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Testimony of Arthur Towers

OTLA Political Director

In Opposition to Senate Bill 319

Before the Senate Committee on Judiciary

March 9, 2023

Chair Prozanski, Vice-Chair Thatcher, and members of the committee, thank you for the opportunity to submit testimony in opposition to SB 319.

OTLA members are lawyers who fight for underdogs. In this case, the underdogs are Oregonians who are victims of violence caused by the negligence of mental health providers.

SB 319 shifts the burden of violent harm from negligent parties on to the victims themselves.

In egregious cases, a person who is the responsibility of a county or its private contractor absconds from an allegedly secure, locked facility and sexually assaults, murders, or otherwise harms a third party. A jury hears all sides of the story and determines the amount of harm and identifies who is responsible. SB 319 limits the amount of compensation to be provided by the negligent parties. Anything in excess of the limits of the Oregon Tort Claims Act caps shall be transferred to the victim.

SB 319 treats mental health providers with poor safety records the same as those with stellar safety performance. Companies that fail to staff appropriately, adequately train the staff they do hire, or otherwise cut corners get just the same treatment as companies that go the extra mile on safety. SB 319 reduces the incentive for companies to put safety over profit.

Companies that lack robust whistleblower protection programs gain the same advantage of liability protection as those that create a culture of safety. This is

especially relevant since few of these private contractors have a unionized workforce.

We know that all contractors are not the same. We have seen what happens to Oregon youth when they are sent to treatment facilities in states without strong standards. SB 319 creates an incentive for low-road, out-of-state contractors to consider operating in Oregon.

Senate Bill 319 is the wrong solution to a real problem.

We appreciate the multiple layers of tragedies facing mentally ill Oregonians. They cannot get the care they need in the community. Some commit a crime and are too ill to aid and assist in their own defense. As a society, we have come to the realization that treatment is the better choice than incarceration, but then the system of care is woefully lacking at the state level and the responsibility is shifted on to the counties.

OTLA is very open-minded about the idea of the state being financially responsible for the risk involved, but not at the expense of victims. We have supported such efforts in a previous session.

In the ideal world, the state would reward high-functioning entities that invest in quality treatment and safety standards. There are analogous efforts under consideration in other Senate committees. The DCBS Director has testified before the Senate Committee on Natural Resources about methods that can be used to reward safety-conscious homeowners in the property insurance market. The -4 amendments to SB 82 outline one approach. Homeowners' insurance is obviously a much different product than liability insurance in this setting, but the principles are very similar.

We urge you to push the stakeholders back to the drawing board to produce an approach that rewards safety and that does not punish victims.

We urge a NO vote on SB 319.