

# Memorandum

PREPARED FOR: House Committee on Early  
Childhood and Human Services

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RE: Senate Bill 1113



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This memo provides a preliminary summary of Senate Bill 1113.

## Restraint and Seclusion in Schools

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### Section 1. ORS 339.285 – definitions for 339.285 to 339.303

- Defines “restraint” as “the physical restriction of a student’s actions by using physical force to hold the student or by using pressure or other means to restrict the ability of the student to voluntarily move the student’s head, limbs, torso, neck, hands, or feet.”
- Changes definition of seclusion as involuntary confinement of a student alone in a room from which the student is physically prevented from leaving, to confinement of a student alone in an area from which the student is physically prevent by any means from leaving.
- Excludes room clear, as defined by rule, from the definition of seclusion, if the student is not prevented by any means from leaving the room.
- Defines “serious bodily injury” as bodily injury that creates substantial risk of death, causes serious permanent disfigurement, unconsciousness, extreme pain, or protracted loss of impairment bodily function or mental faculty.
- Clarifies actions that are not considered restraint.

### Section 2. ORS 339.288 – prohibitions on use of certain restraints

- Clarifies that restraints intended to impede a student’s movement, that include the intentional use of a solid object, and that cause a student’s body to be pressed between the person imposing the restraint and the object or between two objects is prohibited, unless the restraint is necessary to prevent imminent life-threatening injury or gain control of a weapon.
- Prohibits any restraints used for discipline, punishment, retaliation, or convenience.

### Section 3. ORS 339.291 – use of restraint and seclusion

- Permits the use of restraint on a student or placement of a student in seclusion only if:
  - The student’s current actions pose a reasonable risk of imminent serious bodily injury to the student or others;
  - All other efforts to address the current actions have been unsuccessful;

- A less restrictive intervention would not be effective at preventing the serious bodily injury;
- The restraint is imposed with the minimum amount of physical force necessary and is consistent with the size, age, development, and known trauma history of the student;
- The restraint or seclusion ends immediately when the risk of imminent serious bodily injury is resolved, or a less restrictive intervention becomes practicable;
- The restraint is not otherwise prohibited under ORS 339.288.
- Modifies the requirement for school personnel to immediately attempt to notify the parent or guardian of the student if the restraint continues for more than 30 minutes, to for more than 10 minutes.
- Modifies the requirement that an administrator provide written authorization for the continuation of the restraint or seclusion every 15 minutes after the first 30 minutes of the restraint or seclusion, to every five minutes after the first 10 minutes.
- Requires the Oregon Department of Education (ODE) to prescribe by rule a minimum frequency at which a student must have adequate access to the bathroom and water.

#### Section 4. ORS 339.296 – determination of abuse

- Replaces “neglect” with “negligent treatment” in reference to when DHS must make a determination that a public education program is responsible for a report of founded abuse.

## Secure Transportation Providers

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#### Section 5. ORS 418.241 – secure transportation providers

- Defines secure nonmedical transportation service as the secure transportation or escort of children by a provider not subject to rules adopted by the Oregon Health Authority (OHA).
- Clarifies that DHS must adopt rules for issuing licenses to secure nonmedical transportation services providers that are child-caring agencies (CCAs) solely as a result of providing transportation services, and for issuing supplemental licenses to CCAs that also provide secure nonmedical transportation, rather than provides of nonmedical and medical secure transportation services.
- Clarifies that secure nonemergency medical transportation providers are exempt from requirements to obtain a license or supplemental license from DHS to provide secure transportation services unless they also provide secure nonmedical transportation services.



# Restraint and Seclusion of Children in Care

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## Section 6. ORS 418.519 – definitions for regulation of restraint and seclusion

- Defines adjudicated youth foster home as a foster home certified by the Oregon Youth Authority (OYA).
- Defines foster parent as the operator of a certified foster home or adjudicated youth foster home.
- Changes the definition of restraint to align with the new definition in Section 1.
- Makes other conforming amendments to definitions.

