



**Testimony of Kimberly McCullough, Policy Director  
In Support of HB 4009 – Juvenile Dependency Reform  
House Committee on Judiciary  
02/14/2018**

Chair Barker and Members of the Committee:

**The American Civil Liberties Union of Oregon<sup>1</sup> supports HB 4009**, which would balance the civil liberties and civil rights of children and parents in juvenile dependency proceedings. **The ACLU of Oregon supports this bill because it carefully balances these rights in a way that will better ensure that our system is promoting the best interests of children and families.** The bill also matches our model policy for such proceedings.

**A policy to protect the rights of children necessarily raises critical and difficult issues regarding the sometimes competing rights of children and their parents.** On the one hand, children, especially when they are very young, are dependent on their parents. Ordinarily this relationship is a necessary source of nurture and support for the growth and development of children and should not be ruptured, especially not by the state.

What psychologists call "the imperative to care for one's offspring" thus normally ensures the protection of children from substantial harm within the family. But not always. **There are instances when children suffer lasting injury at the hands of their parents, sometimes as a consequence of parental incapacity, and when state intervention is therefore justified.** For this reason, the ACLU policy supporting personal autonomy for adults against state intervention cannot be automatically extended to a principle of unqualified family autonomy.

**On the other hand, any policy that permits involuntary state intervention in the family raises the danger of other abuses.** First, state intervention impinges on the **rights of privacy** of parents and families, and also impinges on what might be termed a **right to parenthood**. Equally important, **state intervention itself often results in substantial harm** to the children who are presumably being protected. The institutionalization of children which frequently results from such intervention has been clearly demonstrated to be harmful to the child's development.

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<sup>1</sup> The American Civil Liberties Union of Oregon (ACLU of Oregon) is a nonpartisan, nonprofit organization with more than 42,000 members in the State of Oregon.

Moreover, the history of involuntary state intervention into family life is studded with instances of judgments made on the basis of such impermissible criteria as race, sex, sexual orientation, economic class, or political or religious or cultural beliefs and practices. **The record shows that involuntary state intervention into family life risks serious civil liberties violations.**

**For these several reasons, we believe that children's rights are ultimately best protected by a policy that strongly presumes family integrity, except in exceptional cases.** Important elements of an ideal policy include:

- **Except for clear emergencies**, and for very brief periods of time that are limited by the duration of the emergency, the state may not coercively intervene in the parent-child relationship, unless it can show, at a **fair hearing** and based upon **clear and convincing evidence** of specific recent overt acts or omissions, that without such intervention, a child has suffered and a child is **highly likely to suffer substantial physical or emotional harm** as a result of repeated parental acts.
- Moreover, the state must show, at such hearing, that its **proposed intervention is highly likely to eliminate, or substantially reduce, such harm.**
- **Hearings should be as prompt as possible**, even during a continuing emergency.
- Even when state intervention is justified, the **state must offer appropriate services to a family**, on a voluntary basis, in the home, and such services must be **aimed at keeping the family together.**
- State custody, except for very brief emergency placements, may not be used except as a **last resort** and only after the state has demonstrated, at a **fair hearing**, that all other **less drastic alternatives have failed** and are almost certainly likely to fail prospectively.
- The child, the biological parent(s) and, when appropriate, the foster guardians should each have a **right to separate independent counsel at all legal proceedings** pursuant to this policy. Appointed counsel shall be provided for children and for parents and foster parents when indigent.
- **When the state has intervened in a child-parent relationship, the child has not yet been adopted, and a fit biological parent seeks return of the child, there should be a very strong presumption in favor of such return**, with the party opposing return bearing the burden of proof. This presumption in favor of return should normally prevail.

- The **following factors should be considered** by a court in deciding whether the presumption referenced above should be rebutted in particular cases:
  - The degree to which the **relationship between the biological parent and the child** has been dissolved and the degree to which an **alternative relationship between the child and foster parents** has developed; and
  - The **desire of the child, tempered by consideration of the maturity of the child.**

**We are pleased that HB 4009 encompasses these very important elements of an ideal policy for juvenile dependency proceedings.** It is because this bill so closely matches what we believe is the model policy that we enthusiastically support the bill.

**The ACLU of Oregon urges you to Support HB 4009.** Please feel free to contact me if you have any questions, comments, or concerns.