

Enrolled
Senate Bill 710

Sponsored by Senators GELSER, MANNING JR; Senator FREDERICK

CHAPTER

AN ACT

Relating to children in care; creating new provisions; amending ORS 418.205, 418.257 and 418.259; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

RESTRAINT AND INVOLUNTARY SECLUSION

SECTION 1. Definitions. As used in sections 1 to 11 of this 2021 Act:

- (1) **“Certified foster home” means a foster home subject to ORS 418.625 to 418.645.**
- (2) **“Chemical restraint” means a drug or medication that is administered to a child in care to control behavior or restrict freedom of movement.**
- (3) **“Child-caring agency” has the meaning given that term in ORS 418.205.**
- (4) **“Child in care” has the meaning given that term in ORS 418.257.**
- (5) **“Children’s emergency safety intervention specialist” means a qualified mental health professional licensed to order, monitor and evaluate the use of seclusion and restraint in accredited and certified facilities that provide intensive mental health treatment services to individuals under 21 years of age.**
- (6) **“Developmental disabilities residential facility” has the meaning given that term in ORS 418.257.**
- (7)(a) **“Involuntary seclusion” means the confinement of a child in care alone in a room from which the child in care is prevented from leaving by any means.**
- (b) **“Involuntary seclusion” does not include age-appropriate discipline, including, but not limited to, time-out if the time-out is in a setting from which the child in care is not prevented from leaving.**
- (8) **“Mechanical restraint” means a device used to restrict the movement of a child in care or the movement or normal function of a portion of the body of a child in care.**
- (9) **“Proctor foster home” means a foster home certified by a child-caring agency under ORS 418.248.**
- (10) **“Program” means:**
 - (a) **A child-caring agency;**
 - (b) **A proctor foster home; or**
 - (c) **A developmental disabilities residential facility that is a residential training home or facility licensed under ORS 443.415 to serve children under 18 years of age.**
- (11) **“Prone restraint” means a restraint in which a child in care is held face down on the floor.**

(12) “Reportable injury” means any type of injury to a child in care, including but not limited to rug burns, fractures, sprains, bruising, pain, soft tissue injury, punctures, scratches, concussions, abrasions, dizziness, loss of consciousness, loss of vision, visual disturbance or death.

(13) “Restraint” means the physical restriction of a child in care’s actions or movements by holding the child in care or using pressure or other means.

(14) “Secure adolescent inpatient treatment program” means a child-caring agency that is an intensive treatment services program, as described by the Oregon Health Authority by rule, that provides inpatient psychiatric stabilization and treatment services to individuals under 21 years of age who require a secure intensive treatment setting.

(15) “Secure children’s inpatient treatment program” means a child-caring agency that is an intensive treatment services program, as described by the authority by rule, that provides inpatient psychiatric stabilization and treatment services to children under 14 years of age who require a secure intensive treatment setting.

(16) “Serious bodily injury” means any significant impairment of the physical condition of an individual, as determined by qualified medical personnel, whether self-inflicted or inflicted by someone else.

(17) “Supine restraint” means a restraint in which a child in care is held face up on the floor.

SECTION 2. Prohibitions on restraint or involuntary seclusion. (1) A child-caring agency, proctor foster home, certified foster home or developmental disabilities residential facility may not place a child in care in a restraint or involuntary seclusion as a form of discipline, punishment or retaliation or for the convenience of staff, contractors or volunteers of the child-caring agency, proctor foster home, certified foster home or developmental disabilities residential facility.

(2) Except as provided in section 3 (4) of this 2021 Act, the use of the following types of restraint of a child in care are prohibited:

(a) Chemical restraint.

(b) Mechanical restraint.

(c) Prone restraint.

(d) Supine restraint.

(e) Any restraint that includes the nonincidental use of a solid object, including the ground, a wall or the floor, to impede a child in care’s movement.

(f) Any restraint that places, or creates a risk of placing, pressure on a child in care’s neck or throat.

(g) Any restraint that places, or creates a risk of placing, pressure on a child in care’s mouth.

(h) Any restraint that impedes, or creates a risk of impeding, a child in care’s breathing.

(i) Any restraint that involves the intentional placement of hands, feet, elbows, knees or any object on a child in care’s neck, throat, genitals or other intimate parts.

(j) Any restraint that causes pressure to be placed, or creates a risk of causing pressure to be placed, on a child in care’s stomach, chest, joints, throat or back by a knee, foot or elbow.

(k) Any other restraint, the primary purpose of which is to inflict pain.

SECTION 3. Permissible use of restraint or involuntary seclusion. (1) Except as otherwise provided in this section, a child-caring agency, proctor foster home or developmental disabilities residential facility may only place a child in care in a restraint or involuntary seclusion if the child in care’s behavior poses a reasonable risk of imminent serious bodily injury to the child in care or others and less restrictive interventions would not effectively reduce that risk.

(2) A certified foster home may not place a child in care in a restraint or involuntary seclusion.

(3) Notwithstanding subsection (1) or (2) of this section, a child-caring agency, proctor foster home, certified foster home or developmental disabilities residential facility may use the following types of restraints on a child in care:

(a) Holding the child in care's hand or arm to escort the child in care safely and without the use of force from one area to another;

(b) Assisting the child in care to complete a task if the child in care does not resist the physical contact; or

(c) Using a physical intervention if:

(A) The intervention is necessary to break up a physical fight or to effectively protect a person from an assault, serious bodily injury or sexual contact;

(B) The intervention uses the least amount of physical force and contact possible; and

(C) The intervention is not a prohibited restraint described in section 2 (2) of this 2021 Act.

(4) Notwithstanding section 2 (2) of this 2021 Act:

(a) The restraint described in section 2 (2)(e) of this 2021 Act may be used if the restraint is necessary to gain control of a weapon.

(b) The restraint described in section 2 (2)(g) of this 2021 Act may be used if the restraint is necessary for the purpose of extracting a body part from a bite.

