

## HB 3835 -1 STAFF MEASURE SUMMARY

### House Committee On Early Childhood and Human Services

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**Meeting Dates:** 3/11, 3/20, 3/25, 4/3

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#### **WHAT THE MEASURE DOES:**

The measure modifies laws related to the use of restraint and seclusion on children in schools and in care settings. The measure defines wrongful restraint and wrongful involuntary seclusion, outlines when restraint or seclusion may be used, and establishes procedures for investigating instances of wrongful restraint or seclusion. It modifies provisions regarding investigations of child abuse in certain settings and changes the definition of abuse. The measure allows the Department of Human Services (DHS) to place children in out-of-state agencies in certain scenarios, exempts medical transport from certain licensing requirements, modifies provisions of placements for older youth in care, and changes when a minor must provide consent for certain treatment. The measure establishes the OHSU Institute for Youth, requires reports to the Legislature, and makes clarifying and conforming amendments.

#### Detailed Summary:

##### **Wrongful Restraint and Wrongful Seclusion (Section 1)**

- Defines “involuntary seclusion” as the confinement of a child alone in a room or enclosed space from which they are prevented from leaving.
- Defines “restraint” as a physical restriction of a child’s actions or movements through holding, pressure, or other means.
- Defines “responsible individual” as a person over 18 who may have contact with a child as a result of their position.
- Establishes that “wrongful seclusion” occurs when a responsible individual places a child in involuntary seclusion for discipline, punishment, retaliation, or convenience of a responsible individual.
- Establishes that “wrongful restraint” occurs if a responsible individual:
  - Uses or directs the use of a restraint for discipline, punishment, retaliation, or convenience;
  - Administers or directs the administration of a chemical restraint;
  - Restrains or directs the restraint of a child through the excessive or reckless use of force that results in, or is likely to result in, serious physical harm.
- Clarifies that wrongful restraint or seclusion does not include age-appropriate disciplinary measures aligned with the child’s developmental stage and individual needs.
- Prohibits corporal punishment, wrongful restraint, or wrongful seclusion by a responsible individual.

##### **Restraint and Seclusion in School Settings (Section 2-7)**

- Aligns definition of “chemical restraint” with Section 1 of the bill.
- Permits the use of restraint only if:
  - The restraint is imposed by personnel of the public education or school district;
  - The student’s behavior poses a risk of imminent serious physical harm to the student, or others, including animals;
  - A less restrictive intervention will not reduce the risk;
  - The least amount of physical force necessary to mitigate the risk is used; and
  - The restraint is not wrongful restraint, or a type of restraint otherwise prohibited.
- Permits the use of involuntary seclusion only if:
  - The student’s behavior poses a risk of imminent serious physical harm to the student, or others, including animals;

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- A less restrictive intervention will not reduce the risk; and
- The involuntary seclusion is not wrongful seclusion.
- Requires that restraint or involuntary seclusion:
  - May only continue as long as the student’s behavior poses a risk, rather than a reasonable risk, of imminent serious physical harm;
  - May only be imposed by trained personnel of the public education or school district, unless trained personnel are not available due to an unforeseen emergency;
  - Must be continuously monitored.
- Modifies notification requirements to report incidents involving “serious physical injury” instead of “serious bodily injury.”
- Removes requirement that complainants seek remedies with the public education’s local governing body before submitting a complaint to the Superintendent of Public Instruction.
- Directs the State Board of Education to adopt rules regarding investigations related to restraint and seclusion to be conducted by the Department of Education, including limiting the subject of investigations to school districts rather than specific personnel and requiring rooms to be equipped with video recording equipment.

### **Secure Transportation Providers and Use of Restraint during Transport (Sections 8; 18)**

- Modifies the definition of “secure transportation providers” to mean only nonmedical transport using specific vehicles.
- Removes children in the care of the DHS from the list of youth who may be restrained during transport under ORS 419A.245.

### **Abuse of a Child in Care (Section 9 – 11)**

- Classifies the following acts as abuse of a child in care when committed by specific responsible individuals:
  - Causing nonaccidental physical injury or injury that is inconsistent with the individual’s explanation;
  - Neglect;
  - Abandonment;
  - Willfully inflicting physical pain or injury upon a child;
  - Committing specific crimes listed in ORS chapter 161;
  - Verbal abuse;
  - Financial exploitation;
  - Sexual abuse or exploitation.
- Removes the prohibited use of restraint or involuntary seclusion from the definition of abuse for purposes of sections related to reports and investigations of abuse of children in care.
- Defines “adjudicated youth foster home” as a foster home certified by the Oregon Youth Authority (OYA) and includes youth in these homes under “child in care.”

