

# Senate Bill 822

Sponsored by Senator GELSER BLOUIN

## 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**.

Prohibits use of seclusion for student in public education program. Modifies definitions of "seclusion" and "involuntary seclusion" of certain children. Clarifies reporting and training requirements involving restraint and seclusion of students in public education programs.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to physical interventions of persons under 21 years of age; creating new provisions;  
3 amending ORS 339.285, 339.291, 339.294, 339.297, 339.300, 339.303, 339.308, 418.519 and 418.528;  
4 and declaring an emergency.

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

6 **SECTION 1. ORS 339.308 is added to and made a part of ORS 339.285 to 339.303.**

7 **SECTION 2.** ORS 339.308 is amended to read:

8 339.308. (1) As used in this section, [:]

9 [*(a) "Public education program" means a program that:*]

10 [*(A) Is for students in early childhood education, elementary school or secondary school;*]

11 [*(B) Is under the jurisdiction of a school district, an education service district or another educa-*  
12 *tional institution or program; and]*

13 [*(C) Receives, or serves students who receive, support in any form from any program supported,*  
14 *directly or indirectly, with funds appropriated to the Department of Education.]*

15 [*(b)*] "seclusion cell" means a freestanding, self-contained unit that is used to:

16 [*(A)*] (a) Isolate a student from other students; or

17 [*(B)*] (b) Physically prevent a student from leaving the unit or cause the student to believe that  
18 the student is physically prevented from leaving the unit.

19 (2) **Seclusion of a student in a public education program is prohibited.**

20 [(2)] (3) A public education program may not:

21 (a) Purchase, build or otherwise take possession of a seclusion cell; or

22 (b) Use a seclusion cell.

23 [(3)] *Nothing in this section prevents a public education program from using seclusion as allowed*  
24 *under ORS 339.285 to 339.303.]*

25 **SECTION 3.** ORS 339.285 is amended to read:

26 339.285. As used in ORS 339.285 to 339.303:

27 (1) "Public education program" means a program in this state that:

28 (a) Is for students in early childhood education, elementary school or secondary school;

29 (b) Is under the jurisdiction of a school district, an education service district or another edu-  
30 cational institution or program; and

**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 (c) Receives, or serves students who receive, support in any form from any program supported,  
2 directly or indirectly, with funds appropriated to the Department of Education.

3 (2)(a) "Restraint" means the restriction of a student's actions or movements by holding the stu-  
4 dent or using pressure or other means.

5 (b) "Restraint" does not include:

6 (A) Holding a student's hand or arm to escort the student safely and without the use of force  
7 from one area to another;

8 (B) Assisting a student to complete a task if the student does not resist the physical contact;  
9 or

10 (C) Providing reasonable intervention with the minimal exertion of force necessary if the inter-  
11 vention does not include a restraint prohibited under ORS 339.288 and the intervention is necessary  
12 to:

13 (i) Break up a physical fight;

14 (ii) Interrupt a student's impulsive behavior that threatens the student's immediate safety, in-  
15 cluding running in front of a vehicle or climbing on unsafe structures or objects; or

16 (iii) Effectively protect oneself or another from an assault, injury or sexual contact with the  
17 minimum physical contact necessary for protection.

18 (3)(a) "Seclusion" means the involuntary confinement of a student alone in [*a room*] **an enclosed**  
19 **space** from which the student is [*physically*] prevented from leaving **by any means**.

20 (b) "Seclusion" does not include the removal of a student for a short period of time to provide  
21 the student with an opportunity to regain self-control if the student is in a setting from which the  
22 student is not [*physically*] prevented from leaving **by any means**.

23 (4) "Serious bodily injury" means any significant impairment of the physical condition of a per-  
24 son, as determined by qualified medical personnel, whether self-inflicted or inflicted by someone else.

25 **SECTION 4.** ORS 339.291 is amended to read:

26 339.291. (1) Restraint [*or seclusion*] may not be used for discipline, punishment, retaliation or  
27 convenience of personnel, contractors or volunteers of a public education program. **Restraint may**  
28 **never be used if prohibited as provided by ORS 339.288.**

29 [(2)(a)] (2) Restraint may be used on a student in a public education program only under the  
30 following circumstances:

31 [(A)] (a) The student's behavior imposes a reasonable risk of imminent and substantial physical  
32 or bodily injury to the student or others; and

33 [(B)] (b) Less restrictive interventions would not be effective.