## Section 7. ORS 418.521 – prohibitions on use of restraint and seclusion on child in care

- Prohibits a restraint that is intended to impede a child's movements, includes the intentional use of a solid object, and causes the child's body to be pressed between the person imposing the restraint and the object, or between two objects, unless the restraint is necessary to prevent an imminent life-threatening injury, gain control of a weapon, or is otherwise allowed by law.
- Clarifies that a restraint that places pressure on a child's mouth is permitted if necessary to extract a body part from a bite.

## Section 8. ORS 418.523 – permissible use of restraint or seclusion of a child in care

- Permits restraint only if the child's current actions pose a reasonable risk of imminent serious bodily injury to the child or others, and:
  - All other efforts to address the current actions have been unsuccessful;
  - A less restrictive intervention would not be effective;
  - The restraint is imposed with the minimum amount of physical force necessary and is consistent with the size, age, development, and known trauma history of the child;
  - The restraint ends immediately when the risk of imminent serious bodily injury is resolved or a less restrictive intervention becomes practicable; and
  - The restraint is not otherwise prohibited under ORS 418.521, except as provided for in psychiatric residential treatment facilities.
- Requires that restraint be imposed only by staff or contractors of a certified CCA, proctor foster home, or developmental disabilities residential facility that is currently providing care or services to the child in question.
- Requires restraints be consistent with the child's individualized service plan for children receiving developmental disability services.
- Permits the use of restraint on a child in care by their foster parent only if the foster parent:
  - Reasonably believes the restraint is the only way to prevent an imminent suicide attempt or unlawful use of force on another person that is likely to result in death or life-threatening injury;



- Did not provoke the incident;
- Imposes the restraint with the minimum force necessary to prevent death or life-threatening injury; and
- Immediately summons assistance from an emergency responder when safe to do so.
- Specifies that involuntary seclusion may only be imposed by staff or contactors of a CCA or foster home that is providing care or services to the child in question.
- Directs programs to provide the child in care who is placed in restraint or involuntary seclusion with adequate access to the bathroom and water at least as often as prescribed by rule.

Section 9 and 10: Creates a new section as part of ORS 418.519 to 418.532

- Permits a CCA that is certified as a psychiatric residential treatment facility (PRTF) and has a current contract with the Oregon Medicaid program to utilize restraints that are otherwise prohibited if:
  - The child in care is admitted to the CCA and is receiving inpatient psychiatric services under the direction of a physician;
  - No other intervention or form of restraint will prevent a life-threatening injury or death of the child or another person;
  - A physician or licensed health care professional who is certified in the use of the restraint continuously monitors the use of the restraint and assesses the physical and psychological well-being of the child in care;
  - At least one individual with current cardiopulmonary resuscitation training is present for the duration of the restraint;
  - The program staff continuously monitors the child for the duration of the restraint; and
  - The restraint is performed in a safe, proportionate, and appropriate manner that considers the child age, developmental age, size, gender identity, physical, medical, and psychiatric condition, personal history, and any history of physical or sexual abuse.

Section 11. ORS 418.529 – investigations of suspected abuse

- Requires DHS to adopt rules on the training standards and certification requirements for a person to qualified to impose a restraint upon a child in care.
- Clarifies that DHS may only designate two or three providers of training programs on the use of restraint and that certifications by these providers will be the sole certifications recognized by DHS as satisfying certification requirements.
- Requires that trainers designated by DHS emphasize that restraint may only be used as the last resort in an emergency, meet all DHS standards for training and certification, and issue certification upon successful completion of the program for an individual to be certified to impose restraint.



- Makes other clarifying changes on training certification requirements, including that continuing education occur in person and that the training program must maintain a registry of issued certifications.
- Clarifies that CCAs, proctor foster homes, and developmental disability residential facilities may utilize additional training methods that do not involve the use of physical force to reduce or eliminate the use of restraint.

