

**SB 710 A STAFF MEASURE SUMMARY****Senate Committee On Human Services, Mental Health and Recovery**

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**Action Date:** 04/08/21**Action:** Do pass with amendments and requesting referral to Ways and Means. (Printed A-Engrossed.)**Vote:** 4-1-0-0**Yeas:** 4 - Anderson, Gelser, Lieber, Taylor**Nays:** 1 - Robinson**Fiscal:** Fiscal impact issued**Revenue:** No revenue impact**Prepared By:** C. Ross, Counsel**Meeting Dates:** 3/11, 4/8

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**WHAT THE MEASURE DOES:**

Prohibits restraining or involuntarily secluding children in care as a form of discipline or for convenience at developmental disabilities residential facilities, certified foster homes, proctor foster homes and child caring agencies. Directs the Department of Human Services (DHS) to establish certification standards by rule to provide personnel a minimum number of hours of training, by qualified trainers, with respect to crisis prevention, de-escalation, alternative techniques, and safe, evidence-based applications of restraint or seclusion. Specifically prohibits chemical, mechanical, prone, and supine restraints, as defined, with narrowly tailored exceptions for health care professionals, state hospital-level care, safety during vehicular transport, gaining control of a weapon, and extracting body parts from bites. Specifies permissible restraints are for use by secure inpatient treatment programs pursuant to order of children's emergency safety intervention specialists as well as medical practitioners. Specifies permissible contact to include: escorting a child by holding their hand or arm; helping a willing child with a task; or exerting minimal physical contact necessary to intervene in a physical altercation, or to protect against serious bodily injury, sexual contact, or assault. With respect to the prevention of life-threatening injury in the context of state hospital-level care: requires specific physician's orders, written policies governing evaluation of children post-restraint, in the presence of personnel trained in cardiopulmonary resuscitation, while the child is continuously monitored, for the minimum duration necessary when no other alternative is possible. Requires written findings and authorization to continue, every five minutes, for any restraint or seclusion longer than 10 minutes; and access to a bathroom and water a minimum of every 30 minutes. With respect to training and certification: requires any person who administers restraint or seclusion of a child in care to be trained with respect to the type of restraint used, pursuant to DHS rule in effect on measure's effective date for period of time from effective date to operative date. Directs DHS to designate nationally recognized crisis intervention programs for certification purposes. Requires rulemaking to address the teaching of crisis intervention techniques that do not require restraint; to include training to identify risks related to use of restraint and seclusion; to address instructor certification; and to ensure consistency across programs, require quality control, and provide support, among other items. Requires demonstrated competency, continuing education, and renewal every two years for instructors and trainees. Requires certifications to be portable between employers, personal to the certified individual, and specifies content of certificate. Requires facilities to establish protocols. Requires documentation of incidents of seclusion or restraint involving reportable injury to include any audio or video recordings surrounding or during the event, and that the facility provide specified notice in writing and release all records to DHS, parents, guardians, court-appointed special advocates (CASAs), and the child's attorney as soon as practicable but no later than two business days. Requires facilities to provide specified written notification within 24 hours, and notes from a meeting of facility personnel held within two business days, to the child's parents, guardians, case managers, CASAs and attorney. Requires specified written notice of the involvement of any

## **SB 710 A STAFF MEASURE SUMMARY**

uncertified personnel. Requires written notice to DHS within 24 hours of serious bodily injury or death of any personnel. Requires quarterly reports from facilities to DHS and specifies minimum content. Directs each facility and DHS to make reports publicly available on their respective websites. Requires facilities to inform parents and guardians how to access reports when a child enters care and at least twice annually thereafter. Requires DHS to provide specified information in writing to children in care, including how to make reports; the toll-free child abuse hotline; and other contact information for licensing entities, CASAs, attorneys, case workers, and Disability Rights Oregon. Includes reports of suspected inappropriate use of restraint or seclusion among provisions governing investigations of suspected abuse to require DHS to review all relevant reports including: certification of involved personnel, reports about the child, circumstances surrounding the incident, and any audio, video, or still photographs. Directs DHS to ask the subject child if they were injured or felt pain. Requires DHS to include specified information about the use of restraint in its regular quarterly reports to the legislature concerning developmental disabilities residential facilities, certified foster homes, and child caring agencies. Establishes due dates for quarterly reports beginning November 1, 2021, and specifies first report must include data from July 1, 2021, though September 1, 2021. Requires that referrals to secure transportation providers must include written notice that such providers must be licensed by DHS if transporting a child who resides in Oregon or transporting to an in-state destination, operative January 2, 2022. Defines terms and incorporates existing statutory definitions by reference. Operative July 1, 2022. Declares emergency, effective on passage.

