

SB 106-3
(LC 2420)
4/12/23 (LAS/ps)

Requested by Senator GELSER BLOUIN

**PROPOSED AMENDMENTS TO
SENATE BILL 106**

In line 2 of the printed bill, after “investigations” insert “; creating new provisions; amending ORS 339.285, 339.288, 339.291, 418.259, 418.519, 418.521, 418.523, 418.528, 419B.005, 419B.035, 430.735 and 676.150; and prescribing an effective date”.

Delete lines 4 through 8 and insert:

“PUBLIC EDUCATION PROGRAMS

“SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS 339.285 to 339.303.

“SECTION 2. An employee of a youth correction facility or a juvenile detention facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 who uses restraint or seclusion on a student in connection with a Youth Corrections Education Program or Juvenile Detention Education Program, as those terms are defined in ORS 326.695, is not subject to the prohibitions under ORS 339.285 to 339.303.

“SECTION 3. ORS 339.285 is amended to read:

“339.285. As used in ORS 339.285 to 339.303:

“(1) ‘Bodily injury’ includes:

“(a) A cut, abrasion, bruise, burn or disfigurement;

“(b) Physical pain;

1 “(c) **Illness;**

2 “(d) **Impairment of the function of a bodily member, organ or**
3 **mental faculty; or**

4 “(e) **Any other injury to the body, no matter how temporary.**

5 “[(1)] (2) ‘Public education program’ means a program in this state that:

6 “(a) Is for students in early childhood education, elementary school or
7 secondary school;

8 “(b) Is under the jurisdiction of a school district, an education service
9 district or another educational institution or program; and

10 “(c) Receives, or serves students who receive, support in any form from
11 any program supported, directly or indirectly, with funds appropriated to the
12 Department of Education.

13 “[(2)(a)] (3)(a) ‘Restraint’ means the **physical** restriction of a student’s
14 actions or movements by holding the student or using pressure or other
15 means.

16 “(b) ‘Restraint’ does not include:

17 “(A) Holding a student’s hand or arm to escort the student safely and
18 without the use of force from one area to another;

19 “(B) Assisting a student to complete a task if the student does not resist
20 the physical contact; or

21 “(C) Providing reasonable **physical** intervention with the minimal ex-
22 ertion of force necessary if the intervention does not include a restraint
23 prohibited under ORS 339.288 and the intervention is necessary to:

24 “(i) Break up a physical fight;

25 “(ii) Interrupt a student’s impulsive behavior that threatens the student’s
26 immediate safety, including running in front of a vehicle or climbing on
27 unsafe structures or objects; or

28 “(iii) Effectively protect oneself or another from [*an assault,*] **bodily** in-
29 jury or sexual contact with the minimum physical contact necessary for
30 protection.

1 “[~~(3)(a)~~] **(4)(a)** ‘Seclusion’ means the involuntary confinement of a student
2 alone in a room **or an enclosed space** from which the student is
3 [*physically*] prevented from leaving **by any means**.

4 “(b) ‘Seclusion’ does not include the **age-appropriate** removal of a stu-
5 dent for a short period of time to provide the student with an opportunity
6 to regain self-control if the student is in a setting from which the student
7 is not [*physically*] prevented from leaving.

8 “[~~(4)~~] **(5)** ‘Serious bodily injury’ means [*any significant impairment of the*
9 *physical condition of a person, as determined by qualified medical personnel,*
10 *whether self-inflicted or inflicted by someone else.*] **bodily injury that in-**
11 **volves:**

12 **“(a) A substantial risk of death;**

13 **“(b) Extreme physical pain;**

14 **“(c) Protracted and obvious disfigurement; or**

15 **“(d) Protracted loss or impairment of the function of a bodily**
16 **member, organ or mental faculty.**

17 **“SECTION 4.** ORS 339.288 is amended to read:

18 “339.288. (1) The use of the following types of restraint on a student in
19 a public education program is prohibited:

20 “(a) Chemical restraint.

21 “(b) Mechanical restraint.

22 “(c) Prone restraint.

23 “(d) Supine restraint.

24 “(e) Any restraint that involves the intentional and nonincidental use of
25 a solid object, including **the ground**, a wall or the floor, to impede a
26 student’s movement, unless the restraint is necessary to prevent an imminent
27 life-threatening injury or to gain control of a weapon.

28 “(f) Any restraint that places, or creates a risk of placing, pressure on a
29 student’s neck or throat.

30 “(g) Any restraint that places, or creates a risk of placing, pressure on a

1 student's mouth, unless the restraint is necessary for the purpose of ex-
2 tracting a body part from a bite.

3 “(h) Any restraint that impedes, or creates a risk of impeding, breathing.

4 “(i) Any restraint that involves the intentional placement of [*the hands,*
5 *feet, elbow, knee or*] any object **or a hand, knee, foot or elbow** on a
6 student's neck, throat, genitals or other intimate parts.

7 “[(j) *Any restraint that causes pressure to be placed, or creates a risk of*
8 *causing pressure to be placed, on the stomach or back by a knee, foot or elbow*
9 *bone.*]

10 **“(j) Any restraint that uses a knee, foot or elbow to cause pressure**
11 **to be placed or that risks causing pressure to be placed on the**
12 **student's stomach, chest, joints, throat or back.**

13 “(k) Any action designed for the primary purpose of inflicting pain.

14 “(2) As used in this section:

15 “(a) ‘Chemical restraint’ means a drug or medication that is used on a
16 student to control behavior or restrict freedom of movement and that is not:

17 “(A) Prescribed by a licensed physician or other qualified health profes-
18 sional acting under the professional's scope of practice for standard treat-
19 ment of the student's medical or psychiatric condition; and

20 “(B) Administered as prescribed by a licensed physician or other qualified
21 health professional acting under the professional's scope of practice.

22 “(b)(A) ‘Mechanical restraint’ means a device used to restrict the move-
23 ment of a student or the movement or normal function of a portion of the
24 body of a student.

25 “(B) ‘Mechanical restraint’ does not include:

26 “(i) A protective or stabilizing device ordered by a licensed physician; or

27 “(ii) A vehicle safety restraint when used as intended during the transport
28 of a student in a moving vehicle.

29 “(c) ‘Prone restraint’ means a restraint in which a student is held face
30 down on the floor.

1 “(d) ‘Supine restraint’ means a restraint in which a student is held face
2 up on the floor.

3 **“SECTION 5.** ORS 339.291 is amended to read:

4 “339.291. (1) Restraint or seclusion may not be used for discipline, pun-
5 ishment, retaliation or convenience of personnel, contractors or volunteers
6 of a public education program.

7 “(2)(a) Restraint may be used on a student in a public education program
8 only under the following circumstances:

9 “(A) The student’s behavior [*imposes a reasonable risk of imminent and*
10 *substantial physical or*] **poses an imminent risk of serious** bodily injury
11 to the student or others; and

12 “(B) Less restrictive interventions would not be effective.

13 “(b) Seclusion may be used on a student in a public education program
14 only under the following circumstances:

15 “(A) The student’s behavior [*imposes a reasonable risk of imminent and*]
16 **poses an imminent risk of** serious bodily injury to the student or others;
17 and

18 “(B) Less restrictive interventions would not be effective.