## Abuse of a Child in Care

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Section 12 and 13. Creates a new section made part of ORS 418.257 to 418.259

- Defines neglect as abuse when an individual fails to provide necessary care, supervision, or services to maintain a child's physical and mental health.
- Classifies the following actions as abuse of a child in care when committed by an operator, contractor, employee, or volunteer of certain care-providing entities, the child's caretaker, or anyone responsible for the child's care:
  - Abandonment of the child;
  - Failing to make a reasonable effort to protect the child from abuse by another individual; or
  - Engaging in sexual conduct with the child in care.
- Classifies the following actions as abuse of a child in care when committed by a subject person:
  - Causing nonaccidental physical injury or an injury that is inconsistent with the individual's' explanation of the act;
  - Imposes restraint or involuntary seclusion that is otherwise prohibited by law;
  - Willfully inflicts physical pain or injury upon the child;
  - Commits listed crimes included in ORS Chapter 161;
  - Verbally abuses the child through threatening significant physical or emotional harm;
  - Engages in financial exploitation of the child in care;
  - Engages in sexual abuse of the child in care;
  - Sexually exploits the child in care;
  - Allows, permits, or encourages another person to engage in sexual contact with the child in care.

Section 14. ORS 418.257 – definitions for abuse of a child in care

- Defines "adjudicated youth foster home" as a foster certified by the Oregon Youth Authority
- Defines "regulated entity" as a child-caring agency (CCA), adjudicated youth foster home, proctor foster home, or developmental disabilities residential facility, if the entity is approved or seeking approval from the Department of Human Services (DHS) to provide care or services to children.



- Clarifies that the definition of “services” includes education and supervision.
- Defines “subject person” as a person who is at least 18 years old and is:
  - An employee, volunteer, contractor, or operator of specific entities that provide services and care to children;
  - An individual who resides in the same facility or foster home as the child in care; or
  - An individual with access to the child in care due to their relationship with another person.

## **Licensure and Regulation of Child Caring Agencies (CCAs)**

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### **Section 15. ORS 418.205 – definitions for CCAs**

- Clarifies definitions related to licensure and regulation of child-caring agencies, including:
  - Defines “certified foster home” as a foster home subject to ORS 418.625 to 418.645.
  - Redefines “child-caring agency” as a children’s care or service provider that is required under ORS 418.215 to be licensed or authorized by DHS.
  - Moves existing definitions of county program, child-caring facility, independent residence facility, outdoor youth program, private residential boarding school, provider of care or services for children, qualified residential treatment program, and shelter-care home.
  - Defines “developmental disabilities residential facility” as a residential facility or foster home subject to ORS 443.400 to 443.455, 443.830, and 443.835 for children under the age of 18 and receiving developmental disability services.
  - Adds reference to “out-of-state child-caring agency” as defined in ORS 418.321.

### **Section 16. ORS 418.210 – applications of ORS 418.205 to 418.327**

- Clarifies which entities are exempt from the requirements that apply to child-caring agencies and secure transportation providers, including the entities previously listed above.

### **Section 17. ORS 418.215 – entities that must be approved by DHS**

- Specifies the entities that must be licensed, certified, or otherwise authorized by DHS, including the entities that meet the definition of “child-caring agency.”
- Specifies the entities that are exempt from these requirements, including developmental disabilities residential facilities, certified foster homes, respite care providers, and others.



#### Section 18. ORS 418.240 – requirements for child-caring agency licensure

- Makes non-substantive conforming amendments to align with other sections.
- Requires DHS to immediately suspend or revoke a license, certificate, or endorsement if a child-caring agency is noncompliant with any regulatory requirement.
- Requires DHS to immediately place a condition on an agency's license, certificate, or endorsement, or take other regulatory action if a child-caring agency fails to provide required financial statements or provide access to a child in the agency's care as required by ORS 418.305.
- Requires DHS to inform the Children's Advocate in addition to the Governor about a notice to rescind a revocation of a license, certificate, or endorsement and modifies required information regarding the agency's ability to comply with regulations.
- Authorizes DHS to charge a reasonable fee to cover the cost of processing applications for approval in addition to inspections performed by other government entities.
- Modifies the requirement for DHS to respond to reports of an agency that is subject to an ongoing investigation in another state.
- Applies requirements to managers of child-caring agencies as well as owners and operators.

