

Sara A. Gelser Blouin

State Senator

District 8



Oregon State Senate

February 12, 2024

Dear Chair Reynolds and members of the committee:

I am writing to express my **opposition to Section 1 of the -1 and -2 Amendment to HB 4086**. Because things are moving so quickly in this short session, I have not had time to meet with you individually. Because this bill will go directly to Ways and Means there will not be a formal opportunity for the Senate to engage on the significant policy issues surrounding this bill. It is for that reason I am submitting testimony to your committee.

I strongly support Section 2 regarding much needed work to address gaps in response to meeting the needs of children and youth impacted by concerning sexual behaviors. In order to demonstrate that strong support, I requested an amendment to remove Section 1 should the committee share the concerns brought forward by myself and others regarding Section 1.

This committee bill began with a request from ODHS to narrow the scope of individuals that CPS investigates for abuse in order to reduce workload. This request has been made in a variety of different forums over the past several years, including through rulemaking in 2019 that attempted to allow ODHS to exceed statutory authority to close reports of abuse at screening. In 2023, I brought forward legislation at the request of ODHS to ensure that the scope of abuse investigations did not include children as subjects alleged to have committed abuse. That bill did not move forward but HB 4086 was initially described as a continuation of that effort. The introduced version of HB 4086 last month proposed changing the scope of Oregon's child abuse investigations this fall, demonstrating the clear intent of the agency in bringing forward the legislation. That proposal drew significant concerns from many interested parties and even members of your committee. The legislative concept was introduced with multiple no votes and courtesy yes votes required to allow the concept to move forward.

The -1 amendment of HB 4086 removed the immediate change to the statute and replaced it with a study to be commissioned by ODHS. The structure, participation and charge of the committee expanded to include not only the scope of individuals that might be investigated, but also the definition of child abuse in Oregon. This was described as an effort to bring all parties to the table for a neutral discussion. The -2 amendment removes any perception that

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this is a neutral study and it explicitly requires specific recommendations for legislation. It charges ODHS with appointing a group to advise the public policy expert on the design of the

study, the production of report, the development of recommendations and even the presentation to the Legislature. Why is a public policy expert contract needed if that public policy expert must be guided by a group handpicked by ODHS? If the purpose of allocating state funds for an outside study of these issues was to ensure neutrality, this new provision in the -2 eliminates that.

ODHS has the ability to develop recommendations, develop a policy option package and have legislation introduced at the request of the Governor. It is not necessary for the Legislature to allocate funds for this work and direct the Department to participate in the presentation. As written, this would require Department participation in the presentation of these recommendations regardless of the position of the Governor’s office. ODHS can do this work and introduce proposed legislation without Legislative direction if this body of work is identified by the agency and the Governor as a priority for time and resource.

During the interim, there was testimony suggesting this work is needed because SB 155 from 2019 substantially increased the workload for ODHS. SB 155 was sponsored by former Senator Roblan, President Wagner and Senator Bonham to address new federal requirements regarding school based allegations of abuse. When the measure passed, ODHS was granted 13 new positions and a budget increase of over \$3 million to support implementation.

According to the Child Welfare Data book, ODHS completes **fewer** child abuse assessments today than it did prior to implementation of SB 155. This chart shows the numbers as reported by ODHS for FFY 2022 (October 2021-September 2022) and FFY 2019 (October 2018-September 2019). In addition, the requirement that ODHS complete child abuse investigations, including third party child abuse investigations, was not created by SB 155. That requirement was longstanding.

Fiscal Year	Reports Documented /Screened	Assessments Assigned	Assessments completed	Total number child victims
FFY 2019	89,451	46,587	41,854	13,674
FFY 2022	87,529	46,136	39,191	10,711

Regardless of the workload debate, decisions about child protection should be based on child safety. Current circumstances do not suggest that this is the time to reduce efforts to address child abuse in Oregon, particularly as it relates to third party abuse. Oregon’s Child Welfare System faces significant challenges and priorities and ODHS currently faces litigation from Oregon’s children regarding its ability to meet their needs. The Court recently found ODHS out of compliance with a 2018 settlement regarding Temporary Lodging. In addition, the Wyatt v.