19 “(3) If restraint or seclusion is used on a student, the restraint or seclu-
20 sion must be:

21 “(a) Used only for as long as the student’s behavior poses [*a reasonable*]
22 **an imminent risk of serious bodily injury** as described in subsection (2)
23 of this section;

24 “(b) Imposed by personnel of the public education program who are:

25 “(A) Trained to use restraint or seclusion through programs described in
26 ORS 339.300; or

27 “(B) Otherwise available in the case of an emergency circumstance when
28 personnel described in subparagraph (A) of this paragraph are not imme-
29 diately available due to the unforeseeable nature of the emergency circum-
30 stance; [*and*]

1 “(c) Continuously monitored by personnel of the public education program
2 for the duration of the restraint or seclusion[.]; **and**

3 **“(d) Imposed in a manner that is safe, proportionate and appropri-**
4 **ate, taking into consideration the student’s:**

5 **“(A) Chronological and developmental age;**

6 **“(B) Size;**

7 **“(C) Gender identity;**

8 **“(D) Physical, medical and psychiatric condition; and**

9 **“(E) Personal history, including any history of physical or sexual**
10 **abuse.**

11 “(4) In addition to the requirements described in subsection (3) of this
12 section, if restraint or seclusion continues for more than [30] **10** minutes:

13 “(a) The student must be provided with adequate access to the bathroom
14 and water **at least** every 30 minutes;

15 “(b) Personnel of the public education program must immediately attempt
16 to verbally or electronically notify a parent or guardian of the student; and

17 “(c) Every [15] **five** minutes after the first [30] **10** minutes of the restraint
18 or seclusion, an administrator for the public education program must provide
19 written authorization for the continuation of the restraint or seclusion, in-
20 cluding providing documentation for the reason the restraint or seclusion
21 must be continued.

22 23 **“CHILD-CARING AGENCIES**

24
25 **“SECTION 6.** ORS 418.259 is amended to read:

26 “418.259. (1) The investigation conducted by the Department of Human
27 Services under ORS 418.258 must result in one of the following findings:

28 “(a) That the report is substantiated. A report is substantiated when there
29 is reasonable cause to believe that the abuse of a child in care occurred.

30 “(b) That the report is unsubstantiated. A report is unsubstantiated [*when*

1 *there is no evidence that the abuse of a child in care occurred.]* **when, after**
2 **an investigation, the evidence does not provide reasonable cause to**
3 **believe that the abuse occurred.**

4 “(c) That the report is inconclusive. A report is inconclusive when there
5 is some indication that the abuse occurred but there is insufficient evidence
6 to conclude that there is reasonable cause to believe that the abuse occurred.

7 “(2) When a report is received under ORS 418.258 alleging that a child in
8 care may have been subjected to abuse, the department shall notify the case
9 managers for the child, the attorney for the child, the child’s court appointed
10 special advocate, the parents or guardians of the child, any attorney repre-
11 senting a parent or guardian of the child and any governmental agency that
12 has a contract with the child-caring agency or developmental disabilities
13 residential facility to provide care or services to the child that a report has
14 been received.

15 “(3)(a) **Subject to rules adopted by the department under section 17**
16 **of this 2023 Act,** the department may interview the child in care who is the
17 subject of suspected abuse and any witnesses, including other children,
18 without the presence of employees of the child-caring agency, proctor foster
19 home or developmental disabilities residential facility, the provider of ser-
20 vices at a certified foster home or department personnel. The department
21 shall inform the child in care that the child may have the child’s parent or
22 guardian, if the child has not been committed to the custody of the depart-
23 ment or the Oregon Youth Authority, or attorney present when participating
24 in an interview conducted in the course of an abuse investigation.

25 “(b) When investigating an allegation of inappropriate use of restraint
26 or involuntary seclusion, the department shall:

27 “(A) Conduct the interviews described in paragraph (a) of this subsection;

28 “(B) Review all relevant incident reports related to the child in care and
29 other reports related to the restraint or involuntary seclusion of the child
30 in care;

1 “(C) Review any audio, video or photographic recordings of the restraint
2 or involuntary seclusion, including the circumstances immediately before and
3 following the incident;

4 “(D) During an interview with the child in care who is the subject of the
5 suspected abuse, ask the child about whether they experienced any reportable
6 injury or pain as a result of the restraint or involuntary seclusion;

7 “(E) Review the training records related to all of the individuals who
8 were involved in the use of restraint or involuntary seclusion; and

9 “(F) Make all reasonable efforts to conduct trauma-informed interviews
10 of each child witness, including the child in care who is the subject of sus-
11 pected abuse unless the investigator makes a specific determination that the
12 interview may significantly traumatize the child and is not in the best in-
13 terests of the child.

14 “(4) The department shall notify the following when a report of abuse is
15 substantiated:

16 “(a) The Director of Human Services.

17 “(b) Personnel in the department responsible for the licensing, certificate
18 or authorization of child-caring agencies.

19 “(c) The department’s lead personnel in that part of the department that
20 is responsible for child welfare generally.

21 “(d) With respect to the child in care who is the subject of the abuse re-
22 port and investigation, the case managers for the child, the attorney for the
23 child, the child’s court appointed special advocate, the parents or guardians
24 of the child, any attorney representing a parent or guardian of the child and
25 any governmental agency that has a contract with the child-caring agency
26 to provide care or services to the child.

27 “(e) The parents or guardians of the child in care who is the subject of
28 the abuse report and investigation if the child in care has not been commit-
29 ted to the custody of the department or the youth authority. Notification
30 under this paragraph may not include any details or information other than

1 that a report of abuse has been substantiated.

2 “(f) Any governmental agency that has a contract with the child-caring
3 agency to provide care or services to a child in care.

4 “(g) The local citizen review board established by the Judicial Department
5 under ORS 419A.090.

6 “(5) The department shall report on a quarterly basis to the interim leg-
7 islative committees on child welfare for the purposes of public review and
8 oversight of the quality and safety of child-caring agencies, certified foster
9 homes and developmental disabilities residential facilities that are licensed,
10 certified or authorized by the department in this state and of proctor foster
11 homes that are certified by the child-caring agencies. Information provided
12 in reports under this subsection may not contain the name or any identifying
13 information of a child in care but must contain all of the following:

14 “(a) The name of any child-caring agency, including an out-of-state
15 child-caring agency, proctor foster home or developmental disabilities resi-
16 dential facility, or, provided there are five or more certified foster homes in
17 the county, the name of the county where a certified foster home is located,
18 where the department conducted an investigation pursuant to ORS 418.258
19 that resulted in a finding that the report of abuse was substantiated during
20 that quarter;

21 “(b) The approximate date that the abuse occurred;

22 “(c) The nature of the abuse and a brief narrative description of the abuse
23 that occurred;

24 “[*(d) Whether physical injury, sexual abuse or death resulted from the*
25 *abuse;*]

26 “**(d) Whether the abuse resulted in a reportable injury, pain, sexual**
27 **abuse or death;**

28 “(e) Corrective actions taken or ordered by the department and the out-
29 come of the corrective actions; and

30 “(f) Information the department received in that quarter regarding any

1 substantiated allegations of child abuse made by any other state involving
2 a congregate care residential setting, as defined in ORS 418.322, in which the
3 department has placed Oregon children.

4 “(6) The department’s quarterly report under subsection (5) of this section
5 must also contain all of the following:

6 “(a) The total number of restraints used in programs that quarter;

7 “(b) The total number of programs that reported the use of restraints of
8 children in care that quarter;

9 “(c) The total number of individual children in care who were placed in
10 restraints by programs that quarter;

11 “(d) The number of reportable injuries to children in care that resulted
12 from those restraints;

13 “(e) The number of incidents in which an individual who was not appro-
14 priately trained in the use of the restraint used on a child in care in a pro-
15 gram; and

16 “(f) The number of incidents that were reported for potential inappropri-
17 ate use of restraint.

18 “(7) In compiling records, reports and other information during an inves-
19 tigation under ORS 418.258 (1) and in issuing findings, letters of concern or
20 reprimands, the Director of Human Services or the director’s designee and
21 the department may not refer to the employee, person or entity that is the
22 subject of the investigation as an ‘alleged perpetrator’ but must refer to the
23 employee, person or entity as the ‘respondent.’

