

Senate Bill 710

Sponsored by Senators GELSER, MANNING JR

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies allowed and prohibited uses of restraint of children in care by child-caring agencies, proctor foster homes and developmental disabilities residential facilities. Prescribes reporting requirements following administration of restraint or involuntary seclusion. Directs Department of Human Services to adopt rules for individuals to be certified in administration of restraints and involuntary seclusion.

Modifies definition of "child caring agency" and "developmental disabilities residential facility."

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to children in care; creating new provisions; amending ORS 418.205, 418.257, 418.259 and
3 419B.354; and declaring an emergency.

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

SECTION 1. Definitions. As used in sections 1 to 7 of this 2021 Act:

6 (1) **"Chemical restraint" means a drug or medication that is administered to a child in
7 care to control behavior or restrict freedom of movement.**

8 (2) **"Mechanical restraint" means a device used to restrict the movement of a child in
9 care or the movement or normal function of a portion of the body of a child in care.**

10 (3) **"Program" means:**

11 (a) **A child-caring agency or proctor foster home subject to ORS 418.205 to 418.327,
12 418.470, 418.475 or 418.950 to 418.970;**

13 (b) **A certified foster home; or**

14 (c) **A developmental disabilities residential facility.**

15 (4) **"Prone restraint" means a restraint in which a child in care is held face down on the
16 floor.**

17 (5) **"Reportable injury" means any type of injury to a child in care, including but not
18 limited to rug burns, fractures, sprains, bruising, pain, soft tissue injury, punctures,
19 scratches, concussions, abrasions, dizziness, loss of consciousness, loss of vision, visual dis-
20 turbance or death.**

21 (6) **"Restraint" means the restriction of a child in care's actions or movements by hold-
22 ing the child in care or using pressure or other means.**

23 (7) **"Serious bodily injury" means any significant impairment of the physical condition
24 of an individual, as determined by qualified medical personnel, whether self-inflicted or in-
25 flicted by someone else.**

26 (8) **"Supine restraint" means a restraint in which a child in care is held face up on the
27 floor.**

28 **SECTION 2. Prohibitions on restraints and involuntary seclusion. (1) Restraint or invol-**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 untary seclusion may not be administered to a child in care for discipline, punishment or
2 retaliation or for the convenience of personnel, contractors or volunteers of a program.

3 (2) Except as provided in section 3 (3), (4) or (5) of this 2021 Act, the use of the following
4 types of restraint of a child in care are prohibited:

5 (a) Chemical restraint.

6 (b) Mechanical restraint.

7 (c) Prone restraint.

8 (d) Supine restraint.

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

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

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

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

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

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

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

21 **SECTION 3. Permissible use of restraints or involuntary seclusion.** (1) Restraint or in-
22 voluntary seclusion may be used on a child in care only if the child in care's behavior poses
23 a reasonable risk of imminent serious bodily injury to the child in care or others and less
24 restrictive interventions would not effectively reduce that risk.

25 (2) Notwithstanding subsection (1) of this section, the following types of restraint may
26 be used on a child in care:

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

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

31 (c) Administering the minimal exertion of force necessary if the intervention does not
32 include a restraint described in section 2 (2) of this 2021 Act and the intervention is neces-
33 sary to break up a physical fight or effectively protect oneself or another from an assault,
34 serious bodily injury or sexual contact with the minimum physical contact necessary for
35 protection.

36 (3) Notwithstanding section 2 (2) of this 2021 Act, a mechanical restraint may be used
37 on a child in care if the mechanical restraint is:

38 (a) A protective or stabilizing device ordered by a licensed physician;

39 (b) A vehicle safety restraint when used as intended during the transport of a child in
40 care in a moving vehicle; or

41 (c) A treatment activity that is consistent with the child in care's treatment plan if the
42 treatment plan has been signed by the child in care's attending physician.

43 (4) Notwithstanding section 2 (2) of this 2021 Act, a chemical restraint may be adminis-
44 tered to a child in care if it is prescribed by a licensed physician or other qualified health
45 care professional acting under the professional's scope of practice for standard treatment

1 of the child in care's medical or psychiatric condition and the chemical restraint is admin-
2 istered as prescribed by a licensed physician or other qualified health care professional acting
3 within the professional's scope of practice.

