



Legislative Testimony

Oregon Criminal Defense Lawyers Association

April 2, 2019

The Honorable Floyd Prozanski, Chair
Senate Judiciary Committee, Members

Re: Testimony in support of SB 924

Dear Chair Prozanski and Members of the Committee:

Thank you for the opportunity to submit the following comments in support of SB 924.

OCDLA supports SB 924 which seeks to prohibit children, wards, and runaways that are taken into protective custody from being unnecessarily placed in juvenile detention facilities. As the Juvenile Code is currently written, it appears to allow children and wards who have not committed delinquent acts to be placed in detention. The Juvenile Code currently also allows for runaways to be held in juvenile detention facilities. OCDLA supports SB 924 which would update multiple statutes throughout the Juvenile Code to explicitly indicate that children, wards, and runaways who need placement and have not committed delinquent acts may only be placed in protective custody such as shelter care.

OCDLA supports SB 924 for the following reasons:

Placing Children in Juvenile Detention Facilities Frustrates the Purpose of Taking a Child Into Protective Custody in the First Place

A child who has experienced or is at risk of experiencing neglect, abuse, or violence is placed under the supervision of child protective services in an effort to prevent the trauma of neglect, abuse, or violence. Placing a child in a juvenile detention facility runs counter to this objective. It is well-established that children experience high rates of trauma while staying in juvenile detention facilities due to systemic institutional abuses.¹ Investigations that led to the Prison Rape Elimination Act established that sexual abuse and harassment of youth in juvenile detention is common,² research on solitary confinement in juvenile detention facilities—which has extremely damaging long-lasting effects—has found that it is routinely used,³ and research has confirmed troubling abuse and harassment of LGBTQIA youth in juvenile detention

¹ Sue Burrell, *Trauma and the Environment of Care in Juvenile Institutions*, THE NATIONAL CHILD TRAUMATIC STRESS NETWORK (2013), http://www.njjn.org/uploads/digital-library/NCTSN_trauma-and-environment-of-juvenile-care-institutions_Sue-Burrell_September-2013.pdf.

² Keeping Youth Safe While in Custody: Sexual Assault in Adult and Juvenile Facilities, Hearing before the Subcommittee on Crime, terrorism, and Homeland Security of the Committee on the Judiciary, House of Representatives, 111th Congress, Second Session (Feb. 23, 2010), Serial No. 111-100.

³ See, generally, HUMAN RIGHTS WATCH AND AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES, 20-46 (2012).

facilities.⁴ Thus, unnecessarily placing children in juvenile detention facilities forces them into the very same traumatic situations they were taken into protective custody in an effort to prevent. OCDLA supports SB 924 as a mechanism to prevent children from experiencing trauma, whether it be inside the home or inside juvenile detention facilities.

Placing Foster Children and Runaways in Juvenile Detention Facilities Reinforces Feelings of Self-Blame

Detention should only be used for youth facing adjudication in delinquency court. A foster child should not be treated as if they have done something wrong simply because they are a foster child. Many foster children already view their removal from the home, especially in domestic violence cases, as “a traumatic act of punishment”⁵ and experts have found that removal heightens a child’s sense of self-blame.⁶ Placing foster children in juvenile detention facilities will only reinforce and confirm the child’s belief that they are being punished and are to blame for being in foster care. The same logic holds true with runaways. Many runaways are scared and running away because of *problems at home*, and placing them in juvenile detention facilities will suggest that *they are the problem*. Children who are seeking safety by running away from home should be treated with compassion, not with punishment and confirmation that they are “bad kids.”

It is also worth noting that LGBTQIA youth are overrepresented in both foster care and the runaway population. Given the unique “troubling abuse and harassment” that LGBTQIA youth experience in juvenile detention facilities, placement of foster children and runaways in such facilities should be done sparingly and only when absolutely necessary.

Children are Entitled to Due Process and Should Be Placed in the Least Restrictive Setting

Just like adults, children are entitled to due process, and placing a child in juvenile detention without adjudication, or even without a delinquent act to be adjudicated, violates that child’s due process rights. Additionally, there are many other less restrictive alternatives to incarceration, and studies have shown that youth—regardless of delinquent behavior—see better outcomes in community-based programs.⁷

While Out-of-State Runaways Can Be Held in Detention Pursuant Interstate Compact Rules, Oregon Should Consider the Least Restrictive Means for Placement

While SB 942 allows for out-of-state runaways to be held in detention pursuant interstate compact rules, OCDLA implores Oregon to consider the least restrictive means for placement. As mentioned above, there is a multitude of less restrictive alternatives to incarceration, and research has shown that children see better outcomes when placed in community-based programs. With this in mind, Oregon should seek the least restrictive means of placement when

⁴ KATAYOON MAJD ET AL., LEGAL SERVICES FOR CHILDREN, NATIONAL JUVENILE DEFENDER CENTER, NATIONAL CENTER FOR LESBIAN RIGHTS, HIDDEN INJUSTICE: LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH IN JUVENILE COURTS, LEGAL SERVICES FOR CHILDREN 101-112 (2009).

⁵ *Nicholson v. Williams*, 203 F. Supp. 2d, 153, 199 (E.D.N.Y. 2002) (testimony of expert witness Dr. Stark).

⁶ *Id.* at 199 (testimony of expert witness Dr. David Pelcovitz).

⁷ PATRICK MCCARTHY ET AL., HARVARD KENNEDY SCHOOL, NATIONAL INSTITUTE OF JUSTICE, THE FUTURE OF YOUTH JUSTICE: A COMMUNITY-BASED ALTERNATIVE TO THE YOUTH PRISON MODEL 21 (2016).

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dealing with an out-of-state runaway in protective custody, and should only resort to a juvenile detention facility after ruling out all less restrictive alternatives.

For the reasons outlined above, OCDLA strongly urges a “yes” to SB 924. Thank you for your consideration.

/s/ Caitlin Skurky

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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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