

Senate Bill 805

Sponsored by COMMITTEE ON JUDICIARY

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**.

Directs Oregon Youth Authority to adopt rules for the use of staff interventions on adjudicated youth.

Modifies definition of "abuse" for purposes of child abuse to include inappropriate use of restraint or seclusion of youth in custody of authority or juvenile department.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to prohibitions of certain treatments of youth in custody; creating new provisions; amend-
3 ing ORS 419B.005; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS 420A.005 to**
6 **420A.155.**

7 **SECTION 2. The Oregon Youth Authority shall adopt rules providing guidance and di-**
8 **rection on the use of staff interventions, including physical interventions, isolation, re-**
9 **straints and time-outs, consistent with state and federal law.**

10 **SECTION 3. ORS 419B.005, as amended by section 8, chapter 90, Oregon Laws 2022, is amended**
11 **to read:**

12 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

13 (1)(a) "Abuse" means:

14 (A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child
15 which has been caused by other than accidental means, including any injury which appears to be
16 at variance with the explanation given of the injury.

17 (B) Any mental injury to a child, which shall include only observable and substantial impairment
18 of the child's mental or psychological ability to function caused by cruelty to the child, with due
19 regard to the culture of the child.

20 (C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual pene-
21 tration and incest, as those acts are described in ORS chapter 163.

22 (D) Sexual abuse, as described in ORS chapter 163.

23 (E) Sexual exploitation, including but not limited to:

24 (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any
25 other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage
26 in the performing for people to observe or the photographing, filming, tape recording or other ex-
27 hibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or
28 described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-
29 cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or
30 which is designed to serve educational or other legitimate purposes; and

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 (ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in
 2 ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as
 3 described in ORS 163.413 or to engage in commercial sexual solicitation as described in ORS 167.008.

4 (F) Negligent treatment or maltreatment of a child, including but not limited to the failure to
 5 provide adequate food, clothing, shelter or medical care that is likely to endanger the health or
 6 welfare of the child.

7 (G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm
 8 to the child’s health or welfare.

9 (H) Buying or selling a person under 18 years of age as described in ORS 163.537.

10 (I) Permitting a person under 18 years of age to enter or remain in or upon premises where
 11 methamphetamines are being manufactured.

12 (J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, or to the unlawful
 13 manufacturing of a cannabinoid extract, as defined in ORS 475C.009, that subjects a child to a sub-
 14 stantial risk of harm to the child’s health or safety.

15 **(K) The use of restraint or involuntary seclusion of a youth in custody in violation of**
 16 **ORS 169.740, 169.750, 169.760, 419A.240 or 419A.245 or the use of interventions on a youth in**
 17 **custody in violation of the rules adopted under section 2 of this 2023 Act.**

18 (b) “Abuse” does not include reasonable discipline unless the discipline results in one of the
 19 conditions described in paragraph (a) of this subsection.

20 (2) “Child” means an unmarried person who:

21 (a) Is under 18 years of age; or

22 (b) Is under 21 years of age and residing in or receiving care or services at a child-caring
 23 agency as that term is defined in ORS 418.205.

24 (3) “Higher education institution” means:

25 (a) A community college as defined in ORS 341.005;

26 (b) A public university listed in ORS 352.002;

27 (c) The Oregon Health and Science University; and

28 (d) A private institution of higher education located in Oregon.

29 (4)(a) “Investigation” means a detailed inquiry into or assessment of the safety of a child alleged
 30 to have experienced abuse.

31 (b) “Investigation” does not include screening activities conducted upon the receipt of a report.

32 (5) “Law enforcement agency” means:

33 (a) A city or municipal police department.

34 (b) A county sheriff’s office.

35 (c) The Oregon State Police.

36 (d) A police department established by a university under ORS 352.121 or 353.125.

37 (e) A county juvenile department.

38 (6) “Public or private official” means:

39 (a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician,
 40 including any intern or resident.

41 (b) Dentist.

42 (c) School employee, including an employee of a higher education institution.

43 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse’s aide, home health aide
 44 or employee of an in-home health service.

45 (e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning

1 Division, Department of Education, Youth Development Division, Office of Child Care, the Oregon
2 Youth Authority, a local health department, a community mental health program, a community de-
3 velopmental disabilities program, a county juvenile department, a child-caring agency as that term
4 is defined in ORS 418.205 or an alcohol and drug treatment program.

5 (f) Peace officer.

6 (g) Psychologist.

7 (h) Member of the clergy.

8 (i) Regulated social worker.

9 (j) Optometrist.

10 (k) Chiropractor.

