

## HB 3835 A -A5 STAFF MEASURE SUMMARY

### House Committee On Rules

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**Prepared By:** Taylor Bickel

**Meeting Dates:** 5/12

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#### WHAT THE MEASURE DOES:

The measure modifies laws related to the use of restraint and seclusion on children in public 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 under certain circumstances, exempts secure medical transport from certain licensing requirements, and modifies provisions of placements for older youth in care. The measure directs DHS to submit narrative reports to the System of Care Advisory Council (SOCAC), requires SOCAC to submit reports to the Legislative Assembly, 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 “chemical restraint” as a medication that is administered to a child to control behavior and restrict freedom of movement and that is not a standard treatment for the child’s medical or psychiatric condition.
- Defines “responsible individual” as a person over age 18 who may have contact with a child as a result of their position as a foster parent or employee, volunteer, or contractor of a child-caring agency or public education program.
- Defines “wrongful seclusion” as the placement of a child in involuntary seclusion for discipline, punishment, retaliation, or convenience by a responsible individual.
- Establishes that a wrongful restraint occurs when a responsible individual
  - uses or directs the use of restraint for discipline, punishment, retaliation, or convenience;
  - administers or directs the use of a chemical restraint; or
  - restrains or directs restraint using excessive or reckless force that results in, or is likely to result in, serious physical harm to the child.
- 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 definitions of “involuntary seclusion,” “restraint,” and “chemical restraint” with Section 1 of the bill.
- Permits the use of restraint in a public education program only if
  - the restraint is imposed by personnel of the public education program or school district;
  - the student’s behavior poses a reasonable 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 that is otherwise prohibited.

- Permits the use of involuntary seclusion only if
  - the student's behavior poses a reasonable risk of imminent serious physical harm to the student, or others, including animals;
  - a less restrictive intervention will not reduce the risk; and
  - the involuntary seclusion is not wrongful seclusion.
- Clarifies that personnel of a public school program or school district may physically intervene without immobilizing a student to protect a person from an assault, serious physical harm, or sexual contact.
- Requires schools to provide a child with access to the bathroom and water as often as determined by the Department of Education (ODE) by rule if restraint or involuntary seclusion continues for more than 10 minutes.
- Modifies the frequency at which an administrator must provide written authorization for restraint or involuntary seclusion to continue.
- Eliminates the requirement for districts to notify certain individuals if personnel are seriously injured in connection to the use of restraint or seclusion.
- Replaces references from "serious bodily injury" with "serious physical injury," as defined in ORS 161.105.
- Removes requirement that complainants seek remedies with the public education's local governing body before submitting a complaint to the State Board of Education.
- Establishes a process, to be adopted in rule by the State Board of Education, for ODE to investigate complaints related to the use of restraint and involuntary seclusion, which includes limiting the subject of investigations to a school district or public education program rather than specific personnel.

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

- Modifies the definition of "secure transportation services" to mean only nonmedical transport of a child using specific vehicles to be further specified by DHS.
- Rescinds authorization for DHS to use restraints during transport of children or youth.
- Requires the Oregon Health Authority (OHA) to create a transportation safety plan prior to using restraints during transportation of a youth.

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

- Establishes that certain responsible entities and individuals abuse a child in care if they do not make a reasonable effort to protect the child in care from abuse, including abuse as defined in ORS 419B.005.
- Classifies and describes 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.
- 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 of the bill.
- Prohibits the use of wrongful restraint, as established in section 1, in settings for children in care.
- Includes adjudicated foster homes in care settings where wrongful restraint and wrongful involuntary seclusion are prohibited.
- Allows the use of restraint or involuntary seclusion by certain child-caring entities only if the child's behavior poses a reasonable risk of imminent serious physical harm 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 type of restraint is not otherwise prohibited, and the involuntary seclusion is not wrongful seclusion, as defined in Section 1.
- 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.
- Creates exemption for certain inpatient treatment programs to place a child in specific restraints if authorized by certain specialists and if the restraint is not authorized as a standing order or on an as-needed basis.
- Replaces references to “serious bodily injury” and “serious physical injury” with “serious physical harm.”
- Grants DHS authority to prescribe requirements by rule for a program to provide a child with access to the bathroom and water, rather than at least every 30 minutes, if restraint or seclusion lasts more than 10 minutes.

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

- Requires DHS to grant specified individuals the opportunity to review, rather than obtain copies of, certain records regarding incidents related to restraint or seclusion upon request and only 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.
- Requires DHS to adopt rules that contain explicit policies to reduce the use of restraint or seclusion.

