



# Oregon

Tina Kotek, Governor

Department of Human Services

500 Summer St.  
Salem, OR 97301



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Senate Committee on Human Services  
Oregon State Capitol  
900 Court St. NE  
Salem, OR 97301

## **RE: Senate Bill 1113, Relating to the welfare of young people**

Dear Chair Gelser Blouin, Vice Chair Linthicum, and Members of the Committee:

### **Scope of Impact**

Senate Bill 1113(SB 1113) introduces significant changes to the use of restraint in schools, Child-Caring Agencies, intellectual/developmental disability (I/DD) residential and foster homes, therapeutic foster homes and Child Welfare and OYA certified foster homes. The bill redefines “serious bodily injury” and establishes a higher threshold for when restraint is permissible and not classified as child abuse.

### **Anticipated Impacts and Potential Consequences:**

The new provisions of SB 1113 create complex standards, which could lead to unintended negative consequences for both children and their caregivers. These changes may increase uncertainty, liability risks, and reluctance among caregivers, potentially reducing placement stability and access to necessary support for children in care.

#### *Redefines "Serious Bodily Injury"*

- **Increased Threshold Beyond Prevention of Immediate Harm:** SB 1113 redefines “serious bodily injury” to include bodily harm that creates a substantial risk of death, causes serious permanent disfigurement, unconsciousness, extreme pain, or long-term impairment of a body part or mental function. This threshold could classify necessary interventions as child

abuse, even when restraint is required to prevent immediate harm but does not meet this standard.

- **Prohibition on non-immobilizing physical interventions:** The proposed legislation would prohibit non-immobilizing physical interventions used to stop fights, prevent assaults, or protect children from severe harm or sexual contact. This restriction could leave children and caregivers vulnerable in crisis situations, potentially increasing the risk of serious injury, neglect, or further trauma.

#### *Impact on Schools and Provider of Child-in-Care*

- **Limits on Proactive Interventions:** SB1113 specifies that restraint may only be used if the child’s actions pose a reasonable risk of imminent “serious bodily injury” to themselves or others. This limits the ability of staff and foster parents to intervene proactively, even when the child’s escalating behavior poses a clear safety risk.
- **Reliance on Law Enforcement Interventions:** With a narrower threshold for intervention, schools, I/DD providers, and behavioral health programs may have fewer viable options to ensure safety. As a result, providers may be forced to rely on law enforcement to manage crisis situations, increasing the likelihood of criminal charges against children and their involvement in the juvenile justice system. This unintended consequence could further marginalize vulnerable youth.
- **Adds a “Negligent Treatment” Abuse Type:** SB 1113 adds language to existing statute that ODHS shall find the public education program founded for abuse for negligent treatment if the program failed to have sufficient “appropriately trained” staff to comply with individualized education programs, 504 plans, or behavior plans independent of use of a restraint or seclusion. This would require ODHS to make training, certification, and appropriate staffing decisions on behalf of education providers under the threat of abuse findings.

#### *Changes to Definitions of Child Abuse*

- **Additional Variation in Definition:** SB 1113 creates different definitions for what constitutes an allegation of child abuse depending on where the restraint occurs:
  1. A school;
  2. DD foster home;

3. Child Welfare or OYA foster home;
4. CCA, CCA proctor home, or I/DD residential facility; or
5. Psychiatric Residential Treatment Facility (PRTF)

SB 1113 introduces further complexity to the already convoluted definition of 'wrongful restraint,' making it more challenging for youth, their families, staff, mandatory reporters, and ODHS child abuse investigators to understand when something is an allegation of child abuse. (see current and SB 1113 child abuse screening decision maps of wrongful restraint posted on OLIS)

- **Additional Abuse Definition:** SB 1113 creates a new child abuse violation if a restraint is not performed precisely according to the individualized service plan (ISP) of a child receiving developmental disability services. This adds a new variability regarding when the use of restraint or seclusion constitutes child abuse, based on factors such as disability status and setting.
- **Conflicting With Evolving Care Plans:** As care plans evolve with a child's development, unforeseen situations may require interventions not explicitly outlined in an ISP. For example, a properly executed, justified restraint, conducted in accordance with training, could still be classified as child abuse if it is the first instance of its use. This provision may create a heightened risk of liability for providers that may specifically deter serving children with I/DD.

