

## **SB 1113 -2 STAFF MEASURE SUMMARY**

### **Senate Committee On Human Services**

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**Meeting Dates:** 3/27, 4/3

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

The measure modifies the laws governing the prohibited and allowable use of restraint and involuntary seclusion in public education programs and regulated entities that provide care for children. The measure modifies provisions for secure transportation providers to apply only to secure nonmedical transport. The measure specifies the actions that constitute abuse or neglect of a child in care and modifies the process for the Oregon Department of Human Services (ODHS) to investigate reports of abuse and neglect. The measure modifies the authority of ODHS to take regulatory actions on child-caring agencies and other regulated entities and impose civil penalties. The measure specifies exceptions to laws regulating out-of-state placements of children in care.

#### Detailed Summary:

##### **Restraint and Seclusion in Schools (Sections 1 to 4)**

- 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” to mean involuntary confinement of a student alone in an area from which the student is physically prevented by any means from leaving, except for a room clear, as defined by rule.
- 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.
- Changes definition of “chemical restraint” to include a drug or medication administered by any means.
- Clarifies that a restraint 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 restraint used for discipline, punishment, retaliation, or convenience.
- Permits the use of restraint on a student or placement of a student in seclusion only under specified circumstances.
- 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 10 minutes, rather 30 minutes.
- Modifies the requirement that an administrator provide written authorization for the continuation of the restraint or seclusion to every five minutes after the first 10 minutes, rather than every 15 minutes after the first 30 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.
- Replaces “neglect” with “negligent treatment” in reference to when ODHS must make a determination that a public education program is responsible for a report of founded abuse.

##### **Secure Transportation Providers (Section 5)**

- 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).
- Modifies definition of “secure escort” to align with definitions of restraint and imminent serious bodily injury.

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*This summary has not been adopted or officially endorsed by action of the committee.*

- Clarifies that secure nonemergency medical transportation providers are exempt from requirements to obtain a license or supplemental license from ODHS to provide secure transportation services unless they also provide secure nonmedical transportation services.

### **Restraint and Seclusion of Children in Care (Sections 6 to 11)**

#### Permissible Use of Restraint and Seclusion for all Children in Care

- Replaces current provisions regulating the use of restraint and involuntary seclusion of a child in care.
- Defines “adjudicated youth foster home” as a foster home certified by the Oregon Youth Authority (OYA)
- Defines “foster parent” as an operator of a certified foster home or an adjudicated youth foster home.
- Aligns definitions of “restraint,” “serious bodily injury,” and “chemical restraint” with above sections.
- 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.
- Permits restraint of a child in care only if the child’s current actions pose a reasonable risk of imminent serious bodily injury to the child or others, under specified circumstances and exceptions.
- Requires that restraint be imposed only by staff or contractors of a certified child-caring agency (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 under specified circumstances.
- Permits the use of involuntary seclusion of a child in care only if the child’s current actions pose a reasonable risk of imminent serious bodily injury to the child or others and other specified circumstances.
- Prohibits the use of restraint on a child in care who is receiving developmental disability services.
- Specifies that involuntary seclusion may only be imposed by staff or contractors of a CCA or foster home that is providing care or services to the child in question.
- Requires programs to provide a 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.

#### Restraint in Psychiatric Residential Treatment Facility

- 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 under specified circumstances.

#### Training Standards and Certification

- Requires ODHS 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 ODHS 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 ODHS as satisfying certification requirements.
- Requires that trainers designated by ODHS emphasize that restraint may only be used as the last resort in an emergency, meet all ODHS 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 a CCA, proctor foster home, and developmental disability residential facility 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 (Sections 12 to 14)**

- Defines neglect as abuse when an individual fails to provide necessary care, supervision, or services to maintain a child's physical and mental health.
- 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 ODHS to provide care or services to children.
- 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.
- Clarifies that "child in care" refers to a child in the physical or legal custody of ODHS.
- Clarifies that the definition of "services" includes education and supervision.
- Classifies actions that constitute 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.
- Classifies the actions that constitute abuse of a child in care when committed by a subject person.

**Licensure and Regulation of Child-Caring Agencies (Sections 15 to 28)**

Definitions and Applicable Entities

- Clarifies definitions related to licensure and regulation of child-caring agencies, including "certified foster home," "child-caring agency," "developmental disabilities residential facility," and "out-of-state child-caring agency," and moves other definitions currently in statute.
- Clarifies that certain entities are not subject to requirements for child-caring agencies, including homes maintained by fraternal organizations, certified foster homes, and governmental entities, with certain exceptions.
- Specifies the entities that must be licensed, certified, or otherwise authorized by ODHS, 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.
- Applies requirements to managers of child-caring agencies as well as owners and operators.
- Adds entities regulated as secure transportation providers to provisions that require regular inspection and supervision by ODHS.