### **Use of Restraint and Seclusion of Children in Care (Section 12-14)**

- Aligns definitions with Section 1 and removes the definition of “serious bodily injury.”
- Clarifies instances when restraints that include the non-incident use of a solid object that places pressure on a child’s mouth are permitted.
- Adds wrongful restraint and wrongful involuntary seclusion, as defined in section 1, as prohibited restraints.
- Prohibits wrongful restraint and wrongful involuntary seclusion in adjudicated foster homes.
- Allows the use of restraint or involuntary seclusion by certain child-caring entities only if the child’s behavior poses a risk of imminent serious physical harm, rather than a reasonable risk of imminent serious bodily injury, to themselves or others, including animals and:
  - A less restrictive intervention would not be effective;
  - The least amount of physical force and contact necessary is used; and
  - The restraint is not a prohibited type of restraint in ORS 418.521.

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- Clarifies that certain child-caring entities may physically intervene, without immobilizing the child in care, to protect individuals from an assault, serious physical harm, or sexual contact.
- Replaces references to “serious bodily injury” and “serious physical injury” to “serious physical harm.”

### **Procedures, Record Keeping, Notifications, Reports, and Training (Section 15 – 17)**

- Removes ability of certain parties to obtain copies of records of incidents of restraint or involuntary seclusion from DHS.
- Requires DHS to grant certain individuals the opportunity to review records with proper consent.
- Directs DHS to appoint an advisory committee for the selection of crisis intervention training providers.
- Increases the number of crisis intervention training providers DHS must designate as meeting certification requirements from two or three to at least four.

### **Abuse Reports and Investigations (Section 19 – 23)**

- Allows, rather than requires, DHS to create an electronic reporting website for child abuse.
- Expands the definition of child abuse to include wrongful restraint, wrongful involuntary seclusion, involuntary servitude, or trafficking.
- Repeals existing sections of law and updates cross-references.

### **Child-Caring Agency (CCA) Licensing and Regulation (Section 24 – 35)**

- Specifies the providers of care or services to children that are required to be licensed by DHS.
- Clarifies that nonemergency medical transportation services and ambulances are not required to be licensed as CCAs.
- Directs DHS to adopt CCA licensing rules and requires CCAs to be corporations, limited liability companies (LLCs), or county programs.
- Allows DHS to place conditions on the license of a CCA, rather than mandating the suspension or revocation of the license, following specified events.
- Changes references from “agency” to “agency’s managers.”
- Changes investigation requirements, including removing requirements that DHS conduct its own investigation in certain circumstances.
- Modifies requirements for DHS quarterly reports to the Legislative Assembly regarding substantiated reports of abuse, wrongful restraint, or wrongful seclusion.
- Requires DHS employees to “assess the circumstances” rather than begin an investigation in response to reports of abuse, deficiencies, violations, ongoing investigations by other entities, or failures to comply with licensing requirements that occur in a CCA.

### **Out-of-State and Congregate Care Placements of Children (Section 36 – 39; 48)**

- Allows DHS to place a child in an out-of-state placement without requiring the placement be licensed by DHS as a CCA, without court approval, if:
  - The child requires specialized services and treatment, there is no suitable CCA placement available in Oregon, and the services are authorized for coverage by Medicaid;
  - The placement is requested by the child’s Tribe or is a youth regional treatment center funded by the Indian Health Service;
  - The child currently resides out of state, and requires treatment or care from an entity in the same state or a neighboring state;
  - The out-of-state placement is approved by an agency in that state that provides licensing services in compliance with certain interstate compacts and statutes; or
  - The placement is the nearest facility to the child’s community that provides necessary services or treatment.
- Requires DHS to verify that an out-of-state placement is in good standing in its state, to provide written notices to certain entities in Oregon upon the placement, and to receive approval from certain state officials.

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- Requires DHS and OHA to establish rules for the approval process for out-of-state placements and ensure standards for quality assurance and oversight.
- Allows DHS to place a child in a congregate care residential setting that is not a CCA or qualified residential treatment program (QRTP), and to extend the length of placement in a residential care facility or shelter-care home, if certain standards are met.
- Requires DHS and OHA to submit quarterly narrative reports, beginning on April 1, 2026, to the System of Care Advisory Council (SOCAC) on out-of-state placements, placements in congregate care facilities that are not QRTPs, or placement extensions.

