

# **Overview of SB 710:** **Use of Restraints in Residential Programs**

*Prepared by Senator Sara Gelsler*

SB 710 does not eliminate the use of physical restraints or seclusion in child caring agencies and kids' residential facilities in the Oregon Developmental Disabilities System. Instead, SB 710 builds upon current statute and licensing rules to provide more clarity around what types of physical restraints can be administered to a child in care, who can administer them and when they can be administered.

Current law already prohibits chemical and mechanical restraints and the application of restraints by staff who have not been trained by a recognized program approved by DHS. Under state and federal regulations, the use of restraint is limited in child caring agencies to instances when there is imminent risk of serious injury and only for as long as that risk remains imminent and not other alternatives will mitigate that risk. Current Oregon regulations also currently require timely notification when restraint is used, comprehensive incident reports, debriefing with staff and youth following a restraint.

If passed, SB 710 would create clarity about restraints that are never allowed (red light), actions that are always allowed and require no reporting (green light) and actions that can be done with caution in emergency situations by trained staff. SB simply brings more clarity to an issue that presents significant risk to youth and adults, and which creates confusion due to current vague definitions in statute and rule. In addition, some programs are governed by multiple statutes. SB 710 brings all regulations into a single place so the expectations and requirements are clear to providers, youth, advocates and regulators.

**RED LIGHT: ALWAYS PROHIBITED**

- Chemical Restraint (Already prohibited)
- Mechanical Restraint (Already prohibited)
- Prone Restraint (Already prohibited by ODDS programs)
- Supine Restraint (Already prohibited by ODDS programs)\*\*
- Nonincidental use of a solid object, including the ground, a wall or the floor, to impede a child in care’s movement\*\*
- Placing pressure on a child’s neck or throat
- Placing pressure on the child’s mouth (except to release a bite)
- Placement of hands, feet, elbows, knees or objects on neck, throat, genitals or intimate parts
- Impeding a child’s breathing
- Placing pressure on stomach, chest, joints, throat or back with a knee, foot or elbow
- Intentional infliction of pain

**YELLOW LIGHT: PERMITTED WITH APPROPRIATE TRAINING**

- Any restraint performed by an appropriately trained individual when there is an imminent risk of injury as long as it does not include “red light” actions

**GREEN LIGHT: ALWAYS PERMITTED/NO REPORTING REQUIRED**

- Holding a child in care’s hand or arm to escort the child in care safely and without the use of force
- Assisting a child in care to complete a task if the child in care does not resist the physical contact
- Using minimal force needed to break up a physical fight or effectively protect oneself or another from an assault, serious bodily injury or sexual contact as long as it does not include a “red light” action

**Exceptions:**

- Restraints involving a solid object such as a wall, floor or ground may be used to gain control of a weapon
- The SCIP and the SAIP may utilize the *supine restraints* and the *wall, floor ground restraints* if performed by a person appropriately trained in the restraint, authorized by a CESIS or other licensed provider, and in compliance with all other requirements under the federal conditions of participation.

**Use of wall, floor or ground:**

This prohibition applies only to the use of the solid object to ***immobilize the child***. It does not apply to gravity, nor does it apply a staff stabilizing themselves against a wall or object. ODE administrative rules describe it this way: *“The use of a solid object, including a piece of furniture, a wall, or the floor, by public education program personnel performing a restraint is not prohibited if the object is used for the personnel’s own stability or support while performing the restraint and not as a mechanism to apply pressure directly to the student’s body.”*

**Examples of prohibited actions:**

- *Holding a child up against a wall/pressing a child into the wall*
- *Holding a child down on the ground*
- *Sitting on top of a student on a sofa or chair*

**Examples of permissible actions:**

- *Staff is leaning against the wall for support, and is between the child and the wall*
- *A staff is sitting on the floor, and a youth is sitting on the staff’s lap*
- *Staff and youth are standing side by side with their backs to the wall for stabilization with no one pressing them into the wall*
- *A youth sitting next to one staff or between two staff on a sofa when the youth is not being pressed into/held against the sofa.*

**Non-Incidental** use refers to unintentional actions. For instance, a staff may be utilizing a permitted standing restraint. However, there may be a loss of balance and the adult and youth may fall to the floor. The staff should immediately readjust, but the incidental/accidental fall is incidental and not an intended part of the restraint.

**What is the difference between “physically assisting” (green light activity) and a restraint?**

Current licensing rules for Wilderness Programs address this question.

OAR 413-215-1031 (2) (a) and (b) read:

*“Appropriate use of a physical assist occurs when staff members physically aid, support, or redirect children in care who are not physically resisting. If a child in care resists reasonable staff direction, staff must assess whether the use of physical restraint is warranted based on the written nonviolent physical restraint policy of the outdoor youth program. An intervention becomes a physical restraint when the child in care resists, has "dug in his or her heels", and is propelled or held still against that resistance. Staff members must comply with all applicable physical restraint regulations, including OAR 413-215-0076.”*