24 “(8) As used in this section, ‘program,’ ‘reportable injury’ and ‘restraint’
25 have the meanings given those terms in ORS 418.519.

26 **“SECTION 7.** ORS 418.519 is amended to read:

27 “418.519. As used in ORS 418.519 to 418.532:

28 “(1) **‘Bodily injury’ includes:**

29 **“(a) A cut, abrasion, bruise, burn or disfigurement;**

30 **“(b) Physical pain;**

1 “(c) **Illness;**

2 “(d) **Impairment of the function of a bodily member, organ or**
3 **mental faculty; or**

4 “(e) **Any other injury to the body, no matter how temporary.**

5 “[(1)] (2) ‘Certified foster home’ means a foster home subject to ORS
6 418.625 to 418.645.

7 “[(2)] (3) ‘Chemical restraint’ means a drug or medication that is admin-
8 istered to a child in care to control behavior or restrict freedom of move-
9 ment.

10 “[(3)] (4) ‘Child-caring agency’ has the meaning given that term in ORS
11 418.205.

12 “[(4)] (5) ‘Child in care’ has the meaning given that term in ORS 418.257.

13 “[(5)] (6) ‘Children’s emergency safety intervention specialist’ means a
14 qualified mental health professional licensed to order, monitor and evaluate
15 the use of seclusion and restraint in accredited and certified facilities that
16 provide intensive mental health treatment services to individuals under 21
17 years of age.

18 “[(6)] (7) ‘Developmental disabilities residential facility’ has the meaning
19 given that term in ORS 418.257.

20 “[(7)(a)] (8)(a) ‘Involuntary seclusion’ means the **involuntary** confine-
21 ment of a child in care alone in a room **or an enclosed space** from which
22 the child in care is prevented from leaving by any means.

23 “(b) ‘Involuntary seclusion’ does not include age-appropriate discipline,
24 including, but not limited to, time-out if the time-out is in a setting from
25 which the child in care is not prevented from leaving **by any means.**

26 “[(8)] (9) ‘Mechanical restraint’ means a device used to restrict the
27 movement of a child in care or the movement or normal function of a portion
28 of the body of a child in care.

29 “[(9)] (10) ‘Proctor foster home’ means a foster home certified by a child-
30 caring agency under ORS 418.248.

1 “[(10)] (11) ‘Program’ means:

2 “(a) A child-caring agency;

3 “(b) A proctor foster home; or

4 “(c) A developmental disabilities residential facility that is a residential
5 training home or facility licensed under ORS 443.415 to serve children under
6 18 years of age.

7 “[(11)] (12) ‘Prone restraint’ means a restraint in which a child in care
8 is held face down on the floor.

9 “[(12)] (13) ‘Reportable injury’ means any type of injury to a child in care,
10 including but not limited to rug burns, fractures, sprains, bruising, pain, soft
11 tissue injury, punctures, scratches, concussions, abrasions, dizziness, loss of
12 consciousness, loss of vision, visual disturbance or death.

13 “[(13)] (14) ‘Restraint’ means the physical restriction of a child in care’s
14 actions or movements by holding the child in care or using pressure or other
15 means.

16 “[(14)] (15) ‘Secure adolescent inpatient treatment program’ means a
17 child-caring agency that is an intensive treatment services program, as de-
18 scribed by the Oregon Health Authority by rule, that provides inpatient
19 psychiatric stabilization and treatment services to individuals under 21 years
20 of age who require a secure intensive treatment setting.

21 “[(15)] (16) ‘Secure children’s inpatient treatment program’ means a
22 child-caring agency that is an intensive treatment services program, as de-
23 scribed by the authority by rule, that provides inpatient psychiatric stabili-
24 zation and treatment services to children under 14 years of age who require
25 a secure intensive treatment setting.

26 “[(16)] (17) ‘Serious bodily injury’ means [*any significant impairment of the*
27 *physical condition of an individual, as determined by qualified medical per-*
28 *sonnel, whether self-inflicted or inflicted by someone else.*] **bodily injury that**
29 **involves:**

30 “(a) A substantial risk of death;

1 **“(b) Extreme physical pain;**

2 **“(c) Protracted and obvious disfigurement; or**

3 **“(d) Protracted loss or impairment of the function of a bodily**
4 **member, organ or mental faculty.**

5 “[(17)] (18) ‘Supine restraint’ means a restraint in which a child in care
6 is held face up on the floor.

7 **“SECTION 8.** ORS 418.521 is amended to read:

8 “418.521. (1) A child-caring agency, proctor foster home, certified foster
9 home or developmental disabilities residential facility may not place a child
10 in care in a restraint or involuntary seclusion as a form of discipline, pun-
11 ishment or retaliation or for the convenience of staff, contractors or volun-
12 teers of the child-caring agency, proctor foster home, certified foster home
13 or developmental disabilities residential facility.

14 “(2) Except as provided in ORS 418.523 (4), the use of the following types
15 of restraint of a child in care are prohibited:

16 “(a) Chemical restraint.

17 “(b) Mechanical restraint.

18 “(c) Prone restraint.

19 “(d) Supine restraint.

20 “(e) Any restraint that includes the **intentional and** nonincidental use
21 of a solid object, including the ground, a wall or the floor, to impede a child
22 in care’s movement.

23 “(f) Any restraint that places, or creates a risk of placing, pressure on a
24 child in care’s neck or throat.

25 “(g) Any restraint that places, or creates a risk of placing, pressure on a
26 child in care’s mouth.

27 “(h) Any restraint that impedes, or creates a risk of impeding, a child in
28 care’s breathing.

29 “(i) Any restraint that involves the intentional placement of [*hands, feet,*
30 *elbows, knees or*] any object **or a hand, knee, foot or elbow** on a child in

1 care's neck, throat, genitals or other intimate parts.

2 “(j) Any restraint that causes pressure to be placed, or creates a risk of
3 causing pressure to be placed, on a child in care's stomach, chest, joints,
4 throat or back by a knee, foot or elbow.

5 “(k) Any other [*restraint*] **action**, the primary purpose of which is to in-
6 flict pain.

7 **“SECTION 9.** ORS 418.523 is amended to read:

8 “418.523. (1) Except as otherwise provided in this section, a child-caring
9 agency, proctor foster home or developmental disabilities residential facility
10 may only place a child in care in a restraint or involuntary seclusion if the
11 child in care's behavior poses [*a reasonable*] **an imminent** risk of
12 [*imminent*] serious bodily injury to the child in care or others and less re-
13 strictive interventions would not effectively reduce that risk.

14 “(2) A certified foster home may not place a child in care in a restraint
15 or involuntary seclusion.

16 “(3) Notwithstanding subsection (1) or (2) of this section, a child-caring
17 agency, proctor foster home, certified foster home or developmental disabili-
18 ties residential facility may use the following types of restraints on a child
19 in care:

20 “(a) Holding the child in care's hand or arm to escort the child in care
21 safely and without the use of force from one area to another;

22 “(b) Assisting the child in care to complete a task if the child in care does
23 not resist the physical contact; or

24 “(c) Using a physical intervention if:

25 **“(A) The physical intervention is administered by a person who is**
26 **not certified, as described in ORS 418.529, in the use of the type of re-**
27 **straint used;**

28 **“(B) The child-caring agency, proctor foster home, certified foster**
29 **home or developmental disabilities residential facility could not have**
30 **reasonably expected that the situation in which the intervention oc-**

1 **curred would have required the presence of individuals certified in the**
2 **appropriate use of restraints;**

3 **“(C) No certified person is immediately available due to the un-**
4 **foreseeable nature of the situation;**

5 **“[(A)] (D)** The intervention is necessary to break up a physical fight or
6 to effectively protect a person from an assault, serious bodily injury or sex-
7 ual contact;

8 **“[(B)] (E)** The intervention uses the least amount of physical force and
9 contact possible; and

10 **“[(C)] (F)** The intervention is not a prohibited restraint described in ORS
11 418.521 (2).