**Abuse Reports and Investigations; Child-Caring Agency (CCA) Licensing and Regulation (Section 19 – 35)**

- Allows, rather than requires, DHS to create an electronic reporting website for child abuse.
- Repeals provisions related to DHS finding a public education program or personnel responsible for abuse based on the improper use of or training related to restraint or seclusion.
- Expands the definition of child abuse to include wrongful restraint, wrongful seclusion, involuntary servitude, or trafficking.
- Expands the definition of “child caring agency” to include any children’s care or services provider that is required by law to be licensed, certified, or otherwise authorized by DHS; modifies other definitions related to CCAs; and specifies exceptions.
- Specifies the types of children’s care or services providers that must be licensed, certified, or otherwise authorized by DHS.
- Directs DHS to adopt CCA licensing rules and requires a CCA to be a corporation, limited liability company, or county program.
- Allows DHS to place conditions on the license of a CCA as an alternative to suspension or revocation of the license, following specified events.
- Modifies the processes for DHS to respond to reports regarding a CCA in order to ensure the health, safety, and welfare of children in care.
- Modifies requirements for DHS quarterly reports to the Legislative Assembly regarding substantiated reports of abuse, wrongful restraint, or wrongful seclusion.

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

- Permits DHS to place a child in an out-of-state placement that is not licensed by DHS as a CCA or designated as a qualified residential treatment program (QRTP) 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 the Interstate Compact on the Placement of Children and relevant Oregon statutes; or
- the placement is the nearest facility to the child's community that provides necessary services or treatment.
- Requires out-of-state placements be subject to court approval.
- Directs DHS to take the following actions before placing a child in an out-of-state placement:
  - verify that the placement is in good standing with the licensing authority in its state,
  - conduct an in-person inspection and verify the placement is in significant alignment with Oregon licensure requirements, and
  - receive approval from certain state officials.
- Directs DHS and the OHA to establish rules and standards regarding out-of-state placements.
- Requires DHS to file with the juvenile court and other state officials and bodies when placing a child out-of-state under this section.
- Prohibits the placement of a child with an intellectual or developmental disability in an out-of-state placement that is an intermediate care facility.
- Requires DHS and OHA to submit quarterly narrative reports regarding out-of-state placements to SOCAC beginning April 1, 2026.
- Authorizes SOCAC to review records submitted in executive session and exempts records from public inspection.
- Directs SOCAC to submit a report analyzing the quarterly report to the Legislative Assembly no later than six months after receiving the report, and an annual report to the Legislative Assembly by September 15 each year.
- Allows DHS to place a child in a congregate care residential setting that is not a CCA or QRTP, and to extend the length of placement in a residential care facility or shelter-care home, if certain standards are met.
- Removes the requirement for DHS to publish information about out-of-state placements on a public website.

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

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

**Legislative Report (Sections 47; 49)**

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

**Miscellaneous & Effective Dates (Sections 50 – 66)**

- Makes conforming and clarifying amendments.
- States that changes to investigations and complaints related to restraint and seclusion in schools apply beginning August 30, 2026, and allows the State Board of Education and ODE to adopt necessary rules for implementation prior to this operative date.
- Declares an emergency, effective on passage.

**ISSUES DISCUSSED:**

**EFFECT OF AMENDMENT:**

-A5 The amendment replaces the measure. The amendment removes sections making changes to the use of restraint and seclusion in education settings and makes conforming amendments. The amendment modifies the definition of chemical restraint, and changes references to "wrongful restraint" and "wrongful involuntary seclusion" to "abusive restraint" and "abusive seclusion." It makes changes to the permissible uses of restraint and seclusion in care settings, removes the minimum number of crisis intervention training providers that the Department of Human Services (DHS) must designate, and requires DHS to designate providers of training that

meet specified standards. The amendment prohibits DHS from issuing or renewing a license, certificate, or authorization to a child-caring agency (CCA) that does not comply with requirements related to restraint and involuntary seclusion and incident reporting. It modifies allowable conditions for DHS to place a child in an out-of-state placement that is not a licensed CCA and requires DHS to report information on out-of-state placements online.

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

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

Detailed Summary:

**Use of Restraint and Seclusion on Children (Section 1 - 19)**

- Removes sections making changes relating to the use of restraint and seclusion in public education settings programs and makes conforming amendments.
- Modifies the definition of "chemical restraint" to a medication that is:
  - administered to a child to reduce an imminent safety risk by managing the child's behavior and temporarily restricting the child's freedom of movement; and
  - not a standard treatment for the child's medical or psychiatric condition.
- Changes references to "wrongful restraint" and "wrongful seclusion" to "abusive restraint" and "abusive seclusion," respectively.
- Restores the definition of "secure escort" and "secure transportation," and clarifies that these terms only include nonmedical transport.
- Classifies sexual contact, as defined by ORS 163.305, with a child in care as abuse of a child in care, regardless of whether the sexual contact is otherwise unlawful.
- Prohibits, with exceptions, a restraint that, unless necessary to prevent an imminent life-threatening injury or gain control of a weapon:
  - is intended to impede a child in care's movement;
  - includes the intentional and nonincidental use of a solid object, including the ground, a wall, or the floor; and
  - causes the child in care to be pressed between the person imposing the restraint and the object, or between objects.
- Clarifies that specified facilities may place a child in care in a restraint or involuntary seclusion if the child's behavior poses a reasonable risk of imminent serious physical harm to animals as defined in ORS 167.310.
- Permits a certified foster home or proctor foster home, consistent with the reasonable and prudent parent standard, to temporarily restrict a child in care's freedom of movement and to implement age-appropriate discipline, and states these actions are not subject to incident reporting requirements related to restraint or involuntary seclusion.
- Defines "reasonable and prudent parent standard" as the standard characterized by careful and sensible parent decisions that maintain the health, safety and best interests of a child in care while encouraging emotional and developmental growth.
- States that federal requirements regarding restraint or seclusion that are more restrictive than state law supersede any inconsistent provision to the extent of the inconsistency.
- Removes the requirement that DHS adopt a minimum number of nationally recognized providers of crisis intervention training, and instead requires DHS to adopt providers of training that:
  - use trauma informed practices;
  - prioritize the reduction or elimination of the use of restraint and involuntary seclusions;
  - teach techniques for de-escalation that do not require restraint or involuntary seclusion; and
  - meet DHS's training standards.
- Directs DHS to coordinate with the System of Care Advisory Council (SOCAC) to convene the advisory committee that provides recommendations regarding the selection of crisis intervention training providers

and clarifies the advisory committee's membership.

- Requires that a child in care receive information that assures the child they will not experience retaliation for making an abuse report or complaint regarding the uses of involuntary seclusion or restraint.
- Permits the Oregon Health Authority (OHA) to use restraints during the escort of a youth, adjudicated youth, or young person, as those terms are defined in ORS chapter 419A, in addition to transportation.
- Permits DHS to impose a corrective action, in addition to a civil penalty, on a child-care agency or provider of secure transportation services for violations related to the use of restraint and seclusion.

**Child Abuse, Abuse Reports and Investigations (Section 21 - 23)**

- Removes provision that allows, rather than requires, DHS to develop a website for electronic reporting of suspected child abuse.
- Permits DHS to impose a corrective action or a civil penalty on a child-care agency or provider of secure transportation services for violations of specified requirements.

**Child-Caring Agency (CCA) Regulation (Sections 24 - 35)**

- Requires CCAs that are domestic or foreign limited liability companies to meet additional standards established by DHS by rule.
- Prohibits DHS from issuing or renewing a license, certificate, or authorization to a CCA unless the CCA complies with requirements related to restraint and involuntary seclusion of children in care and incident reporting.
- Adds the following data to the list of information that must be included in DHS's quarterly report to interim legislative committees:
  - the number of incidents that were reported as suspected abusive restraint;
  - the number of incidents in which a prohibited restraint was used;
  - the number of complaints received involving alleged violations of procedural, reporting, training, and notification requirements; and
  - the number of complaints that involved allegations later confirmed to be violations.

**Out-of-state Placements and Congregate Care Placements of Children (Sections 36 - 39)**

- Modifies allowable conditions for DHS to place a child in an out-of-state placement that is not a licensed CCA to include:
  - that no CCA placements are available in this state that are suitable for the child and provide services and treatments that are medically necessary and medically appropriate, and the services are approved for coverage by Medicaid;
  - that there is reason to know that the child is an Indian child, the placement complies with placement preferences under the Oregon Indian Child Welfare Act, and:
    - the placement is a youth regional treatment center operated or funded by the Indian Health Services that serves the needs of Indian children or youth; or
    - the Indian child's Tribe has requested the child be placed in the out-of-state placement.
  - that the out-of-state placement is an out-of-state CCA, the child currently resides in a placement located in the same state or a neighboring state, subject to the Interstate Compact on the Placement of Children, and the CCA provides treatment or services that medically necessary and appropriate for the child, consistent with rules adopted by OHA; or
  - that the provider that is closest to the child's community that is able to provide treatment or services that are medically necessary and appropriate is in a neighboring state, accessing the treatment in the neighboring state maintains the child's connection to the community, and the services or treatment are consistent with rules adopted by OHA.
- Directs DHS, rather than DHS and OHA, to submit quarterly narrative reports to SOCAC on the circumstances justifying certain placement exceptions and extensions.

- Permits DHS to place a child or ward in a congregate care setting that serves adults and is not a licensed CCA or Q RTP if the congregate care setting is licensed by DHS or OHA and provides medically necessary and appropriate services or treatment.
- Requires DHS to maintain a website that is updated monthly with information on out-of-state placements and to provide a narrative description of circumstances behind out-of-state placements to SOCAC on a quarterly basis.

**Miscellaneous and Effective Dates**

- Makes conforming amendments.
- Declares an emergency, effective on passage.

**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 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 following reports of treatment of children in some out-of-state facilities, including the use of chemical restraints and seclusion ([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 to 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.