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

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

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

9 (c) The restraints described in section 2 (2)(d) and (e) of this 2021 Act may be used by a
10 program providing state hospital-level care services to the child in care only if the following
11 requirements are met:

12 (A) The restraint is administered under the current written order of a physician;

13 (B) The physician's order is written specifically for the current situation;

14 (C) The restraint is used only as long as needed to prevent life-threatening injury and
15 while no other intervention or form of restraint is possible;

16 (D) The use of the restraint is continuously monitored by a physician or a qualified
17 mental health professional, the physician or qualified mental health professional is certified
18 in the administration of the type of restraint used and the physician or qualified mental
19 health professional continuously monitors the physical and psychological well-being of the
20 child in care at all times while the restraint is being used;

21 (E) Each individual administering the restraint is certified as described in section 6 of
22 this 2021 Act to administer the type of restraint used and the certification is current;

23 (F) One or more individuals with current cardiopulmonary resuscitation training are
24 present at all times while the restraint is being administered;

25 (G) No individual performing the restraint has a body mass index greater than 34;

26 (H) The program has written policies that require a physician or other licensed practi-
27 tioner to evaluate and document the physical, psychological and emotional well-being of the
28 child in care immediately following the use of the restraint; and

29 (I) The program is in compliance with any other requirements under sections 1 to 7 of
30 this 2021 Act, any applicable contract requirements and any other state or federal law related
31 to the use of restraints.

32 (6) If restraint or involuntary seclusion is used other than as provided in subsections (2)
33 to (4) of this section, the restraint or involuntary seclusion must be:

34 (a) Used only for as long as the child in care's behavior poses a reasonable risk of im-
35 minent serious bodily injury;

36 (b) Administered by personnel of the program who are currently certified as described
37 in section 6 of this 2021 Act to use that type of restraint or involuntary seclusion;

38 (c) Continuously monitored by personnel of the program at all times while the restraint
39 or involuntary seclusion is being used; and

40 (d) Performed in a manner that is safe, proportionate and appropriate to the child in
41 care's chronological and developmental age, size, gender identity, physical, medical and psy-
42 chiatric condition and any personal history, including history of physical or sexual abuse.

43 (7) In addition to the requirements described in subsection (6) of this section, if the re-
44 straint or involuntary seclusion continues for more than 10 minutes:

45 (a) The child in care must be provided with adequate access to the bathroom and water

1 at least every 30 minutes; and

2 (b) Every five minutes after the first 10 minutes of the restraint or involuntary seclusion,
3 an administrator for the program who is currently certified as described in section 6 of this
4 2021 Act to administer that type of restraint or involuntary seclusion must provide written
5 authorization for the continuation of the restraint or involuntary seclusion. The written
6 authorization must document why the restraint or involuntary seclusion continues to be the
7 least restrictive intervention to reduce the risk of imminent serious bodily injury in the
8 given circumstances.

9 **SECTION 4. Notices and reports required following use of restraints or involuntary se-**
10 **clusion.** (1) A program must establish procedures for the program to follow relating to the
11 administration of restraints or involuntary seclusion consistent with the provisions of
12 sections 2 and 3 of this 2021 Act and relating to the notices and reports required under this
13 section following the use of restraints or involuntary seclusion of a child in care.

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

18 (3) A program that administers a restraint or involuntary seclusion of a child in care
19 other than as provided in section 3 (2) to (4) of this 2021 Act must:

20 (a) Provide the following to the child in care's case managers, attorney, court appointed
21 special advocate and parents or guardians:

22 (A) No later than 11:59 p.m. on the day the restraint or involuntary seclusion is admin-
23 istered, verbal or electronic notification that the restraint or involuntary seclusion occurred;
24 and

25 (B) No later than 24 hours following the administration of the restraint or involuntary
26 seclusion, written notification that includes:

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

30 (ii) A description of the child in care's activity that prompted the use of restraint or in-
31 voluntary seclusion.

32 (iii) The efforts used to de-escalate the situation and the alternatives to restraint or in-
33 voluntary seclusion that were attempted.

34 (iv) The names of each of individual who administered, monitored or approved the re-
35 straint or involuntary seclusion.

36 (v) For each individual who administered, monitored or approved the restraint or invol-
37 untary seclusion, whether the individual was currently certified under section 6 of this 2021
38 Act to administer the kind of restraint or involuntary seclusion and, if so, the date of the
39 most recent certification and a description of the kinds of restraint the individual is certified
40 to administer or, if the individual was not currently certified, the information required under
41 paragraph (b) of this subsection.

