

HB 3835: Policy Brief

Regulating restraint & seclusion – Placement Settings

(Sections: 1, 12-18, 22, 23, 32, 46)

Challenge

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 others. In addition, current law places liability fully on front-line workers. These issues can undermine care quality as workers may prioritize risk mitigation over proactive engagement with youth. Proposed changes create more clear definitions of wrongful restraint and wrongful seclusion and aim to shift accountability where appropriate, such as holding leaders and management accountable for systemic failures like inadequate training or staffing resources. Additionally, the restriction to three approved crisis intervention models has created 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.

Proposed Change

HB 3835 proposes several key changes to improve child abuse definitions and care practices in Oregon:

- Simplifies the definition of "wrongful restraint" and applies it uniformly across foster parents, child-caring agencies, developmental disabilities facilities, and educational personnel. New definition:

- A restraint is used as a form of discipline, punishment, retaliation or convenience;
- Use of chemical restraint; or
- Excessive or reckless use of force that results in, or is likely to result in, serious physical harm to the child or child in care.

Consistent with federal law, this new definition does not include temporarily holding the child without undue force and in a way that is appropriate for their developmental stage and individualized needs to promote safety, healthy development, and well-being, such as physical de-escalation, slowing down, or redirection.

- 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 would still be prohibited but handled through licensing or HR processes to address root causes.
- Expands the number of approved crisis intervention models from three to at least four, allowing for greater diversity and innovation in care practices. A new panel of youth and families with lived experience would advise ODHS on the approval of new models, ensuring that 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.

Why it Matters

These proposed amendments are critical for strengthening workforce stability, which in turn will enhance placement and treatment capacity among providers, ultimately improving the quality of care for Oregon's at-risk youth. By clarifying definitions and reducing unnecessary investigations, the changes will help front-line workers focus on providing care rather than managing liability concerns. This shift will not only foster a more supportive and effective work environment but also ensure that children with complex needs receive consistent, trauma-informed care.

Several child caring agencies (CCAs) have expressed that these changes would help them retain children with aggressive behaviors for longer periods, allowing them to complete their treatment plans. This reduces the trauma associated with unplanned discharges to different settings, ensuring youth have the opportunity to stabilize and receive the necessary care. In turn, the changes will improve overall treatment outcomes, promote consistency across care settings, and make it easier for providers to offer timely and appropriate services to youth in crisis.

Regulating restraint & seclusion – School Settings

(Sections: 1 – 7, 20, 22, 23, 46, 52-55, 62)

Challenge

Oregon's current definitions of wrongful restraint and wrongful seclusion in schools are similar but not the same as those in placement settings. This overlap causes confusion among students, families, and mandatory reporters, as actions deemed child abuse in one context may not be considered abuse in another.

This confusion, coupled with the fact that, the current law places increased liability on school staff directly interacting with children, can lead to a focus on risk mitigation rather than proactive and trauma-informed engagement with students. Proposed changes aim to shift accountability where it belongs, holding school leadership and management accountable for systemic issues like insufficient training or staffing.

In addition to being investigated by ODHS for child abuse, violations related to restraint and involuntary seclusion are addressed under Division 22 standards and managed through the school district's formal complaint process. If unresolved, complaints can be appealed to the Oregon Department of Education (ODE). However, many parents find this system problematic, as they perceive the school district's involvement as creating a conflict of interest. This potential bias toward protecting the district from liability rather than impartially resolving the issue can undermine trust in the process and delay meaningful resolutions.

Proposed Change

HB 3835 proposes several key changes to improve child abuse definitions and oversight of the use of restraint and seclusion in Oregon schools:

- Establish a single, unified definition of wrongful restraint and wrongful seclusion (explained above) 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.

These changes will promote clarity, consistency, and fairness, ensuring all Oregon children are protected by uniform standards, regardless of their setting.