12 **“(4)** Notwithstanding ORS 418.521 (2):

13 **“(a)** The restraint described in ORS 418.521 (2)(e) may be used if the re-
14 straint is necessary to gain control of a weapon.

15 **“(b)** The restraint described in ORS 418.521 (2)(g) may be used if the re-
16 straint is necessary for the purpose of extracting a body part from a bite.

17 **“(c)** If a program is a secure children’s inpatient treatment program or
18 secure adolescent inpatient treatment program, the program may place a
19 child in care in a restraint described in ORS 418.521 (2)(d) or (e) only if:

20 **“(A)** The child in care is currently admitted to the program;

21 **“(B)** The restraint is authorized by an order written at the time of and
22 specifically for the current situation by a licensed medical practitioner or a
23 licensed children’s emergency safety intervention specialist;

24 **“(C)** The restraint is used only as long as needed to prevent serious
25 physical injury, as defined in ORS 161.015, and while no other intervention
26 or form of restraint is possible;

27 **“(D)** A licensed medical practitioner, children’s emergency safety inter-
28 vention specialist or qualified mental health professional, who is certified in
29 the use of the type of restraint used, continuously monitors the use of the
30 restraint and the physical and psychological well-being of the child in care

1 at all times while the restraint is being used;

2 “(E) Each individual placing the child in care in the restraint is certified
3 as described in ORS 418.529 in the use of the type of restraint used and the
4 individual’s training is current;

5 “(F) One or more individuals with current cardiopulmonary resuscitation
6 training are present for the duration of the restraint;

7 “(G) The program has written policies that require a licensed children’s
8 emergency safety intervention specialist or other licensed practitioner to
9 evaluate and document the physical, psychological and emotional well-being
10 of the child in care immediately following the use of the restraint; and

11 “(H) The program is in compliance with any other requirements under
12 ORS 418.519 to 418.532, and the use of the restraint does not otherwise vio-
13 late any applicable contract requirements or any state or federal law related
14 to the use of restraints.

15 “(5) In addition to the restraints described in subsection (3) of this sec-
16 tion, a program may place a child in care in a restraint or involuntary se-
17 clusion if:

18 “(a) The restraint or involuntary seclusion is used only for as long as the
19 child in care’s behavior poses [*a reasonable*] **an imminent** risk of
20 [*imminent*] serious bodily injury;

21 “(b) The individuals placing the child in care in the restraint or invol-
22 untary seclusion are certified as described in ORS 418.529 in the use of the
23 type of restraint used or are trained, as required by the department by rule,
24 in the use of the involuntary seclusion used;

25 “(c) The program staff continuously monitor the child in care for the du-
26 ration of the restraint or involuntary seclusion; and

27 “(d) The restraint or involuntary seclusion is performed in a manner that
28 is safe, proportionate and appropriate, taking into consideration the child in
29 care’s chronological and developmental age, size, gender identity, physical,
30 medical and psychiatric condition and personal history, including any history

1 of physical or sexual abuse.

2 “(6) In addition to the requirements described in subsection (5) of this
3 section, if a program places a child in care in a restraint or involuntary se-
4 clusion for more than 10 minutes:

5 “(a) The program must provide the child in care with adequate access to
6 the bathroom and water at least every 30 minutes; and

7 “(b)(A) Every five minutes after the first 10 minutes of the restraint or
8 involuntary seclusion, a program supervisor who is certified as described in
9 ORS 418.529 in the use of the type of restraint being used or trained, as re-
10 quired by the department by rule, in the use of the involuntary seclusion
11 being used must provide written authorization for the continuation of the
12 restraint or involuntary seclusion.

13 “(B) If the supervisor is not on-site at the time the restraint is used, the
14 supervisor may provide the written authorization electronically.

15 “(C) The written authorization must document why the restraint or in-
16 voluntary seclusion continues to be the least restrictive intervention to re-
17 duce the **imminent** risk of [*imminent*] serious bodily injury in the given
18 circumstances.

19 **“SECTION 10.** ORS 418.528 is amended to read:

20 “418.528. (1) A program must prepare and submit to the Department of
21 Human Services a quarterly report detailing the program’s use of restraint
22 and involuntary seclusion for the preceding three-month period, including,
23 at a minimum:

24 “(a) The total number of incidents involving restraint.

25 “(b) The total number of incidents involving involuntary seclusion.

26 “(c) The total number of involuntary seclusions in a locked room.

27 “(d) The total number of rooms available for use by the program for in-
28 voluntary seclusion and a description of the dimensions and design of the
29 rooms.

30 “(e) The total number of children in care placed in restraint.

1 “(f) The total number of children in care placed in involuntary seclusion.

2 **“(g) The total number of children who experienced both restraint**
3 **and involuntary seclusion.**

4 “[*(g)*] (h) The total number of incidents under paragraph (a) or (b) of this
5 subsection that resulted in reportable injuries.

6 “[*(h)*] (i) The number of children in care who were placed in restraint or
7 involuntary seclusion more than three times during the preceding three-
8 month period and a description of the steps the program has taken to de-
9 crease the use of restraint and involuntary seclusion.

10 “[*(i)*] (j) The number of incidents in which an individual who placed a
11 child in care in a restraint or involuntary seclusion was not certified as de-
12 scribed in ORS 418.529 or trained, as required by the department by rule, in
13 the use of the type of restraint or involuntary seclusion used.

14 “[*(j)*] (k) The demographic characteristics of the children in care who the
15 program placed in a restraint or involuntary seclusion, including race,
16 ethnicity, gender, disability status, migrant status, English proficiency and
17 status as economically disadvantaged, unless the demographic information
18 would reveal personally identifiable information about an individual child in
19 care.

20 **“(L) The total number of children in care served by the program**
21 **during the reporting period, including race, ethnicity, gender, disabil-**
22 **ity status, migrant status, English proficiency and status as econom-**
23 **ically disadvantaged, unless the demographic information would reveal**
24 **personally identifiable information about an individual child in care.**

25 “(2)(a) If a program provides services in more than one location, the re-
26 ports under subsection (1) of this section must separate the data for each
27 location that serves five or more children in care.

28 “(b) If the site-specific data for a given location is not provided under
29 paragraph (a) of this subsection because the program serves fewer than five
30 children in care at that location, the program’s report must include a nota-

tion indicating the aggregate number of children in care served by the program across all of the program's locations and the reporting requirements under paragraph (a) of this subsection continue to apply to any of the program's other locations serving five or more children in care.

"(3)(a) The department shall make each quarterly report it receives under this section available to the public on the department's website.

"(b) Each program that submits a report under this section shall make its quarterly report available to the public upon request at the program's main office and on the program's website if the program maintains a website.

"(c) Each program shall provide notice regarding how to access the quarterly reports to the parents or guardians of children in care in the program. The program shall provide the notice upon the child in care's admission and at least two times each year thereafter.

"CHILD ABUSE

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

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

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

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

"(B) Any mental injury to a child, which shall include [*only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child*] **cruel or unconscionable acts or statements made, or threatened to be made, to a child if the acts, statements or threats result in se-**

vere harm to the child’s psychological, cognitive, emotional or social well-being and functioning.

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

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

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

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

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

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

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

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

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

“(J) Unlawful exposure to a controlled substance, as defined in ORS

1 475.005, or to the unlawful manufacturing of a cannabinoid extract, as de-
2 fined in ORS 475C.009, that subjects a child to a substantial risk of harm to
3 the child's health or safety.