42 (b) If an individual who administered, monitored or approved the restraint or involuntary
43 seclusion was not currently certified in the administration of the type of restraint used or
44 involuntary seclusion, written notice to the Department of Human Services and the child in
45 care's attorney, court appointed special advocate and parents or guardians describing the

1 certification deficiency and the reason the restraint or involuntary seclusion was adminis-
2 tered, monitored or approved by an individual without the proper certification.

3 (c) Hold a debriefing meeting with each individual who was involved in the incident and
4 any other appropriate program personnel no later than two business days following the date
5 of the restraint or involuntary seclusion, take written notes of the debriefing meeting and
6 provide copies of the written notes to the child in care's attorney, case managers, court ap-
7 pointed special advocate and parents or guardians.

8 (d) If the child in care suffers a reportable injury arising from the restraint or involun-
9 tary seclusion, immediately provide written notification of the incident to the Department
10 of Human Services and release all records related to the restraint or involuntary seclusion,
11 including any photographs and audio or video recordings, to the department and the child's
12 attorney, court appointed special advocate and parents or guardians.

13 (e) If serious bodily injury or the death of program personnel occurs in relation to the
14 use of the restraint or involuntary seclusion, provide the department with written notifica-
15 tion of the incident no later than 24 hours following the incident.

16 (4)(a) If a restraint or involuntary seclusion is used on a child in care more than two
17 times in a seven-day period, the program shall immediately assemble a team to review the
18 child in care's treatment plan.

19 (b) The team must include an administrator of the program, a representative of the De-
20 partment of Human Services who is familiar with the child in care's case, a representative
21 of the program's licensing agency, the child in care's attorney and court appointed special
22 advocate and, if the child in care is 10 years of age or older and wants to participate, the
23 child in care.

24 (c) The team shall prepare a written report identifying each of the team members and
25 documenting the team's conclusions regarding the following:

26 (A) The suitability of the program for the child in care;

27 (B) Any necessary modifications to the child in care's treatment plan;

28 (C) What, if any, staff training regarding alternative therapeutic behavior management
29 techniques are appropriate; and

30 (D) The impact of the restraints or involuntary seclusion on the child in care's physical,
31 mental and emotional well-being.

32 (d) The program and any agency that was involved in placing the child in care in the
33 program shall immediately implement any necessary corrective actions identified in the re-
34 port.

35 **SECTION 5. Reporting requirements.** (1) A program must prepare and submit to the
36 Department of Human Services a quarterly report detailing the use of restraint and invol-
37 untary seclusion for the preceding three-month period, including, at a minimum:

38 (a) The total number of incidents involving restraint.

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

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

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

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

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

45 (g) The total number of incidents under paragraph (a) or (b) of this subsection that re-

1 sulted in reportable injuries.

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

5 (i) The number of incidents in which individuals who administered restraints or involun-
6 tary seclusion were not certified as provided in section 6 of this 2021 Act to administer the
7 type of restraint used or involuntary seclusion.

8 (j) The demographic characteristics of all children in care to whom restraint or involun-
9 tary seclusion was administered, including race, ethnicity, gender, disability status, migrant
10 status, English proficiency and status as economically disadvantaged, unless the demo-
11 graphic information would reveal personally identifiable information about an individual child
12 in care.

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

15 (b) Each program that submits a report under this section shall make its quarterly re-
16 port available to the public at the program's main office and on the program's website.

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

20 **SECTION 6. Certification in use of restraints and seclusion.** (1) The Department of Hu-
21 man Services shall adopt by rule standards for certification programs in restraint and in-
22 voluntary seclusion that:

23 (a) Teach evidence-based techniques that are shown to be effective in the prevention and
24 safe use of restraint or involuntary seclusion;

25 (b) Provide evidence-based skills training related to positive behavior support, conflict
26 prevention, de-escalation and crisis response techniques; and

27 (c) Are consistent with the philosophies, practices and techniques for restraint and in-
28 voluntary seclusion that are established by the department by rule or policy.