### **ISSUES DISCUSSED:**

- Codifying and clarifying existing DHS and OHA rules with respect to use of restraint
- Centralizing use of restraint requirements in one place
- Licensing secure transport facilities (current requirements applying only to involuntarily committed adults, determined to be a danger to self or others, pursuant to a physician's order and under DHS oversight)
- Trauma of removing children from their homes against their will; use of fear and forcible deprivation of liberty with parental consent (kidnapping or false imprisonment in any other context)
- Routine restraint of children during transport; lack of regulation primarily with private behavioral health placements
- Extent of private industry concerned with youth behavioral health
- Educating parents and other consumers; notifying an appropriate state agency when parents consent to coerced or forcible removal of a child
- Companion measure establishing training and certification specifics and appropriating funds for training: Senate Bill 265

### **EFFECT OF AMENDMENT:**

Specifies permissible restraints are for use by secure inpatient treatment programs pursuant to order of children's emergency safety intervention specialists as well as medical practitioners. Provides for operative date of July 1, 2022, to allow time for compliance with new provisions and rulemaking process. Rewrites provisions governing training and certification to require any person who administers restraint or seclusion of a child in care to be trained with respect to the type of restraint used, pursuant to DHS rule in effect on measure's effective date for the period of time from the effective date to the operative date. Directs DHS to designate nationally recognized crisis intervention programs for certification purposes. Requires rulemaking to address the teaching of crisis intervention techniques that do not require restraint; to include training to identify risks related to use of restraint and seclusion; to address instructor certification; and to ensure consistency across programs, require quality control, and provide support, among other items. Requires demonstrated competency, continuing education, and renewal every two years for instructors and trainees. Requires certifications to be portable between employers, personal to the certified individual, and specifies content of certificate. Changes notice deadlines to report use of certain restraints, to as soon as practicable but no later than two business days; restores DHS discretion to interview subject children and witnesses upon receipt of a report of suspected abuse; requires Oregon Youth Authority (OYA) and child-caring agencies, along with DHS, to provide specified information to children in care;

## **SB 710 A STAFF MEASURE SUMMARY**

and refines description of secure transportation services. Establishes due dates for quarterly reports beginning November 1, 2021, and specifies first report must include data from July 1, 2021, though September 1, 2021. Adds requirement for data by location. Removes the requirement for immediate review and report on a child's treatment plan based on use of restraint or isolation more than twice in seven days. Removes language prohibiting presence of program personnel when DHS interviews children in care and others pursuant to investigation of inappropriate use of restraint or seclusion. Adds requirement that referrals to secure transportation providers must include written notice that such providers must be licensed by DHS if transporting a child who resides in Oregon or transporting to an in-state destination, operative January 2, 2022. Narrows DHS' required review of all incident reports when investigating suspected misuse of restraint or seclusion, to review of all *relevant* incident reports, and corrects a reference to secure transportation providers to mirror the definition. Adds several defined terms and incorporates existing statutory definitions by reference.

### **BACKGROUND:**

Unnecessary and improper use of restraint and involuntary seclusion in residential facilities and child caring agencies can traumatize and physically injure the individual subject to restraint, as well as the person applying the restraint. Use of restraint and involuntary seclusion are currently prohibited and regulated primarily through rules promulgated by the Oregon Health Authority (OHA) and the Department of Human Services (DHS). There are narrow exceptions for particular types of restraint in specific circumstances such as those involving bites, weapons, or imminent risk of injury, and in those instances the restraint may only be applied by persons who are appropriately trained. Restraining youth during secure transport is currently largely unregulated.

Senate Bill 710 A codifies, centralizes, and makes existing rules around the use of restraint and involuntary seclusion, and corresponding training and certification requirements, more robust. It also clarifies the narrowly tailored exceptions for permissible uses of restraint and requires secure transportation service providers to be licensed by DHS if they have a nexus to Oregon.