

Enrolled
Senate Bill 1024

Sponsored by Senator GELSER BLOUIN

CHAPTER

AN ACT

Relating to restrictive interventions; creating new provisions; and amending ORS 339.294, 418.240 and 418.526.

Be It Enacted by the People of the State of Oregon:

CHILD-CARING AGENCIES

SECTION 1. ORS 418.526 is amended to read:

418.526. (1) A program shall establish procedures for the program to follow when a child in care is placed in a restraint or involuntary seclusion. The procedures must be consistent with the provisions of this section and ORS 418.521 and 418.523.

(2)(a) A program shall maintain a record of each incident in which a reportable injury arises from the use of a restraint or involuntary seclusion. The record under this subsection must include any [audio or video recording] **photographs, audio recordings or video recordings** immediately preceding, during and following the incident. **The record may not be destroyed, edited, concealed or altered in any way.**

(b) **The program shall immediately provide the Department of Human Services with written notification of the incident and true copies of any record maintained under this subsection.**

(c) **Upon the request of the attorney, court appointed special advocate, parents or guardians of a child in care on whom the restraint or involuntary seclusion was used, the department shall provide the child in care’s attorney, court appointed special advocate, parents or guardians with copies of the records described in this subsection.**

(3)(a) If a program places a child in care in a restraint except as provided in ORS 418.523 (3)(a) or (b), or involuntary seclusion, the program shall provide the child in care’s case manager, attorney, court appointed special advocate and parents or guardians with:

(A) Verbal or electronic notice that the restraint or involuntary seclusion was used as soon as practicable following the incident but not later than the end of the next business day; and

(B) Written notice that the restraint or involuntary seclusion was used as soon as practicable following the incident but not later than the end of the next business day.

(b) The written notice must include:

(A) A description of the restraint or involuntary seclusion, the date of the restraint or involuntary seclusion, the times when the restraint or involuntary seclusion began and ended and the location of the restraint or involuntary seclusion.

(B) A description of the child in care's activity that necessitated the use of restraint or involuntary seclusion.

(C) The efforts the program used to de-escalate the situation and the alternatives to restraint or involuntary seclusion the program attempted before placing the child in care in the restraint or involuntary seclusion.

(D)(i) The names of each of individual who placed the child in care in the restraint or involuntary seclusion or who monitored or approved the placement of the child in care in the restraint or involuntary seclusion.

(ii) For each individual identified in this subparagraph, whether the individual was certified as described in ORS 418.529 in the use of the type of restraint used or trained, as required by the Department of Human Services by rule, in the use of the involuntary seclusion used, the date of the individual's most recent certification or training and a description of the types of restraint the individual is certified to use, if any.

(iii) If an individual identified in this subparagraph was not certified or trained in the type of restraint or involuntary seclusion used, or if the individual's certification or training was not current, a description of the individual's certification or training deficiency and the reason an individual without the proper certification or training was involved in the restraint or involuntary seclusion.

(E) If the child in care suffered a reportable injury arising from the incident, a description of any photographs, audio recordings or video recordings related to the incident that are maintained by the program under subsection (2) of this section.

(4) If an incident requires notice under subsection (3) of this section, not later than two business days following the date of the restraint or involuntary seclusion, the program shall hold a debriefing meeting with each individual who was involved in the incident and with any other appropriate program staff, shall take written notes of the debriefing meeting and shall provide copies of the written notes to the child in care's case manager, attorney, court appointed special advocate and parents or guardians.

[(5)(a) If a program places a child in care in a restraint or involuntary seclusion and the child in care suffers a reportable injury arising from the restraint or involuntary seclusion, the program shall immediately provide the department and the child in care's attorney, court appointed special advocate and parents or guardians with written notification of the incident and access to and, upon request, copies of all records related to the restraint or involuntary seclusion, including any photographs and audio or video recordings.]

[(b)] (5) If serious bodily injury or the death of staff personnel occurs in connection to the use of the restraint or involuntary seclusion, the program shall provide the department with written notification of the incident not later than 24 hours following the incident.

(6) The department shall adopt rules regarding the installation and use of video recording equipment in a program.