(c) If a program is a secure children's inpatient treatment program or secure adolescent inpatient treatment program, the program may place a child in care in a restraint described in section 2 (2)(d) or (e) of this 2021 Act only if:

(A) The child in care is currently admitted to the program;

(B) The restraint is authorized by an order written at the time of and specifically for the current situation by a licensed medical practitioner or a licensed children's emergency safety intervention specialist;

(C) The restraint is used only as long as needed to prevent serious physical injury, as defined in ORS 161.015, and while no other intervention or form of restraint is possible;

(D) A licensed medical practitioner, children's emergency safety intervention specialist or qualified mental health professional, who is certified in the use of the type of restraint used, continuously monitors the use of the restraint and the physical and psychological well-being of the child in care at all times while the restraint is being used;

(E) Each individual placing the child in care in the restraint is trained, as required by the Department of Human Services by rule, in the use of the type of restraint used and the individual's training is current;

(F) One or more individuals with current cardiopulmonary resuscitation training are present for the duration of the restraint;

(G) The program has written policies that require a licensed children's emergency safety intervention specialist or other licensed practitioner to evaluate and document the physical, psychological and emotional well-being of the child in care immediately following the use of the restraint; and

(H) The program is in compliance with any other requirements under sections 1 to 11 of this 2021 Act, and the use of the restraint does not otherwise violate any applicable contract requirements or any state or federal law related to the use of restraints.

(5) In addition to the restraints described in subsection (3) of this section, a program may place a child in care in a restraint or involuntary seclusion if:

(a) The restraint or involuntary seclusion is used only for as long as the child in care's behavior poses a reasonable risk of imminent serious bodily injury;

(b) The individuals placing the child in care in the restraint are trained, as required by the department by rule, in the use of the type of restraint or involuntary seclusion used;

(c) The program staff continuously monitor the child in care for the duration of the restraint or involuntary seclusion; and

(d) The restraint or involuntary seclusion is performed in a manner that is safe, proportionate and appropriate, taking into consideration the child in care's chronological and developmental age, size, gender identity, physical, medical and psychiatric condition and personal history, including any history of physical or sexual abuse.

(6) In addition to the requirements described in subsection (5) of this section, if a program places a child in care in a restraint or involuntary seclusion for more than 10 minutes:

(a) The program must provide the child in care with adequate access to the bathroom and water at least every 30 minutes; and

(b)(A) Every five minutes after the first 10 minutes of the restraint or involuntary seclusion, a program supervisor who is trained, as required by the department by rule, in the use of the type of restraint or involuntary seclusion being used must provide written authorization for the continuation of the restraint or involuntary seclusion.

(B) If the supervisor is not on-site at the time the restraint is used, the supervisor may provide the written authorization electronically.

(C) The written authorization must document why the restraint or involuntary seclusion continues to be the least restrictive intervention to reduce the risk of imminent serious bodily injury in the given circumstances.

SECTION 4. Section 3 of this 2021 Act is amended to read:

Sec. 3. (1) Except as otherwise provided in this section, a child-caring agency, proctor foster home or developmental disabilities residential facility may only place a child in care in a restraint or involuntary seclusion if the child in care's behavior poses a reasonable risk of imminent serious bodily injury to the child in care or others and less restrictive interventions would not effectively reduce that risk.

(2) A certified foster home may not place a child in care in a restraint or involuntary seclusion.

(3) Notwithstanding subsection (1) or (2) of this section, a child-caring agency, proctor foster home, certified foster home or developmental disabilities residential facility may use the following types of restraints on a child in care:

(a) Holding the child in care's hand or arm to escort the child in care safely and without the use of force from one area to another;

(b) Assisting the child in care to complete a task if the child in care does not resist the physical contact; or

(c) Using a physical intervention if:

(A) The intervention is necessary to break up a physical fight or to effectively protect a person from an assault, serious bodily injury or sexual contact;

(B) The intervention uses the least amount of physical force and contact possible; and

(C) The intervention is not a prohibited restraint described in section 2 (2) of this 2021 Act.

(4) Notwithstanding section 2 (2) of this 2021 Act:

(a) The restraint described in section 2 (2)(e) of this 2021 Act may be used if the restraint is necessary to gain control of a weapon.

(b) The restraint described in section 2 (2)(g) of this 2021 Act may be used if the restraint is necessary for the purpose of extracting a body part from a bite.

(c) If a program is a secure children's inpatient treatment program or secure adolescent inpatient treatment program, the program may place a child in care in a restraint described in section 2 (2)(d) or (e) of this 2021 Act only if:

(A) The child in care is currently admitted to the program;

(B) The restraint is authorized by an order written at the time of and specifically for the current situation by a licensed medical practitioner or a licensed children's emergency safety intervention specialist;

(C) The restraint is used only as long as needed to prevent serious physical injury, as defined in ORS 161.015, and while no other intervention or form of restraint is possible;

(D) A licensed medical practitioner, children's emergency safety intervention specialist or qualified mental health professional, who is certified in the use of the type of restraint used, contin-

uously monitors the use of the restraint and the physical and psychological well-being of the child in care at all times while the restraint is being used;

(E) Each individual placing the child in care in the restraint is [*trained, as required by the Department of Human Services by rule,*] **certified as described in section 9 of this 2021 Act** in the use of the type of restraint used and the individual's training is current;

(F) One or more individuals with current cardiopulmonary resuscitation training are present for the duration of the restraint;

(G) The program has written policies that require a licensed children's emergency safety intervention specialist or other licensed practitioner to evaluate and document the physical, psychological and emotional well-being of the child in care immediately following the use of the restraint; and

(H) The program is in compliance with any other requirements under sections 1 to 11 of this 2021 Act, and the use of the restraint does not otherwise violate any applicable contract requirements or any state or federal law related to the use of restraints.

