

TESTIMONY ON HOUSE BILL 4058
BEFORE THE HOUSE COMMITTEE ON EARLY CHILDHOOD AND HUMAN
SERVICES
FEBRUARY 3, 2026

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Chair Hartman, Vice-Chairs Scharf and Walters, and Members of the Committee:

Thank you for the opportunity to provide feedback to the language proposed for placing Indian children in Department of Human Services (DHS) custody in out-of-state placements in HB 4058 with the -3 amendments. The Oregon Judicial Department (OJD) recognizes the importance of careful deliberation in child welfare cases, and in particular, when the case involves an Indian child.

The federal Indian Child Welfare Act (ICWA) was enacted in 1978, nearly 50 years ago, to remedy the widespread and unwarranted practice of separating American Indian/Alaska Native children from their families and tribes. In 2020, Oregon adopted a state-based ICWA (referred to as ORICWA) statute to align with the federal act and declared “It is the policy of the State of Oregon to protect the health and safety of Indian children and the stability and security of Indian tribes and families by promoting practices designed to prevent the removal of Indian children from their families and, if removal is necessary and lawful, to prioritize the placement of an Indian child with the Indian child’s extended family and tribal community.” See House Bill 4214 (Oregon Laws 2020, section 1).

OJD appreciates the special attention given to placement of Indian children in HB 4058. The language of the measure, however, incorporates some of the provisions of ORICWA in a manner that may confuse the two processes. Our judges want to ensure that all of the necessary steps of ORICWA are met and followed while also following the procedures outlined in this measure.

One concern is that the way sections 1(1)(a) and (1)(b)(A) and (B) are worded is counter to the current ORICWA statutes. As written, it could lead to an assumption that if an Indian child needs an institution, and there is an institution out of state that has a program suitable to meet the Indian child’s needs, that it might become the default placement for the Indian child, without input from the court or parties. Currently, ORS 419B.654 lists an order of placement preferences to place with a member of the Indian child’s extended family or a licensed foster home approved by the Indian child’s tribe, or a licensed foster home with a foster parent who is Indian before being placed in an institution.

HB 4058, as written, does not address the possibility that the court may need to make a good cause finding to deviate from placement preferences. Rather, it appears ambiguous. This ambiguity could be clarified by requiring the court to make the good cause finding, if necessary, to deviate from placement preferences as outlined in ORS 419B.654(3).

Additionally, the second part of the proposed statute, section 1(1)(b)(A) and (b)(B), are revised ways of calling out the placement preferences in ORS 419B.654(1)(d)(A) and (1)(d)(B)(iv). As those preferences are already referenced in the process that must be met in proposed section 1(a), it does not seem necessary to include them with slightly different wording here. ORICWA already has provisions that direct both tribal placement preferences and tribal approval for institutional placement to be followed.

The courts are an integral part of the child welfare system. OJD wants to ensure that these processes run in parallel and the court and parties are aware of the out-of-state placement of an Indian child in a facility that does not comply with ORS 418.321 or ORS 418.322. Additionally, in light of the role of the court in the child welfare system, courts ask for an opportunity to know when children are placed out of state as contemplated in subsection (2) of the -3 amendments. To that end, we are requesting an additional provision that if the Department of Human Services wishes to place a child in an out-of-state child caring agency pursuant to this section or to the -3 amendments, the agency must provide written notice to the court and to the parties within a specific period of time. If no party objects, the court may approve the placement without a hearing. We are also requesting clarity in this section to ensure that a good cause finding should be made if needed.

Thank you for your consideration.