

## HB 2849 A STAFF MEASURE SUMMARY

### House Committee On Judiciary

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**Action Date:** 04/09/19

**Action:** Do pass with amendments and be referred to Ways and Means. (Printed A-Eng.)

**Vote:** 11-0-0-0

**Yeas:** 11 - Barker, Bynum, Gorsek, Greenlick, Lewis, McLane, Piluso, Power, Sprenger, Stark, Williamson

**Fiscal:** Fiscal impact issued

**Revenue:** No revenue impact

**Prepared By:** Channa Newell, Counsel

**Meeting Dates:** 4/3, 4/9

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#### WHAT THE MEASURE DOES:

Updates standards under which a child may be taken into protective custody without a court order. Specifies that a child may be taken into protective custody by a peace officer, counselor, or employee of Department of Human Services only when there is reasonable cause to believe that there is an imminent threat of severe harm to the child, the child poses an imminent threat of severe harm to self or others, the child has run away from home, or there is an imminent threat that the child's parent or guardian will cause the child to be beyond the reach of the juvenile court before an assessment of abuse allegations could be completed or before the court can order that the child be taken into protective custody. Specifies that if there is reason to know child is an Indian child, that child can be taken into protective custody without a court order only when it is necessary to prevent imminent physical damage or harm to the child. Specifies that person obtaining a court order for protective custody must submit a declaration that protective custody is necessary and the least restrictive means available to protect the child from abuse, prevent the child from inflicting harm on self or others, ensure the child remains within the reach of the juvenile court to protect them from abuse or harm, or to ensure the safety of a child who has run away from home. Requires declaration to set out why protective custody is in the best interest of the child. Specifies process for delivering declaration to court. Mirrors court determinations on taking a child into protective custody to standards required in declaration. Specifies court procedures. Ensures that individual who removes child for the purpose of conducting medical assessment or documenting injuries under ORS 419B.023 does so only for the period of time necessary to ensure compliance with requirement.

#### ISSUES DISCUSSED:

- Current standard for removal of children is unconstitutional
- Effect on families and children when removal occurs
- Desire to keep families together and to provide services in the home
- Interim work group efforts

#### EFFECT OF AMENDMENT:

Restores language relating to children in care over the age of 18 but under the age of 21. Allows child to be taken into protective custody if parent or guardian would move child before the court could order the child be taken into protective custody. Provides process for court to take oral statement under oath for obtaining protective custody order. Modifies provisions of Chapter 419B relating to runaways. Makes technical corrections. Makes ORS 419B.150(3) new stand-alone statute.

#### BACKGROUND:

Current Oregon law allows a child to be taken into protective custody without a court order when the conditions or surroundings appear to jeopardize the child's welfare. This standard, however, is at odds with case law applying *This summary has not been adopted or officially endorsed by action of the committee.*

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the Fourth and Fourteenth Amendments of the U.S. Constitution. In response to this dichotomy, House Bill 4009 (2018) proposed a stricter standard. While provisions of the measure relating to taking a child into custody were not enacted, a work group was formed to examine the issue.

House Bill 2849 A is the product of that work group. It provides new standards for when a child may be taken into protective custody without a court order, specifically when there is reasonable cause to believe that there is an imminent threat of severe harm to the child, the child poses an imminent threat of severe harm to self or others, the child has run away from home, or there is an imminent threat that the child will be removed from the jurisdiction of the court in the time it takes to complete an assessment of an allegation of abuse or for the court to order the child be taken into protective custody. The measure provides a standard for Indian children that is in line with the Indian Child Welfare Act (ICWA), allowing removal only when necessary to prevent imminent physical damage or harm to the child. The measure allows caseworkers to submit written declarations or oral statements under oath when seeking a protective custody order and sets the standards that must be met for the order to be granted.