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Senate Committee on Judiciary
900 Court St NE
Salem, OR 97301

Re: **SB 1587**

Dear Chair Prozanski and Members of the Senate Judiciary Committee:

I'm writing on behalf of Oregon Child Abuse Solutions, a statewide nonprofit organization that works closely with Oregon's 24 children's advocacy centers, trains first responders, supports multidisciplinary teams across the state, and leads statewide initiatives to help protect Oregon's children impacted by child abuse. I am writing in response to Art Towers and Megan Moyer's testimony on SB 1587.

In short, Mr. Towers' And Ms. Moyer's testimony does not accurately represent the aims, purposes, or effects of the proposed legislation. Instead, it engages in a scare tactic by using a Florida case involving Maya Kowalski that, while shocking, has nothing at all to do with the proposed bill here. The harms that Florida's for-profit privatized child welfare system has caused are not the problems that Oregon faces, and the misconduct that the jury found in that case is precisely the kind of misconduct that our proposed bill **would not** immunize defendants against. Such misconduct is awful, and those who engage in it should face liability. That kind of misconduct is not what's at issue here.

Here's the short history. Since early 2022, Oregon's Child Advocacy Centers (CACs) have pursued legislation that would help protect them from facing baseless retaliatory lawsuits simply for doing their job – the job that Oregon law directs them to do.

In early 2023, that legislation was proposed as HB 2479. OTLA opposed the bill based on several specific concerns. We then crafted a set of revisions that addressed every concern OTLA raised, ultimately filing the proposed changes as HB 2479-2. That bill did not make it out of committee in 2023, but was redrafted and introduced as SB 1587 this year.

A chart reflecting each of OTLA's concerns with the originally-filed bill, and the responsive changes the HB 2479 -2 amendments/SB 1587 contained, has been uploaded to OLIS. Mr.

Towers has been invited to explain “what—if any—of the conclusions are inaccurate” in that chart. Mr. Towers’ response did not contest any part of the chart. Indeed, as the -2 amendments and the identical SB 1587 already answered OTLA’s concerns, their opposition no longer responds to the bill on its substance. Instead, Mr. Towers’ testimony simply mischaracterizes the bill as having been “filed in response to” the November 2023 verdict in Maya Kowalski’s Florida verdict, and falsely says that the bill proposes things that it does not propose.

Here are the facts.

The Legislative Assembly has explained that Oregon faces a “serious need” for widely available “child abuse assessment[s]” and to “**conduct timely investigations of allegations of child abuse,**” particularly through the use of county-based CACs. ORS 418.780. To do that, district attorneys must develop child abuse multidisciplinary teams that include law enforcement, DHS workers, and “child abuse intervention center workers” at CACs. ORS 418.747. Those teams handle “**immediate investigation of and notification procedures for child abuse cases**” and “interviewing child abuse victims.” *Id.* (2). They exist “to conduct timely investigations of allegations of child abuse and provide comprehensive services to victims of child abuse through coordinated child abuse multidisciplinary intervention plans.” ORS 418.780. The teams are in place “**to ensure that every child referred to a center for concerns of neglect or abuse receives a skilled, complete, and forensically sound child abuse assessment.**” *Id.*

Oregon’s CACs do exactly that. That is what this body directs them to do.

The problem is, abusers often don’t want those investigations and assessments to occur. As this body has recognized, mistreatment of children thrives in the dark.

And some abusers, both in Oregon and elsewhere, have discovered that *suing* a child advocacy center and its workers can deter and inhibit that work. For instance, an abusive parent might argue that simply conducting such an assessment invades the parent’s civil rights. Even though nearly all such claims are wholly unfounded, the burden of defending them pulls CAC workers away from the work that ORS chp 418 directs of them, and the cost of litigating (or insuring against) such claims is often more than CACs’ scarce resources can bear. **That is the problem this legislation aims to help solve.**

That problem falls uniquely on CACs because they are not public bodies, but nonprofits--so they face liability that others participating in the same process would not. For instance, sheriff’s detectives can (and often do) participate in the very same assessments, but due to Oregon’s Tort Claims Act and the protections of qualified immunity, they can do that job without facing the same threat of tort liability.

That doesn’t mean CACs and their workers should simply be immune from liability for bad acts. Such an approach would only swing the balance too far in the opposite direction. The right

approach is to instead strike a fair and functional balance—one that allows injured plaintiffs to recover for a defendant’s misconduct, but which doesn’t permit abusers to manipulate the court system to intimidate CACs from doing the work that the legislature directs them to do.

That is why this legislation includes several important guardrails:

- The bill would extend immunity to a CAC or its case workers **only** if they participate in good faith in a child abuse assessment, and **only** if they can show reasonable grounds for their participation and for the conclusions reached.
- It would **not** extend immunity for any claims of “abuse or neglect of the child” who is being assessed.
- It would **not** extend immunity for any claims of medical malpractice.
- It would **not** extend immunity for gross negligence.
- It would **not** extend immunity for reckless, wanton, or intentional misconduct.
- And it would **not** extend immunity for any “discrimination on the basis of a protected class” such as race, gender, or disability.

Mr. Towers’ November 2023 letter falsely contends that this bill was filed “in response to a case in Florida” in which a ten year-old girl named Maya Kowalski was taken away from her parents for several months, and in which her hospital was found liable for wide-ranging misconduct. (When HB 2479 was filed, trial in that case had not even begun, much less decided.) Mr. Towers also says that if such misconduct occurred in Oregon, passage of this bill would mean families “would have no way to hold the CAC accountable for the harm that was caused.” Mr. Towers’ letter is wrong.

According to the jury’s verdict in Maya Kowalski’s case, the defendants engaged in medical malpractice, battery, false imprisonment, and a host of other forms of intentional misconduct against Maya and her family. The jury also awarded damages for the hospital’s decision to require Maya to be stripped to her undergarments and placed under video surveillance without permission of the family or a court, and for the conduct of a hospital worker who had inappropriately kissed and hugged Maya and sat on her lap. Maya was also taken away from her parents for 13 weeks. (In Oregon, CACs do not make such decisions.)

To say that SB 1587 was filed in response to that decision is not just historically false. It is also a dangerous misrepresentation of the bill’s purpose and effect, because **what the verdict in that case describes is precisely the kind of conduct that this bill would not immunize a defendant against.** Such intentional misconduct and medical malpractice are expressly excluded from the bill’s scope, because a defendant **should** face liability for such bad acts, just

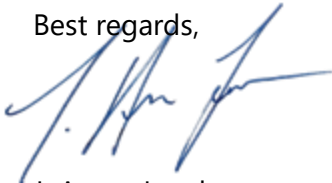
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as they would under current Oregon law. To say that SB 1587 is an effort by CACs to shield themselves from liability for such misconduct is a smear and a scare tactic. It has no basis in the facts, in existing law, or in the bill as proposed.

As always, thank you for your consideration. If any further information would be helpful, feel free to let me know.

Best regards,



J. Aaron Landau

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