

# OREGON TRIAL LAWYERS ASSOCIATION

319 SW Washington Street, #607

Portland, OR 97204

[www.oregontriallawyers.org](http://www.oregontriallawyers.org)

503-799-1017

## Testimony of Arthur Towers & John Devlin Before the House Committee on Human Services & Housing Senate Bill 819-A May 18, 2017

Thank you for the opportunity to provide testimony on SB 819-A. OTLA members fight for children who have suffered abuse. We seek to hold the wrongdoers accountable for the lifelong impact that the trauma has on the child, or on their loved ones if the child dies from the abuse, and we seek to improve child welfare through the accountability and transparency of the civil justice system. We have many of the same goals that were behind the passage of Karly's Law back in 2007, of which ORS 419B.024 is a part.

We have a lot of sympathy and understanding for DHS front-line personnel and management's perpetual lack of staffing, funding, training, and overall resources. But behind each headline or CIRT report is a child or children who have suffered serious injuries or have died. In order for a child or their family to have real access to justice, they have to have access to information about the incident and subsequent investigations.

We believe that the overall intent of the bill is positive and that there are many strong provisions in the legislation. We have concerns about one piece of SB 819-A. We have a great deal of confidence that we can work with the supporters to iron out our issues with the bill. Once those issues are settled, we can enthusiastically support the bill. But this is our last chance to put our concerns on the record so we want to do so.

**We are concerned that SB 819-A as currently drafted create layers of opacity that will not benefit children or keep them safe.**

Section 7(a) of the bill would allow a public member of a CIRT to avoid being examined in a civil or administrative proceeding about the CIRT review or the underlying incident. While we have reservations about shielding any member of the CIRT from questioning, we can live with that provision if it will further the goal of adding public members to the CIRT process.

Section 7(b) of the bill would prohibit anyone from being questioned in a civil or administrative proceeding about their "statements, deliberations, thoughts, analyses or impressions" or about their "interactions with the team in a case review including whether the person was interviewed, the questions that were asked of the person and the answers the person provided." We cannot support this provision, which would restrict the ability of a child or their family to learn about what happened during

the CIRT process, but more significantly, may prevent the truth about the underlying critical incident from being obtained.

By way of example, the legal representative of a child or family could not ask a person about statements he or she made to the CIRT, even if those statements would refresh the person's recollection of the incident or would contradict statements made by the person in a subsequent deposition. Statements to investigators, made close in time to when events occurred, are routinely used for those purposes. DHS is asking to create an unacceptable exception that general rule – an exception that is contrary to the interests of justice and accountability.

Section 7(c) of the bill would prevent a court or jury from learning about what happened in a CIRT related to the case. The bill states that “[t]he record of the case review of a team assigned under this section, including but not limited to records received, prepared and maintained by the team, is subject to discovery in a civil or administrative proceeding but may not be admitted into evidence or otherwise used in a civil or administrative proceeding.” The bill would allow a child's representative to see the records of the CIRT, but it would prevent the child's representative from using the records for any purpose, including to refresh a witness's recollection or to cross-examine a witness who testifies differently than what is reflected in the record.

Particular CIRT team members prepare separate reports as part of the CIRT process, e.g. a CIRT Team Member who is generally a DHS Program Manager (basically a branch manager who supervises both foster home certifiers and caseworkers, and who has generally come up through the ranks of caseworkers and/or certifiers) will do a comprehensive review of the **certification file** (“Certification Review Report”) of the foster parents and then write a comprehensive report about what was done right and wrong during the certification and oversight of the foster home by the certifiers.

Another CIRT Team Member who is also generally also a DHS Program Manager will do a comprehensive review of the **case file**, which has the records about the foster children and their parents, and he or she will then write a comprehensive review of that information (“Case File Review Report”).

The bill would prevent the use of those documents for any reason, with no exceptions. By way of example, attorneys for DHS could make arguments directly contradicted by the conclusions of a CIRT – contending that a DHS employee complied with all policies and acted reasonably when a CIRT concluded otherwise -- and the jury would never learn that fact.

The bill also would prevent the legal representative of a child or family from asking CIRT members about sources of information referenced in those documents. Sometimes when the child and their representatives get access to documents in the civil case, we cannot identify the source of particular information referred to in the Certification Review Report or the Case File Review Report, and we want to know where it came from because it's really important. If the child and their representatives can't question the CIRT Team members about their sources of information, we are at a loss to know why they had something that was not produced to us.

Given the continued challenges of DHS, it is hard to imagine a more vital public interest than the interest in the outcomes of incidents serious enough to merit a CIRT review. DHS needs far more sunshine, not less sunshine, if we are going to reach the mutual goal of preventing child abuse.

We do not understand how allowing the CIRT process to operate in secret promotes child safety. The CIRT members and those who participate in the process should be completely transparent in their efforts to determine how best to improve policy and practices to keep children safe.

We have no doubt about the positive motivation of all parties and our shared goals of child safety. We look forward to working with other stakeholders to ensure a positive outcome for Oregon's most vulnerable children.