34 [(b) *Seclusion may be used on a student in a public education program only under the following*  
35 *circumstances:*]

36 [(A) *The student's behavior imposes a reasonable risk of imminent and serious bodily injury to the*  
37 *student or others; and]*

38 [(B) *Less restrictive interventions would not be effective.*]

39 (3) If restraint [*or seclusion*] is used on a student, the restraint [*or seclusion*] must be:

40 (a) Used only for as long as the student's behavior poses a reasonable risk as described in sub-  
41 section (2) of this section;

42 (b) Imposed by personnel of the public education program who are:

43 (A) Trained to use restraint [*or seclusion*] through programs described in ORS 339.300; or

44 (B) Otherwise available in the case of an emergency circumstance when personnel described in  
45 subparagraph (A) of this paragraph are not immediately available due to the unforeseeable nature

1 of the emergency circumstance; and

2 (c) Continuously monitored by personnel of the public education program for the duration of the  
3 restraint [*or seclusion*].

4 (4) In addition to the requirements described in subsection (3) of this section, if restraint [*or*  
5 *seclusion*] continues for more than 30 minutes:

6 (a) The student must be provided with adequate access to the bathroom and water every 30  
7 minutes;

8 (b) Personnel of the public education program must immediately attempt to verbally or elec-  
9 tronically notify a parent or guardian of the student; and

10 (c) Every 15 minutes after the first 30 minutes of the restraint [*or seclusion*], an administrator  
11 for the public education program must provide written authorization for the continuation of the re-  
12 straint [*or seclusion*], including providing documentation for the reason the restraint [*or seclusion*]  
13 must be continued.

14 **SECTION 5.** ORS 339.294 is amended to read:

15 339.294. (1) Each entity that has jurisdiction over a public education program must establish  
16 procedures for the public education program to follow after an incident involving [*the use of restraint*  
17 *or seclusion*] **any use of restraint prohibited under ORS 339.288, restraint allowed under ORS**  
18 **339.291 or seclusion prohibited under ORS 339.308.**

19 (2) Following an incident involving the use of restraint or seclusion, the following must be pro-  
20 vided to a parent or guardian of the student:

21 (a) Verbal or electronic notification of the incident by the end of the school day when the inci-  
22 dent occurred.

23 (b) Written documentation of the incident within 24 hours of the incident that provides:

24 (A) A description of the restraint or seclusion, including:

25 (i) The date of the restraint or seclusion;

26 (ii) The times when the restraint or seclusion began and ended; and

27 (iii) The location of the restraint or seclusion.

28 (B) A description of the student's activity that prompted the use of restraint or seclusion.

29 (C) The efforts used to de-escalate the situation and the alternatives to restraint or seclusion  
30 that were attempted.

31 (D) The names of the personnel of the public education program who administered the restraint  
32 or seclusion.

33 (E) A description of the training status of the personnel of the public education program who  
34 administered the restraint or seclusion, including any information that may need to be provided to  
35 the parent or guardian under subsection (3) of this section.

36 (c) Timely notification of a debriefing meeting to be held as provided by subsection (4) of this  
37 section and the parent's or guardian's right to attend the meeting.

38 (3) If the personnel of the public education program who administered the restraint or seclusion  
39 had not received training as provided by ORS 339.300, the administrator of the public education  
40 program shall ensure that a parent or guardian of the student and the district superintendent re-  
41 ceive written notification of:

42 (a) The lack of training; and

43 (b) The reason the restraint or seclusion was administered by a person without training.

44 (4)(a) A debriefing meeting related to the use of restraint or seclusion must be held within two  
45 school days of the incident and must include all personnel of the public education program who were

1 involved in the incident and any other appropriate personnel.

2 (b) Written notes must be taken of the debriefing meeting, and a copy of the written notes must  
3 be provided to a parent or guardian of the student.

4 (5) If a student is involved in five **or more** incidents in a school year involving restraint [*or*  
5 *seclusion*] **allowed under ORS 339.291, or in one or more incidents in a school year involving**  
6 **restraint prohibited under ORS 339.288 or seclusion**, a team consisting of personnel of the public  
7 education program and a parent or guardian of the student must be formed for the purposes of re-  
8 viewing and revising the student's behavior plan and ensuring the provision of any necessary be-  
9 havioral supports.

10 (6) If serious bodily injury or death of a student occurs in relation to the use of restraint or  
11 seclusion, written notification of the incident must be provided within 24 hours of the incident to  
12 the Department of Human Services.

13 (7) If serious bodily injury or death of personnel of the public education program occurs in re-  
14 lation to the use of restraint or seclusion, written notification of the incident must be provided  
15 within 24 hours of the incident to the district superintendent and, if applicable, to the union repre-  
16 sentative for the affected party.

17 (8) Each public education program must maintain a record of each incident in which injuries  
18 or death occurs in relation to the use of restraint or seclusion.

