

HB 3835: Impacts to Children with I/DD

Summary

HB 3835 proposes several key changes related to restraint, seclusion, and child abuse that apply to many child-serving systems. HB 3835 would:

- Establish a single, unified definition of wrongful restraint and wrongful seclusion that applies consistently to foster parents, employees, contractors, and volunteers across child-caring agencies, intellectual and developmental disabilities residential facilities, and education personnel.
- Create an investigative process within the Oregon Department of Education (ODE) to handle reported restraint and seclusion violations, ensuring impartiality and transparency in addressing complaints.

Children's ODDS Settings:

Current State Law and HB 3835 Changes

Children with intellectual or developmental disabilities (I/DD) residing in 24-hour residential homes, ODDS foster homes, and host homes are protected by state law, federal Home and Community-Based Settings rules, and ODDS Oregon Administrative Rules (OARs) and policies related to restraint and seclusion. HB 3835 aims to promote clarity, consistency, and fairness, ensuring all Oregon children are protected by uniform standards, regardless of their setting.

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Subject	Effect of Current State Law	Effect of HB 3835 on Current State Law	Other HCBS or ODDS Requirements	Effect on children with I/DD of HB 3835 Passing
Prohibited restraints for children residing in ODDS settings	<p>ORS 418.521 prohibits all chemical, mechanical, prone, and supine restraints and any restraint that:</p> <ul style="list-style-type: none"> • Is used as a form of discipline, punishment, retaliation, or convenience of staff, contractors, or volunteers • includes the nonincidental use of a solid object to impede a child's movement • places, or creates a risk of placing, pressure on a child's neck or throat. • places, or creates a risk of placing, pressure on a child's mouth. • impedes, or creates a risk of impeding, a child in care's breathing. • involves the intentional placement of hands, feet, elbows, knees or any object on a child in care's neck, throat, genitals or other intimate parts. • causes pressure to be placed or creates a risk of causing pressure to be placed, on a child in care's stomach, chest, joints, throat or back by a knee, foot or elbow. • the primary purpose of which is to inflict pain 	No change.	<p>ODDS OARs prohibit all the same restraints in current state law, plus:</p> <ul style="list-style-type: none"> • Lateral floor restraints • Any restraint or other behavior intervention strategy that is abusive, aversive, coercive, or demeaning. 	No change.
Training requirements	<p>Crisis intervention instructors must:</p> <ul style="list-style-type: none"> • Be certified to conduct the type of training the instructor is providing; • Complete a minimum of 26 hours of initial education with a focus on de-escalation, nonviolent intervention and methods consistent with the department's rules for the use of physical intervention; 	<p>No change in certification requirements for instructors or providers. No change in training and continuing education requirements.</p> <p>Requires at least four (4) nationally-recognized crisis intervention programs designated by ODHS that meet all standards in existing law.</p>	Only the Oregon Intervention System (OIS) is currently approved for ODDS providers.	<p>No immediate change.</p> <p>Future potential for more additional approved crisis intervention programs for ODDS settings.</p>

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	<ul style="list-style-type: none"> • Complete a minimum of 12 hours of continuing education every two years; • Be recertified at least once every two years; and, • Demonstrate written and physical competency before receiving certification or recertification. <p>Providers who place a child in a restraint must be certified in the use of the specific type of restraint used, complete at least 12 hours of initial training from an instructor, receive continuing education from an instructor, and demonstrate mastery in writing and physical competency before certification.</p> <p>Two (2) or three (3) crisis intervention training programs allowed total for ODHS, including ODDS.</p>	Creates training advisory committee.		
Restraints that meet definition of child abuse in ODDS children's settings	<p>ORS 418.257 defines abuse as the use of any prohibited restraint under ORS 418.521 (noted in the "Prohibited Restraints" section of this table) or any violation of ORS 418.523, such as:</p> <ul style="list-style-type: none"> • Using a restraint when the child's behavior did not pose a reasonable risk of imminent serious bodily injury to the child or others and a less restrictive intervention would effectively reduce the risk • Using a physical intervention when the intervention is for any reason other than to break up a physical fight or to effectively protect a person from an assault, serious bodily injury or sexual contact 	<p>HB 3835 Section 1</p> <p>(2)(a) A responsible individual places a child in wrongful seclusion if the individual places the child in involuntary seclusion for discipline, punishment, retaliation or the convenience of one or more responsible individuals described in subsection (1)(i) of this section.</p> <p>(3)(a) A responsible individual places a child in a wrongful restraint if:</p>	--	<p>Fewer restraints of children with I/DD will meet the definition of child abuse.</p> <p>Complaints of prohibited restraints that do not meet the definition of child abuse would be referred for licensing investigations and subsequent</p>