#### Section 19. ORS 418.248 – certification of proctor foster homes

- Allows a child-caring agency to certify a proctor foster home regardless of whether the children served are in the custody of DHS if the proctor foster home is not already required to be licensed.

#### Section 20. ORS 418.255 – inspection and supervision of child-caring agencies

- Adds entities regulated as secure transportation providers to provisions that require regular inspection and supervision by DHS.
- Requires child-caring agencies with annual revenues over \$1 million to provide DHS with financial statements once per year.

#### Section 21. ORS 418.258 – Reports of suspected abuse of a child in care

- Modifies the obligation of DHS to open an investigation of abuse of a child in care upon receiving information in a public hearing or any other means.
- Adds references to the centralized abuse reporting system.
- Extends immunity from civil or criminal liability to any individual who expresses concern about possible abuse of a child in care, or the department's response to abuse, to a responsible government official.

#### Section 22. ORS 418.259 – Investigation of suspected abuse of a child in care





- Modifies the procedure for DHS to conduct an investigation of abuse of a child in care.
- Requires, rather than allows, DHS to interview the child and any witnesses without employees of the provider present, and allows a court appointed special advocate to be present.
- Requires that the investigation review whether the individual being investigated had current certification related to the use of restraint and seclusion.
- Specifies that DHS may not issue a substantiated finding against an individual solely because the individual did not have a current certification on the use of restraint.
- Adds additional individuals who must be notified when a report is substantiated if the child has a developmental disability or is receiving inpatient psychiatric services.
- Requires that quarterly reports issued by DHS on reports and investigations of abuse of children in care include information on:
  - The total number of allegations that were inconclusive;
  - The total number of children in care, including those who were placed in restraints or involuntary seclusion, disaggregated by race; and
  - A description of the regulatory enforcement actions taken by DHS in response to regulatory violations related to the use of restraint and involuntary seclusion.

#### Section 23. ORS 418.260 – Investigations of child-caring agencies

- Revises the process for DHS to investigate child-caring agencies in response to reports of abuses, deficiencies, violations, or failures to comply with regulations.
- Requires DHS to monitor the ongoing regulatory compliance of all regulated entities.
- Specifies the regulatory enforcement actions that DHS may take in response to finding that a regulated entity has failed to maintain compliance with requirements related to the health, safety, welfare, or rights of children in care.
- Clarifies that DHS may not suspend or revoke a license, certification, or endorsement unless violations pose an imminent risk to children in care, violations are part of a repeated pattern, DHS has previously taken less punitive actions, or the suspension or revocation are otherwise required by state or federal law.
- Requires DHS to notify a parents or guardian who privately placed a child in the care of a regulated entity when it suspends or revokes the entity's license certification, or endorsement.
- Modifies requirements for DHS to inform the public and certain entities about a regulated entity's failure to comply with a plan of correction within a specified time period, including:





- Adding a requirement that the department post notice on the DHS website;
- Adding a requirement to notify a parent or guardian who privately placed a child in the care of a regulated entity; and
- Removing a requirement to notify the Legislative Assembly or interim legislative committees related to child welfare.
- Clarifies that an employee's duty to report is in addition to the existing obligation to report child abuse under ORS 419B.010.
- Requires DHS to post information about regulatory enforcement actions against a regulated entity on its website for at least 24 months.
- Requires DHS to notify OHA personnel about noncompliance involving the use of restraint or involuntary seclusion in facilities that provide psychiatric inpatient services for individuals under age 21.

