

Statement of Intent – “Serious physical harm” as an undefined term in HB 3835A

The sponsors of HB 3835A wish it to be formally recorded that our legislative intent in using the legally undefined term, “serious physical harm” in HB 3835A. This statement is to formally clarify the intent behind using that term, to aid in the potential of a legal case related to that term in the context of an abusive restraint or abusive seclusion lawsuit.

The phrase ‘serious physical harm’ is without legal definition in the bill on purpose. The lack of specific legal language defining ‘serious physical harm’ is done to ensure a plain language interpretation of that phrase, to ensure that workers who are legally allowed to perform restraint or seclusion and have obtained and successfully completed the required training on an Oregon-approved intervention model, should rely on their training, the context in front of them, and their clinical expertise to determine whether the child in care is at risk of serious physical harm, without having to use a third-party standard to determine whether or how to respond to the crisis unfolding in front of them. This is based on national best practice from both the Joint Commission and the federal Department of Education.

The intent is that the courts should, in the case of a lawsuit based on this term, interpret the phrase using the plain language meaning of the words as the legal threshold for when a physical intervention, in accordance with all rules, regulations, and required trainings, is allowable.