29 (2) The rules adopted under this section must:

30 (a) Require trainers to be certified and to have completed a minimum of 24 hours of ed-
31 ucation to train individuals in the appropriate use of restraints, involuntary seclusion and
32 alternative techniques, including de-escalation and nonviolent intervention;

33 (b) Require that participants in a certification program complete a minimum of 15 hours
34 of training;

35 (c) Emphasize the use of alternative techniques, including de-escalation and nonviolent
36 intervention;

37 (d) Require that training for the administration of restraints must be done in person;

38 (e) Require demonstration of written and technical proficiency prior to granting certi-
39 fication;

40 (f) Limit the duration of certification to two-years;

41 (g) Require that each certification include the dates during which the certification is
42 current, the types of physical restraints that the individual is certified to administer and the
43 name of the individual who conducted the training and administered the assessment of pro-
44 ficiency; and

45 (h) Require annual continuing education to maintain certification.

1 **SECTION 7. Information provided to children in care.** The Department of Human Ser-
 2 vices shall provide each child in care with written information that:

3 (1) Explains the provisions of sections 1 to 7 of this 2021 Act;

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

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

8 (4) Includes the telephone number for the toll-free child abuse hotline described in ORS
 9 417.805 and the telephone numbers and electronic mail addresses for the program’s licensing
 10 or certification agency, the child in care’s caseworker and attorney, the child in care’s court
 11 appointed special advocate and Disability Rights Oregon.

12 **SECTION 8.** ORS 418.205, as amended by sections 15a and 15b, chapter 19, Oregon Laws 2020
 13 (first special session), is amended to read:

14 418.205. As used in ORS 418.205 to 418.327, 418.470, 418.475, 418.950 to 418.970 and 418.992 to
 15 418.998, unless the context requires otherwise:

16 (1) **“Applied behavior analysis” has the meaning given that term in ORS 676.802.**

17 [(1)] (2) “Child” means an unmarried person under 21 years of age who resides in or receives
 18 care or services from a child-caring agency.

19 [(2)(a)] (3)(a) “Child-caring agency”:

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

21 (i) Day treatment for children with emotional disturbances;

22 (ii) Adoption placement services;

23 (iii) Residential care, including but not limited to foster care or residential treatment for chil-
 24 dren;

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

27 (v) Outdoor youth programs; [or]

28 (vi) **Center-based applied behavior analysis for children; or**

29 [(vi)] (vii) Other similar care or services for children.

30 (B) Includes the following:

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

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

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

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

35 (v) **A private organization that provides transportation of or escort services for children**
 36 **to or from a school, agency, organization or program described in this paragraph or to or**
 37 **from any other treatment program, boarding school or outdoor wilderness program.**

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

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

42 (B) Any private agency or organization facilitating the provision of respite services for parents
 43 pursuant to a properly executed power of attorney under ORS 109.056. For purposes of this subpar-
 44 agraph, “respite services” means the voluntary assumption of short-term care and control of a minor
 45 child without compensation or reimbursement of expenses for the purpose of providing a parent in

1 crisis with relief from the demands of ongoing care of the parent's child;

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

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

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

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

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

8 [(3)] (4) "Child-caring facility" has the meaning given that term in ORS 418.950.

9 [(4)(a)] (5)(a) "County program" means any county operated program that provides care or ser-
10 vices to children in the custody of the Department of Human Services or the Oregon Youth Au-
11 thority.

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

14 [(5)] (6) "Governmental agency" means an executive, legislative or judicial agency, department,
15 board, commission, authority, institution or instrumentality of this state or of a county, municipality
16 or other political subdivision of this state.

17 [(6)] (7) "Independent residence facility" means a facility established or certified under ORS
18 418.475.

19 [(7)(a)] (8)(a) "Outdoor youth program" means a program that provides, in an outdoor living
20 setting, services to children who have behavioral problems, mental health problems or problems with
21 abuse of alcohol or drugs.

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

23 (A) Operated by a governmental entity;

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

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

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

27 [(8)] (9) "Private" means not owned, operated or administered by any governmental agency or
28 unit.

29 [(9)] (10) "Private residential boarding school" means either of the following as the context re-
30 quires:

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

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

36 [(10)] (11) "Proctor foster home" means a foster home certified by a child-caring agency under
37 ORS 418.248 that is not subject to ORS 418.625 to 418.645.

38 [(11)] (12) "Provider of care or services for children" means a person, entity or organization that
39 provides care or services to children, regardless of whether the child is in the custody of the De-
40 partment of Human Services, and that does not otherwise meet the definition of, or requirements for,
41 a child-caring agency. "Provider of care or services for children" includes a proctor foster home
42 certified by a child-caring agency under ORS 418.248.

43 [(12)] (13) "Qualified residential treatment program" means a program described in section 12b,
44 chapter 19, Oregon Laws 2020 (first special session) (Enrolled Senate Bill 1605).