### Older Children in Care (Section 40 – 41)

- Removes the requirement that DHS collect a portion of housing expenses from certain older youth.
- Allows DHS to exempt individuals over 18 who were placed in a foster or adoptive home by DHS from certain criminal records check requirements.

### Medical Decision-Making by Minors (Section 42 – 45)

- Allows a parent or guardian to consent to the inpatient behavioral treatment of a child if certain standards are met.
- Prohibits a health care professional from refusing to provide diagnosis or treatment of behavioral health disorders when the parent or guardian consents if the refusal is based solely on the child's objection.
- Establishes additional exceptions to the requirement for a person providing behavior, substance abuse, or mental health treatment to a minor to involve the minor's parent or guardian in the treatment.

### Oregon Health & Science University Institute for Youth (Section 46)

- Establishes the Oregon Institute for Youth Health Systems within Oregon Health and Science University (OHSU).
- Outlines the purpose and functions of the institute, including that the institute provide clinical consultation, workforce support, and a data dashboard on youth care services.

### Legislative Report (Sections 47; 49)

- Directs the SOCAC to study the implementation and effects of specified sections of law and to submit an initial report to the Legislative Assembly by September 15, 2026, and a final report by September 15, 2027.

### Miscellaneous (Sections 50 – 63)

- Makes conforming and clarifying amendments.
- Requires the State Board of Education to adopt rules for investigations by the 2026-27 school year.

### Effective Date (Section 64)

- Declares an emergency, effective on passage.

*REVENUE: May have revenue impact, but no statement yet issued.*

*FISCAL: May have fiscal impact, but no statement yet issued.*

### ISSUES DISCUSSED:

#### EFFECT OF AMENDMENT:

-1 The amendment makes changes to definitions and to procedures on the use of restraint or seclusion in school or care settings. It permits individuals to report violations by certain entities and provides immunity for report-makers from certain liability and disciplinary action. The amendment requires court approval for out-of-state placements and requires the Department of Human Services (DHS) to conduct in-person inspections of out-of-state placements. It removes sections that make changes to medical decision making by minors. The amendment requires the Systems of Care Advisory Council (SOCAC) to submit reports to the Legislative Assembly.

Detailed Summary:

**Wrongful Restraint and Seclusion**

- Changes the preamble.
- Replaces definition of “chemical restraint” and defines as a medication that is administered to a child to control behavior and restrict freedom of movement that is not a standard treatment for the child’s medical or psychiatric condition.

**Restraint and Seclusion in School Settings**

- Replaces description of wrongful restraint and establishes wrongful restraint occurs if a responsible individual:
  - Places or directs the placement of a restraint used for discipline, punishment, retaliation or convenience;
  - Administers or directs administration of a chemical restraint;
  - Restraints or directs restraint through excessive or reckless use of force that results, or is likely to result, in serious physical harm to the child.
- Clarifies that restraint may be used if the student’s behavior poses a reasonable risk of imminent serious physical harm.
- Inserts language clarifying that school personnel may physically intervene, without immobilizing a student, if necessary to break up a fight, or to protect a person from assault, serious physical harm, or sexual contact.
- Modifies requirements on the frequency of which a student must be provided with adequate access to the bathroom or water if restraint or seclusion continues for more than 10 minutes.
- Modifies the requirements on when school districts must provide written notification about incidents of restraint or seclusion.
- Removes the requirement that rooms used for involuntary seclusion be equipped with video recording equipment.
- Changes references to the State Board of Education to the Department of Education.

**Abuse in Care Settings; Restraint and Seclusion in Care Settings**

- Establishes that certain entities and individuals engage in the abuse of a child in care if they do not make a reasonable effort to protect a child in care from abuse, including abuse as defined in ORS 419B.005.
- Reinserts language requiring that a child’s behavior must pose a reasonable risk of imminent serious physical harm, rather than a risk of imminent serious physical harm.
- Allows certain inpatient treatment programs to place a child in a restraint if authorized by certain specialists if the restraint is not authorized as a standing order or on an as-needed basis.
- Requires a program to provide a child with access to the bathroom and water as often as prescribed by rule, rather than at least every 30 minutes, if restraint or seclusion lasts more than 10 minutes.
- Requires DHS to adopt rules that contain explicit policies to reduce the use of restraint or seclusion.