(5) In addition to the restraints described in subsection (3) of this section, a program may place a child in care in a restraint or involuntary seclusion if:

(a) The restraint or involuntary seclusion is used only for as long as the child in care's behavior poses a reasonable risk of imminent serious bodily injury;

(b) The individuals placing the child in care in the restraint **or involuntary seclusion are certified as described in section 9 of this 2021 Act in the use of the type of restraint used** or are trained, as required by the department by rule, in the use of the [*type of restraint or*] involuntary seclusion used;

(c) The program staff continuously monitor the child in care for the duration of the restraint or involuntary seclusion; and

(d) The restraint or involuntary seclusion is performed in a manner that is safe, proportionate and appropriate, taking into consideration the child in care's chronological and developmental age, size, gender identity, physical, medical and psychiatric condition and personal history, including any history of physical or sexual abuse.

(6) In addition to the requirements described in subsection (5) of this section, if a program places a child in care in a restraint or involuntary seclusion for more than 10 minutes:

(a) The program must provide the child in care with adequate access to the bathroom and water at least every 30 minutes; and

(b)(A) Every five minutes after the first 10 minutes of the restraint or involuntary seclusion, a program supervisor who is **certified as described in section 9 of this 2021 Act in the use of the type of restraint being used** or trained, as required by the department by rule, in the use of the [*type of restraint or*] involuntary seclusion being used must provide written authorization for the continuation of the restraint or involuntary seclusion.

(B) If the supervisor is not on-site at the time the restraint is used, the supervisor may provide the written authorization electronically.

(C) The written authorization must document why the restraint or involuntary seclusion continues to be the least restrictive intervention to reduce the risk of imminent serious bodily injury in the given circumstances.

SECTION 5. Procedures, notices and reports. (1) **A program shall establish procedures for the program to follow when a child in care is placed in a restraint or involuntary seclusion. The procedures must be consistent with the provisions of this section and sections 2 and 3 of this 2021 Act.**

(2) **A program shall maintain a record of each incident in which a reportable injury arises from the use of a restraint or involuntary seclusion. The record under this subsection must include any audio or video recording immediately preceding, during and following the incident.**

(3)(a) **If a program places a child in care in a restraint except as provided in section 3 (3)(a) or (b) of this 2021 Act, or involuntary seclusion, the program shall provide the child in**

care's case manager, attorney, court appointed special advocate and parents or guardians with:

(A) Verbal or electronic notice that the restraint or involuntary seclusion was used as soon as practicable following the incident but not later than the end of the next business day; and

(B) Written notice that the restraint or involuntary seclusion was used as soon as practicable following the incident but not later than the end of the next business day.

(b) The written notice must include:

(A) A description of the restraint or involuntary seclusion, the date of the restraint or involuntary seclusion, the times when the restraint or involuntary seclusion began and ended and the location of the restraint or involuntary seclusion.

(B) A description of the child in care's activity that necessitated the use of restraint or involuntary seclusion.

(C) The efforts the program used to de-escalate the situation and the alternatives to restraint or involuntary seclusion the program attempted before placing the child in care in the restraint or involuntary seclusion.

(D)(i) The names of each of individual who placed the child in care in the restraint or involuntary seclusion or who monitored or approved the placement of the child in care in the restraint or involuntary seclusion.

(ii) For each individual identified in this subparagraph, whether the individual was trained, as required by the Department of Human Services by rule, in the use of the type of restraint or involuntary seclusion used, the date of the individual's most recent training and a description of the types of restraint the individual is trained to use, if any.

(iii) If an individual identified in this subparagraph was not trained in the type of restraint or involuntary seclusion used, or if the individual's training was not current, a description of the individual's training deficiency and the reason an individual without the proper training was involved in the restraint or involuntary seclusion.

(4) If an incident requires notice under subsection (3) of this section, not later than two business days following the date of the restraint or involuntary seclusion, the program shall hold a debriefing meeting with each individual who was involved in the incident and with any other appropriate program staff, shall take written notes of the debriefing meeting and shall provide copies of the written notes to the child in care's case manager, attorney, court appointed special advocate and parents or guardians.

(5)(a) If a program places a child in care in a restraint or involuntary seclusion and the child in care suffers a reportable injury arising from the restraint or involuntary seclusion, the program shall immediately provide the department and the child in care's attorney, court appointed special advocate and parents or guardians with written notification of the incident and access to and, upon request, copies of all records related to the restraint or involuntary seclusion, including any photographs and audio or video recordings.

(b) If serious bodily injury or the death of staff personnel occurs in connection to the use of the restraint or involuntary seclusion, the program shall provide the department with written notification of the incident not later than 24 hours following the incident.

SECTION 6. Section 5 of this 2021 Act is amended to read:

Sec. 5. (1) A program shall establish procedures for the program to follow when a child in care is placed in a restraint or involuntary seclusion. The procedures must be consistent with the provisions of this section and sections 2 and 3 of this 2021 Act.

(2) A program shall maintain a record of each incident in which a reportable injury arises from the use of a restraint or involuntary seclusion. The record under this subsection must include any audio or video recording immediately preceding, during and following the incident.

(3)(a) If a program places a child in care in a restraint except as provided in section 3 (3)(a) or (b) of this 2021 Act, or involuntary seclusion, the program shall provide the child in care's case manager, attorney, court appointed special advocate and parents or guardians with:

(A) Verbal or electronic notice that the restraint or involuntary seclusion was used as soon as practicable following the incident but not later than the end of the next business day; and

(B) Written notice that the restraint or involuntary seclusion was used as soon as practicable following the incident but not later than the end of the next business day.

(b) The written notice must include:

(A) A description of the restraint or involuntary seclusion, the date of the restraint or involuntary seclusion, the times when the restraint or involuntary seclusion began and ended and the location of the restraint or involuntary seclusion.

(B) A description of the child in care's activity that necessitated the use of restraint or involuntary seclusion.

(C) The efforts the program used to de-escalate the situation and the alternatives to restraint or involuntary seclusion the program attempted before placing the child in care in the restraint or involuntary seclusion.

(D)(i) The names of each of individual who placed the child in care in the restraint or involuntary seclusion or who monitored or approved the placement of the child in care in the restraint or involuntary seclusion.

