DRO | Disability Rights Oregon

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From: Tom Stenson

Re: HB 3835, Analysis with -A5 amendment

1. **Chemical restraint**: -A5 amendment a) changes definition to require an intent to "reduce an immediate safety risk" to count as a “chemical restraint” Because of this amendment, a medication-based restraint done for any other purpose (e.g., to control long-term behaviors, to make a child be quiet) is not a chemical restraint. The amendment also b) discounts as a “chemical restraint” any use of a medication that is a "standard treatment for a child's medical or psychiatric condition," which lets a provider use Benadryl to control behaviors as long as Benadryl is part of the child's care plan for hay fever, or allows a provider to administer three times the standard dose of Haldol to control a child, which is permitted by the amendment as long as the child was supposed to get the lower dose of Haldol therapeutically. As we know, from experience, those are two of the most common uses of chemical restraint. Adopting this term would make it very difficult to ever find that someone had used a chemical restraint.

2. **Abusive seclusion**: According to the amendment, seclusion is only abuse if the person acts with the intent of discipline, punishment, retaliation, or the convenience of others. Under this language, seclusion is not and cannot be "abusive" where the child is secluded for hours on end; where the child is not allowed to use the bathroom; where the child is not given food or water; or where the conditions of the seclusion are otherwise particularly harmful or oppressive. This will make it hard to open an abuse investigation or to find that an act of seclusion was abuse, unless the perpetrator admits one of the prohibited intents.

3. **Abusive restraint:** According to the bill, restraint is only abuse if 1) the person acts with the intent of discipline, punishment, retaliation, or the convenience of others, 2) the restraint is a chemical restraint, or 3) the

restraint actually results in or is likely to result in serious physical harm to the child. Restraint is not abusive just because it goes on for a long time; it is administered contrary to training standards; it causes physical harm but not life-threatening or life-altering harm (e.g., a broken wrist); a child is handcuffed, ziptied, tied up, or otherwise mechanically restrained; or a child is pressed against the floor in a supine or prone restraint. These are all serious acts of restraint that should be investigated as abuse.

4. **Responsible individual:** According to the amendment, a restraint or seclusion is not abuse, even if it fits the restrictive standards above, if it is not performed by a person on the designated list of people who "count." People who are not "responsible individuals" and thus cannot be investigated for abusive restraint or seclusion include: actual DHS employees, DHS contractors (like Dynamic Life), OYA staff, staff at an OYA-operated home, SACU staff, youth corrections staff, providers of day services or day care, and a wide variety of other parties responsible for children's welfare.

5. **Redefinition of who can commit abuse:** Under the amendment, only staff at a child caring agency, a foster home, adjudicated youth facility, or a DD facility can commit "abuse" or "neglect" under this chapter. This (particularly read together with the redefinition of physical abuse) would thwart OTIS investigation of a child's unexplained injuries, even if they resided at group home or foster home. Unless and until OTIS specifically knows that one of the people on the list of potential perpetrators committed the abuse, OTIS might well conclude that it lacks jurisdiction to even investigate.

6. **Redefinition of physical abuse**: The definition of physical abuse has been subtly rewritten to require that the person commit a specific act causing harm to the child. The current definition in both chapter 418 and 419B allows "any physical injury to a child in care caused by other than accidental means"—this broad definition allows OTIS to investigate injuries to children without actually receiving a report of a specific adult harming them. For instance, arguably OTIS would not be able to investigate a report from a teacher that a child came to school with scratches and bruises on their throat that the child could not explain.

7. **Restricting access to records**: The amendment removes access of a child's attorney to keep records relating to involuntary seclusion or restraint. That attorney may only view the records, and only with permission of parent or guardian. Because a parent's interests are often adverse to a child's in dependency proceedings, and the state is the guardian, this would severely impede any outside scrutiny of restraints or seclusions.

8. **Implicitly prohibits foster children from reporting non-abusive restraints and seclusions:** CCAs need only give children an explanation of how to report abusive restraints and abusive seclusion. They do not need to tell children how to report other restraints or seclusions.

9. **Relaxes scrutiny on CCAs where CCA's abuse or neglect leads to death or sexual abuse of a child.** Under amendment, DHS could choose to "place conditions" on a facility that causes the death of a child or allows known sexual abuse to continue, rather than suspension or revocation of the license.

10. **Allows CCA managers to interfere with the release of records if only "mistreatment," not abuse is suspected.** By removing the more general term "mistreatment," the amended provisions of Section 30 appear to allow managers to interfere with investigation of any act that falls short of actual abuse.

11. **Allows DHS to ignore reports of abuse that come to its attention by any means other than the hotline**.

12. **Diminished reporting of seclusion and restraint**: DHS will no longer disclose which acts of seclusion and restraint result in a 'reportable injury' or 'sexual abuse.' Instead, DHS will only report to the legislature when DHS makes a specific finding that the agency failed to protect the child against *known* acts of physical or sexual abuse. DHS would not have to report to the legislature, for instance, when a child is sexually assaulted by a staffer in a seclusion room and the agency managers *should have* but *did not* know of the abuse.

13. **Out of state placement**. The amendment would allow the out of state placement of children on the bare showing that no suitable in-state placement is available and that Medicaid has approved the payment. Court

approval is required, the facility must be licensed in the home state, and DHS must inspect it to see if it is "in significant alignment" with Oregon licensing standards. The actual protocols for what constitutes “significant alignment” are left to DHS to define. The rules must "require in-person contact with the child," but does not say contact *by whom*, which is vitally important. Notice is required of OOS placement with SOCAC, governor, and foster care ombudsman. This language reinstates the identical standard used in 2018 and 2019 by DHS to determine how to use out of state placement. The requirements of initial inspection and subsequent contact with the child are vague and easily exploited.

14. **Prolonged non-treatment care**: DHS may place foster children in adult settings based only on DHS finding that the placement is necessary and appropriate. DHS may also extend time spent in a shelter or other nontreatment facility based on the "best interest" of the child. Both options allow the long-term placement of foster youth in inappropriate settings—i.e., in adult settings or homeless shelters—based on discretionary decision-making by DHS.