#### Section 24. ORS 418.992 – civil penalties

- Makes conforming and clarifying amendments.
- Establishes a minimum civil penalty of \$500 for violations of a final order by a CCA, or for each day a CCA is in violation of a requirement to have a license, certificate, endorsement, or other authorization.
- Requires DHS to impose a civil penalty of at least \$259 on a secure transportation provider for each day the provider violates disclosure requirements.
- Requires that DHS impose a penalty of \$500 for the first violation, and of at least \$1500 for subsequent violation, on any CCA for falsifying records, reports, documents, or other financial statements.
- Prohibits DHS from imposing a civil penalty on a regulated entity that assumes custody of a child knowing the child's care needs exceeds the scope of the entity takes certain actions.
- Creates civil penalties of various amounts related to instances of prohibited restraint or seclusion.
- Creates a civil penalty of at least \$250 for instance the child was denied immediate access to their attorney, case manager, CASA, the Children's Advocate, or the child abuse hotline.

#### Section 25. ORS 418.994 – schedule of penalties

- Increases the maximum penalty that DHS may impose on CCAs from \$500 to \$1500 for each violation.

#### Section 26. ORS 418.321 – out of state child-caring agency placements

- Allows DHS to place a child in an out-of-state congregate care facility without requiring the facility to be licensed as a CCA if:



- The placement is requested by the child's Tribe or the placement is funded by the Indian Health Services and the child's Tribe does not object to the placement;
- A physician or psychiatrist determines the child requires the residential treatment for substance use disorder, a residential treatment program is not available in Oregon, the facility meets other licensing requirements, OHA has authorized admission and payment through Oregon Medicaid, and the placement is approved by the court;
- Allows DHS to place a child in an out-of-state PRTF if without requiring the facility be licensed as a CCA if:
  - The child meets certain diagnostic criteria;
  - Community based alternative have been offered to the child;
  - A team that includes a physician has knowledge of the child's situation, examines and interviews the child, and provides written certification regarding the need of treatment in the facility;
  - The facility meets certain standards including convening a team to develop a plan of care;
  - The placement is approved by OHA, will be paid for by the Oregon Medicaid program, and the facility has an active provider agreement with OHA;
  - The court has approved the placement.
- Allows DHS to place a child in an out-of-state hospital without requiring the facility to be licensed as a CCA if:
  - The child's physician ordered the inpatient medical treatment;
  - The treatment is not available in Oregon, or the hospital is located within 60 miles of Oregon and is the closest available hospital the child;
  - Hospital admission is medically necessary and appropriate;
  - OHA has authorized the admission and payment through the Oregon Medicaid program; and
  - The child maintains an ongoing placement with a foster home, and the foster parent is provide with support to maintain regular contact and participation in the child's care and treatment.
- Clarifies when DHS may place a child in an out-of-state agency that also provides care to juvenile offenders.
- Requires that a facility obtain a license as a CCA if DHS places more than one child in the facility in a 12-month period and allows DHS to waive the requirement that the facility be a corporation or county program.
- Makes other clarifying and conforming amendments.

Section 27. ORS 418.322 – placement in congregate care



- Makes clarifying and conforming amendments.
- Allows DHS to place a child in a congregate care residential facility if OHA has approved the placement as medically necessary, authorized payment for services with Medicaid fund, and that the facility is a psychiatric residential treatment facility, among other instances.

#### Section 28. ORS 418.327 – licensing of private residential boarding schools

- Defines “private residential boarding school” as:
  - A private school providing residential care in combination with academic therapeutic care; or
  - A private school providing residential care that is primarily engaged in educational work.

## Child Abuse Investigations

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#### Section 29. 419B.005 – child abuse definitions

- Adds restraint or seclusion in violation of ORS 339.288, 339.291, or 339.308 to definition of “abuse” for purposes of child abuse.
- Adds subjecting a child to involuntary servitude or trafficking to definition of “abuse” for purposes of child abuse.

#### Section 30 and Section 31 – chapter 581, OL 2023

- Makes administrative and conforming amendments.

## Miscellaneous

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#### Sections 32 – 49

- Makes conforming amendments.