Why it Matters

Establishing a single, clear definition of wrongful restraint and wrongful seclusion across all child-serving settings will eliminate confusion and ensure consistency in how child abuse is identified and addressed. By removing discrepancies between schools and other child-caring environments, mandatory reporters, families, and youth will have a better understanding of when to report and how abuse is defined. Creating an impartial investigative process through the Oregon Department of Education will help ensure that complaints are handled transparently and without bias, strengthening trust in the system and leading to more timely and fair resolutions.

Additionally, these changes will have a positive impact on the school workforce. With clearer guidelines and more defined accountability, educators and school staff will be better equipped to engage proactively with students in a trauma-informed manner, rather than prioritizing risk avoidance. This can lead to a more supportive and positive school environment, fostering better relationships between students and staff and enhancing the overall quality of care. Ultimately, this change will better protect children across Oregon by ensuring uniform standards are applied to all settings, leading to safer, more consistent care, and empowering school staff to focus on what matters most: the safety, well-being, and development of every student.

The Oregon School Employees Association shared the following example that highlights the need for change:

A highly agitated elementary school student climbed onto a lunch table, distressing their peers. A classified educator with 20 years of experience observed the situation but had been instructed not to restrain or limit a student's freedom of movement unless there was a clear threat to life. Despite attempts at verbal redirection, the educator became concerned about the risk of the student falling or escalating conflict among the other students. In a split-second decision, the educator chose to lift the student off the table, effectively defusing the situation. However, under the current statutory definition of wrongful restraint applicable to education providers, this intervention technically violated statute and triggered a child abuse investigation. Amending the definition of wrongful restraint would help protect educators like her, allowing them to act in the best interest of student safety without fearing unjust child abuse allegations that could jeopardize their current or future employment.

Consent authority

(Sections: 42 - 45)

Challenge

There is confusion regarding the application of existing minor consent statutes to inpatient treatment, with some mistakenly believing that a youth has the ability to consent to or refuse behavioral health care at levels beyond outpatient services. This misunderstanding can create a false impression that a youth has an implied right to refuse higher levels of care, potentially delaying or hindering appropriate intervention in crisis situations.

Proposed Change

HB 3835 proposes amendments to Oregon statutes to clearly distinguish between the rights of minors and the authority of parents or legal guardians to consent to behavioral health services.

Why it Matters

The need for clarity in consent authority is urgent, especially in light of the tragic case of Jacob, a youth in Child Welfare custody who died after his severe mental health needs went untreated due to his refusal to consent to treatment. Jacob's situation highlighted serious gaps in Oregon's legal framework regarding involuntary care for minors at imminent risk of harm to themselves or others. In the weeks leading up to his death, the lack of clear guidance on consent and treatment led to delays in intervention.

The Critical Incident Review Team's report on Jacob's death recommended changes to clarify the consent process and the authority of parents or legal guardians to make decisions for minors in crisis. The proposed amendments in HB 3835 directly address these gaps, offering statutory clarity that will not only benefit children in Child Welfare custody but also parents and caregivers statewide who struggle with ambiguous statutes during times of crisis.

These changes will ensure that parents or guardians can consent to necessary behavioral health care, including inpatient treatment, when a youth is at risk. By providing clear legal authority, the law will facilitate timely, appropriate interventions that prioritize the safety and well-being of vulnerable youth, preventing future tragedies and improving outcomes for children in crisis.

Secure transportation

(Sections: 8, 18, 59)

Challenge

Secure transportation services are occasionally needed by parents or child welfare to get a child safely to a treatment program. SB 710 (2021) was intended to regulate secure transportation providers to better protect children in Oregon, but it inadvertently caused a complete shutdown of secure, non-emergency medical transportation services by requiring them to be licensed as a CCA. They currently already are regulated by the Oregon Health Authority. This left children stranded in hospitals and

child-caring agencies (CCAs), unable to be legally transported for medically necessary treatment. While Senate Bill 1547 in 2022 made some amendments, it did not fully resolve the complex overlap between medical transport and child-caring agency regulations, resulting in fewer medical and non-medical transport providers willing to serve children.

