HB 3835 -A13 Frequently Asked Questions

Restraint and Involuntary Seclusion

Why does this legislation change the definitions of “wrongful restraint” and “wrongful seclusion”?

Oregon's definitions of "wrongful restraint" and "wrongful seclusion" in child abuse law are inconsistent, causing confusion among mandatory reporters, families and youth, as actions may be considered abuse in some settings but not in others. In addition, current law places liability fully on frontline workers. These issues can undermine care quality as workers are positioned to prioritize risk mitigation over proactive engagement with youth. Addressing these challenges requires that we establish clearer definitions of situations where use of restraint or seclusion amounts to child abuse, and to shift accountability where appropriate – holding frontline workers’ leaders and management accountable for systemic failures like inadequate training or staffing resources. Additionally, current statute restricts crisis intervention to three models, which creates a barrier for new providers who are already using other nationally recognized models. Expanding treatment options and removing barriers for new providers to serve children in Oregon is critical to improving access to timely care for youth with complex needs.

Does this legislation make it easier to restrain or seclude kids?

No. This legislation does not change the requirement that restraint or seclusion are used as a last resort, when no less-restrictive intervention can prevent imminent risk of serious physical harm. It maintains Oregon’s existing high standards for third-party abuse and makes them consistent across Child Caring Agencies and residential care for children with disabilities settings so there is no ambiguity in what is considered abuse and against the law.

Does this legislation change in what is considered abuse?

No. Abuse is abuse - this legislation puts everyone on the same page so that providers in any setting know there's no technicality or confusing application of what is simply understood as abuse.

Does this legislation change how child abuse is investigated?

Child abuse against a "child" or a "child-in-care" will continue to be investigated as child abuse. This legislation simply clarifies when child abuse is investigated under ORS 419B and ORS 418.

Is it true this bill will result in Oregon having some of the lowest protections related to restraint and seclusion in the country?

No. Oregon is currently, and with the proposed amendments will continue to be, among the top 10 states in the country for strong regulations considering restraint and seclusion on children.[4]

Will some restraints be permissible that are now prohibited?

No. The regulations in existing statute regarding prohibited restraints and seclusion—including procedures, record-keeping, notifications, and training standards—remain unchanged, as they are essential for protecting child safety. We are changing how we investigate restraints, not changing the prohibited restraints.

What types of violations will no longer be required to be investigated as wrongful restraint or involuntary seclusion?

Certain violations, such as documentation errors, formal authorization timing issues, or training lapses that do not affect the justification or performance of a restraint would no longer automatically trigger child abuse investigations. These violations will continue to be investigated through licensing or human resources processes to address root causes. The bill adds language clarifying Oregon Department of Human Services' (ODHS) authority to take licensing action as necessary. The bill also removes the arbitrary statutory limit on the number of approved crisis intervention models, allowing for greater diversity and innovation in care practices. SOCAC will be responsible to

convene youth and families with lived experience to advise ODHS on the approval of new models, ensuring those directly affected have a voice in the decision-making process. These changes aim to improve child safety, ensure consistent reporting, reduce provider burnout, and enhance care quality across Oregon's child-serving systems.

What does "serious physical harm" mean if it is not defined?

In researching alternative terms to replace "serious bodily injury," it was concluded that "serious physical harm" is the most appropriate choice for three reasons:

1. Consistency with Established Standards: The term aligns with the U.S. Department of Education's guidance and the Joint Commission model policy, ensuring consistency with widely accepted frameworks.

2. Legal Precedent: "Serious physical harm" is not specifically defined in Oregon statutes, but its plain meaning is well established in Oregon statutes and can be readily applied in legal contexts.

3. Enhances Understanding and Maintains a High Standard: The plain meaning of "serious physical harm" uses common, easily understood language while still conveying the intended high standard.

When terms are not specifically defined, courts assume those terms hold their plain, ordinary meanings, as defined by Webster's Dictionary.

- "Serious" is defined as "such as to cause considerable distress, anxiety, or inconvenience: attended with danger."
- "Physical" means "of or relating to the body."
- "Harm" and "injury" are synonymous, both meaning "damage." According to Webster's Third, "harm" is defined as "physical or mental damage: INJURY," while "injury" refers to "hurt, damage, or loss sustained," which are synonymous with harm.

Therefore, "serious physical harm" conveys the idea of considerable damage to the body, upholding the high standard intended by SOCAC and ODHS.

Will this legislation reduce safety standards that are in place in Oregon?

No. Safety standards remain the same with this legislation.

How do the changes in Section 15 that amend ORS 418.526 impact access to records by a party in a dependency case?

Section 15 of HB 3835 amends ORS 418.526 to specifically address access to photographs, audio, and video recordings related to the use of restraint or seclusion. This statutory change will not have an impact on access to records by legal parties to a dependency case as they have established rights to these records through discovery.

What evidence supports that current legislation is part of the problem?

There is broad agreement that the challenges facing Oregon’s children's behavioral health system stem from multiple, complex factors. No single piece of legislation is solely responsible. However, there is growing evidence that current laws are not effectively supporting improvements in care quality, system capacity, or workforce stability.

Stakeholders across the system have consistently reported that the existing regulatory framework creates unintended barriers, and modest but meaningful statutory changes are needed as part of a broader effort to improve outcomes for children.