SECTION 2. ORS 418.240 is amended to read:

418.240. (1) All child-caring agencies shall obtain from the Department of Human Services a license, certificate or other authorization to provide care or services to children under ORS 418.205 to 418.327, 418.470, 418.475 or 418.950 to 418.970. The criteria for issuance, renewal, suspension or revocation of, or for placing conditions on, a license, certificate or authorization under this section must:

(a) Be set forth in rules adopted by the department;

(b) Include the full compliance requirements set forth in subsection (2) of this section; and

(c) Include, but are not limited to, the following:

(A) The fitness of the child-caring agency.

(B) The employment of capable, trained or experienced staff that meet minimum staffing requirements.

(C) Sufficient financial backing to ensure effective operations.

(D) The probability of permanence in the child-caring agency.

(E) The care and services provided to the children served will be in their best interests and that of society.

(F) That the child-caring agency is or will be in compliance with the standards of care and treatment established in rules adopted by the department.

(2)(a) The department may not issue or renew a license, certificate or other authorization to a child-caring agency unless the department finds the agency is or will be in full compliance with all of the following:

(A) The agency ensures child and family rights.

(B) The agency complies with abuse reporting and investigation requirements.

(C) The agency engages in and applies appropriate behavior management techniques.

(D) The agency provides adequate furnishings and personal items for children.

(E) The agency provides appropriate food services.

(F) The agency ensures the safety of children.

(G) The agency utilizes approved procedures and protocols for use of medications for children receiving care or services from the agency.

(H) The agency or the agency's employees or agents have not engaged in financial mismanagement.

(I) The agency fully and timely corrects violations and maintains standards in accordance with any plan of correction imposed by the department.

(J) The agency provides access as required under ORS 418.305 to a child or the agency's premises to the department or the department's employees, investigators, court appointed special advocates, attorneys for a child or other authorized persons or entities.

(K) The agency provides the department with true copies of records relating to incidents involving the restraint or involuntary seclusion of children in care as required under ORS 418.526 (2).

(b) The department may suspend, revoke or place conditions on a license, certificate or authorization of a child-caring agency if the department finds the agency is not in full compliance with any one or more of the full compliance requirements listed in paragraph (a) of this subsection.

(c) The department must take immediate steps to suspend or revoke the license, certificate or other authorization of a child-caring agency, if any of the following are found to exist:

(A) There has been the death of a child as a result of abuse or neglect on the part of the agency or any of the agency's employees or agents.

(B) There has been sexual or physical abuse or neglect of a child in the agency's care or custody that was known to the agency and the agency did not take immediate steps to report the abuse or neglect and to ensure the child's safety.

(C) The agency failed to cooperate fully with any local, state or federal regulatory entity's investigation of the agency or the agency's operations or employees.

(D) The agency failed to provide financial statements as required under ORS 418.255.

(d) If any of the circumstances described in paragraph (c) of this subsection exists, the department may immediately place conditions on the license, certificate or authorization of the child-caring agency prior to a hearing if, consistent with ORS 183.430, the department finds there is a serious danger to the public health or safety and sets forth specific reasons for such findings.

(e) It is grounds to deny issuance or renewal, suspend, revoke or place conditions on a license, certificate or other authorization if the department becomes aware that a child-caring agency, or the owner or operator of the agency, has been found by other state or federal entities to have engaged in financial, civil or criminal misconduct.

(3)(a) If the Director of Human Services has taken action under subsection (2)(c) of this section to suspend or revoke a license, certificate or other authorization, the notice of intent to suspend or revoke may be rescinded if the director determines that the concerns regarding the health and safety of the children in the child-caring agency's care or custody have been ameliorated and any conditions placed on the license, certificate or other authorization of the child-caring agency have been resolved.

(b) Fourteen days before rescinding a notice of intent to suspend or revoke, the Director of Human Services must provide written notice regarding the intent to rescind to the Governor. The notice of intent to rescind is a public record and open for inspection by any person without order of a court. The notice of intent to rescind must include the following information:

(A) The circumstances that led to the notice of intent to suspend or revoke;

(B) The actions taken by the child-caring agency, the Department of Human Services, the Attorney General, the Oregon Youth Authority and the Oregon Health Authority in response to the circumstances leading to the notice of intent to suspend or revoke;

(C) Any penalties, fees or charges made or levied against the child-caring agency; and

(D) A complete description of changes that were made at the child-caring agency and the reasons for the determination that the concerns regarding the health and safety of children in the child-caring agency's care or custody have been ameliorated or that any conditions placed on the license, certificate or other authorization of the child-caring agency have been resolved.