(ii) For each individual identified in this subparagraph, whether the individual was **certified as described in section 9 of this 2021 Act in the use of the type of restraint used or trained**, as required by the Department of Human Services by rule, in the use of the [*type of restraint or*] involuntary seclusion used, the date of the individual's most recent **certification or training** and a description of the types of restraint the individual is [*trained*] **certified** to use, if any.

(iii) If an individual identified in this subparagraph was not **certified or trained** in the type of restraint or involuntary seclusion used, or if the individual's **certification or training** was not current, a description of the individual's **certification or training** deficiency and the reason an individual without the proper **certification or training** was involved in the restraint or involuntary seclusion.

(4) If an incident requires notice under subsection (3) of this section, not later than two business days following the date of the restraint or involuntary seclusion, the program shall hold a debriefing meeting with each individual who was involved in the incident and with any other appropriate program staff, shall take written notes of the debriefing meeting and shall provide copies of the written notes to the child in care's case manager, attorney, court appointed special advocate and parents or guardians.

(5)(a) If a program places a child in care in a restraint or involuntary seclusion and the child in care suffers a reportable injury arising from the restraint or involuntary seclusion, the program shall immediately provide the department and the child in care's attorney, court appointed special advocate and parents or guardians with written notification of the incident and access to and, upon request, copies of all records related to the restraint or involuntary seclusion, including any photographs and audio or video recordings.

(b) If serious bodily injury or the death of staff personnel occurs in connection to the use of the restraint or involuntary seclusion, the program shall provide the department with written notification of the incident not later than 24 hours following the incident.

SECTION 7. Reporting requirements. (1) A program must prepare and submit to the Department of Human Services a quarterly report detailing the program's use of restraint and involuntary seclusion for the preceding three-month period, including, at a minimum:

(a) The total number of incidents involving restraint.

(b) The total number of incidents involving involuntary seclusion.

(c) The total number of involuntary seclusions in a locked room.

(d) The total number of rooms available for use by the program for involuntary seclusion and a description of the dimensions and design of the rooms.

(e) The total number of children in care placed in restraint.

(f) The total number of children in care placed in involuntary seclusion.

(g) The total number of incidents under paragraph (a) or (b) of this subsection that resulted in reportable injuries.

(h) The number of children in care who were placed in restraint or involuntary seclusion more than three times during the preceding three-month period and a description of the steps the program has taken to decrease the use of restraint and involuntary seclusion.

(i) The number of incidents in which an individual who placed a child in care in a restraint or involuntary seclusion was not trained, as required by the department by rule, in the use of the type of restraint or involuntary seclusion used.

(j) The demographic characteristics of the children in care who the program placed in a restraint or involuntary seclusion, including race, ethnicity, gender, disability status, migrant status, English proficiency and status as economically disadvantaged, unless the demographic information would reveal personally identifiable information about an individual child in care.

(2)(a) If a program provides services in more than one location, the reports under subsection (1) of this section must separate the data for each location that serves five or more children in care.

(b) If the site-specific data for a given location is not provided under paragraph (a) of this subsection because the program serves fewer than five children in care at that location, the program's report must include a notation indicating the aggregate number of children in care served by the program across all of the program's locations and the reporting requirements under paragraph (a) of this subsection continue to apply to any of the program's other locations serving five or more children in care.

(3)(a) The department shall make each quarterly report it receives under this section available to the public on the department's website.

(b) Each program that submits a report under this section shall make its quarterly report available to the public upon request at the program's main office and on the program's website if the program maintains a website.

(c) Each program shall provide notice regarding how to access the quarterly reports to the parents or guardians of children in care in the program. The program shall provide the notice upon the child in care's admission and at least two times each year thereafter.

SECTION 8. Section 7 of this 2021 Act is amended to read:

Sec. 7. (1) A program must prepare and submit to the Department of Human Services a quarterly report detailing the program's use of restraint and involuntary seclusion for the preceding three-month period, including, at a minimum:

(a) The total number of incidents involving restraint.

(b) The total number of incidents involving involuntary seclusion.

(c) The total number of involuntary seclusions in a locked room.

(d) The total number of rooms available for use by the program for involuntary seclusion and a description of the dimensions and design of the rooms.

(e) The total number of children in care placed in restraint.

(f) The total number of children in care placed in involuntary seclusion.

(g) The total number of incidents under paragraph (a) or (b) of this subsection that resulted in reportable injuries.

(h) The number of children in care who were placed in restraint or involuntary seclusion more than three times during the preceding three-month period and a description of the steps the program has taken to decrease the use of restraint and involuntary seclusion.

(i) The number of incidents in which an individual who placed a child in care in a restraint or involuntary seclusion was not **certified as described in section 9 of this 2021 Act** or trained, as required by the department by rule, in the use of the type of restraint or involuntary seclusion used.

(j) The demographic characteristics of the children in care who the program placed in a restraint or involuntary seclusion, including race, ethnicity, gender, disability status, migrant status,

English proficiency and status as economically disadvantaged, unless the demographic information would reveal personally identifiable information about an individual child in care.

(2)(a) If a program provides services in more than one location, the reports under subsection (1) of this section must separate the data for each location that serves five or more children in care.

(b) If the site-specific data for a given location is not provided under paragraph (a) of this subsection because the program serves fewer than five children in care at that location, the program's report must include a notation indicating the aggregate number of children in care served by the program across all of the program's locations and the reporting requirements under paragraph (a) of this subsection continue to apply to any of the program's other locations serving five or more children in care.

(3)(a) The department shall make each quarterly report it receives under this section available to the public on the department's website.

(b) Each program that submits a report under this section shall make its quarterly report available to the public upon request at the program's main office and on the program's website if the program maintains a website.

(c) Each program shall provide notice regarding how to access the quarterly reports to the parents or guardians of children in care in the program. The program shall provide the notice upon the child in care's admission and at least two times each year thereafter.