4 "(b) 'Abuse' does not include reasonable discipline unless the discipline
5 results in one of the 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*
9 *at a child-caring agency as that term is defined in ORS 418.205*] **a child in**
10 **care, as defined in ORS 418.257.**

11 "(3) 'Higher education institution' means:

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

13 "(b) A public university listed in ORS 352.002;

14 "(c) The Oregon Health and Science University; and

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

16 "(4)(a) 'Investigation' means a detailed inquiry into or assessment of the
17 safety of a child alleged to have experienced abuse.

18 "(b) 'Investigation' does not include screening activities conducted upon
19 the receipt of a report.

20 "(5) 'Law enforcement agency' means:

21 "(a) A city or municipal police department.

22 "(b) A county sheriff's office.

23 "(c) The Oregon State Police.

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

26 "(e) A county juvenile department.

27 "(6) 'Public or private official' means:

28 "(a) Physician or physician assistant licensed under ORS chapter 677 or
29 naturopathic physician, including any intern or resident.

30 "(b) Dentist.

1 “(c) School employee, including an employee of a higher education insti-
2 tution.

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

5 “(e) Employee of the Department of Human Services, Oregon Health Au-
6 thority, Early Learning Division, Department of Education, Youth Develop-
7 ment Division, Office of Child Care, the Oregon Youth Authority, a local
8 health department, a community mental health program, a community de-
9 velopmental disabilities program, a county juvenile department, a child-
10 caring agency as that term is defined in ORS 418.205 or an alcohol and drug
11 treatment program.

12 “(f) Peace officer.

13 “(g) Psychologist.

14 “(h) Member of the clergy.

15 “(i) Regulated social worker.

16 “(j) Optometrist.

17 “(k) Chiropractor.

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

19 “(m) Attorney.

20 “(n) Licensed professional counselor.

21 “(o) Licensed marriage and family therapist.

22 “(p) Firefighter or emergency medical services provider.

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

24 “(r) A child care provider registered or certified under ORS 329A.030 and
25 329A.250 to 329A.450.

26 “(s) An elected official of a branch of government of this state or a state
27 agency, board, commission or department of a branch of government of this
28 state or of a city, county or other political subdivision in this state.

29 “(t) Physical, speech or occupational therapist.

30 “(u) Audiologist.

1 “(v) Speech-language pathologist.

2 “(w) Employee of the Teacher Standards and Practices Commission di-
3 rectly involved in investigations or discipline by the commission.

4 “(x) Pharmacist.

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

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

7 “(aa) Employee of a private agency or organization facilitating the pro-
8 vision of respite services, as defined in ORS 418.205, for parents pursuant to
9 a properly executed power of attorney under ORS 109.056.

10 “(bb) An employee of a public or private organization providing child-
11 related services or activities:

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

13 “(i) Youth group or center;

14 “(ii) Scout group or camp;

15 “(iii) Summer or day camp;

16 “(iv) Survival camp; or

17 “(v) Group, center or camp that is operated under the guidance, super-
18 vision or auspices of a religious, public or private educational system or a
19 community service organization; and

20 “(B) Excluding an employee of a qualified victim services program as de-
21 fined in ORS 147.600 that provides confidential, direct services to victims of
22 domestic violence, sexual assault, stalking or human trafficking.

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

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

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

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

28 “(gg) Member of a school district board, an education service district
29 board or a public charter school governing body.

30 “(hh) An individual who is paid by a public body, in accordance with ORS

1 430.215, to provide a service identified in an individualized written service
2 plan of a child with a developmental disability.

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

4 **“(jj) Parole and probation officer, as defined in ORS 181A.355.**

5 **“(kk) Behavior analyst or assistant behavior analyst licensed under**
6 **ORS 676.810 or behavior analysis interventionist registered under ORS**
7 **676.815.**

8 **“SECTION 12.** ORS 419B.005, as amended by section 58, chapter 631,
9 Oregon Laws 2021, section 16, chapter 27, Oregon Laws 2022, and section 7,
10 chapter 90, Oregon Laws 2022, is amended to read:

11 “419B.005. As used in ORS 419B.005 to 419B.050, unless the context re-
12 quires otherwise:

13 “(1)(a) ‘Abuse’ means:

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

18 “(B) Any mental injury to a child, which shall include [*only observable*
19 *and substantial impairment of the child’s mental or psychological ability to*
20 *function caused by cruelty to the child, with due regard to the culture of the*
21 *child*] **cruel or unconscionable acts or statements made, threatened to**
22 **be made or permitted to be made, to a child if the acts or statements**
23 **result in severe harm to the child’s psychological, cognitive, emotional**
24 **or social well-being and functioning.**

25 “(C) Rape of a child, which includes but is not limited to rape, sodomy,
26 unlawful sexual penetration and incest, as those acts are described in ORS
27 chapter 163.

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

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

30 “(i) Contributing to the sexual delinquency of a minor, as defined in ORS

chapter 163, and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; and

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

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

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

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

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

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

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

“(2) ‘Child’ means an unmarried person who:

“(a) Is under 18 years of age; or

“(b) Is *[under 21 years of age and residing in or receiving care or services*

1 *at a child-caring agency as that term is defined in ORS 418.205]* **a child in**
2 **care, as defined in ORS 418.257.**

3 “(3) ‘Higher education institution’ means:

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

5 “(b) A public university listed in ORS 352.002;

6 “(c) The Oregon Health and Science University; and

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

8 “(4)(a) ‘Investigation’ means a detailed inquiry into or assessment of the
9 safety of a child alleged to have experienced abuse.

10 “(b) ‘Investigation’ does not include screening activities conducted upon
11 the receipt of a report.

12 “(5) ‘Law enforcement agency’ means:

13 “(a) A city or municipal police department.

14 “(b) A county sheriff’s office.

15 “(c) The Oregon State Police.

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

18 “(e) A county juvenile department.

19 “(6) ‘Public or private official’ means:

20 “(a) Physician or physician assistant licensed under ORS chapter 677 or
21 naturopathic physician, including any intern or resident.

22 “(b) Dentist.

23 “(c) School employee, including an employee of a higher education insti-
24 tution.

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

27 “(e) Employee of the Department of Human Services, Oregon Health Au-
28 thority, Department of Early Learning and Care, Department of Education,
29 Youth Development Division, Office of Child Care, the Oregon Youth Au-
30 thority, a local health department, a community mental health program, a

1 community developmental disabilities program, a county juvenile department,
2 a child-caring agency as that term is defined in ORS 418.205 or an alcohol
3 and drug treatment program.

4 “(f) Peace officer.

5 “(g) Psychologist.

6 “(h) Member of the clergy.

7 “(i) Regulated social worker.

8 “(j) Optometrist.

9 “(k) Chiropractor.

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

11 “(m) Attorney.

12 “(n) Licensed professional counselor.

13 “(o) Licensed marriage and family therapist.

14 “(p) Firefighter or emergency medical services provider.

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

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

18 “(s) An elected official of a branch of government of this state or a state
19 agency, board, commission or department of a branch of government of this
20 state or of a city, county or other political 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 di-
25 rectly involved in investigations 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 pro-
30 vision of respite services, as defined in ORS 418.205, for parents pursuant to

1 a properly executed power of attorney under ORS 109.056.

2 “(bb) An employee of a public or private organization providing child-
3 related services or activities:

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

5 “(i) Youth group or center;

6 “(ii) Scout group or camp;

7 “(iii) Summer or day camp;

8 “(iv) Survival camp; or

9 “(v) Group, center or camp that is operated under the guidance, super-
10 vision or auspices of a religious, public or private educational system or a
11 community service organization; and

12 “(B) Excluding an employee of a qualified victim services program as de-
13 fined in ORS 147.600 that provides confidential, direct services to victims of
14 domestic violence, sexual assault, stalking or human trafficking.

