059; Minn. Stat. § 260C.329; Nev. Rev. Stat. Ann. §§ 128.160, 128.170; N.Y. Fam. Ct. Act, §§ 635-637; N.C. Gen. Stat. § 7B-1114; Ok. Stat. Ann. Tit. 10 A, § 1-4-909; Code. Va. § 16.1-283.2; Wash. Rev. Code Ann. § 13.34.215.

^x National Coalition for Child Protection Reform, *The 2016 NCCPR Rate-of-Removal Index 7* (2017) <https://drive.google.com/file/d/1vu3AfAxex2TYTbUa1TfuYTsgbeQrPFnt/view>

^{xi} Department of Human Services, Office of Business Intelligence, *2016 Child Welfare Data Book 15* (2017), <http://www.oregon.gov/DHS/CHILDREN/CHILD-ABUSE/Documents/2016-cw-data-book.pdf>

^{xii} Stephanie Clifford and Jessica Silver-Greenberg, *Foster Care as Punishment: The New Reality of ‘Jane Crow’*, N.Y. Times, July 21, 2017, <https://www.nytimes.com/2017/07/21/nyregion/foster-care-nyc-jane-crow.html>