SECTION 9. Training. If a program places a child in care in a restraint or involuntary seclusion, the individuals using the restraint or involuntary seclusion must be trained, as required by the Department of Human Services by rule in effect on the effective date of this 2021 Act, to administer the type of restraint or involuntary seclusion used.

SECTION 10. Section 9 of this 2021 Act is amended to read:

Sec. 9. *[If a program places a child in care in a restraint or involuntary seclusion, the individuals using the restraint or involuntary seclusion must be trained, as required by the Department of Human Services by rule in effect on the effective date of this 2021 Act, to administer the type of restraint or involuntary seclusion used.]*

(1)(a) **The Department of Human Services shall adopt by rule training standards and certification requirements regarding the placement of a child in care in a restraint or involuntary seclusion, consistent with this section.**

(b) **The department shall designate two or three nationally recognized providers of crisis intervention training that meet the department's training standards and whose certifications issued upon completion of the training programs the department will recognize as satisfying the department's certification requirements.**

(2) **The department's rules under this section must:**

(a) **Ensure consistency of training and professional development across all programs;**

(b) **Require the teaching of techniques for nonviolent crisis intervention that do not require restraint;**

(c) **Focus on de-escalation and trauma-informed behavioral support as the core of a training program;**

(d) **Offer options for certification in skills that do not include the use of restraint to improve agency-wide safety, culture and trauma-informed practices;**

(e) **Prioritize the reduction or elimination of the use of restraint and involuntary seclusion;**

(f) **Ensure that any physical intervention skills taught are trauma-informed, age-appropriate and developmentally appropriate for children in care, reduce the risk of physical or emotional harm and are consistent with all state and federal laws;**

(g) **Include training to identify the physical, psychological and emotional risks for children and program staff related to the use of restraint and involuntary seclusion;**

(h) **Ensure fidelity of training through the publication of consistent training materials and resources for certified instructors and certified program staff;**

(i) **Include requirements for instructor training and certification; and**

(j) Require regular, ongoing support to certified instructors, including quality control, monitoring of outcomes and provision of information regarding networks for professional collaboration and support.

(3) The department's rules must require that training instructors:

(a) Be certified to conduct the type of training the instructor is providing;

(b) Complete a minimum of 26 hours of initial education with a focus on de-escalation, nonviolent intervention and methods consistent with the department's rules for the use of physical intervention;

(c) Complete a minimum of 12 hours of continuing education every two years;

(d) Be recertified at least once every two years; and

(e) Demonstrate written and physical competency before receiving certification or re-certification.

(4) The department's rules must provide that an individual who places a child in care in a program in a restraint must be certified in the use of the specific type of restraint used. The department's rules must describe the minimum certification requirements, including:

(a) Completion of a minimum of 12 hours of initial training in person from an instructor certified as provided in subsection (3) of this section, including at least six hours of training in positive behavior support, nonviolent crisis intervention and other methods of nonphysical intervention to support children in care in crisis;

(b) Annual continuing education with a certified instructor; and

(c) Demonstration of a mastery of the training program material both in writing and by physical competency before receiving certification.

(5) A certification issued under this section:

(a) Must be personal to the individual certified by the training provider;

(b) May be valid for no more than two years without recertification;

(c) Must require annual continuing education to maintain;

(d) Must require additional training to renew the certification;

(e) Must be portable between employers; and

(f) Must include:

(A) The dates during which the certification is current;

(B) The types of restraint in which the individual is certified, if any;

(C) The types of training the individual is certified to conduct, if any;

(D) Any special endorsements earned by the individual;

(E) The level of training; and

(F) The name of the certified instructor who conducted the training and administered the assessment of proficiency.

(6) An individual whose certification is consistent with the department's rules under this section shall maintain the documentation of the certification and make that documentation available to the department upon request.

SECTION 11. Information provided to children in care. (1) Each child in care receiving services from a child-caring agency must be provided with information that:

(a) Explains the provisions of sections 1 to 11 of this 2021 Act;

(b) Provides instruction regarding how a child in care may report suspected inappropriate use of restraint or involuntary seclusion;

(c) Assures the child in care that the child will not experience retaliation for reporting suspected inappropriate uses of restraint or involuntary seclusion; and

(d) Includes the telephone number for the toll-free child abuse hotline described in ORS 417.805 and the telephone numbers and electronic mail addresses for the program's licensing or certification agency, the child in care's caseworker and attorney, the child in care's court appointed special advocate and Disability Rights Oregon.

(2) The information described in subsection (1) of this section must be provided by:

(a) **The Department of Human Services if the department placed the child in care in the child-caring agency;**

(b) **The Oregon Youth Authority if the child in care has been committed to the custody of the authority; or**

(c) **The child-caring agency, as required by the department by rule, for all other children in care.**

SECTION 12. ORS 418.257 is amended to read:

418.257. As used in ORS 418.257 to 418.259:

(1) "Abuse" means one or more of the following:

(a) Any physical injury to a child in care caused by other than accidental means, or that appears to be at variance with the explanation given of the injury.

(b) Neglect of a child in care.

(c) Abandonment, including desertion or willful forsaking of a child in care or the withdrawal or neglect of duties and obligations owed a child in care by a child-caring agency, caretaker, certified foster home, developmental disabilities residential facility or other person.

(d) Willful infliction of physical pain or injury upon a child in care.

(e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465, 163.467 or 163.525.

(f) Verbal abuse.

(g) Financial exploitation.

(h) Sexual abuse.

[(i) Involuntary seclusion of a child in care for the convenience of a child-caring agency, caretaker, certified foster home or developmental disabilities residential facility or to discipline the child in care.]

[(j) A wrongful use of a physical or chemical restraint of a child in care, excluding an act of restraint prescribed by a physician licensed under ORS chapter 677 and any treatment activities that are consistent with an approved treatment plan or in connection with a court order.]

(i) The use of restraint or involuntary seclusion of a child in care in violation of section 2 or 3 of this 2021 Act.

(2) "Certified foster home" means a foster home certified by the Department of Human Services and subject to ORS 418.625 to 418.645.

