



DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

DATE: April 3, 2019
TO: Honorable Jennifer Williamson, Chair of the House Committee on Judiciary
FROM: Aaron Knott, Legislative Director
SUBJECT: HB 2849: Standards for Child Protective Custody

This testimony is presented in support of HB 2849.

Background

HB 2849 is the product of a work group created following the 2018 legislative session to draft amendments to ORS 419B.150, the statute authorizing peace officers, juvenile court counselors, and employees of the Department of Human Services to take children into protective custody without a court order. Both the Department of Justice and Department of Human Services participated in the work group, along with many other stakeholders involved in Oregon's child welfare system.

Currently, ORS 419B.150 authorizes a child to be taken into protective custody when the child's "condition or surroundings reasonably appear to be such as to jeopardize the child's welfare." That statutory language has been part of Oregon's juvenile code since 1959. In the intervening years, the Ninth Circuit Court of Appeals has held that, in order to comply with the Fourth and Fourteenth Amendments to the United States Constitution, the standard for the removal of children from their parents without a court order is much more restrictive, requiring a showing of both exigency and severe harm. See *Kirkpatrick v. County of Washoe*, 843 F3d 784 (9th Cir. 2016). Although the Department of Human Services' rules incorporate that higher standard, the statute does not.

Concept

HB 2849 amends ORS 419B.150 to: (1) establish a constitutionally sufficient standard for taking children into protective custody without a court order; (2) clearly articulate the standard to be applied when conducting an emergency removal of an Indian child under the Indian Child Welfare Act; and (3) provide a process for obtaining a court order prior to removing a child from a parent or guardian.

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