11 (L) Certified provider of foster care, or an employee thereof.

12 (m) Attorney.

13 (n) Licensed professional counselor.

14 (o) Licensed marriage and family therapist.

15 (p) Firefighter or emergency medical services provider.

16 (q) A court appointed special advocate, as defined in ORS 419A.004.

17 (r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.

18 (s) An elected official of a branch of government of this state or a state agency, board, com-
19 mission or department of a branch of government of this state or of a city, county or other political
20 subdivision in this state.

21 (t) Physical, speech or occupational therapist.

22 (u) Audiologist.

23 (v) Speech-language pathologist.

24 (w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
25 gations or discipline by the commission.

26 (x) Pharmacist.

27 (y) An operator of a preschool recorded program under ORS 329A.255.

28 (z) An operator of a school-age recorded program under ORS 329A.255.

29 (aa) Employee of a private agency or organization facilitating the provision of respite services,
30 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS
31 109.056.

32 (bb) An employee of a public or private organization providing child-related services or activ-
33 ities:

34 (A) Including but not limited to an employee of a:

35 (i) Youth group or center;

36 (ii) Scout group or camp;

37 (iii) Summer or day camp;

38 (iv) Survival camp; or

39 (v) Group, center or camp that is operated under the guidance, supervision or auspices of a re-
40 ligious, public or private educational system or a community service organization; and

41 (B) Excluding an employee of a qualified victim services program as defined in ORS 147.600 that
42 provides confidential, direct services to victims of domestic violence, sexual assault, stalking or hu-
43 man trafficking.

44 (cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete,
45 if compensated and if the athlete is a child.

1 (dd) Personal support worker, as defined in ORS 410.600.

2 (ee) Home care worker, as defined in ORS 410.600.

3 (ff) Animal control officer, as defined in ORS 609.500.

4 (gg) Member of a school district board, an education service district board or a public charter
5 school governing body.

6 (hh) An individual who is paid by a public body, in accordance with ORS 430.215, to provide a
7 service identified in an individualized written service plan of a child with a developmental disability.

8 (ii) Referral agent, as defined in ORS 418.351.

9 **(7) “Youth in custody” means a child in the physical custody of a county juvenile de-**
10 **partment or the Oregon Youth Authority.**

11 **SECTION 4.** ORS 419B.005, as amended by section 58, chapter 631, Oregon Laws 2021, section
12 16, chapter 27, Oregon Laws 2022, and section 7, chapter 90, Oregon Laws 2022, is amended to read:
13 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

14 (1)(a) “Abuse” means:

15 (A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child
16 which has been caused by other than accidental means, including any injury which appears to be
17 at variance with the explanation given of the injury.

18 (B) Any mental injury to a child, which shall include only observable and substantial impairment
19 of the child’s mental or psychological ability to function caused by cruelty to the child, with due
20 regard to the culture of the child.

21 (C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual pene-
22 tration and incest, as those acts are described in ORS chapter 163.

23 (D) Sexual abuse, as described in ORS chapter 163.

24 (E) Sexual exploitation, including but not limited to:

25 (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any
26 other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage
27 in the performing for people to observe or the photographing, filming, tape recording or other ex-
28 hibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or
29 described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-
30 cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or
31 which is designed to serve educational or other legitimate purposes; and

32 (ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in
33 ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as
34 described in ORS 163.413 or to engage in commercial sexual solicitation as described in ORS 167.008.

35 (F) Negligent treatment or maltreatment of a child, including but not limited to the failure to
36 provide adequate food, clothing, shelter or medical care that is likely to endanger the health or
37 welfare of the child.

38 (G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm
39 to the child’s health or welfare.

40 (H) Buying or selling a person under 18 years of age as described in ORS 163.537.

41 (I) Permitting a person under 18 years of age to enter or remain in or upon premises where
42 methamphetamines are being manufactured.

43 (J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, or to the unlawful
44 manufacturing of a cannabinoid extract, as defined in ORS 475C.009, that subjects a child to a sub-
45 stantial risk of harm to the child’s health or safety.

1 **(K) The use of restraint or involuntary seclusion of a youth in custody in violation of**
2 **ORS 169.740, 169.750, 169.760, 419A.240 or 419A.245 or the use of interventions on a youth in**
3 **custody in violation of the rules adopted under section 2 of this 2023 Act.**

4 (b) “Abuse” does not include reasonable discipline unless the discipline results in one of the
5 conditions described in paragraph (a) of this subsection.

6 (2) “Child” means an unmarried person who:

7 (a) Is under 18 years of age; or

8 (b) Is under 21 years of age and residing in or receiving care or services at a child-caring
9 agency as that term is defined in ORS 418.205.

