



Legislative Testimony

Oregon Criminal Defense Lawyers Association

April 3, 2019

The Honorable Representative Jennifer Williamson, Chair
House Judiciary Committee, Members

Re: Testimony in support of HB 2849 and -2, -3, -4, and -6 amendments

Dear Chair Williamson and Members of the Committee:

Thank you for the opportunity to submit the following comments in support of HB 2849 as well as the -2, -3, -4, and -6 amendments.

OCDLA wants to acknowledge and thank Representative Sanchez and Senator Gelser for their time and efforts as well as all of the stakeholders including DOJ, OJD, ODAA, DHS, YRJ and community groups among others for working together this past year to bring this bill to fruition. This bill concept was first introduced during the 2018 Legislative Session in HB 4009, and stakeholders engaged in a workgroup that has spanned over the last year. This bill greatly improves Oregon law, and we are thankful to our partners for working with us to make this a reality.

HB 2849 Aligns Oregon’s Standard for Removal with the Constitution & Protects Children

HB 2849 heightens the standard for taking a child into custody without a court order, aligning Oregon’s statute with the constitutional standard. Further, HB 2849 ensures that when a removal does happen, it is necessary for the child’s safety.¹ HB 2849 also increases access to court orders for removal and ensures that law enforcement and caseworkers are still able to remove children with suspicious physical injuries to conduct necessary abuse assessments.

Removal Causes Serious and Long-Lasting Trauma

A host of theoretical research and expert opinion has shown that removing a child from the home causes serious trauma and significantly worse long-term outcomes. Empirical research has shown that children who remain in the home have lower delinquency rates on average than those who are removed.² Many sources have even demonstrated that separating a child from a parent for a relatively short period of time can have devastating emotional and physical impact on the

¹ HB 2849 requires DHS to explain why removal is in the child’s best interest.

² Melissa Jonson-Reid and Richard P. Barth, *From Maltreatment Report to Juvenile Incarceration: The Role of Child Welfare Services*, 24 CHILD ABUSE & NEGLECT 505 (2000); Melissa Jonson-Reid, Melissa and Richard P. Barth *From Placement to Prison: The Path to Adolescent Incarceration from Child Welfare Supervised Foster or Group Care*, 22 CHILDREN AND YOUTH SERVICES REVIEW 493 (2000).

child.³ Experts have noted that disruptions in the parent-child relationship, even when relatively brief, can provoke “fear and anxiety in a child and diminish his or her sense of stability of self.”⁴ For some children, parent-child separations cause feelings of significant rejection and loss that affect the formation of attachments for the rest of their life.⁵ Given the long-term devastating impacts that removal can have on a child, it is imperative that States implement preventative measures to ensure that children are not removed from the home unnecessarily. OCDLA supports HB 2849 because it implements such measures by providing clear guidance and procedural instruction to caseworkers and law enforcement as to when removal is necessary, and heightening the standard for taking a child into custody without a court order.

Oregon’s Current Statute is Unconstitutional, Against National Trends, and Lacks Appropriate Judicial Oversight

The current process for obtaining a court order to remove a child (called a “protective custody order”) needs fixed. Oregon’s current statute that permits a child to be removed with and without a court order is unconstitutional according to both the Oregon Court of Appeals and the Federal Court of Appeals.⁶ Currently, forty-five states have a higher standard for removal without a court order than Oregon.

HB 2849 revises the standard for taking a child into custody without a court order resulting in alignment of Oregon’s statute with the constitutional standard. HB 2849 will improve the lives of Oregon’s children by ensuring judicial oversight to the removal process, thereby preventing children who should not be removed from their families from entering foster care unnecessarily.

HB 2849 also provides guidance and procedural instruction to caseworkers and law enforcement who are tasked with making removal decisions by allowing them to remove children in emergencies but then relying on a judge to otherwise issue a protective custody order, which is very similar to a warrant in a criminal case.

Oregon’s Current Statute Disproportionally Affects Families of Color

Under Oregon’s current standard, American Indian/Alaska Native children are overrepresented in foster care at a rate 3.25 times that of the general population and for African American/Black children that rate is 1.8.⁷ Removal is a traumatic experience that can cause lasting and significant emotional harm.⁸ Additionally, children of color experience unique harms and

³ Theo Liebmann, *What’s Missing From Foster Care Reform? The Need for Comprehensive, Realistic, and Compassionate Removal Standards*, 28 Hamline J. PUB. L. & POL’Y 141, 161-62 (2006-2007).