**Child-Caring Agency (CCA) Licensing and Regulation**

- Removes language requiring that certain actions be “intentional” to constitute misconduct.
- Permits any person to make reports to certain entities regarding violations by CCAs or other facilities.
- Provides that a person making a report in good faith is immune from certain liability and disciplinary action and allows a reporter to disclose otherwise confidential information for the purposes of the report.
- Requires that out-of-state placements be subject to court approval.
- Requires DHS to conduct an in-person inspection of an out-of-state placement facility before placing a child in the facility.
- Prohibits the placement of a child with an intellectual or developmental disability in an out-of-state placement that is an intermediate care facility.
- Directs DHS to adopt rules on the process for review of out-of-state placements and outlines minimum requirements for the rules.

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- Directs SOCAC to submit a report to the Legislative Assembly with an analysis of the required quarterly report no later than six months after receiving the report, directs SCOAC to submit an annual report to the Legislative Assembly, and prohibits SOCAC from including identifying information in its reports.
- Exempts records received by SOCAC from public inspection, and allows SOCAC to hold non-public meetings for the consideration of information and reports.

### Medical Decision-Making by Minors

- Removes sections that make changes to medical decision making.

### Miscellaneous

- Makes conforming amendments.
- States that changes to investigations of complaints related to restraint and seclusion in schools apply beginning August 30, 2026, and allows rulemaking prior to this operative date.
- Declares an emergency, effective on passage.

*REVENUE: May have revenue impact, but no statement yet issued.*

*FISCAL: May have fiscal impact, but no statement yet issued.*

### BACKGROUND:

#### Use of Restraint and Seclusion, and Secure Transportation Services

In 2011, the Legislature Assembly passed [House Bill 2939](#), which limited the use of physical restraint and seclusion for students in Oregon schools. [Senate Bill 963](#), passed in 2019, modified the permissible use of restraint in public schools. The bill prohibited the use of certain types of restraints including chemical, mechanical, prone, and supine restraints, and clarified circumstances under which students could be restrained. In 2021, the Legislative Assembly passed [Senate Bill 710](#) which prohibited certain entities, including child-caring agencies (CCAs), foster homes, and developmental disability residential facilities (DDRFs) from using restraint or involuntary seclusion as a form of discipline, punishment, or retaliation. The bill prohibited the use of certain types of restraints, such as chemical or mechanical restraints. [The bill](#) also required secure transportation service providers that transported children to or from certain locations to be licensed as a CCAs.

Subsequent bills passed by the Legislative Assembly have made changes to provisions regarding the use of restraint or seclusion in public education and care settings. These bills include [SB 93 \(2023\)](#), [SB 790 \(2023\)](#), and [SB 1024 \(2023\)](#).

[ORS 418.523](#) outlines the permissible uses of restraint or involuntary seclusion of children in care and requirements for monitoring and authorizing continued restraint or seclusion. Under Oregon law, staff must be trained on the proper usage of restraint and seclusion, and DHS may investigate the improper use of restraint and seclusion as abuse of a child in care. The Children's Care Licensing Program (CCLP), a division of DHS, collects and reports information relating to restraint and involuntary seclusion in CCAs. Those [reports](#) can be found on the CCLP's webpage.

#### Out of State Placements

In recent years, placements of Oregon children in out-of-state CCAs became the subject of investigation and review after reports of treatment of children in some out-of-state facilities ([Associated Press, 2019](#)). In an informational presentation given to the Senate Committee on Human Services in April 2019, DHS reported that 84 youth in the Oregon foster system were placed out-of-state ([DHS, 2019](#)).

Following reports that DHS was placing foster children in hotels and other nonstandard placements, a practice known as "temporary lodging," a class action lawsuit was filed in 2012 (*CASA for Children v. State of Oregon*). A separate class action lawsuit filed in 2019, *Wyatt v. Kotek*, alleged that DHS had failed to protect foster children in its care from trauma, citing frequent moves, inadequate therapy, and unsafe placements. These cases highlighted systemic challenges including the use of temporary lodging and placements in out-of-state and unlicensed facilities. In 2024, a [settlement](#) for *Wyatt* was reached that required DHS contract with a neutral expert to address foster care system outcomes. Additionally, the court for *CASA* appointed a special master, whose report made several recommendations to improve the system of care for foster children.

[Senate Bill 1605](#), passed by the Legislative Assembly in 2020, was an omnibus bill relating to children. Among other changes, the bill prohibited DHS from placing a child in an out-of-state child-caring agency unless the agency met certain standards, including that the agency be licensed by DHS under Oregon law.

Beginning in 2022, DHS contracted with a Keizer-based nonprofit entity called Dynamic Life to supervise foster children in unlicensed short-term rentals as an alternative to temporary lodging, although the organization was not a licensed CCA. Following a series of investigative reports and legislative hearings, DHS ended the contract in 2024.