10 (3) “Higher education institution” means:

11 (a) A community college as defined in ORS 341.005;

12 (b) A public university listed in ORS 352.002;

13 (c) The Oregon Health and Science University; and

14 (d) A private institution of higher education located in Oregon.

15 (4)(a) “Investigation” means a detailed inquiry into or assessment of the safety of a child alleged
16 to have experienced abuse.

17 (b) “Investigation” does not include screening activities conducted upon the receipt of a report.

18 (5) “Law enforcement agency” means:

19 (a) A city or municipal police department.

20 (b) A county sheriff’s office.

21 (c) The Oregon State Police.

22 (d) A police department established by a university under ORS 352.121 or 353.125.

23 (e) A county juvenile department.

24 (6) “Public or private official” means:

25 (a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician,
26 including any intern or resident.

27 (b) Dentist.

28 (c) School employee, including an employee of a higher education institution.

29 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse’s aide, home health aide
30 or employee of an in-home health service.

31 (e) Employee of the Department of Human Services, Oregon Health Authority, Department of
32 Early Learning and Care, Department of Education, Youth Development Division, Office of Child
33 Care, the Oregon Youth Authority, a local health department, a community mental health program,
34 a community developmental disabilities program, a county juvenile department, a child-caring
35 agency as that term is defined in ORS 418.205 or an alcohol and drug treatment program.

36 (f) Peace officer.

37 (g) Psychologist.

38 (h) Member of the clergy.

39 (i) Regulated social worker.

40 (j) Optometrist.

41 (k) Chiropractor.

42 (L) Certified provider of foster care, or an employee thereof.

43 (m) Attorney.

44 (n) Licensed professional counselor.

45 (o) Licensed marriage and family therapist.

- 1 (p) Firefighter or emergency medical services provider.
- 2 (q) A court appointed special advocate, as defined in ORS 419A.004.
- 3 (r) A child care provider registered or certified under ORS 329A.250 to 329A.450.
- 4 (s) An elected official of a branch of government of this state or a state agency, board, com-
- 5 mission or department of a branch of government of this state or of a city, county or other political
- 6 subdivision in this state.
- 7 (t) Physical, speech or occupational therapist.
- 8 (u) Audiologist.
- 9 (v) Speech-language pathologist.
- 10 (w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
- 11 gations or discipline by the commission.
- 12 (x) Pharmacist.
- 13 (y) An operator of a preschool recorded program under ORS 329A.255.
- 14 (z) An operator of a school-age recorded program under ORS 329A.255.
- 15 (aa) Employee of a private agency or organization facilitating the provision of respite services,
- 16 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS
- 17 109.056.
- 18 (bb) An employee of a public or private organization providing child-related services or activ-
- 19 ities:
 - 20 (A) Including but not limited to an employee of a:
 - 21 (i) Youth group or center;
 - 22 (ii) Scout group or camp;
 - 23 (iii) Summer or day camp;
 - 24 (iv) Survival camp; or
 - 25 (v) Group, center or camp that is operated under the guidance, supervision or auspices of a re-
 - 26 ligious, public or private educational system or a community service organization; and
 - 27 (B) Excluding an employee of a qualified victim services program as defined in ORS 147.600 that
 - 28 provides confidential, direct services to victims of domestic violence, sexual assault, stalking or hu-
 - 29 man trafficking.
 - 30 (cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete,
 - 31 if compensated and if the athlete is a child.
 - 32 (dd) Personal support worker, as defined in ORS 410.600.
 - 33 (ee) Home care worker, as defined in ORS 410.600.
 - 34 (ff) Animal control officer, as defined in ORS 609.500.
 - 35 (gg) Member of a school district board, an education service district board or a public charter
 - 36 school governing body.
 - 37 (hh) An individual who is paid by a public body, in accordance with ORS 430.215, to provide a
 - 38 service identified in an individualized written service plan of a child with a developmental disability.
 - 39 (ii) Referral agent, as defined in ORS 418.351.
- 40 **(7) “Youth in custody” means a child in the physical custody of a county juvenile de-**
- 41 **partment or the Oregon Youth Authority.**
- 42 **SECTION 5. Section 2 of this 2023 Act and the amendments to ORS 419B.005 by sections**
- 43 **3 and 4 of this 2023 Act apply to incidents involving intervention or the use of restraint or**
- 44 **seclusion occurring on or after the effective date of this 2023 Act.**
- 45 **SECTION 6. This 2023 Act being necessary for the immediate preservation of the public**

1 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**
2 **on its passage.**

3