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

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

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

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

20 “(gg) Member of a school district board, an education service district
21 board or a public charter school governing body.

22 “(hh) An individual who is paid by a public body, in accordance with ORS
23 430.215, to provide a service identified in an individualized written service
24 plan of a child with a developmental disability.

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

26 “**(jj) Parole and probation officer, as defined in ORS 181A.355.**

27 “**(kk) Behavior analyst or assistant behavior analyst licensed under**
28 **ORS 676.810 or behavior analysis interventionist registered under ORS**
29 **676.815.**

30 “**SECTION 13.** ORS 419B.035, as amended by section 10, chapter 27,

Oregon Laws 2022, and section 9, chapter 90, Oregon Laws 2022, is amended to read:

“419B.035. (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.478 and 192.610 to 192.810 relating to confidentiality and accessibility for public inspection of public records and public documents, reports and records compiled under the provisions of ORS 419B.010 to 419B.050 are confidential and may not be disclosed except as provided in this section.

The Department of Human Services shall make the records available to:

“(a) Any law enforcement agency or a child abuse registry in any other state for the purpose of subsequent investigation of child abuse;

“(b) Any physician, physician assistant licensed under ORS 677.505 to 677.525 or nurse practitioner licensed under ORS 678.375 to 678.390, at the request of the physician, physician assistant or nurse practitioner, regarding any child brought to the physician, physician assistant or nurse practitioner or coming before the physician, physician assistant or nurse practitioner for examination, care or treatment;

“(c) Attorneys of record for the child or child’s parent or guardian in any juvenile court proceeding;

“(d) Citizen review boards established by the Judicial Department for the purpose of periodically reviewing the status of children, youths and adjudicated youths under the jurisdiction of the juvenile court under ORS 419B.100 and 419C.005. Citizen review boards may make such records available to participants in case reviews;

“(e) A court appointed special advocate in any juvenile court proceeding in which it is alleged that a child has been subjected to child abuse or neglect;

“(f) The Early Learning Division for the purpose of carrying out the functions of the division, including the certification, registration or regulation of child care facilities and child care providers and the administration of enrollment in the Central Background Registry;

1 “(g) The Office of Children’s Advocate;

2 “(h) The Teacher Standards and Practices Commission for investigations
3 conducted under ORS 339.390 or 342.176 involving any child or any student;

4 “(i) Any person, upon request to the Department of Human Services, if
5 the reports or records requested regard an incident in which a child, as the
6 result of abuse, died or suffered serious physical injury as defined in ORS
7 161.015. Reports or records disclosed under this paragraph must be disclosed
8 in accordance with ORS 192.311 to 192.478;

9 “(j) The Office of Child Care for purposes of applications described in
10 ORS 329A.030 (10)(c)(G) to (J);

11 “(k) With respect to a report of abuse occurring at a school or in an ed-
12 ucational setting that involves a child with a disability, Disability Rights
13 Oregon;

14 “(L) The Department of Education for purposes of investigations con-
15 ducted under ORS 339.391; [and]

16 “(m) An education provider for the purpose of making determinations
17 under ORS 339.388[.]; and

18 **“(n) A national nonprofit organization designated by the Depart-**
19 **ment of Human Services that provides assistance with locating, re-**
20 **covering or providing services to children or youth determined by the**
21 **department to be missing.**

22 “(2)(a) When disclosing reports and records pursuant to subsection (1)(i)
23 of this section, the Department of Human Services may exempt from disclo-
24 sure the names, addresses and other identifying information about other
25 children, witnesses, victims or other persons named in the report or record
26 if the department determines, in written findings, that the safety or well-
27 being of a person named in the report or record may be jeopardized by dis-
28 closure of the names, addresses or other identifying information, and if that
29 concern outweighs the public’s interest in the disclosure of that information.

30 “(b) If the Department of Human Services does not have a report or re-

1 cord of abuse regarding a child who, as the result of abuse, died or suffered
2 serious physical injury as defined in ORS 161.015, the department may dis-
3 close that information.

4 “(3) The Department of Human Services may make reports and records
5 compiled under the provisions of ORS 419B.010 to 419B.050 available to any
6 person, administrative hearings officer, court, agency, organization or other
7 entity when the department determines that such disclosure is necessary to
8 administer its child welfare services and is in the best interests of the af-
9 fected child, or that such disclosure is necessary to investigate, prevent or
10 treat child abuse and neglect, to protect children from abuse and neglect or
11 for research when the Director of Human Services gives prior written ap-
12 proval. The Department of Human Services shall adopt rules setting forth the
13 procedures by which it will make the disclosures authorized under this sub-
14 section or subsection (1) or (2) of this section. The name, address and other
15 identifying information about the person who made the report may not be
16 disclosed pursuant to this subsection and subsection (1) of this section.

17 “(4) A law enforcement agency may make reports and records compiled
18 under the provisions of ORS 419B.010 to 419B.050 available to other law
19 enforcement agencies, district attorneys, city attorneys with criminal
20 prosecutorial functions and the Attorney General when the law enforcement
21 agency determines that disclosure is necessary for the investigation or
22 enforcement of laws relating to child abuse and neglect or necessary to de-
23 termine a claim for crime victim compensation under ORS 147.005 to 147.367.

24 “(5) A law enforcement agency, upon completing an investigation and
25 closing the file in a specific case relating to child abuse or neglect, shall
26 make reports and records in the case available upon request to any law
27 enforcement agency or community corrections agency in this state, to the
28 Department of Corrections, to the Oregon Youth Authority or to the State
29 Board of Parole and Post-Prison Supervision for the purpose of managing and
30 supervising offenders in custody or on probation, parole, post-prison super-

1 vision or other form of conditional or supervised release. A law enforcement
2 agency may make reports and records compiled under the provisions of ORS
3 419B.010 to 419B.050 available to the Oregon Youth Authority, law enforce-
4 ment, community corrections, corrections or parole agencies in an open case
5 when the law enforcement agency determines that the disclosure will not
6 interfere with an ongoing investigation in the case. The name, address and
7 other identifying information about the person who made the report may not
8 be disclosed under this subsection or subsection (6)(b) of this section.

9 “(6)(a) Any record made available to a law enforcement agency or com-
10 munity corrections agency in this state, to the Department of Corrections,
11 the Oregon Youth Authority or the State Board of Parole and Post-Prison
12 Supervision or to a physician, physician assistant or nurse practitioner in
13 this state, as authorized by subsections (1) to (5) of this section, shall be kept
14 confidential by the agency, department, board, physician, physician assistant
15 or nurse practitioner. Any record or report disclosed by the Department of
16 Human Services to other persons or entities pursuant to subsections (1) and
17 (3) of this section shall be kept confidential.

18 “(b) Notwithstanding paragraph (a) of this subsection:

19 “(A) A law enforcement agency, a community corrections agency, the
20 Department of Corrections, the Oregon Youth Authority and the State Board
21 of Parole and Post-Prison Supervision may disclose records made available
22 to them under subsection (5) of this section to each other, to law enforce-
23 ment, community corrections, corrections and parole agencies of other states
24 and to authorized treatment providers for the purpose of managing and
25 supervising offenders in custody or on probation, parole, post-prison super-
26 vision or other form of conditional or supervised release.

27 “(B) The Department of Corrections and the Oregon Youth Authority may
28 disclose records made available to them under subsection (5) of this section
29 regarding a person in the custody of the Department of Corrections or the
30 Oregon Youth Authority to each other, to the court, to the district attorney

1 and to the person's attorney for the purpose of the person's hearing under
2 ORS 420A.200 to 420A.206.