45 [(13)] (14) "Shelter-care home" has the meaning given that term in ORS 418.470.

SECTION 9. ORS 418.257 is amended to read:

418.257. As used in ORS 418.257 to 418.259 **and sections 1 to 7 of this 2021 Act:**

(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.]* **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

1 or property of the child in care if the child would reasonably believe that the threat conveyed would
2 be carried out.

3 (C) Misappropriating, misusing or transferring without authorization any moneys from any ac-
4 count held jointly or singly by a child in care.

5 (D) Failing to use the income or assets of a child in care effectively for the support and main-
6 tenance of the child in care.

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

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

11 (7)(a) **"Involuntary seclusion" means the confinement of a child in care alone in a room
12 from which the child in care is physically prevented from leaving by any means.**

13 (b) **"Involuntary seclusion" does not include the removal of a child in care for a short
14 period of time to provide the child in care with an opportunity to regain self-control if the
15 child in care is in a setting from which the child in care is not physically prevented from
16 leaving.**

17 [(10)] (8) "Law enforcement agency" means:

18 (a) Any city or municipal police department.

19 (b) Any county sheriff's office.

20 (c) The Oregon State Police.

21 (d) Any district attorney.

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

23 [(11)] (9) "Neglect" means:

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

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

29 [(12)] (10) "Services" includes but is not limited to the provision of food, clothing, medicine,
30 housing, medical services, assistance with bathing or personal hygiene or any other service essential
31 to the well-being of a child in care.

32 [(13)] (11) "Sexual abuse" means:

33 (a) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit mate-
34 rial or language;

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

38 (c) Any sexual contact between a person and a child in care that is unlawful under ORS chapter
39 163 and not subject to a defense under that chapter; or

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

41 [(14)] (12) "Sexual contact" has the meaning given that term in ORS 163.305.

42 [(15)] (13) "Sexual exploitation" means sexual exploitation as described in ORS 419B.005
43 (1)(a)(E).

44 [(16)] (14) "Verbal abuse" means to threaten significant physical or emotional harm to a child
45 in care through the use of:

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

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

4 **SECTION 10.** ORS 418.259, as amended by section 9, chapter 19, Oregon Laws 2020 (first special
5 session), is amended to read:

6 418.259. (1) The investigation conducted by the Department of Human Services under ORS
7 418.258 must result in one of the following findings:

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

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

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

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

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

28 **(b) When investigating an allegation of inappropriate use of restraint or involuntary se-**
29 **clusion, the department shall:**

30 **(A) Conduct the interviews described in paragraph (a) of this subsection without the**
31 **presence of employees of the child-caring agency, proctor foster home or developmental dis-**
32 **abilities residential facility;**

33 **(B) Review all incident reports related to the child in care;**

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

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

39 **(E) Review the training records related to all of the staff who were involved in the use**
40 **of restraint or involuntary seclusion.**

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

42 (a) The Director of Human Services.

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

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

1 welfare generally.

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

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

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

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

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

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

25 (b) The approximate date that the abuse occurred;

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

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

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

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

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

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

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

38 **(c) The total number of individual children in care who were subject to restraints that**
39 **quarter;**

40 **(d) The number of reportable injuries to children in care that resulted from those re-**
41 **straints;**

42 **(e) The number of restraints applied by program staff who were not appropriately trained**
43 **to implement the restraint; and**

44 **(f) The number of restraints that were reported for potential inappropriate use of re-**
45 **straint.**

1 [(6)] (7) In compiling records, reports and other information during an investigation under ORS
 2 418.258 (1) and in issuing findings, letters of concern or reprimands, the Director of Human Services
 3 or the director’s designee and the department may not refer to the employee, person or entity that
 4 is the subject of the investigation as an “alleged perpetrator” but must refer to the employee, person
 5 or entity as the “respondent.”

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

8 **SECTION 11.** ORS 419B.354, as amended by sections 11a and 11b, chapter 19, Oregon Laws 2020
 9 (first special session), is amended to read:

10 419B.354. (1) As used in this section:

11 (a) “Congregate care residential setting” means any setting that cares for more than one child
 12 or ward and is not a setting described in ORS 418.205 [(2)(b)(A), (D) or (E) or (10)] **(3)(b)(A), (D)**
 13 **or (E) or (11).**

14 (b) “Sex trafficking” means the recruitment, harboring, transportation, provision, obtaining, pa-
 15 tronizing or soliciting of a person under 18 years of age for the purpose of a commercial sex act,
 16 as defined in ORS 163.266, or the recruitment, harboring, transportation, provision or obtaining of
 17 a person over 18 years of age using force, fraud or coercion for the purpose of a commercial sex
 18 act, as defined in ORS 163.266.