### *Increased Safety and System Strain*

- **Risk of Misinterpretation:** The risk of misinterpretation and legal repercussions may cause staff to hesitate in critical moments, creating unsafe situations for both children and caregivers. This uncertainty could lead to increased stress, emotional strain, and reluctance among foster parents, caregivers, and staff, further reducing the number of available placements for vulnerable children.
- **Continued Strain on Child Welfare System:** This uncertainty could lead to increased stress, emotional strain, and reluctance among foster parents, caregivers, and staff, further reducing the number of available placements for vulnerable children. As providers, resource parents, and caregivers withdraw from serving high-needs children, the child welfare system faces additional strain. This could lead to:
  - Increased emergency department visits for children in crisis.
  - Unplanned discharges from treatment providers.
  - Placement disruptions, further exacerbating trauma.

- A rise in the number of children placed in temporary and unstable accommodations, such as hotels.
- **Change in Required Qualifications:** Currently under statute a licensed medical practitioner, children’s emergency safety intervention specialist, or qualified mental health professional trained in the type of restraint must be present to continuously monitor the use of restraints and assess the physical and psychological well-being of the child. This legislation significantly narrows this to a physician or licensed health care professional which is expected to be costly and likely impossible for psychiatric residential treatment facilities as they will be required to have a minimum of 2 staff at that level on shift 24/7 in case of a restraint.

#### *Applies ORS 418 Child Abuse Definitions on Child Welfare Staff*

- **Definition Expansion:** Currently, Child Welfare staff can be investigated for child abuse under ORS 419B.005 child abuse definitions. SB 1113 modifies the definition of “child-in-care” and the criteria for individual subject to child abuse investigations under ORS 418. While ODHS staff are currently subject to child abuse definitions under ORS 419B, SB 1113 would also apply the ORS 418 child abuse definitions to ODHS specifically while caring for children in hotels due to lack of available placements. This could place staff at heightened liability of child abuse allegations simply for providing emergency care in an already strained system, further discouraging workers from stepping in to support children in crisis.

#### *Impacts on Foster Parents, Including Relatives*

- **Classification of foster care providers added to "regulated entities,"** SB 1113 introduces several provisions that could notably impact foster parents, including relative caregivers. Section 8 outlines specific actions that foster parents must take during a crisis, which may require additional training for all foster parents about proper procedures to avoid confusion and added pressure during difficult situations.
- **Additional Regulations and civil penalties:** Section 23 introduces further compliance regulations and actions the department must take on “regulated entities.” Additionally, Section 24 creates civil penalties for non-compliance with these regulations, which may increase the risk of legal repercussions for foster parents who inadvertently fail to meet the new requirements.

- **Typical Parenting practices 0-3 years old:** Section 13 redefines violations related to restraint and seclusion, requiring allegations of child abuse in foster homes, which may cause confusion around typical parenting practices, such as restricting the movement of children ages 0-3. Certain actions, which may often be considered normal parenting behaviors, might now be interpreted as unjustified restraints under the new definitions. These increased liabilities and responsibilities may contribute to a shortage in foster care providers and lead to inequitable treatment for children in care.
- **New Terms Will Result in Abuse Findings Against Other Youth Living in these Facilities:** “subject person” is a new term introduced by the legislation and significantly expands who can be investigated for child abuse and includes many other youth that may reside in the same facility and be of a similar age. This is because the definition includes anyone 18 years of age and resides in the placement or has access to the child due to the individual’s relationship with another person. Youth 18 - 21 residing in the defined placement types would need to be investigated for child abuse. Developmental Disabilities clients being served in these facilities between the ages of 18 - 21 would also need to be investigated for child abuse under these changes.

## Conclusion

This overview is intended to be informational to ensure clarity and understanding of implementation of ODHS. Please reach out with any questions.

**More information:** Michelle Pfeiffer, Legislative Coordinator,

[michelle.h.pfeiffer@odhsoha.oregon.gov](mailto:michelle.h.pfeiffer@odhsoha.oregon.gov)