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	<ul style="list-style-type: none"> Using a physical intervention that doesn't use the least amount of physical force and contact possible Due to formal authorization timing errors Due to bathroom or water break interval errors Due to formal documentation or reporting errors Due to training lapses or training errors If the restraint wasn't performed in a manner that is safe, proportionate and appropriate based on the child's age, size, gender identity, physical, medical and psychiatric condition and personal history, including any history of physical or sexual abuse. 	<p>(A) The responsible individual places or directs the placement of the child in a restraint and the restraint is used for discipline, punishment, retaliation or convenience;</p> <p>(B) The responsible individual administers or directs to be administered a chemical restraint to the child; or</p> <p>(C) The responsible individual restrains or directs the restraint of the freedom of movement of the child through the excessive or reckless use of force that results in, or is likely to result in, serious physical harm to the child.</p>		corrective action such as conditions, advisory and serious violation letters requiring remediation within a specified time period, civil penalties, suspension, and revocation.
Reporting requirements	<p>For all reportable restraints: Providers are required to notify the child case manager, attorney, court appointed special advocate and parents or guardians verbally and in writing as soon as possible but no later than the end of the next business day.</p> <p>If reportable injury arising from the restraint or involuntary inclusion, the program shall immediately notify in writing the department and the child in care's attorney, court appointed special advocate and parents or guardians.</p>	No change	<p>In addition to current law, ODDS requires providers to submit an incident report for every restraint.</p> <p>In addition to the quarterly reporting requirements under current law, ODDS requires providers identify, for any child that experienced a</p>	No change

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	<p>Providers must hold a debriefing meeting, no later than two business days after incident, with each individual who was involved in the incident and with any other appropriate program staff, must take notes, and must provide notes to specific parties.</p> <p>If serious bodily injury or the death of staff personnel occurs in connection to the use of the restraint or involuntary seclusion, providers notify ODDS in writing no later than 24 hours following the incident.</p> <p>A program must prepare and submit to the Department of Human Services a quarterly report detailing the program's use of restraint and involuntary seclusion for the preceding three-month period.</p>		restraint, a description of strategies used to reduce the need for further restraints.	
Out-of-state placements	<p>ODHS may place a child in the custody of Child Welfare in an out-of-state child caring agency if:</p> <ul style="list-style-type: none"> • The out-of-state agency is licensed by ODHS, meeting all Oregon licensure requirements including that the agency is a corporation. • ODHS has a contract with the agency requiring the agency to meet all requirements applicable to Oregon CCAs. 	<p>HB 3835 adds narrow exceptions to out-of-state placement restrictions for children in the custody of Child Welfare.</p> <p>To ensure any approved out-of-state placements are safe and medically necessary and appropriate, HB 3835 adds protections to increase oversight and accountability. In addition to court approval and approval by the child welfare director and state Medicaid</p>	--	Narrowly increases access to out-of-state placement for a child in the custody of Child Welfare, with rigorous oversight. If a child with I/DD in the custody of Child Welfare has a co-occurring mental health or substance use disorder or other specific medical treatment need, the narrow exceptions in this

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		<p>director for any out-of-state placement, the bill requires:</p> <ul style="list-style-type: none"> • Approval by the OHA Medicaid director prior to placement. • In-person inspection by an ODHS licensing professional prior to placement; the inspection will look at whether the facility meets similar safety and licensure requirements as Oregon • A multi-disciplinary team to monitor progress of the child. • In-person contact with the child from a member of the multidisciplinary team every 15 days at a minimum. • ODHS must ensure the child understands their rights and how to report violations of their rights. • ODHS must notify the Governor’s Office, the foster care ombudsman and SOCAC prior to placement or as soon as possible and provide quarterly reports to SOCAC. • SOCAC is required to convene a subcommittee to review placements and provide an annual report to the Legislature. 	<p>bill would apply to them, too.</p> <p>Placement by Child Welfare in any ICF/IID would be prohibited.</p>
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		In addition, the legislation bans ODHS placement of a child with I/DD in foster care in an intermediate care facility for individuals with intellectual disabilities (ICF-IID).		
Consent to Restraints	Not required.	Not required.	Consent to limit a person's right to freedom from restraint is required through a formal process. Exceptions to consent are allowed in narrow, emergency circumstances.	No change

School-related impacts

Children with I/DD who are of school age are impacted by HB 3835's changes to restraint and involuntary seclusion regulations within school settings. These changes do not impact ODDS OARs or practices directly. HB 3835 aims to align abuse definitions and restraint and seclusion requirements in among schools, ODDS settings, and child caring agencies and improve the integrity of investigations related to the use of restraint and involuntary seclusion in schools for all students.

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