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Kotek case is set for trial on May 13. It alleges ODHS fails to meet the needs of children for safe and appropriate placement. This includes concern about the Department's ability to respond to

safety concerns for children in substitute care environments. In December, Oregon DHS was ordered to pay \$40 million in a case regarding severe abuse of several children in substitute care despite calls to the Child Abuse hotline.

The Department recently sent a report by Public Knowledge to the entire Legislature. This report was commissioned by ODHS and submitted as expert witness testimony for the Wyatt case. The report touted Oregon's improved child abuse definitions and investigations in substitute care, the centralized child abuse report hotline, comprehensive Critical Incident Response Team reports, the coordination between OTIS and CPS and even changes brought by SB 155 as substantial improvements in child safety since 2016. It's unclear why the Department would seek to change processes identified as key strengths by the state's own expert witness.

Many states use the criminal code as the primary enforcement mechanism for addressing third party abuse while Oregon has taken a primarily administrative response. Unlike other states, Oregon does not explicitly include child abuse or neglect in its criminal code unless it involves sex related abuses or neglect involving controlled substances. While other states have established criminal charges specifically for Child Abuse, Oregon law makes no explicit distinction between children and adults when it comes to physical abuse or neglect. As a result, law enforcement lacks the jurisdiction to investigate most of the allegations included in Oregon's child abuse statutes.

Oregon's current framework for child abuse investigations is deeply entwined with multiple program areas. For instance, schools, senior services, services to people with disabilities, child care, foster care and child caring agencies all rely on our current framework to keep vulnerable people safe and to remain in compliance with federal laws. Other states fill this gap through criminal background checks because of the availability of criminal charges. For school employees, employees of kids' residential programs and others this means that a substantiated allegation of abuse has far more significant consequences towards future employment, housing and volunteer opportunities in other states than what occurs here in Oregon.

Should the Legislature decide to reduce ODHS caseload by shifting third party child abuse investigations to law enforcement, the consequence will either be abuse that goes unaddressed or significant increases in costs for courts, local law enforcement, district attorneys and public defenders. In addition, many individuals who currently receive a founded or substantiated allegation of abuse will have that information show up on a regular criminal background check. Our current process allows the state to identify individuals who are not qualified to work with vulnerable individuals and prevent them from working without impacting that person's social, employment and community engagement opportunities outside the narrow scope to which it is applicable.

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OSEA raised issues regarding ODHS administrative rules related to the agency interpretation of neglect. Because the concern they raise is in the administrative rule, a study is not needed to

explore this issue. The existing rulemaking process allows for a nuanced response for interpretation in school settings. In 2023, we passed legislation that explicitly pointed to the need for this type of nuance. It creates a safeguard for school staff who are unable to meet the supervisory or care needs of students due to inadequate staffing or training.

Any change to Oregon's child abuse investigation framework will require significant time, expertise, research and substantial involvement of ODHS, the courts, law enforcement, district attorneys, child attorneys, CASAs, public defenders and others. It is hard to see how work this complex could be completed in time to make recommendations for legislation after just 6 months as required in the -2 amendment. This is particularly true given the demands on ODHS to address issues related to safety, the capacity of its child serving system and the profound pressures currently facing partners in criminal justice and public safety related to Measure 110, the state hospital and the public defender crisis.

I appreciate the intentions behind this measure and certainly support ongoing discussions between parties about how to best protect Oregon's children. I would enthusiastically support increased resources to ODHS if necessary to expand the workforce to meet the needs of children in our state. However, I hope the committee will consider not moving forward with Section 1 in either the -1 or -2 amendments at this time. Should the Department wish to do this work, it currently has the authority to do so and can bring forward proposed statutory changes through the normal process for executive branch agencies rather than through a legislative committee bill.

Thank you for your consideration.

Sincerely,



Sara Gelser Blouin

Chair, Senate Human Services Committee