3 "(C) A person may disclose records made available to the person under
4 subsection (1)(i) of this section if the records are disclosed for the purpose
5 of advancing the public interest.

6 "(7) Except as provided by ORS 339.389, an officer or employee of the
7 Department of Human Services or of a law enforcement agency or any person
8 or entity to whom disclosure is made pursuant to subsections (1) to (6) of this
9 section may not release any information not authorized by subsections (1) to
10 (6) of this section.

11 "(8) As used in this section, 'law enforcement agency' has the meaning
12 given that term in ORS 181A.010.

13 "(9) A person who violates subsection (6)(a) or (7) of this section commits
14 a Class A violation.

15
16 **"VULNERABLE ADULT ABUSE**

17
18 **"SECTION 14.** ORS 430.735 is amended to read:

19 "430.735. As used in ORS 430.735 to 430.765:

20 "(1) 'Abuse' means one or more of the following:

21 "(a) Abandonment, including desertion or willful forsaking of an adult or
22 the withdrawal or neglect of duties and obligations owed an adult by a
23 caregiver or other person.

24 "(b) Any physical injury to an adult caused by other than accidental
25 means, or that appears to be at variance with the explanation given of the
26 injury.

27 "(c) Willful infliction of physical pain or injury upon an adult.

28 "(d) Sexual abuse.

29 "(e) Neglect.

30 "(f) Verbal abuse of an adult.

1 “(g) Financial exploitation of an adult.

2 “(h) Involuntary seclusion of an adult for the convenience of the caregiver
3 or to discipline the adult.

4 “(i) A wrongful use of a physical or chemical restraint upon an adult,
5 excluding an act of restraint prescribed by a physician licensed under ORS
6 chapter 677, physician assistant licensed under ORS 677.505 to 677.525,
7 naturopathic physician licensed under ORS chapter 685 or nurse practitioner
8 licensed under ORS 678.375 to 678.390 and any treatment activities that are
9 consistent with an approved treatment plan or in connection with a court
10 order.

11 “(j) An act that constitutes a crime under ORS 163.375, 163.405, 163.411,
12 163.415, 163.425, 163.427, 163.465 or 163.467.

13 “(k) Any death of an adult caused by other than accidental or natural
14 means.

15 **“(L) If the adult is a person with a developmental disability who is**
16 **a student in a public education program, as defined in ORS 339.285, the**
17 **restraint or seclusion of the adult in violation of ORS 339.285, 339.288,**
18 **339.291, 339.303 or 339.308.**

19 **“(m) If the adult is a person with a developmental disability who is**
20 **a student at a public school subject to policies and procedures adopted**
21 **under ORS 339.250, the infliction of corporal punishment on the adult**
22 **in violation of ORS 339.250 (9).**

23 “(2) ‘Adult’ means a person 18 years of age or older:

24 “(a) With a developmental disability who is currently receiving services
25 from a community program or facility or who was previously determined el-
26 igible for services as an adult by a community program or facility;

27 “(b) With a severe and persistent mental illness who is receiving mental
28 health treatment from a community program; or

29 “(c) Who is receiving services for a substance use disorder or a mental
30 illness in a facility or a state hospital.

1 “(3) ‘Adult protective services’ means the necessary actions taken to pre-
2 vent abuse or exploitation of an adult, to prevent self-destructive acts and
3 to safeguard the adult’s person, property and funds, including petitioning for
4 a protective order as defined in ORS 125.005. Any actions taken to protect
5 an adult shall be undertaken in a manner that is least intrusive to the adult
6 and provides for the greatest degree of independence.

7 “(4) ‘Caregiver’ means an individual, whether paid or unpaid, or a facility
8 that has assumed responsibility for all or a portion of the care of an adult
9 as a result of a contract or agreement.

10 “(5) ‘Community program’ includes:

11 “(a) A community mental health program or a community developmental
12 disabilities program as established in ORS 430.610 to 430.695; or

13 “(b) A provider that is paid directly or indirectly by the Oregon Health
14 Authority to provide mental health treatment in the community.

15 “(6) ‘Facility’ means a residential treatment home or facility, residential
16 care facility, adult foster home, residential training home or facility or crisis
17 respite facility.

18 “(7) ‘Financial exploitation’ means:

19 “(a) Wrongfully taking the assets, funds or property belonging to or in-
20 tended for the use of an adult.

21 “(b) Alarming an adult by conveying a threat to wrongfully take or ap-
22 propriate money or property of the adult if the adult would reasonably be-
23 lieve that the threat conveyed would be carried out.

24 “(c) Misappropriating, misusing or transferring without authorization any
25 money from any account held jointly or singly by an adult.

26 “(d) Failing to use the income or assets of an adult effectively for the
27 support and maintenance of the adult.

28 “(8) ‘Intimidation’ means compelling or deterring conduct by threat.

29 “(9) ‘Law enforcement agency’ means:

30 “(a) Any city or municipal police department;

1 “(b) A police department established by a university under ORS 352.121
2 or 353.125;

3 “(c) Any county sheriff’s office;

4 “(d) The Oregon State Police; or

5 “(e) Any district attorney.

6 “(10) ‘Neglect’ means:

7 “(a) Failure to provide the care, supervision or services necessary to
8 maintain the physical and mental health of an adult that may result in
9 physical harm or significant emotional harm to the adult;

10 “(b) Failure of a caregiver to make a reasonable effort to protect an adult
11 from abuse; or

12 “(c) Withholding of services necessary to maintain the health and well-
13 being of an adult that leads to physical harm of the adult.

14 “(11) ‘Public or private official’ means:

15 “(a) Physician licensed under ORS chapter 677, physician assistant li-
16 censed under ORS 677.505 to 677.525, naturopathic physician, psychologist
17 or chiropractor, including any intern or resident;

18 “(b) Licensed practical nurse, registered nurse, nurse’s aide, home health
19 aide or employee of an in-home health service;

20 “(c) Employee of the Department of Human Services or Oregon Health
21 Authority, local health department, community mental health program or
22 community developmental disabilities program or private agency contracting
23 with a public body to provide any community mental health service;

24 “(d) Peace officer;

25 “(e) Member of the clergy;

26 “(f) Regulated social worker;

27 “(g) Physical, speech or occupational therapist;

28 “(h) Information and referral, outreach or crisis worker;

29 “(i) Attorney;

30 “(j) Licensed professional counselor or licensed marriage and family

1 therapist;

2 “(k) Any public official;

3 “(L) Firefighter or emergency medical services provider;

4 “(m) Elected official of a branch of government of this state or a state
5 agency, board, commission or department of a branch of government of this
6 state or of a city, county or other political subdivision in this state;

7 “(n) Personal support worker, as defined in ORS 410.600;

8 “(o) Home care worker, as defined in ORS 410.600; or

9 “(p) Individual paid by the Department of Human Services to provide a
10 service identified in an individualized service plan of an adult with a devel-
11 opmental disability.

12 “(12) ‘Services’ includes but is not limited to the provision of food,
13 clothing, medicine, housing, medical services, assistance with bathing or
14 personal hygiene or any other service essential to the well-being of an adult.

15 “(13)(a) ‘Sexual abuse’ means:

16 “(A) Sexual contact with a nonconsenting adult or with an adult consid-
17 ered incapable of consenting to a sexual act under ORS 163.315;

18 “(B) Sexual harassment, sexual exploitation or inappropriate exposure to
19 sexually explicit material or language;

20 “(C) Any sexual contact between an employee of a facility or paid
21 caregiver and an adult served by the facility or caregiver;

22 “(D) Any sexual contact between an adult and a relative of the adult
23 other than a spouse;

24 “(E) Any sexual contact that is achieved through force, trickery, threat
25 or coercion; or

26 “(F) Any sexual contact between an individual receiving mental health
27 or substance abuse treatment and the individual providing the mental health
28 or substance abuse treatment.