² Catherine R. Lawrence et al., *The Impact of Foster Care on Development*, 18 Development and Psychopathology 57, 58 (2006).

⁴ *Nicholson v. Williams*, 203 F. Supp. 2d, 153, 199 (E.D.N.Y. 2002) (testimony of expert witness Dr. Peter Wolf).

⁵ Catherine R. Lawrence et al., *The Impact of Foster Care on Development*, 18 DEVELOPMENT AND PSYCHOPATHOLOGY 57, 58 (2006).

⁶ *Nathan v. Dept. of Human Svs.*, 288 Or. App. 554 (2017); *Kirkpatrick v. Cty. of Washoe*, 843 F.3d 784 (9th Cir. 2016).

⁷ DHS, 2016 Child Welfare Data Book.

⁸ 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*

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traumas while in foster care, such as an indigenous child having their hair—which many tribes consider to be a source of strength and power—shaved off due to lice. The stark racial disproportionality in the foster care system has led the New York Times to recently label Child Protection laws “The New Jane Crow.” Removal is a traumatic experience that can cause lasting and significant emotional harm, and it cannot be ignored that this long-lasting trauma is being forced disproportionately and uniquely on children of color. HB 2849 focuses on preventing unnecessary removal of children by heightening the standard for removal and placing the decision to remove children in the hands of the courts as required by the constitution.

Oregon’s Foster Care System is Overwhelmed and Understaffed

A 2018 audit by the Secretary of State found that Oregon’s foster care system is deeply overwhelmed and understaffed, resulting in a system that is “disorganized, inconsistent, and high risk for the children it serves.”⁹ Since 2011 more than 11,000 children enter Oregon’s foster care system each year,¹⁰ a system that functions with “little oversight” and is deeply affected by “chronic management failures.”¹¹

With the current state of the Oregon’s foster care system, it is imperative that protective measures are put in place to ensure that children are not removed from their families and entered into a dysfunctional and traumatic foster care system unnecessarily.

HB 2849 provides guidance and procedural instruction to caseworkers and law enforcement who are tasked with making removal decisions by allowing them to remove children in emergencies, thus preventing unnecessary entry into the foster care system. OCDLA supports HB 2849 as a mechanism to prevent children from entering foster care unnecessarily and stopping the cycle of an overwhelmed and understaffed foster care system that retraumatizes Oregon’s most vulnerable children.

HB 2849 Makes it Easier to Obtain a Court Order and Does Not Prevent Removals Due to Suspicious Injuries

To better implement judicial oversight, HB 2849 heightens the standard for removal without a court order, while also making it easier for caseworkers to obtain court orders in the first place. HB 2849 makes application for a court order for removal easier for caseworkers by eliminating the requirement for a notary and allowing for the electronic or telephonic exchange of information in order to obtain a court order. HB 2849 better protects children by limiting removal *without* judicial oversight while increasing access to removal *with* judicial oversight.

Further, while HB 2849 helps prevent unnecessary removal, it is written to ensure that it does not prevent law enforcement or caseworkers from removing children with suspicious physical

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.

⁹ SECRETARY OF STATE, AUDITS DIVISION, FOSTER CARE IN OREGON: CHRONIC MANAGEMENT FAILURES AND HIGH CASELOADS JEOPARDIZE THE SAFETY OF SOME OF THE STATE’S MOST VULNERABLE CHILDREN (2018).

¹⁰ *Id.*

¹¹ *Id.*

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injuries to conduct necessary abuse assessments. OCDLA supports HB 2849 because it prevents unnecessary removal while simultaneously increasing access to court orders for removal and ensuring law enforcement and caseworkers are still able to remove children with suspicious physical injuries.

For the reasons outlined above, OCDLA strongly urges a “yes” to HB 2849. Thank you for your consideration.

/s/ Caitlin Skurky

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/s/ Mary Sofia

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OCDLA

About OCDLA

The Oregon Criminal Defense Lawyers Association (OCDLA) is a private, non-partisan, non-profit bar 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. The Oregon Criminal Defense Lawyers Association serves the defense and juvenile law communities through continuing legal education, public education, networking, and legislative action.

OCDLA promotes legislation beneficial to the criminal and juvenile justice systems that protects the constitutional and statutory rights of those accused of crime or otherwise involved in delinquency and dependency systems as well as to the lawyers and service providers who do this difficult work. We also advocate against issues that would harm our goals of reform within the criminal and juvenile justice systems.

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