Additionally, the current statute, ORS 419A.245, regulating the use of mechanical restraints during the transportation of children in Child Welfare or juvenile justice custody, is outdated and does not align with current standards for treating children in the custody of ODHS.

Proposed Change

HB 3835 makes the following changes to improve a child's access to secure transportation services in Oregon:

- Amends the statute to remove medical transportation providers from CCA regulations, reducing confusion between the OHA-regulated medical transport providers and child-caring agencies. This change would enable medical transportation providers to more confidently serve children in need.
- Removes references to children in Child Welfare custody from the permissible use of mechanical restraints by Oregon Health Authority transport providers.

Why it Matters

The proposed changes are crucial for ensuring that children in Oregon can be safely and promptly transported to the care they need. By clarifying the roles and responsibilities of medical transportation and non-medical secure transport services, these amendments will reduce regulatory confusion, improve coordination, and prevent delays in critical care. These changes are vital to safeguarding the well-being of children in Oregon, ensuring they receive timely and necessary treatment, and preventing further disruptions in their care and safety.

Treatment access for children in foster care

(Sections: 32, 36 – 39, 46)

Challenge

Children in foster care have more limited options for treatment than children on the Oregon Health Plan, children in the juvenile justice system or children covered by private insurance.

Current law prohibits children in foster care from receiving in-patient treatment from any facility than is not licensed as an Oregon child caring agency (CCA). This means they cannot receive treatment, even when medically necessary, from a provider outside of Oregon. This is especially challenging for Tribal children seeking culturally appropriate care that may be out of state and children who live outside the I-5 corridor seeking more convenient options in neighboring states.

In addition, there are time limits that apply to children in foster care for certain in-state placements that do not apply to other youth.

These differences create inequitable outcomes and lead to foster children being placed in temporary lodging.

Proposed Change

HB 3835 makes the following changes to improve access to treatment options for foster children:

- Allow for placement in non-CCA licensed settings, including those out of state, if the responsible Medicaid entity has approved the placement as medically necessary and appropriate.
- Allow exceptions to out-of-state regulations when it fulfills a Tribal request, for children in rural areas seeking treatment in neighboring states and for children who are placed with relatives and adoptive families out of state.
- Extends time limitations on placements such as shelter care homes or other agencies that are not “qualified residential treatment programs” (QRTPs) and allows children to advocate for extended placements if they wish to stay.

- Allows exception for out-of-state adoption and foster care agencies from being required to be licensed as a CCA by Oregon. This bill ensures children achieve placement stability with relatives or adoptive placements without unnecessary delays or barriers.
- Allows for exceptions to be made on a case-by-case basis for a child to be placed in an adult setting for medically necessary and appropriate treatment.
- Requires ODHS to report quarterly all approved exceptions to placement regulations to the SOCAC.

Why it Matters

Accessing medically necessary care

The OHA Ombuds Office was contacted by a hospital who was caring for an adolescent Oregon Health Plan patient admitted with an advanced eating disorder. The hospital provided care for the physical aspects of the member's symptoms but was not equipped to provide the kind of behavioral health treatment the member needed to address their condition. The hospital reported that while they were able to assure the member's physiological safety was maintained, their mental health was declining in the absence of the necessary psychological care. The member was unable to be admitted to any behavioral health facilities in Oregon to receive those therapies because they required an ongoing high level of medical care. It was determined that no facility in Oregon could provide the level of simultaneous medical and psychological care the member required and that, in its absence, the member was at highly elevated risk of mortality. The Ombuds Office convened members of the treatment team, family, and the CCO(Coordinated Care Organization), and ultimately arranged for the member to be sent to an out of state care facility that could provide all the treatment the member required in one location.

After a period of treatment at that facility, the member was able to be returned home to their community and maintained with outpatient care appropriate to their needs.

Oliver's Story: Extending Time Limits

During the initial 60 day stay, he was doing extremely well and there had been no placement found for him. We gave a 30-day extension after discharging him for a day. During that extension it was determined that he may benefit from a child specific contract to not disrupt the progress he was making at Youth Tides.

