

March 19, 2025

RE: Oppose HB 3835

Dear Chair Hartman, Vice Chair Nguyen, Vice Chair Scharf, and Members of the Committee,

I am writing to oppose HB3835. This bill will make Oregon less safe for children.

Sec. 1(3)(a)(C) of HB 3835 uses the term "serious physical harm" when determining what restraint will be considered abuse. This bill does not define this term, which means that Oregon's Courts will define the term consistent with past caselaw.

The term "serious physical harm" is used routinely in Oregon law. It typically has the same or a similar meaning in terms of degree of the harm as the term "serious bodily injury" or "serious physical injury." The specific phrase "serious physical harm" is used 135 times in Oregon cases, usually as a descriptor of the kind and degree of harm that must arise or be at risk.

The phrase "serious physical harm" as used by Oregon courts means harm by which "the person's safe survival will be compromised." Matter of M. A. E., 299 Or. App. 231, 240, 448 P.3d 656, 661 (2019). Oregon courts have reiterated that holding in 21 other cases on civil commitment in the last 6 years, all concurring that the meaning of "serious physical harm" requires that a person's survival has been jeopardized. See, e.g., Matter of R. L. M., 309 Or. App. 545, 549, 482 P.3d 201, 203 (2021); Matter of C. M. C., 301 Or. App. 206, 212, 454 P.3d 30, 33 (2019); Matter of J. D. J., 313 Or. App. 526, 530, 496 P.3d 1095, 1098 (2021).

So, applying what the Oregon Courts have found, a restraint would only be wrongful if the child's survival was jeopardized or the child was permanently disfigured by the abuser's actions. This would not include breaking bones or other serious trauma to a child's body caused by an abuser using restraints. State v. Stone, 326 Or App 200, 204 (2023) (physical assault that left victim with broken nose, facial lacerations and bruising, and a concussion did not qualify as "serious physical injury" because the injuries are not permanent).

HB 3835 will prohibit considering most restraints as abuse—unless the restraints threaten death or permanent, lifechanging maiming of the child. This is an unacceptably high standard.

This is just one of my many concerns about how HB 3835 will make Oregon less safe for children and other vulnerable Oregonians.

I am also opposed to provisions of the bill related to abuse, abuse investigations, hoteling for foster care children, out of state placements of foster care children, lack of meaningful oversight, and more.

I ask you to oppose HB 3835.

Sincerely,
Bliss Barger