19 (2) The Department of Human Services may place a child or ward in a congregate care resi-
 20 dential setting only if the setting is:

21 (a) A child-caring agency, as defined in ORS 418.205, a hospital, as defined in ORS 442.015, or
 22 a rural hospital, as defined in ORS 442.470; and

23 (b) A qualified residential treatment program described in section 12b, chapter 19, Oregon Laws
 24 2020 (first special session).

25 (3) Notwithstanding subsection (2) of this section, the department may place a child or ward in
 26 a child-caring agency that is not a qualified residential treatment program if:

27 (a) The child-caring agency is providing prenatal, postpartum or parenting supports to the child
 28 or ward.

29 (b) The child or ward is placed in an independent residence facility described in ORS 418.475
 30 that is licensed by the department as a child-caring agency.

31 (c) The child or ward is, or is at risk of becoming, a victim of sex trafficking and the child-caring
 32 agency is providing high-quality residential care and supportive services to the child or ward.

33 (d) The Oregon Health Authority has approved the placement as medically necessary and the
 34 child-caring agency:

35 (A) Is a residential care facility;

36 (B) Is licensed by the authority and maintains site-specific accreditation from a nationally re-
 37 cognized organization to provide psychiatric treatment to children; and

38 (C) Has an active provider agreement with the Oregon Medicaid program.

39 (e) The child-caring agency is an adolescent residential drug and alcohol treatment program li-
 40 censed or certified by the State of Oregon to provide residential care, and the court has approved,
 41 or approval is pending for, the placement in the child-caring agency of each child or ward over
 42 whom the department retains jurisdiction.

43 (f) The placement with the child-caring agency is for the purpose of placing the child or ward
 44 in a proctor foster home.

45 (g) The child-caring agency is a residential care facility licensed by the department that provides

1 short-term assessment and stabilization services.

2 (h) The child-caring agency is a shelter-care home, as defined in ORS 418.470, that provides
3 short-term assessment and stabilization services.

4 (i) The child-caring agency is a homeless, runaway or transitional living shelter licensed by the
5 department that provides short-term assessment and stabilization services.

6 (4) The department may not place a child or ward in a residential care facility or shelter-care
7 home described in subsection (3)(g) or (h) of this section:

8 (a) For more than 60 consecutive days or 90 cumulative days in a 12-month period; or

9 (b) If the residential care facility or shelter-care home also serves youth or youth offenders
10 served by the county juvenile department or youth offenders committed to the custody of the Oregon
11 Youth Authority by the court.

12 (5) The department may not place a child or ward in a homeless, runaway or transitional living
13 shelter described in subsection (3)(i) of this section for more than 60 consecutive or 90 cumulative
14 days in any 12-month period.

15 (6) Calculations of the number of days a child or ward is placed in a shelter-care home under
16 subsection (3)(h) of this section or a homeless, runaway or transitional living shelter under sub-
17 section (3)(i) of this section exclude the days the child or ward is in the shelter-care home or shelter
18 if the child or ward:

19 (a) Accessed the shelter-care home or shelter without the support or direction of the department;
20 and

21 (b) Is homeless or a runaway, as defined by the department by rule.

22 (7)(a) Nothing in this section prohibits the Oregon Youth Authority from placing a youth
23 offender committed to its custody in a placement that is not a qualified residential treatment pro-
24 gram.

25 (b) Nothing in this section prohibits the Oregon Youth Authority or a county juvenile depart-
26 ment from placing a youth offender or a youth served by the Oregon Youth Authority or the county
27 juvenile department in shelter care or detention under ORS chapter 419C.

28 **SECTION 12. Captions. The section captions used in this 2021 Act are provided only for**
29 **the convenience of the reader and do not become part of the statutory law of this state or**
30 **express any legislative intent in the enactment of this 2021 Act.**

31 **SECTION 13. Effective date. This 2021 Act being necessary for the immediate preserva-**
32 **tion of the public peace, health and safety, an emergency is declared to exist, and this 2021**
33 **Act takes effect on its passage.**

34