(c) In making a decision to rescind a notice of intent to suspend or revoke under this subsection, the decision must be based solely on the health and safety of the children served by the child-caring agency. Systemwide capacity of the child welfare system may not be considered as an element of the decision.

(d) For three years after a notice of intent to suspend or revoke is rescinded under this subsection, the child-caring agency must apply for a renewal of the child-caring agency's license, certificate or other authorization on an annual basis.

(e) The department must provide the following with copies of a notice of intent to rescind within five business days of issuing the notice:

(A) The Governor; and

(B) The committees of the Legislative Assembly relating to child welfare.

(4) The department may immediately place conditions on any license, certificate or authorization issued under this section, including but not limited to placing full or partial restrictions on admission of children, temporary suspension, limitation of operations subject to an intent to revoke and limitation of operations subject to correction of violations as specified in a plan of correction imposed by the department. The department shall immediately notify any state or governmental agency or unit that has a contract with the child-caring agency to provide care or services to a child, and the governing board, trustees, owners, managers, operators or other appropriate authorities responsible for the child-caring agency, of conditions placed by the department on the child-caring agency's license, certificate or authorization under this section.

(5) If applicable, an applicant shall submit written proof of compliance with the notification requirements in ORS 336.575.

(6) The department may not charge a fee for inspections leading to decisions regarding, and issuance of, licenses, certifications or authorizations under this section, but may impose fees to cover costs of related inspections done for the department by other governmental agencies.

(7) Except as provided in subsection (3) of this section, a license, certificate or authorization issued by the department under this section shall be valid for a period of two years, unless suspended or revoked sooner by the department. However, the department at any time may require amendments to an existing license, certificate or authorization to accommodate changes in the factors upon which the issuance was based.

(8) When a condition exists that seriously endangers or places at risk the health, safety or welfare of a child who is receiving care or services at a child-caring agency:

(a) The director shall issue an interim emergency order without notice, or with reasonable notice under the circumstances, requiring the agency to correct the conditions and ensure the safety of children in the care of the agency. The interim emergency order shall remain in force until a final order, after a hearing, has been entered in accordance with ORS chapter 183.

(b) The director may commence an action to enjoin operation of a child-caring agency:

(A) If the agency is being operated without a valid license, certificate or other authorization issued under this section; or

(B) If the agency fails to comply with a plan of correction imposed by the department or to correct conditions not in conformity with standards as set out in an order issued under paragraph (a) of this subsection, within the time specified in the order.

(9) If the director, the director's designee or the department becomes aware through any means that a child-caring agency, or an owner, operator or employee of a child-caring agency, is the subject of an investigation by another state agency, law enforcement agency or federal agency, the director or director's designee shall take immediate steps to cause an investigation to take place into the circumstances surrounding the investigation and whether there is a threat to a child, or whether a child is at risk, at the child-caring agency. Upon determination of the level of threat or risk to children at the agency, the director shall take appropriate steps to protect and ensure the health, safety and welfare of children as necessary under the circumstances. Failure to comply with the requirements of this subsection constitutes grounds for a charge of official misconduct in the second degree under ORS 162.405.

(10) If the Department of Justice or Bureau of Labor and Industries commences an investigation of a child-caring agency or an owner, operator or employee of a child-caring agency, the Department of Justice or Bureau of Labor and Industries shall notify, inform and regularly update the director, the director's designee or such other personnel in the Department of Human Services designated to receive such information regarding the investigation. The director and the department shall immediately undertake the responsive action required by subsection (9) of this section upon receiving such notification. Interference with, discouragement of or impediment to the receipt of the notification, information and updates required under this subsection constitutes official misconduct in the second degree under ORS 162.405.

(11) The Department of Human Services shall adopt rules to implement the provisions of this section.

