



OREGON DEPARTMENT OF JUSTICE

TO: House Early Childhood and Human Services Committee
FROM: Kristin Ward, Attorney, Dept. of Justice, Child Advocacy & Protection Division
DATE: 3/26/2025
SUBJECT: Technical comments on legal standards for imposing restraint

This testimony is submitted by the Oregon Department of Justice's Child Advocacy & Protection Division on behalf of and at the request of our client, the Oregon Department of Human Services.

The Current Standard for Restraints

Currently, a child-caring agency, proctor foster home, developmental disabilities residential facility, or personnel, contractors or volunteers of a public education program are legally authorized to restrain a child when the child's behavior poses a reasonable risk of imminent "substantial physical or bodily injury" or "serious bodily injury." See ORS 339.291 (restraint in schools) and ORS 418.523 (restraint of a "child in care").

How does the phrase "serious physical harm" in HB 3835 compare to the current standard of "serious bodily injury" in statute?

"Serious bodily injury" is defined as the "significant impairment of the physical condition" of a person or individual, "as determined by qualified medical personnel," whether self-inflicted or inflicted by someone else. ORS 418.519(16); ORS 339.285(4).

The "serious bodily injury" standard requires an individual working in an educational or licensed child-caring agency setting to make a split-second decision in an emergent situation by analyzing whether qualified medical personnel would conclude that there was a reasonable risk of imminent significant impairment of the child's physical condition. That standard externalizes on-the-spot decision making to include a nonexistent third person.

HB 3835 shifts to the standard "reasonable risk of imminent serious physical harm." Under this standard, the hypothetical "qualified medical professional" is removed from the equation. And "serious physical harm" is not defined, which allows the individual to use their own intuition and judgment by applying the plain meaning of those terms.

As the term "serious physical harm" is undefined in HB 3835, a court would likely apply the plain meaning of those terms. While "serious physical harm" is substantially similar to the current standard of "serious bodily injury," it eliminates the real-time analysis regarding a qualified medical personnel's opinion. Additionally, the term "serious physical harm" aligns with the U.S. Department of Education guidance and standard for restraints.

Implementing a new standard would require training for those working in the settings described above, however, the new standard would likely be easier to teach and learn.

HB 3835 continues to use the term “serious physical injury, as defined in ORS 161.015” in a handful of places applicable to notification and reporting requirements in educational settings, licensed programs and out-of-state placements. If called to interpret the definition of the alternative term “serious physical harm,” in addition to determining plain meaning, a court would likely take into account the legislative intent to use different terms and any applicable legislative history.