

SB 710 STAFF MEASURE SUMMARY

Senate Committee On Human Services, Mental Health and Recovery

Prepared By: C. Ross, Counsel

Meeting Dates: 3/11, 4/6

WHAT THE MEASURE DOES:

Prohibits restraining or involuntarily secluding children in care as a form of discipline or for convenience at developmental disabilities residential facilities, certified foster homes, proctor foster homes and child caring agencies. Directs the Department of Human Services (DHS) to establish certification standards by rule to provide personnel a minimum number of hours of training, by qualified trainers, with respect to crisis prevention, de-escalation, alternative techniques, and safe, evidence-based applications of restraint or seclusion.

Specifically prohibits chemical, mechanical, prone, and supine restraints, as defined, with narrowly tailored exceptions for health care professionals, state hospital-level care, safety during vehicular transport, gaining control of a weapon, and extracting body parts from bites. Specifies restraints that may be applied in an appropriate and informed manner by certified personnel, continuously monitored, only when other alternatives would not be effective to reduce a reasonable risk of serious, imminent bodily injury, for the minimum duration necessary to alleviate the risk, to include: escorting a child by holding their hand or arm; helping a willing child with a task; or exerting minimal physical contact necessary to intervene in a physical altercation, or to protect against serious bodily injury, sexual contact, or assault.

With respect to the prevention of life-threatening injury in the context of state hospital-level care: requires specific physician's orders, written policies governing evaluation of children post-restraint, application by certified persons with a body mass index of 34 or less, in the presence of personnel trained in cardiopulmonary resuscitation, while the child is continuously monitored, for the minimum duration necessary when no other alternative is possible.

Requires written findings and authorization to continue, every five minutes, for any restraint or seclusion longer than 10 minutes; and bathroom access and water a minimum of every 30 minutes.

Requires facilities to establish protocols. Requires documentation of incidents of seclusion or restraint involving reportable injury to include any audio or video recordings surrounding or during the event, and that the facility immediately provide specified notice in writing and release all records to DHS, parents, guardians, court-appointed special advocates (CASAs), and the child's attorney. Requires facilities to provide specified written notification within 24 hours, and notes from a meeting of facility personnel held within two business days, to the child's parents, guardians, case managers, CASAs and attorney. Requires specified written notice to the same persons, except case managers but including DHS, of the involvement of any uncertified personnel. Requires written notice to DHS within 24 hours, of serious bodily injury or death of any personnel.

Requires immediate review and report on a child's treatment plan if restraint or isolation is applied more than twice in seven days. Specifies content of report and participants responsible for review, including subject children age 10 or older if they wish, and requires immediate implementation of report recommendations.

Requires quarterly reports from facilities to DHS and specifies minimum content. Directs each facility and DHS to make reports publicly available on their respective websites. Requires facilities to inform parents and guardians how to access reports when a child enters care and at least twice annually thereafter. Requires DHS to provide specified information in writing to children in care, including how to make reports; the toll-free child abuse hotline; and other contact information for licensing entities, CASAs, attorneys, case workers, and Disability Rights

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Oregon.

Replaces DHS' current discretion, with requirement, to interview subject children and witnesses upon receipt of a report of suspected abuse, and includes reports of suspected inappropriate use of restraint or seclusion among provisions governing abuse investigations, to require DHS to review: certification of involved personnel, reports about the child, circumstances surrounding the incident, and any audio, video, or still photographs. Directs DHS to ask the subject child if they were injured or felt pain. Requires DHS to include specified information about the use of restraint in its regular quarterly reports to the legislature concerning developmental disabilities residential facilities, certified foster homes, and child caring agencies.

Defines terms and makes other conforming changes. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Codifying and clarifying existing DHS and OHA rules with respect to use of restraint
- Centralizing use of restraint requirements in one place
- Licensing secure transport facilities; current requirements applying only to involuntarily committed adults, determined to be a danger to self or others, pursuant to a physician's order and under DHS oversight
- Trauma of removing children from their homes against their will, using fear and forcible deprivation of liberty, with parental consent; kidnapping or false imprisonment in any other context
- Routine restraint of children during transport; lack of regulation primarily with private behavioral health placements
- Extent of private industry concerned with youth behavioral health
- Educating parents and other consumers; notifying the state when a parent consents to removal of a child
- Further technical amendment pending

EFFECT OF AMENDMENT:

[-1 amendment dated 03/10/21] Specifies permissible restraints are for use by secure inpatient treatment programs pursuant to order of children's emergency safety intervention specialists as well as medical practitioners, and defines new terms.

Provides for operative date of July 1, 2022, to allow time for compliance with new provisions and rulemaking process. Replaces references to "training as required by the department by rule" in effect upon enactment, with "certification as described by section 6 of the Act" on the operative date.

Rewrites section 6 on training and certification. For period of time from effective date to operative date of July 1, 2022: requires any person who administers restraint or seclusion of a child in care to be trained with respect to the type of restraint used, pursuant to DHS rule in effect on measure's effective date. Replaces that requirement on operative date with provisions governing training and certification. Directs DHS to designate nationally recognized crisis intervention programs for certification purposes. Requires rulemaking to address the teaching of crisis intervention techniques that do not require restraint; to include training to identify risks related to use of restraint and seclusion; to address instructor certification; and to ensure consistency across programs, require quality control, and provide support, among other items. Requires demonstrated competency, continuing education, and renewal every two years for instructors and trainees. Requires certifications to be portable between employers, personal to the certified individual, and specifies content of certificate.

Makes other refinements including: changing notice deadlines to report use of certain restraints, to as soon as practicable but no later than two business days; restoring DHS discretion to interview subject children and witnesses upon receipt of a report of suspected abuse; including OYA and child-caring agencies, along with DHS, to provide specified information to children in care; and refining description of transportation services.

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Establishes due dates for quarterly reports beginning November 1, 2021, and specifies first report must include data from July 1, 2021 through September 1, 2021. Also adds requirement for data by location.

[-2 amendment dated 4/1/21] Further refinement of the -1 amendment for clarity, including rewording with greater specificity, renumbering, reordering and conforming changes. Removes the requirement for immediate review and report on a child's treatment plan based on use of restraint or isolation more than twice in seven days. Removes language prohibiting presence of program personnel when DHS interviews children in care and others pursuant to investigation of inappropriate use of restraint or seclusion. Adds requirement that referrals to secure transportation providers must include written notice that such providers must be licensed by DHS if transporting a child that resides in Oregon or transporting to an in-state destination, operative January 1, 2022. Adds several more defined terms or incorporates existing definitions by reference. Adds headings for convenience.

BACKGROUND:

Use of restraint in residential facilities and child caring agencies is currently prohibited and regulated primarily through rules promulgated by the Oregon Health Authority (OHA) and the Department of Human Services (DHS). There are narrow exceptions for particular types of restraint in specific circumstances such as those involving bites, weapons, or imminent risk of injury, and in those instances the restraint may only be applied by persons who are appropriately trained. Restraining youth during secure transport is currently, largely unregulated. Unnecessary and improper restraint can harm the person applying the restraint, as well as traumatize the individual subject to restraint.

Senate Bill 710 centralizes, codifies, and makes existing rules around the use of restraint and involuntary seclusion, and corresponding training and certification requirements, more robust, and applicable to secure transport.