(3)(a) "Child in care" means a person under 21 years of age who is residing in or receiving care or services from:

(A) A child-caring agency or proctor foster home subject to ORS 418.205 to 418.327, 418.470, 418.475 or 418.950 to 418.970;

(B) A certified foster home; or

(C) A developmental disabilities residential facility.

(b) "Child in care" does not include a person under 21 years of age who is residing in any of the entities listed in paragraph (a) of this subsection when the care provided is in the home of the child by the child's parent.

[(4) "Child-caring agency" has the meaning given that term in ORS 418.205.]

[(5) (4) "Developmental disabilities residential facility" means a residential facility or foster home for children who are [18] 17 years of age or younger and receiving developmental disability services that is subject to ORS 443.400 to 443.455, 443.830 and 443.835.

[(6) "Involuntary seclusion" means the confinement of a child in care alone in a room from which the child in care is physically prevented from leaving. "Involuntary seclusion" does not include age-appropriate discipline, including but not limited to a time-out.]

[(7) "Proctor foster home" has the meaning given that term in ORS 418.205.]

[(8)(a) (5)(a) "Financial exploitation" means:

(A) Wrongfully taking the assets, funds or property belonging to or intended for the use of a child in care.

(B) Alarming a child in care by conveying a threat to wrongfully take or appropriate moneys or property of the child in care if the child would reasonably believe that the threat conveyed would be carried out.

(C) Misappropriating, misusing or transferring without authorization any moneys from any account held jointly or singly by a child in care.

(D) Failing to use the income or assets of a child in care effectively for the support and maintenance of the child in care.

(b) "Financial exploitation" does not include age-appropriate discipline that may involve the threat to withhold, or the withholding of, privileges.

[(9)] (6) "Intimidation" means compelling or deterring conduct by threat. "Intimidation" does not include age-appropriate discipline that may involve the threat to withhold privileges.

(7) "Involuntary seclusion" has the meaning given that term in section 1 of this 2021 Act.

[(10)] (8) "Law enforcement agency" means:

(a) Any city or municipal police department.

(b) Any county sheriff's office.

(c) The Oregon State Police.

(d) Any district attorney.

(e) A police department established by a university under ORS 352.121 or 353.125.

[(11)] (9) "Neglect" means:

(a) Failure to provide the care, supervision or services necessary to maintain the physical and mental health of a child in care; or

(b) The failure of a child-caring agency, proctor foster home, certified foster home, developmental disabilities residential facility, caretaker or other person to make a reasonable effort to protect a child in care from abuse.

(10) "Restraint" has the meaning given that term in section 1 of this 2021 Act.

[(12)] (11) "Services" includes but is not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene or any other service essential to the well-being of a child in care.

[(13)] (12) "Sexual abuse" means:

(a) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit material or language;

(b) Any sexual contact between a child in care and an employee of a child-caring agency, proctor foster home, certified foster home, developmental disabilities residential facility, caretaker or other person responsible for the provision of care or services to a child in care;

(c) Any sexual contact between a person and a child in care that is unlawful under ORS chapter 163 and not subject to a defense under that chapter; or

(d) Any sexual contact that is achieved through force, trickery, threat or coercion.

[(14)] (13) "Sexual contact" has the meaning given that term in ORS 163.305.

[(15)] (14) "Sexual exploitation" means sexual exploitation as described in ORS 419B.005 (1)(a)(E).

[(16)] (15) "Verbal abuse" means to threaten significant physical or emotional harm to a child in care through the use of:

(a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or

(b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate sexual comments.

SECTION 13. ORS 418.259, as amended by section 9, chapter 19, Oregon Laws 2020 (first special session), is amended to read:

418.259. (1) The investigation conducted by the Department of Human Services under ORS 418.258 must result in one of the following findings:

(a) That the report is substantiated. A report is substantiated when there is reasonable cause to believe that the abuse of a child in care occurred.

(b) That the report is unsubstantiated. A report is unsubstantiated when there is no evidence that the abuse of a child in care occurred.

(c) That the report is inconclusive. A report is inconclusive when there is some indication that the abuse occurred but there is insufficient evidence to conclude that there is reasonable cause to believe that the abuse occurred.

(2) When a report is received under ORS 418.258 alleging that a child in care may have been subjected to abuse, the department shall notify the case managers for the child, the attorney for the child, the child's court appointed special advocate, the parents or guardians of the child, any attorney representing a parent or guardian of the child and any governmental agency that has a contract with the child-caring agency or developmental disabilities residential facility to provide care or services to the child that a report has been received.

(3)(a) The department may interview the child in care who is the subject of suspected abuse and **any witnesses, including other children**, without the presence of employees of the child-caring agency, proctor foster home or developmental disabilities residential facility, the provider of services at a certified foster home or department personnel. The department shall inform the child in care that the child may have the child's parent or guardian, if the child has not been committed to the custody of the department or the Oregon Youth Authority, or attorney present when participating in an interview conducted in the course of an abuse investigation.

(b) When investigating an allegation of inappropriate use of restraint or involuntary seclusion, the department shall:

(A) Conduct the interviews described in paragraph (a) of this subsection;

(B) Review all relevant incident reports related to the child in care and other reports related to the restraint or involuntary seclusion of the child in care;

(C) Review any audio, video or photographic recordings of the restraint or involuntary seclusion, including the circumstances immediately before and following the incident;

(D) During an interview with the child in care who is the subject of the suspected abuse, ask the child about whether they experienced any reportable injury or pain as a result of the restraint or involuntary seclusion;

(E) Review the training records related to all of the individuals who were involved in the use of restraint or involuntary seclusion; and

(F) Make all reasonable efforts to conduct trauma-informed interviews of each child witness, including the child in care who is the subject of suspected abuse unless the investigator makes a specific determination that the interview may significantly traumatize the child and is not in the best interests of the child.

(4) The department shall notify the following when a report of abuse is substantiated:

(a) The Director of Human Services.

(b) Personnel in the department responsible for the licensing, certificate or authorization of child-caring agencies.