Licensure, Certification, Endorsement, or Authorization

- Directs ODHS to adopt rules for licensing, certification, endorsement, or authorization of child-caring agencies.
- Requires ODHS to immediately suspend or revoke a license, certificate, or endorsement if a child-caring agency is noncompliant with any regulatory requirement.
- Requires ODHS to immediately impose 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.
- Requires ODHS 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 ODHS to charge a reasonable fee to cover the cost of processing applications for approval in addition to inspections performed by other government entities.

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- Modifies the requirement for ODHS to respond to reports of an agency that is subject to an ongoing investigation in another state.
- Allows a child-caring agency to certify a proctor foster home regardless of whether the children served are in the custody of ODHS if the proctor foster home is not already required to be licensed.
- Requires child-caring agencies with annual revenues over \$1 million to provide ODHS with financial statements once per year.

### Reports and Investigation of Suspected Abuse of a Child in Care

- Modifies the obligation of ODHS to open an investigation of abuse of a child in care upon receiving information in a public hearing or any other means.
- 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.
- Modifies the procedure for ODHS to conduct an investigation of abuse of a child in care.
- Requires, rather than allows, ODHS 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 an individual being investigated had current certification related to the use of restraint and seclusion.
- Specifies that ODHS 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 ODHS on reports and investigations of abuse of children in care include certain additional information.

### Investigations of Child-Caring Agencies

- Revises the process for ODHS to investigate child-caring agencies in response to reports of abuses, deficiencies, violations, or failures to comply with regulations.
- Requires ODHS to monitor the ongoing regulatory compliance of all regulated entities.
- Specifies the regulatory enforcement actions that ODHS may take upon becoming aware 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 ODHS 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, ODHS has previously taken less punitive actions, or the suspension or revocation are otherwise required by state or federal law.
- Requires ODHS 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 ODHS 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.
- Clarifies that an employee's duty to report is in addition to the existing obligation to report child abuse under ORS 419B.010.
- Requires ODHS to post information about regulatory enforcement actions against a regulated entity on its website for at least 24 months.
- Requires ODHS 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.

### Civil Penalties

- 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 ODHS to impose a civil penalty of at least \$259 on a secure transportation provider for each day the provider violates disclosure requirements.

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- Requires ODHS to 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 ODHS from imposing a civil penalty on a regulated entity that assumes custody of a child if the child's care needs exceed the scope of the entity and the entity makes a good faith effort to take appropriate actions.
- Establishes civil penalties of various amounts related to instances of prohibited restraint or seclusion.
- Establishes a civil penalty of at least \$250 for instance the child was denied immediate access to their attorney, case manager, court appointed special advocate, the Children's Advocate, or the child abuse hotline.
- Increases the maximum penalty that ODHS may impose on CCAs from \$500 to \$1500 for each violation.

### **Out-of-State Child-Caring Agency Placements**

- Clarifies that requirements for out-of-state child-caring agencies apply only to congregate care facilities.
- Allows DHS to place a child in an out-of-state congregate care facility without requiring the facility to be licensed as a CCA under specified circumstances.
- Allows ODHS to place a child in an out-of-state PRTF if without requiring the facility be licensed as a CCA under specified circumstances.
- Allows ODHS to place a child in an out-of-state hospital without requiring the facility to be licensed as a CCA under specified circumstances.
- Clarifies when ODHS 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 ODHS places more than one child in the facility in a 12-month period and allows ODHS to waive the requirement that the facility be a corporation or county program.

### **Placement in Congregate Care Residential Settings**

- Allows ODHS to place a child in a congregate care residential setting that is not a qualified residential treatment program if OHA has approved the placement as medically necessary, authorized payment for services with Medicaid funds, and that the facility is a PRTF for individuals under age 21.
- Authorizes ODHS to extend the placement of a child or ward over age 16 in a residential care facility or shelter-care home under specified circumstances.

### **Licensing of Private Residential Boarding Schools**

- Defines "private residential boarding school."

### **Child Abuse Investigations (Sections 29 to 31)**

- Modifies the definition of "abuse" to purposes of a child protective services investigation of child abuse.
- Makes nonsubstantive and conforming amendments.

### **Miscellaneous (Sections 32 to 49)**

- Makes nonsubstantive and conforming amendments.