19 **SECTION 6.** ORS 339.297 is amended to read:

20 339.297. (1) Each entity that has jurisdiction over a public education program must prepare and  
21 submit to the Department of Education an annual report detailing [*the use of restraint and*  
22 *seclusion*] **any use of restraint prohibited under ORS 339.288, restraint allowed under ORS**  
23 **339.291 or seclusion prohibited under ORS 339.308** for the preceding school year, including, at a  
24 minimum:

25 (a) The total number of incidents involving **allowed or prohibited** restraint.

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

27 (c) The total number of seclusions in a locked room **or locked enclosed space**.

28 (d) The total number of rooms **or enclosed spaces used** [*available for use*] by the public edu-  
29 cation program for seclusion of a student and a description of the dimensions and design of the  
30 rooms **or spaces**.

31 (e) The total number of students placed in **allowed or prohibited** restraint.

32 (f) The total number of students placed in seclusion.

33 (g) The total number of incidents that resulted in injuries or death to students or personnel as  
34 a result of the use of restraint or seclusion.

35 (h) The number of students who were placed in restraint **allowed under ORS 339.291** [*or se-*  
36 *clusion*] more than 10 times, **or in restraint prohibited under ORS 339.288 or seclusion one or**  
37 **more times**, in the course of a school year and an explanation of what steps have been taken by  
38 the public education program to **eliminate the use of prohibited restraint or seclusion or to**  
39 decrease the use of **allowed** restraint [*and seclusion*] for each student.

40 (i) The number of incidents in which the personnel of the public education program administer-  
41 ing restraint or seclusion were not trained as provided by ORS 339.300.

42 (j) The demographic characteristics of all students upon whom restraint or seclusion was im-  
43 posed, including race, ethnicity, gender, disability status, migrant status, English proficiency and  
44 status as economically disadvantaged, unless the demographic information would reveal personally  
45 identifiable information about an individual student.

1 (2)(a) Each entity that has jurisdiction over a public education program shall make its annual  
2 report about restraint and seclusion available to:

3 (A) The public at the entity's main office and the website of the entity;

4 (B) The board or governing body overseeing the entity;

5 (C) If the entity is an education service district, the component school districts of the education  
6 service district; and

7 (D) If the entity is a public charter school, the sponsor of the public charter school.

8 (b) Parents and guardians of students in a public education program shall be advised at least  
9 once each school year about how to access the report.

10 (3) A public education provider that does not comply with the requirement to submit a report  
11 to the Department of Education under subsection (1) of this section or to make the report available  
12 as described in subsection (2) of this section is considered nonstandard under ORS 327.103.

13 **SECTION 7.** ORS 339.300 is amended to read:

14 339.300. The Department of Education shall approve training programs in restraint and seclusion  
15 that:

16 (1) **Specify the types of restraint that are prohibited under ORS 339.288 and specify that**  
17 **seclusion is prohibited under ORS 339.308;**

18 [(1)] (2) Teach evidence-based techniques that are shown to be effective in the prevention of **any**  
19 **restraint or seclusion** and **effective in the** safe use of **allowed types of** restraint [*or seclusion*];

20 [(2)] (3) Provide evidence-based skills training related to positive behavior support, conflict  
21 prevention, de-escalation and crisis response techniques; and

22 [(3)] (4) Are consistent with the philosophies, practices and techniques for restraint [*and seclu-*  
23 *sion*] that are established by rule or policy of the Department of Human Services.

24 **SECTION 8.** ORS 339.303 is amended to read:

25 339.303. The State Board of Education shall adopt by rule:

26 (1) A process for an organization or an individual to submit to the Superintendent of Public In-  
27 struction a written, signed complaint alleging that a public education program is violating or has  
28 violated a provision of ORS 339.285 to 339.303. The complaint must indicate that, prior to submitting  
29 the complaint to the superintendent, the organization or individual attempted to seek a remedy for  
30 the complaint from the board or governing body overseeing the entity that has jurisdiction over the  
31 public education program against which the complaint is being submitted.

32 (2) A process for investigating a complaint submitted under [*subsection (1) of*] this section.

33 [(3)] *The minimum standards for any rooms used by a public education program for seclusion of*  
34 *a student. The standards must:*

35 [(a)] *Take into account the health and safety of students and personnel of the public education*  
36 *program and the respect and dignity of students; and]*

37 [(b)] *Include consideration of the size, safety features, lighting and ventilation of the rooms.]*

38 **SECTION 9. Section 1 of this 2023 Act and the amendments to 339.285, 339.291, 339.294,**  
39 **339.297, 339.300, 339.303 and 339.308 by sections 2 to 8 of this 2023 Act become operative on**  
40 **July 1, 2023.**

41 **SECTION 10.** ORS 418.519 is amended to read:

42 418.519. As used in ORS 418.519 to 418.532:

43 (1) "Certified foster home" means a foster home subject to ORS 418.625 to 418.645.