(c) The department's lead personnel in that part of the department that is responsible for child welfare generally.

(d) With respect to the child in care who is the subject of the abuse report and investigation, the case managers for the child, the attorney for the child, the child's court appointed special advocate, the parents or guardians of the child, any attorney representing a parent or guardian of the child and any governmental agency that has a contract with the child-caring agency to provide care or services to the child.

(e) The parents or guardians of the child in care who is the subject of the abuse report and investigation if the child in care has not been committed to the custody of the department or the youth authority. Notification under this paragraph may not include any details or information other than that a report of abuse has been substantiated.

(f) Any governmental agency that has a contract with the child-caring agency to provide care or services to a child in care.

(g) The local citizen review board established by the Judicial Department under ORS 419A.090.

(5) The department shall report on a quarterly basis to the interim legislative committees on child welfare for the purposes of public review and oversight of the quality and safety of child-caring agencies, certified foster homes and developmental disabilities residential facilities that are licensed, certified or authorized by the department in this state and of proctor foster homes that are certified by the child-caring agencies. Information provided in reports under this subsection may not contain the name or any identifying information of a child in care but must contain all of the following:

(a) The name of any child-caring agency, including an out-of-state child-caring agency, proctor foster home or developmental disabilities residential facility, or, provided there are five or more certified foster homes in the county, the name of the county where a certified foster home is located, where the department conducted an investigation pursuant to ORS 418.258 that resulted in a finding that the report of abuse was substantiated during that quarter;

(b) The approximate date that the abuse occurred;

(c) The nature of the abuse and a brief narrative description of the abuse that occurred;

(d) Whether physical injury, sexual abuse or death resulted from the abuse;

(e) Corrective actions taken or ordered by the department and the outcome of the corrective actions; and

(f) Information the department received in that quarter regarding any substantiated allegations of child abuse made by any other state involving a congregate care residential setting, as defined in ORS 419B.354, in which the department has placed Oregon children.

(6) The department's quarterly report under subsection (5) of this section must also contain all of the following:

(a) The total number of restraints used in programs that quarter;

(b) The total number of programs that reported the use of restraints of children in care that quarter;

(c) The total number of individual children in care who were placed in restraints by programs that quarter;

(d) The number of reportable injuries to children in care that resulted from those restraints;

(e) The number of incidents in which an individual who was not appropriately trained in the use of the restraint used on a child in care in a program; and

(f) The number of incidents that were reported for potential inappropriate use of restraint.

~~[(6)]~~ (7) In compiling records, reports and other information during an investigation under ORS 418.258 (1) and in issuing findings, letters of concern or reprimands, the Director of Human Services or the director's designee and the department may not refer to the employee, person or entity that is the subject of the investigation as an "alleged perpetrator" but must refer to the employee, person or entity as the "respondent."

(8) As used in this section, "program," "reportable injury" and "restraint" have the meanings given those terms in section 1 of this 2021 Act.

SECURE TRANSPORTATION SERVICES PROVIDERS

SECTION 14. Referrals to secure transportation services providers. (1) A person or organization that makes a referral or recommendation related to the use of a secure transportation services provider to transport a child to a school, agency, organization or program described in ORS 418.205 (2)(a)(A) must provide the written referral disclosure described in subsection (2) of this section if the child to be transferred is a resident of this state or if the school, agency, organization or program to which the secure transportation services provider will deliver the child is located in this state.

(2) The referral disclosure under this section must state:

ORS 418.215 requires a secure transportation services provider that transports children to or from a school, agency, organization or program along a route that begins or ends in Oregon to be licensed by the Department of Human Services.

(3) As used in this section, “child” and “secure transportation services provider” have the meanings given those terms in ORS 418.205.

SECTION 15. ORS 418.205, as amended by sections 15a and 15b, chapter 19, Oregon Laws 2020 (first special session), is amended to read:

418.205. As used in ORS 418.205 to 418.327, 418.470, 418.475, 418.950 to 418.970 and 418.992 to 418.998, unless the context requires otherwise:

(1) “Child” means an unmarried person under 21 years of age who resides in or receives care or services from a child-caring agency.

(2)(a) “Child-caring agency”:

(A) Means any private school, private agency, private organization or county program providing:

(i) Day treatment for children with emotional disturbances;

(ii) Adoption placement services;

(iii) Residential care, including but not limited to foster care or residential treatment for children;

(iv) Residential care in combination with academic education and therapeutic care, including but not limited to treatment for emotional, behavioral or mental health disturbances;

(v) Outdoor youth programs; or

(vi) Other similar care or services for children.

(B) Includes the following:

(i) A shelter-care home that is not a foster home subject to ORS 418.625 to 418.645;

(ii) An independent residence facility as described in ORS 418.475;

(iii) A private residential boarding school; *[and]*

(iv) A child-caring facility as defined in ORS 418.950[.]; **and**

(v) A secure transportation services provider that transports or provides escort services for children on the highways of this state along a route that begins or ends in this state to or from a school, agency, organization or program described in subparagraph (A) of this paragraph, if the school, agency, organization or program is located in this state or in any other state.

(b) “Child-caring agency” does not include:

(A) Residential facilities or foster care homes certified or licensed by the Department of Human Services under ORS 443.400 to 443.455, 443.830 and 443.835 for children receiving developmental disability services;

(B) Any private agency or organization facilitating the provision of respite services for parents pursuant to a properly executed power of attorney under ORS 109.056. For purposes of this subparagraph, “respite services” means the voluntary assumption of short-term care and control of a minor child without compensation or reimbursement of expenses for the purpose of providing a parent in crisis with relief from the demands of ongoing care of the parent’s child;

(C) A youth job development organization as defined in ORS 344.415;

(D) A shelter-care home that is a foster home subject to ORS 418.625 to 418.645;

(E) A foster home subject to ORS 418.625 to 418.645;

(F) A facility that exclusively serves individuals 18 years of age and older; or

(G) A facility that primarily serves both adults and children but requires that any child must be accompanied at all times by at least one custodial parent or guardian.

