



**TO: Sen. Sara Gelser Blouin, Chair
Sen. Diane Linthicum, Vice-Chair
Members of Senate Committee On Human Services**

FR: Oregon District Attorneys Association

RE: SB 743 – Oppose w/o Amendments

March 6, 2025

Thank you for the opportunity to offer our testimony in regard to SB 743.

Generally, prosecutors encourage law enforcement to utilize recordings in child abuse investigations. The stakes are high, and law enforcement must ensure that investigators are reaching appropriate conclusions. Recording often helps ensure that system partners later understand exactly what was said.

However, an obligation to record introduces additional complications. Thus, ODAA has five primary concerns with SB 743: (1) Some important terms and processes are not adequately defined; (2) The recording and storage of these statements is logistically complicated and resource intensive; (3) The bill creates a public record that will likely include information that should not be publicly released; (4) A remedy for failure to record is not defined, and ODAA strongly believes that a failure to record a statement under the identified circumstances should not result in suppression and should be admitted into evidence through other forms such as testimony or depositions; and (5) Any recording made as a result of this legislation should not be included in a child hearsay notice under OEC 803(18a)(b).

These concerns are outlined further below:

- 1. Some important terms and processes are not adequately defined, and the bill appears to place law enforcement standards on DHS case workers who are not peace officers and have a different investigative purpose.**

Under Subsection 2, SB 743 requires DHS workers or law enforcement agencies to electronically record interviews where the subject is the alleged perpetrator of the abuse. The definition of “alleged perpetrator” is not clear. Does this mean “alleged perpetrator” at

the time of the interview or determined to be the “alleged perpetrator” at the end of the investigation? Circumstances of abuse are often fluid situations where information is not

always disclosed in an organized and logically understandable manner. As a result, as people are being interviewed, whether they are an “alleged perpetrator” may not be known at the time. One exception to recording includes that the individual “expressed an unwillingness” to be recorded. When that issue is litigated later in court, what is the standard the Court would apply to whether that was actually the situation? How is “expressed an unwillingness” to be defined? If the Court decides the person was actually being cooperative, and the interview was not recorded, what would the remedy be? What would the remedy be if the Court decided one of the other exceptions listed did not apply?

Because SB 743 lacks definitions, it arguably could create legal standards for DHS meant for law enforcement. This is because law enforcement officers are Executive Branch members investigating possible criminal conduct, which legally provides clear constitutional guidelines. By contrast, the DHS investigation is not usually focused on whether a crime has been committed, but rather to determine if children are at risk and what steps can be taken to protect them.

For instance, does DHS now have to consider if the statement is “mere conversation” or an actual “interview” based on “reasonable suspicion?” Do they need to identify if “compelling circumstances” exist and whether the person is arguably in “custody” as that is defined by case law? If so, do *Miranda* rights need to be provided? What is the current DHS interview purpose and standard? Could it be an exception to the legal requirements in criminal investigations? How could this effect an important parallel criminal investigation law enforcement is doing surrounding the same conduct?

To be clear, ODAA is supportive of fair and accurate investigations, and would like to participate in further conversations about how to adequately resolve some of the complicated legal issues contained in SB 743.

2. The recording and storage of these statements is logistically complicated, and resource intensive.

Recording and providing copies of recordings by DHS would require specific equipment, training for equipment and practice of use, clarification of the format, storage, or recordings for records retention, and providing copies.. There also may be a need for staff, such as paralegals, to assist in providing, redacting, and processing these requests, as well as training for staff in handling record requests, since the bill currently indicates these recordings may be a public record.

3. The bill creates a public record from an investigation that will likely include information that should not be publicly released.

Under Subsection 4, SB 743 indicates that the recording of alleged perpetrators “is a record.” ODAA recommends that this record should not be releasable as a public record. Further analysis is also needed to evaluate this provision with ORS 419B.035, dealing with the “Confidentiality of records.” Clarity is also needed as to whom is in control of these records.

4. Any remedy for failure to record a statement under the identified circumstances should not result in suppression and should be admitted into evidence through other forms such as testimony or depositions.

SB 743 does not indicate what the possible remedy would be if DHS or law enforcement did not comply with the detailed recording requirements. The bill should expressly state that the failure to record an “alleged perpetrator” statement does not prohibit the evidence from being admitted in other forms such as testimony or depositions and should expressly describe further details of a remedy for the Court and parties. This is consistent with other evidentiary rules that do not require automatic suppression as a remedy.

5. Any recording made as a result of this legislation should not be included in a child hearsay notice under OEC 803(18a)(b).

ODAA is also concerned that SB 743 could impact the important hearsay exception in Oregon Evidence Code 803(18)(a)(b), often used in child sexual and physical abuse cases. As a result, the bill should include that “Any recording made under this section need not be included in a child hearsay notice under OEC 803(18a)(b).” We do not want this bill to inadvertently impose any further sufficiency of notice provisions for this hearsay exception that do not already exist.

Thank you for the opportunity to provide our concerns as it relates to SB 743. As previously stated, ODAA is supportive of fair and accurate investigations, including the recordation of perpetrator statements. We look forward to discussions with the proponents and stakeholders of this bill to address the concerns we have identified and hopefully produce a meaningful procedural law.