

## **HB 3835: Frequently Asked Questions**

### **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, residential care for children with disabilities, and school 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.<sup>4</sup>

### **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 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.

## **Will this add children to the civil commitment process?**

No. This law aligns Oregon statute with federal law to allow parents to provide mental health treatment for kids under age 18.

## **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.

## **Who is regulated as a Child-Caring Agency?**

Licensed Child Caring Agencies are listed on this [webpage](#). They include the following categories:

- Academic Boarding Schools
- Adoption Agencies
- Day Treatment Programs
- Foster Care Agencies
- Homeless, Runaway and Transitional Living Shelters
- Outdoor Youth Programs
- Residential Care Programs
- Secure Transportation Services
- Therapeutic Boarding Schools

## **Who is impacted by "Regulating the use of restraint and seclusion – Placement Settings"?**

- Child-Caring Agencies
- Residential facilities and foster homes for children with intellectual and developmental disabilities.
- Child Welfare certified foster homes
- CCA certified foster homes
- Oregon Youth Authority (OYA) certified foster homes

**Who is impacted by “Regulating the use of restraint and seclusion – School Settings”?**

- Public Education Programs
- School Districts
- Students

**Who is impacted by “Consent authority”?**

- All children in Oregon
- All legal guardians in Oregon
- Hospitals
- In-patient providers

**Who is impacted by “Secure transportation”?**

- All children in Oregon
- All medical transportation providers certified by OHA
- All non-medical transportation providers certified by ODHS

**Who is impacted by “Treatment access for children in foster care”?**

- Children and young adults in the custody of Child Welfare
- Non-QRTP providers like Homeless, Runaway and Transitional Living Shelters

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