



# Legislative Testimony

## Oregon Criminal Defense Lawyers Association

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February 22, 2018

The Honorable Chair Sara Gelser  
The Honorable Vice-Chair Tim Knopp  
Members of the Senate Human Services Committee

### **RE: Testimony in Support of HB 4009**

Dear Chair Gelser and Members of the Committee:

The Oregon Criminal Defense Lawyers Association is an association of attorneys who represent juveniles and adults in delinquency, dependency, criminal prosecutions, appeals, civil commitment and post-conviction relief proceedings throughout the state of Oregon.

**Thank you for the opportunity to submit the following comments in support of HB 4009.** HB 4009 is a bill sponsored by Rep. Tawna Sanchez and jointly presented by my organization Oregon Criminal Defense Lawyers Association (OCDLA) and Youth, Rights & Justice (YRJ). We had an amazing hearing in front of the House Judiciary Committee last week, and our bill passed off the House floor yesterday morning unanimously.

#### **What our Bill Does:**

Our bill creates a court process for a child or DHS to ask the juvenile court to re-instate a parent's rights when a parent is able to now safely parent and the juvenile court finds that it is in the child's best interests. Our bill is focused on preventing teenagers who are struggling to find permanency from aging out of the foster care system as legal orphans. Children of color and those with disabilities are more likely to age out of foster care without a permanent family.

Our bill has numerous safeguards in place meant to limit this process to only the most special circumstances and to protect the child. We have modeled our proposal after Washington's law, and their state has only seen about 8 to 10 cases a year, and they have more kids in care than Oregon. While this bill is meant to impact a very small group of families, the changes it creates will be incredibly meaningful. The Oregon Court of appeals (Dept. of Human Services v. K.W., 273 Or App 611 (2015)) has indicated that the legislature should consider legislatively fixing this gap where a court does not have the discretion to re-instate rights when parents are safe. That is exactly what our bill does. Rep. Sanchez and Sen. Gelser have worked together to create an amendment that addresses a few final concerns from Sen. Gelser, and we are excited to say that

these final touches really help finalize our concept—This is good law, and we are thrilled to share it with you.

### **Safeguards Present in Bill for Motion Process:**

- Only DHS and child<sup>1</sup> can file a motion to reinstate parental rights that have been terminated.
- Child must be at least 12 years old to file absent good cause.
- Child has a right to have a lawyer appointed to help them.
- Child must consent to her parent’s rights being reinstated.
- Cannot file a motion if an adoption has been initiated (Under ORS 109.309 or ORS 419B.529), so no filed or pending adoptions will be interrupted.
- Must wait to file until 18 months after the parental rights have been terminated or six months after the appellate judgment, whichever is later.<sup>2</sup>
- Motion must be in writing and state a prima facie case (showing a legally sufficient case)—if no prima facie case is stated, the motion can be denied without a hearing.
- Moving party has the burden of proving the required elements by clear and convincing evidence, which is a very high standard of proof. The required elements are:
  - a. the conduct or conditions that led to the termination of parental rights have been ameliorated;
  - b. the parent wants his/her rights to be reinstated;
  - c. it is in the best interest of the child which requires the court to consider: the child’s health, safety, permanency, age, maturity, ability to express his/her preferences, why the parent’s rights were terminated in the first place, why the parent wants her rights reinstated, and the impact of the past abuse, if any, by the parent on the child.
  - d. And, the child consents to the reinstatement.

### **Safeguards Present in Bill for When Motion Granted:**

- The child remains a ward of the court for at least six months which means that DHS and the court remain involved in the family’s lives—wardship can continue longer than 6 months if needed.
- DHS aids in the child’s transition to the parent’s home and continues to offer supports including reunification supports.
- A permanency hearing, where DHS reports to the court, must be held within 60 days of the order reinstating parental rights.

### **Lots of Support:**

Our bill is supported by the Department of Justice and a whole coalition of community partners including two branches of the NAACP, Coalition for Communities of Color, ACLU of Oregon, Children First for Oregon, YWCA of Portland, Partnership for Safety & Justice and NAYA. Of note, ACLU of Oregon reviewed our bill regarding reinstatement of parental rights, and OCDLA was excited to find out that our concept fits squarely within ACLU’s National model policy recommendations. Additionally, ODAA, DHS, and OJD were all part of the drafting process and

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<sup>1</sup> Though a few states allow parents to file, neither Washington nor California does.

<sup>2</sup> Nationally 83% of adoptions happen within the first 17 months after termination.

are neutral. We do not believe that we have any current opposition from other lobbying organizations in the building.

Please do not hesitate to reach out with any questions. We are incredibly happy to be working together to help families reunite, and we urge your “aye” votes.

Respectfully,

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Legislative Representative for OCDLA

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