

OREGON TRIAL LAWYERS ASSOCIATION

812 SW Washington Street, #900

Portland, OR 97205

www.oregontriallawyers.org

503-799-1017

Testimony of Arthur Towers

OTLA Political Director

In Opposition to House Bill 3333

Before the House Committee on Early Childhood and Human Services

March 22, 2023

Chair Reynolds, Vice Chairs Nguyen and Scharf, thank you for the opportunity to testify on this important bill.

OTLA members are lawyers who fight for the rights of abused children. We watchdog the government's role in the process and private providers' role as well. We share common goals with providers and the state to make sure our system keeps kids as safe as possible. We appreciate the commitment to child safety from all the stakeholders.

OTLA has serious concerns regarding HB 3333 and is opposed to the introduced version of the bill.

We applaud the efforts to improve worker morale and workplace culture. We believe that more needs to be done to improve the working conditions of these essential workers.

We believe that a just culture approach is worthy of exploration. A just culture approach in combination with improved pay and benefits, worker voice on the job, whistleblower protection, and enhanced training and retention efforts may well have a very positive impact on the child welfare system.

However, the serious flaws in HB 3333 cause us to oppose the bill.

Will investigations that are terminated before conclusion miss systemic problems?

A report is made of suspected abuse and an investigation ensues. “in the course of the investigation” (page 2, line 6 Sec 1(2)(a)) so before the investigation is completed, the determination is made that the abuse occurred but the child was unharmed and there was no intent and the behavior that resulted was from human error (page 3 lines 24-29 Sec 2(1)(b)) **the investigation stops.**

So, to take the example used in the testimony: The care provider dispenses medication from the pill bottle of a different student. The medication was identical, so no harm was caused. It was certainly human error, and there was no intent to harm. Under HB 3333, the investigation can stop.

It would be important to learn:

1. Is there a systemic problem at the facility that allows medications to be mixed up?
2. Is the workload such that to get the job done on time, a worker must ignore existing safety protocols?
3. Are workers praised for behavior that is at-risk? Worker A can get meds distributed to residents in 30 minutes. A supervisor notes to Worker B – “why does it take you 45 minutes – watch Worker A to see how it’s done?”
4. Are training programs and other systems in place to make sure workers are aware of and reminded about the risks?

But the way HB 3333 reads, the investigation could be halted before any of those questions get answered.

Because investigations would be halted before completion, would we miss patterns of risky activity either by the worker or at the facility?

How is the investigator supposed to determine all the criteria are truly met under the new law if they do not complete the assessment? We already have concerns that calls into the hotline are closed at screening when they should not be.

Other issues

On page 2, lines 6-10 Sec 1(2)(a), the bill calls for an agency to submit a corrective action plan. What are the requirements for follow-up and outside review of the corrective action plan?

On page 3 line 25 Sec 2(1)(b)(B)(1), there is no definition of the word “significant.” It would be important to understand the threshold.

The legislation proposes changes to the current definitions of abuse and to the investigation process. HB 3333 makes an exception to the definition of abuse and does not require the investigatory process to run its course as it did before this proposed change.

We understand the point that mistakes that are substantiated abuse are characterized as abuse even when the outcome was de minimis. But the alternative laid out in the bill – the report is deemed unsubstantiated -- is unsatisfactory.

For these reasons, we urge a no vote on HB 3333.