Oliver ended up staying at Youth Tides for one year, 10 months. During this time, he was able to graduate high school, obtain employment, apply and get accepted into college, learn important life skills around budgeting, public transportation, shopping, cooking, etc. Oliver also gained confidence in himself, and he was able to create meaningful relationships with adult staff that really cared for him. Oliver still calls Youth Tides from time to time to check in and update us on his life. He is doing well in school, he's in a committed healthy relationship, and he now has a cat at his home. He's excelling at his responsibilities with his growing independence.

Disruption to youths' placements can cause harm to their stability. Frequently when youth have had to leave Youth Tides at the 60/90 day deadline, I've seen them feeling comfortable with staff and real progress being made for it to be disrupted and often times they're not being moved to a foster placement or reunified with guardian but moved to another shelter where the youth have to start the process all over again. I believe in a lot of cases that longer stays at shelters can be very beneficial for the youth. -Youth Tides Supervisor

Technical and Clarification Amendments

Challenge

The bill addresses several other challenges brought to SOCAC by families and youth with lived experience, state agencies, youth advocates, and organizations that serve children.

Proposed Changes

- **Human Trafficking.** (Section 22) While Oregon already has a definition of child abuse for commercial sex trafficking of children, this amendment adds labor

trafficking of a child to the definitions of child abuse, aligning Oregon statute with federal law. Labor trafficking is defined as the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

- **Electronic Reporting.** (Section 19) ORS 418.190 is amended from "shall" to "may" regarding the requirement for mandatory reporters to have an electronic reporting system.
- **Background Check Requirements for Children-in-Care.** (Section 41) This change establishes in statute the long-standing practice of exempting young people aged 18 and older who are in the custody of Child Welfare and have been placed in a foster home, from unnecessary criminal history checks in order to remain in their home—including FBI fingerprint checks.
- **Reducing Housing Barriers for Older Youth.** (Section 40) The requirement for children in independent living facilities to contribute to housing expenses and support costs is removed. The Oregon Department of Human Services (ODHS) is already funding the full placement rate for youth in Independent Living Program (ILP) settings through Treatment Services, as this previous requirement created unnecessary barriers to accessing essential services.
- **Video recordings.** (Section 15) Provide an Opportunity to Review video of alleged restraint and seclusion violations and require the consent of the involved young person if 18 years of age or older before the video is shared with eligible parties.
- **Codify Application of Child-in-Care Child Abuse Definitions.** (Section 10) ORS 418 to specifying that they apply exclusively to individuals employed by child-caring agencies, developmental disabilities residential facilities, proctor foster homes, certified foster homes, adjudicated youth foster homes, or those responsible for providing care or services to children in care.
- **Expand Definition of Child-in-Care.** (Sections 11 – 14, 31, 32) Includes youth who are adjudicated in Oregon Youth Authority (OYA) foster homes, thereby aligning regulations and definitions for OYA certified foster homes and across all types of Oregon foster homes. This statutory amendment clarifies legislative

intent and aligns with current practices in screening and investigation by ODHS and expands protections to adjudicated youth in the same way all other children in certified foster care are currently protected.

- **Broaden Mandatory Actions.** (Section 27) ORS 418.240 amended to include placing conditions on the license, not just suspension or revocation, aligning with similar regulatory actions of developmental disabilities residential facilities for children.
- **Adding a Narrow Corporate Status Exception.** (Section 27) Currently, all CCAs are required to be corporations, regardless of the type of services provided to children. This bill introduces a narrow exception to this requirement, allowing similar service organizations—such as Direct Support Professional organizations, which are authorized by Oregon statute to operate as Limited Liability Companies (LLCs)—to be licensed as CCAs. Under this exception, companies must establish an advisory board and comply with additional standards to ensure child safety set by the Department of Human Services through rulemaking.
- **Align Quarterly Reporting.** (Section 32) The information required in quarterly reports to the legislature is revised to align with the circumstances that would trigger mandatory actions on a CCA's license as specified in ORS 418.240 (2)(c).

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