PUBLIC EDUCATION PROGRAMS

SECTION 3. ORS 339.294 is amended to read:

339.294. (1) Each entity that has jurisdiction over a public education program must establish procedures for the public education program to follow after an incident involving the use of restraint or seclusion.

(2) Following an incident involving the use of restraint or seclusion, the following must be provided to a parent or guardian of the student:

(a) Verbal or electronic notification of the incident by the end of the school day when the incident occurred.

(b) Written documentation of the incident within 24 hours of the incident that provides:

(A) A description of the restraint or seclusion, including:

(i) The date of the restraint or seclusion;

(ii) The times when the restraint or seclusion began and ended; and

(iii) The location of the restraint or seclusion.

(B) A description of the student's activity that prompted the use of restraint or seclusion.

(C) The efforts used to de-escalate the situation and the alternatives to restraint or seclusion that were attempted.

(D) The names of the personnel of the public education program who administered the restraint or seclusion.

(E) A description of the training status of the personnel of the public education program who administered the restraint or seclusion, including any information that may need to be provided to the parent or guardian under subsection (3) of this section.

(c) Timely notification of a debriefing meeting to be held as provided by subsection (4) of this section and the parent's or guardian's right to attend the meeting.

(d) Immediate, written notification of the existence of a record described in subsection (9) of this section.

(3) If the personnel of the public education program who administered the restraint or seclusion had not received training as provided by ORS 339.300, the administrator of the public education program shall ensure that a parent or guardian of the student and the district superintendent receive written notification of:

(a) The lack of training; and

(b) The reason the restraint or seclusion was administered by a person without training.

(4)(a) A debriefing meeting related to the use of restraint or seclusion must be held within two school days of the incident and must include all personnel of the public education program who were involved in the incident and any other appropriate personnel.

(b) Written notes must be taken of the debriefing meeting, and a copy of the written notes must be provided to a parent or guardian of the student.

(5) If a student is involved in five incidents in a school year involving restraint or seclusion, a team consisting of personnel of the public education program and a parent or guardian of the student must be formed for the purposes of reviewing and revising the student's behavior plan and ensuring the provision of any necessary behavioral supports.

(6) If serious bodily injury or death of a student occurs in relation to the use of restraint or seclusion[,]:

(a) Oral notification of the incident must be provided immediately to a parent or guardian of the student and to the Department of Human Services; and

(b) Written notification of the incident must be provided within 24 hours of the incident to the department [of Human Services].

(7) If serious bodily injury or death of personnel of the public education program occurs in relation to the use of restraint or seclusion, written notification of the incident must be provided within 24 hours of the incident to the district superintendent, **to the Superintendent of Public Instruction** and, if applicable, to the union representative for the affected party.

(8) *[Each]* A public education program *[must]* **shall** maintain a record of each incident in which injuries or death occurs in relation to the use of restraint or seclusion.

(9)(a) A public education program shall preserve, and may not destroy, any records related to an incident of restraint or seclusion, including an audio or video recording. The records must be preserved in the original format and without any alteration.

(b) The public education program shall review any audio or video recording preserved under this subsection at the debriefing meeting described in subsection (4) of this section.

(10)(a) At the request of a student's parent or guardian, a public education program shall disclose records preserved under this section to the parent or guardian. To the extent practicable without altering the meaning of the record, the public education program shall segregate or redact from a record disclosed under this paragraph any personally identifiable information of other students. If the public education program is unable to segregate or redact personally identifiable information of other students without altering the meaning of the record, the public education program shall disclose the record to the student's parent or guardian in its original format and without any alteration.

(b) If the department is investigating the incident of restraint or seclusion as suspected child abuse, at the request of the department, the public education program shall disclose to the department or the department's designee any records preserved under this section that are relevant to the department's investigation. The public education program shall disclose any record under this paragraph in its original format and without any alteration.

MISCELLANEOUS

SECTION 4. The unit captions used in this 2023 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2023 Act.

Passed by Senate March 27, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House May 25, 2023

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Dan Rayfield, Speaker of House

Received by Governor:

.....M,....., 2023

Approved:

.....M,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M,....., 2023

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Secretary of State