(3) “Child-caring facility” has the meaning given that term in ORS 418.950.

(4)(a) “County program” means any county operated program that provides care or services to children:

(A) In the custody of the Department of Human Services or the Oregon Youth Authority[.]; or

(B) Under a contract with the Oregon Health Authority.

(b) "County program" does not include any local juvenile detention facility that receives state services provided and coordinated by the Department of Corrections under ORS 169.070.

(5) "Governmental agency" means an executive, legislative or judicial agency, department, board, commission, authority, institution or instrumentality of this state or of a county, municipality or other political subdivision of this state.

(6) "Independent residence facility" means a facility established or certified under ORS 418.475.

(7)(a) "Outdoor youth program" means a program that provides, in an outdoor living setting, services to children who have behavioral problems, mental health problems or problems with abuse of alcohol or drugs.

(b) "Outdoor youth program" does not include any program, facility or activity:

(A) Operated by a governmental entity;

(B) Operated or affiliated with the Oregon Youth Corps;

(C) Licensed by the Department of Human Services under other authority of the department; or

(D) Operated by a youth job development organization as defined in ORS 344.415.

(8) "Private" means not owned, operated or administered by any governmental agency or unit.

(9) "Private residential boarding school" means either of the following as the context requires:

(a) A child-caring agency that is a private school that provides residential care in combination with academic education and therapeutic care, including but not limited to treatment for emotional, behavioral or mental health disturbances; or

(b) A private school providing residential care that is primarily engaged in educational work under ORS 418.327.

(10) "Proctor foster home" means a foster home certified by a child-caring agency under ORS 418.248 that is not subject to ORS 418.625 to 418.645.

(11) "Provider of care or services for children" means a person, entity or organization that provides care or services to children, regardless of whether the child is in the custody of the Department of Human Services, and that does not otherwise meet the definition of, or requirements for, a child-caring agency. "Provider of care or services for children" includes a proctor foster home certified by a child-caring agency under ORS 418.248.

(12) "Qualified residential treatment program" means a program described in section 12b, chapter 19, Oregon Laws 2020 (first special session).

(13) "Secure transportation services provider" means a private organization or person that provides secure transportation or secure escort services for children to or from a school, agency, organization or program described in subsection (2)(a)(A) of this section, if the school, agency, organization or program is located in this state or in any other state.

[(13)] (14) "Shelter-care home" has the meaning given that term in ORS 418.470.

MISCELLANEOUS

SECTION 16. Reports first due. The reports under section 7 of this 2021 Act are due on February 1, 2022, and quarterly thereafter. The reports due on February 1, 2022, must include data regarding the program's use of restraint and involuntary seclusion from September 1, 2021, through December 31, 2021.

SECTION 17. Appropriations. (1) Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (8), chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), for the biennium beginning July 1, 2021, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and Medicare receipts and including federal funds for indirect cost recovery, Social Security Supplemental Security Income recoveries and the Child Care and Development Fund, but excluding lottery funds and federal funds not described in section 2, chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), collected or received by the Department of

Human Services, for shared services, is increased by \$591,746 for the purpose of carrying out the provisions of this 2021 Act.

(2) Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 3 (2), chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), for the biennium beginning July 1, 2021, as the maximum limit for payment of expenses from federal funds, excluding federal funds described in section 2, chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), collected or received by the Department of Human Services, for state assessments and enterprise-wide costs, is increased by \$231,981 for the purpose of carrying out the provisions of this 2021 Act.

(3) Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (2), chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), for the biennium beginning July 1, 2021, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and Medicare receipts and including federal funds for indirect cost recovery, Social Security Supplemental Security Income recoveries and the Child Care and Development Fund, but excluding lottery funds and federal funds not described in section 2, chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), collected or received by the Department of Human Services, for state assessments and enterprise-wide costs, is increased by \$1,483 for the purpose of carrying out the provisions of this 2021 Act.

(4) Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Human Services by section 1 (2), chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), for the biennium beginning July 1, 2021, for state assessments and enterprise-wide costs, is increased by \$440,116, for the purpose of carrying out the provisions of this 2021 Act.

(5) Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 3 (7), chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), for the biennium beginning July 1, 2021, as the maximum limit for payment of expenses from federal funds, excluding federal funds described in section 2, chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), collected or received by the Department of Human Services, for intellectual/developmental disabilities programs, is increased by \$2,042,807 for the purpose of carrying out the provisions of this 2021 Act.

(6) Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Human Services by section 1 (7), chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), for the biennium beginning July 1, 2021, for intellectual/developmental disabilities programs, is increased by \$1,047,717, for the purpose of carrying out the provisions of this 2021 Act.

SECTION 18. Operative dates. (1)(a) The amendments to sections 3, 5, 7 and 9 of this 2021 Act by sections 4, 6, 8 and 10 of this 2021 Act become operative on July 1, 2022.

(b) The Department of Human Services may adopt rules and take any other action before the operative date specified in paragraph (a) of this subsection that is necessary to enable the department, on or after the operative date specified in paragraph (a) of this subsection, to undertake and exercise all of the duties, functions and powers conferred on the department by the amendments to sections 3, 5, 7 and 9 of this 2021 Act by sections 4, 6, 8 and 10 of this 2021 Act.

(2)(a) Section 14 of this 2021 Act and the amendments to ORS 418.205 by section 15 of this 2021 Act become operative on January 2, 2022.

(b) The department may adopt rules and take any other action before the operative date specified in paragraph (a) of this subsection that is necessary to enable the department, on or after the operative date specified in paragraph (a) of this subsection, to undertake and exercise all of the duties, functions and powers conferred on the department by section 14 of this 2021 Act and the amendments to ORS 418.205 by section 15 of this 2021 Act.

SECTION 19. Captions. The unit and section captions used in this 2021 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2021 Act.

SECTION 20. Effective date. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on September 1, 2021.

Passed by Senate June 24, 2021

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House June 25, 2021

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

.....
Shemia Fagan, Secretary of State