As Looking Glass testified:

“The regulatory environment has also caused the premature exits of children residing in therapeutic environments and their entry into non-therapeutic settings, adding to patterns of abandonment. In the last 3 years, 34 children have required emergency exits from our residential programs. 32 of those children would have remained in care prior to 2022.”

This testimony underscores how inflexible regulations are contributing to placement instability—forcing youth out of therapeutic care prematurely and compounding trauma rather than alleviating it.

The Special Master's report highlights the devastating effects of placement instability on children in care and recommends the development of Individual Residential Care Programs—specialized, trauma-informed settings designed to provide individualized care for youth with extraordinary needs, including those currently in temporary lodging or in need of psychiatric or developmental disability services.

ODHS has issued a Request for Proposals (RFP) since January 2024, inviting providers to propose their own pricing to establish Individual Residential Care Programs. However, there has been little to no interest, with providers consistently reporting that they will not engage until the regulatory environment is improved.

To meet the requirements outlined in both federal settlement agreements—and to truly serve children and young adults with complex needs—Oregon must build a robust, flexible, and diverse array of services that providers are both willing and able to deliver.

In and Out-of-State Placement/Treatment

Why are we considering sending children out-of-state for treatment?
All children enrolled in the Oregon Health Plan (OHP) deserve equal access to medically necessary and appropriate treatment, including care provided outside of Oregon when such services are not available in-state. Accessing regional, specialized treatment across state lines is a standard and necessary practice within our broader healthcare system.

However, under current law, children in the custody of child welfare face regulatory barriers that prevent or delay access to out-of-state care—even when that care is medically necessary. These

delays are especially dangerous in urgent cases, such as treatment for severe eating disorders, where postponed access to care can result in serious harm or even death.

Won't sending kids out of state remove the ability for the state to provide oversight and ensure child safety?

No. This bill strengthens oversight measures by requiring the Child Welfare Director's review and approval for any exception as opposed to a case manager. Additionally, SOCAC will receive and monitor reports on every out of state placement, and an OHSU-based institute will oversee clinical best practice and evaluate trends for treatment gaps.

There are currently not enough providers in Oregon to serve the level of needs the state has. While we grow the provider workforce in Oregon, this bill carefully and narrowly amends statute to increase the access for children and young adults in the custody of Child Welfare to have equal access to placements and treatment as their peers on the Oregon Health Plan or private insurance.

Why is the state focused on changing regulations instead of working to build capacity and train providers?

We must do both! Improving youth behavioral health and access to treatment is a multi-faceted approach. The Governor's Recommended Budget includes new and critical financial investments to grow capacity and build our workforce.

What are the new external accountability and legislative oversight for in-state and out-of-state exceptions?

Required Review and Approvals

- ✓ Dependency court approval
- ✓ Verification the treatment provider is in good standing with the licensing authority in their state.
- ✓ In-person inspection by ODHS licensor prior to placement to ensure the provider is safe and in significant compliance with Oregon's licensure requirements.

- ✓ Approval by the Oregon Child Welfare Director or their designee, who must be a member of the Child Welfare leadership team.
- ✓ Approval by the Oregon Medicaid Director or their designee, who must be a member of the Medicaid leadership team.
- ✓ Ensure the child's rights in the out-of-state placement are in significant alignment with the rights they have in Oregon.
- ✓ Ensure the child understands the child's rights as a child in the care or custody of the department, including under the Oregon Foster Children's Bill of Rights, and ensure that the child knows how to report violations of those rights to the State of Oregon

Required Actions During Stay

- ✓ A member of the multidisciplinary team to accompany the child as they travel to and from the out-of-state placement.
- ✓ Multidisciplinary team monitoring of progress of the child's treatment
- ✓ In-person visits to check in with the child at least every 15 days by a member of the multidisciplinary team.
- ✓ Immediate actions are taken per OAR if there is a report of a violation of a child's rights or a report of child abuse.

ODHS and SOCAC Reporting Requirements

- ✓ Prior to or as soon as practicable after the date of placement in medically necessary residential treatment, ODHS must file a report to juvenile court and provide written notice of the placement to the office of the Governor, the foster care ombudsman and the System of Care Advisory Council.
- ✓ ODHS must update a public website monthly as currently required by ORS 419B.335 regarding children in the custody of Child Welfare who have been placed or sent to treatment out of state.
- ✓ ODHS must submit quarterly narrative reports to the System of Care Advisory Council describing the circumstances justifying the exception to an in-state or out-of-state placement.

- ✓ The System of Care Advisory Council must submit quarterly reports to committees of the Legislative Assembly related to human services and behavioral health on their analysis of the appropriateness of the placement exceptions and of the trends reflected in the quarterly report.
- ✓ The System of Care Advisory Council must also submit quarterly reports to committees of the Legislative Assembly related to human services and behavioral health annually before September 15 of each year, summarizing the quarterly reports received from the department in the previous four quarters. The summary must include the System of Care Advisory Council's analysis of the appropriateness of the placement exceptions and of the trends reflected in the quarterly reports in the previous four quarters.

You can get this document in other languages, large print, braille or a format you prefer free of charge. Contact the System of Care Advisory Council at statewide.soc@oha.oregon.gov.