

Senate Bill 1024

Sponsored by Senator GELSER BLOUIN

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies provisions regarding retention of records of incidents involving the use of restraints or seclusion of children in care and students in public education programs.

Directs Department of Human Services to adopt rules regarding installation and use of recording equipment in specified programs.

Directs public education programs to provide records of incidents involving use of restraint or seclusion of students to certain investigators upon request.

A BILL FOR 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

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 following the incident but not later than the end of the next business day.

2 (b) The written notice must include:

3 (A) A description of the restraint or involuntary seclusion, the date of the restraint or involun-
4 tary seclusion, the times when the restraint or involuntary seclusion began and ended and the lo-
5 cation of the restraint or involuntary seclusion.

6 (B) A description of the child in care's activity that necessitated the use of restraint or invol-
7 untary seclusion.

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

11 (D)(i) The names of each of individual who placed the child in care in the restraint or involun-
12 tary seclusion or who monitored or approved the placement of the child in care in the restraint or
13 involuntary seclusion.

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

19 (iii) If an individual identified in this subparagraph was not certified or trained in the type of
20 restraint or involuntary seclusion used, or if the individual's certification or training was not cur-
21 rent, a description of the individual's certification or training deficiency and the reason an individ-
22 ual without the proper certification or training was involved in the restraint or involuntary
23 seclusion.

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

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

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

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

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

44 **SECTION 2.** ORS 418.240 is amended to read:

45 418.240. (1) All child-caring agencies shall obtain from the Department of Human Services a li-

1 cense, certificate or other authorization to provide care or services to children under ORS 418.205
 2 to 418.327, 418.470, 418.475 or 418.950 to 418.970. The criteria for issuance, renewal, suspension or
 3 revocation of, or for placing conditions on, a license, certificate or authorization under this section
 4 must:

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

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

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

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

9 (B) The employment of capable, trained or experienced staff that meet minimum staffing re-
 10 quirements.

11 (C) Sufficient financial backing to ensure effective operations.

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

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

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

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

20 (A) The agency ensures child and family rights.

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

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

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

24 (E) The agency provides appropriate food services.

25 (F) The agency ensures the safety of children.

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

28 (H) The agency or the agency's employees or agents have not engaged in financial mismanage-
 29 ment.

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

32 (J) The agency provides access as required under ORS 418.305 to a child or the agency's prem-
 33 ises to the department or the department's employees, investigators, court appointed special advo-
 34 cates, attorneys for a child or other authorized persons or entities.

35 **(K) The agency provides the department with true copies of records relating to incidents**
 36 **involving the restraint or involuntary seclusion of children in care as required under ORS**
 37 **418.526 (2).**

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

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

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

45 (B) There has been sexual or physical abuse or neglect of a child in the agency's care or custody

1 that was known to the agency and the agency did not take immediate steps to report the abuse or
2 neglect and to ensure the child's safety.

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (A) The Governor; and

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

44 (4) The department may immediately place conditions on any license, certificate or authorization
45 issued under this section, including but not limited to placing full or partial restrictions on admis-

1 sion of children, temporary suspension, limitation of operations subject to an intent to revoke and
2 limitation of operations subject to correction of violations as specified in a plan of correction im-
3 posed by the department. The department shall immediately notify any state or governmental agency
4 or unit that has a contract with the child-caring agency to provide care or services to a child, and
5 the governing board, trustees, owners, managers, operators or other appropriate authorities respon-
6 sible for the child-caring agency, of conditions placed by the department on the child-caring agency's
7 license, certificate or authorization under this section.

8 (5) If applicable, an applicant shall submit written proof of compliance with the notification re-
9 quirements in ORS 336.575.

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

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

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

20 (a) The director shall issue an interim emergency order without notice, or with reasonable no-
21 tice under the circumstances, requiring the agency to correct the conditions and ensure the safety
22 of children in the care of the agency. The interim emergency order shall remain in force until a final
23 order, after a hearing, has been entered in accordance with ORS chapter 183.

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

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

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

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

40 (10) If the Department of Justice or Bureau of Labor and Industries commences an investigation
41 of a child-caring agency or an owner, operator or employee of a child-caring agency, the Department
42 of Justice or Bureau of Labor and Industries shall notify, inform and regularly update the director,
43 the director's designee or such other personnel in the Department of Human Services designated to
44 receive such information regarding the investigation. The director and the department shall imme-
45 diately undertake the responsive action required by subsection (9) of this section upon receiving

1 such notification. Interference with, discouragement of or impediment to the receipt of the notifica-
 2 tion, information and updates required under this subsection constitutes official misconduct in the
 3 second degree under ORS 162.405.

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

6
 7 **PUBLIC EDUCATION PROGRAMS**

8
 9 **SECTION 3.** ORS 339.294 is amended to read:

10 339.294. (1) Each entity that has jurisdiction over a public education program must establish
 11 procedures for the public education program to follow after an incident involving the use of re-
 12 straint or seclusion.

13 (2) Following an incident involving the use of restraint or seclusion, the following must be pro-
 14 vided to a parent or guardian of the student:

15 (a) Verbal or electronic notification of the incident by the end of the school day when the inci-
 16 dent occurred.

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

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

19 (i) The date of the restraint or seclusion;

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

21 (iii) The location of the restraint or seclusion.

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

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

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

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

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

32 **(d) Immediate, written notification to the parent or guardian of the student of the ex-**
 33 **istence of a record described in subsection (8)(b) of this section.**

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

38 (a) The lack of training; and

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

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

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

45 (5) If a student is involved in five incidents in a school year involving restraint or seclusion, a

1 team consisting of personnel of the public education program and a parent or guardian of the stu-
2 dent must be formed for the purposes of reviewing and revising the student's behavior plan and en-
3 suring the provision of any necessary behavioral supports.

4 (6) If serious bodily injury or death of a student occurs in relation to the use of restraint or
5 seclusion, written notification of the incident must be provided within 24 hours of the incident to
6 the Department of Human Services.

7 (7) If serious bodily injury or death of personnel of the public education program occurs in re-
8 lation to the use of restraint or seclusion, written notification of the incident must be provided
9 within 24 hours of the incident to the district superintendent and, if applicable, to the union repre-
10 sentative for the affected party.

11 (8)(a) Each public education program must maintain a record of each incident in which injuries
12 or death occurs in relation to the use of restraint or seclusion.

13 **(b) If an incident involving the use of restraint or seclusion is recorded, intentionally or**
14 **unintentionally, through a photograph, video recording or audio recording, the public educa-**
15 **tion program must:**

16 **(A) Ensure that the record is not destroyed, edited, concealed or altered in any way.**

17 **(B) Make the record available for review at the debriefing meeting under subsection (4)**
18 **of this section.**

19 **(C) Preserve the record in the student's records.**

20 **(D) At the request of the department or a law enforcement agency, immediately make**
21 **the record available as part of any criminal or child abuse investigation into the use of the**
22 **restraint or seclusion.**

23
24 **MISCELLANEOUS**

25
26 **SECTION 4. The unit captions used in this 2023 Act are provided only for the convenience**
27 **of the reader and do not become part of the statutory law of this state or express any leg-**
28 **islative intent in the enactment of this 2023 Act.**