*REVENUE: No revenue impact*

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

### **ISSUES DISCUSSED:**

- Intersection with other proposed legislation
- Distinctions between definitions of "abuse" in different contexts
- Content of proposed amendments
- Use of restraint and seclusion in education settings
- Use of restraint and seclusion in psychiatric residential treatment facilities for youth
- Actions that constitute abuse of a child in care

### **EFFECT OF AMENDMENT:**

*This Summary has not been adopted or officially endorsed by action of the committee.*

-2 The amendment removes provisions relating to restraint and seclusion in schools. The amendment modifies provisions regarding secure transportation providers. The amendment modifies the allowable use of and exceptions to restraint and seclusion of children in care. The amendment modifies provisions and creates additional exceptions for placement of children in out-of-state child-caring agencies.

Detailed Summary:

**Restraint and Seclusion in Schools (Sections 1 to 4)**

- Removes provisions relating to restraint and seclusion in schools.

**Secure Transportation Providers (Section 5)**

- Modifies the definition of "secure escort" to allow restraint of a child only during involuntary transport to a congregate care residential program, foster home, or developmental disabilities residential facility that is not a hospital or health care facility.
- Modifies the definition of "secure nonmedical transportation services" to apply only to transportation of a child to a congregate care residential program, foster home, or developmental disabilities residential facility that is not a hospital or health care facility.
- Prohibits a secure nonmedical transport provider from transporting a child to a hospital, health care, or treatment facility that is certified by or contracted with the Oregon Health Authority.

**Restraint and Seclusion of Children in Care (Sections 6 to 11)**

Permissible Use of Restraint and Seclusion for all Children in Care

- Creates exceptions in the definition of "chemical restraint" for drugs prescribed and administered by a qualified health professional within the scope of practice for standard treatment of a condition.
- Specifies the actions that do not constitute restraint, including brief physical contact under certain circumstances.
- Allows the use of supine restraint in a psychiatric residential treatment facility.
- Removes the allowable use of restraint by a foster parent.
- Clarifies that a foster parent, Department of Human Services (ODHS) employee, or other person not authorized to use restraint is not prohibited from using minimal force in an emergency, provided that a prohibited restraint is not used.

Restraint in Psychiatric Residential Treatment Facility

- Removes the allowance for a psychiatric residential treatment facility that has a current contract with the Oregon Medicaid program to use restraints that are otherwise prohibited.
- Permits a child-caring agency that is a secure children's inpatient program or secure adolescent's inpatient program to use restraints that are otherwise prohibited.
- Provides that the use of restraint or involuntary seclusion in violation of allowed use under law is a licensing violation and is grounds for revocation, suspension, or imposition of conditions of an entity's authority to operate.

Training Standards and Certification

- Requires that alternative certification options include prioritization through explicit policy on reducing or eliminating the use of restraint.

**Abuse of a Child in Care (Sections 12 to 14)**

- Makes non-substantive clarifications.

**Licensure and Regulation of Child-Caring Agencies (Sections 15 to 28)**

Reports and Investigation of Suspected Abuse of a Child in Care

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- Restores original language that specifies that a child-caring agency, certified foster home or developmental disabilities residential facility that has no employees, volunteers, or staff is not required to develop certain training materials.
- Restores original language regarding an unsubstantiated investigation of abuse of a child in care.

### Investigations of Child-Caring Agencies

- Requires ODHS to monitor the ongoing regulatory compliance of child-caring agencies, rather than regulated entities.

### Civil Penalties

- Removes provisions related to civil penalties for child-caring agencies.

### Out-of-State Child-Caring Agency Placements

- Allows ODHS to waive the requirement that an out-of-state child-caring agency be incorporated under the laws of any state or be a county program.
- Restores language that prohibits ODHS from delegating its authority for licensing, visiting, inspecting, investigating, or supervising an out-of-state child-caring agency.
- Requires ODHS, by rule, to notify the state protection and advocacy system for accessing public records related to individuals with disabilities and mental illness when placing a child with an intellectual or developmental disability with an out-of-state child-caring agency.
- Sunsets the requirement that a physician or psychologist determine that a child requires residential treatment for substance use disorder that is not available in Oregon in order for ODHS to place a child in an out-of-state congregate care facility that is not licensed as a child-caring agency on August 1, 2027.

### Placement in Congregate Care Residential Settings

- Allows ODHS to place a child or ward over age 18 in a congregate care residential setting that is not a child-caring agency or a qualified residential treatment program that primarily serves adults if the admission is medically necessary and is approved by a physician or psychiatrist.

*REVENUE: No revenue impact*

*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 the Oregon Department of Human Services (ODHS) 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 ODHS, 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, ODHS reported that 84 youth in the Oregon foster system were placed out-of-state ([ODHS, 2019](#)).

Following reports that ODHS 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 ODHS 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 ODHS 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 ODHS 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 ODHS under Oregon law.

Beginning in 2022, ODHS 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, ODHS ended the contract in 2024.