44 (2) "Chemical restraint" means a drug or medication that is administered to a child in care to  
45 control behavior or restrict freedom of movement.

1 (3) “Child-caring agency” has the meaning given that term in ORS 418.205.

2 (4) “Child in care” has the meaning given that term in ORS 418.257.

3 (5) “Children’s emergency safety intervention specialist” means a qualified mental health pro-  
 4 fessional licensed to order, monitor and evaluate the use of seclusion and restraint in accredited and  
 5 certified facilities that provide intensive mental health treatment services to individuals under 21  
 6 years of age.

7 (6) “Developmental disabilities residential facility” has the meaning given that term in ORS  
 8 418.257.

9 (7)(a) “Involuntary seclusion” means the confinement of a child in care alone in [a room] **an**  
 10 **enclosed space** from which the child in care is prevented from leaving by any means.

11 (b) “Involuntary seclusion” does not include age-appropriate discipline, including, but not limited  
 12 to, time-out if the time-out is in a setting from which the child in care is not prevented from leaving.

13 (8) “Mechanical restraint” means a device used to restrict the movement of a child in care or  
 14 the movement or normal function of a portion of the body of a child in care.

15 (9) “Proctor foster home” means a foster home certified by a child-caring agency under ORS  
 16 418.248.

17 (10) “Program” means:

18 (a) A child-caring agency;

19 (b) A proctor foster home; or

20 (c) A developmental disabilities residential facility that is a residential training home or facility  
 21 licensed under ORS 443.415 to serve children under 18 years of age.

22 (11) “Prone restraint” means a restraint in which a child in care is held face down on the floor.

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

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

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

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

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

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

40 **SECTION 11.** ORS 418.528 is amended to read:

41 418.528. (1) A program must prepare and submit to the Department of Human Services a quar-  
 42 terly report detailing the program’s use of restraint and involuntary seclusion for the preceding  
 43 three-month period, including, at a minimum:

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

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

- 1 (c) The total number of involuntary seclusions in a locked room **or locked enclosed space**.
- 2 (d) The total number of rooms **or enclosed spaces** available for use by the program for invol-
- 3 untary seclusion and a description of the dimensions and design of the rooms **or spaces**.
- 4 (e) The total number of children in care placed in restraint.
- 5 (f) The total number of children in care placed in involuntary seclusion.
- 6 (g) The total number of incidents under paragraph (a) or (b) of this subsection that resulted in
- 7 reportable injuries.
- 8 (h) The number of children in care who were placed in restraint or involuntary seclusion more
- 9 than three times during the preceding three-month period and a description of the steps the program
- 10 has taken to decrease the use of restraint and involuntary seclusion.
- 11 (i) The number of incidents in which an individual who placed a child in care in a restraint or
- 12 involuntary seclusion was not certified as described in ORS 418.529 or trained, as required by the
- 13 department by rule, in the use of the type of restraint or involuntary seclusion used.
- 14 (j) The demographic characteristics of the children in care who the program placed in a re-
- 15 straint or involuntary seclusion, including race, ethnicity, gender, disability status, migrant status,
- 16 English proficiency and status as economically disadvantaged, unless the demographic information
- 17 would reveal personally identifiable information about an individual child in care.
- 18 (2)(a) If a program provides services in more than one location, the reports under subsection (1)
- 19 of this section must separate the data for each location that serves five or more children in care.
- 20 (b) If the site-specific data for a given location is not provided under paragraph (a) of this sub-
- 21 section because the program serves fewer than five children in care at that location, the program's
- 22 report must include a notation indicating the aggregate number of children in care served by the
- 23 program across all of the program's locations and the reporting requirements under paragraph (a)
- 24 of this subsection continue to apply to any of the program's other locations serving five or more
- 25 children in care.
- 26 (3)(a) The department shall make each quarterly report it receives under this section available
- 27 to the public on the department's website.
- 28 (b) Each program that submits a report under this section shall make its quarterly report
- 29 available to the public upon request at the program's main office and on the program's website if
- 30 the program maintains a website.
- 31 (c) Each program shall provide notice regarding how to access the quarterly reports to the
- 32 parents or guardians of children in care in the program. The program shall provide the notice upon
- 33 the child in care's admission and at least two times each year thereafter.

34 **SECTION 12. This 2023 Act being necessary for the immediate preservation of the public**  
 35 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**  
 36 **on its passage.**

37