29 “(b) ‘Sexual abuse’ does not mean consensual sexual contact between an
30 adult and a paid caregiver who is the spouse of the adult.

1 “(14) ‘Sexual contact’ has the meaning given that term in ORS 163.305.

2 “(15) ‘Verbal abuse’ means to threaten significant physical or emotional
3 harm to an adult through the use of:

4 “(a) Derogatory or inappropriate names, insults, verbal assaults, profanity
5 or ridicule; or

6 “(b) Harassment, coercion, threats, intimidation, humiliation, mental cru-
7 elty or inappropriate sexual comments.

8
9 **“PROFESSIONAL MISCONDUCT**

10
11 **“SECTION 15.** ORS 676.150 is amended to read:

12 “676.150. (1) As used in this section:

13 “(a) ‘Board’ means the:

14 “(A) State Board of Examiners for Speech-Language Pathology and
15 Audiology;

16 “(B) State Board of Chiropractic Examiners;

17 “(C) State Board of Licensed Social Workers;

18 “(D) Oregon Board of Licensed Professional Counselors and Therapists;

19 “(E) Oregon Board of Dentistry;

20 “(F) Board of Licensed Dietitians;

21 “(G) State Board of Massage Therapists;

22 “(H) Oregon Board of Naturopathic Medicine;

23 “(I) Oregon State Board of Nursing;

24 “(J) Long Term Care Administrators Board;

25 “(K) Oregon Board of Optometry;

26 “(L) State Board of Pharmacy;

27 “(M) Oregon Medical Board;

28 “(N) Occupational Therapy Licensing Board;

29 “(O) Oregon Board of Physical Therapy;

30 “(P) Oregon Board of Psychology;

1 “(Q) Board of Medical Imaging;

2 “(R) State Board of Direct Entry Midwifery;

3 “(S) State Board of Denture Technology;

4 “(T) Respiratory Therapist and Polysomnographic Technologist Licensing
5 Board;

6 “(U) Oregon Health Authority, to the extent that the authority licenses
7 emergency medical services providers;

8 “(V) Oregon State Veterinary Medical Examining Board; *[or]*

9 “(W) State Mortuary and Cemetery Board[.]; **or**

10 **“(X) Behavior Analysis Regulatory Board.**

11 “(b) ‘Licensee’ means a health professional licensed or certified by or
12 registered with a board.

13 “(c) ‘Prohibited conduct’ means conduct by a licensee that:

14 “(A) Constitutes a criminal act against a patient or client; or

15 “(B) Constitutes a criminal act that creates a risk of harm to a patient
16 or client.

17 “(d) ‘Unprofessional conduct’ means conduct unbecoming a licensee or
18 detrimental to the best interests of the public, including conduct contrary
19 to recognized standards of ethics of the licensee’s profession or conduct that
20 endangers the health, safety or welfare of a patient or client.

21 “(2) Unless state or federal laws relating to confidentiality or the pro-
22 tection of health information prohibit disclosure, a licensee who has rea-
23 sonable cause to believe that another licensee has engaged in prohibited or
24 unprofessional conduct shall report the conduct to the board responsible for
25 the licensee who is believed to have engaged in the conduct. The reporting
26 licensee shall report the conduct without undue delay, but in no event later
27 than 10 working days after the reporting licensee learns of the conduct.

28 “(3) A licensee who is convicted of a misdemeanor or felony or who is
29 arrested for a felony crime shall report the conviction or arrest to the
30 licensee’s board within 10 days after the conviction or arrest.

1 “(4) The board responsible for a licensee who is reported to have engaged
2 in prohibited or unprofessional conduct shall investigate in accordance with
3 the board’s rules. If the board has reasonable cause to believe that the
4 licensee has engaged in prohibited conduct, the board shall present the facts
5 to an appropriate law enforcement agency without undue delay, but in no
6 event later than 10 working days after the board finds reasonable cause to
7 believe that the licensee engaged in prohibited conduct.

8 “(5) A licensee who fails to report prohibited or unprofessional conduct
9 as required by subsection (2) of this section or the licensee’s conviction or
10 arrest as required by subsection (3) of this section is subject to discipline
11 by the board responsible for the licensee.

12 “(6) A licensee who fails to report prohibited conduct as required by
13 subsection (2) of this section commits a Class A violation.

14 “(7)(a) Notwithstanding any other provision of law, a report under sub-
15 section (2) or (3) of this section is confidential under ORS 676.175.

16 “(b) A board may disclose a report as provided in ORS 676.177.

17 “(c) If the Health Licensing Office receives a report described in this
18 subsection, the report is confidential and the office may only disclose the
19 report pursuant to ORS 676.595 and 676.599.

20 “(8) Except as part of an application for a license or for renewal of a li-
21 cense and except as provided in subsection (3) of this section, a board may
22 not require a licensee to report the licensee’s criminal conduct.

23 “(9) The obligations imposed by this section are in addition to and not in
24 lieu of other obligations to report unprofessional conduct as provided by
25 statute.

26 “(10) A licensee who reports to a board in good faith as required by sub-
27 section (2) of this section is immune from civil liability for making the re-
28 port.

29 “(11) A board and the members, employees and contractors of the board
30 are immune from civil liability for actions taken in good faith as a result

of a report received under subsection (2) or (3) of this section.

“INVESTIGATIONS OF ABUSE IN OUT-OF-HOME SETTINGS

“SECTION 16. The Department of Human Services by rule shall establish processes for investigations under ORS 418.257 to 418.259, 419B.005 to 419B.050 and 430.735 to 430.765 of child abuse in nonfamily settings. The rules, at a minimum, must:

“(1) Prescribe processes the department will use to determine whether substantiated abuse is the result of a violation by an individual, an entity or both an individual and an entity.

“(2) Require that all interviews of witnesses and suspected victims of the abuse be conducted in a trauma-informed manner.

“(3) Prescribe procedures for interviews of employees and agents of an entity, including:

“(a) Making all reasonable efforts to interview each employee who is a witness to the suspected abuse.

“(b) Allowing employees and agents to be interviewed outside the presence of supervisors or other agents or employees of the entity.

“(c) Providing employees with the opportunity to be accompanied at the interview with an advocate or support person, including an attorney, a union steward or other trusted individual.

“(3) Prescribe procedures for interviews of children who witnessed or are the suspected victims of the abuse, including:

“(a) Making all reasonable efforts to conduct interviews of each child witness, including the child who is the suspected victim of the abuse, unless the investigator specifically determines that the interview may significantly traumatize the child and is not in the best interests of the child.

“(b) Conducting the interview outside the presence of employees of

1 the entity at which the abuse occurred.

2 “(c) Informing the child that the child may have a parent or
3 guardian present at the interview.

4 “(d) If the suspected abuse involved the use of restraint or seclu-
5 sion, asking the child who is the suspected victim of the abuse about
6 whether the child experienced any reportable injury or pain as a result
7 of the use of restraint or seclusion.

8
9 “MISCELLANEOUS
10

11 “SECTION 17. Section 2 of this 2023 Act and the amendments to
12 ORS 339.285, 339.288, 339.291, 418.259, 418.519, 418.521, 418.523, 418.528,
13 419B.005, 419B.035, 430.735 and 676.150 by sections 3 to 15 of this 2023
14 Act apply to conduct occurring on or after the operative date specified
15 in section 18 of this 2023 Act.

16 “SECTION 18. (1) Sections 2 and 16 of this 2023 Act and the
17 amendments to ORS 339.285, 339.288, 339.291, 418.259, 418.519, 418.521,
18 418.523, 418.528, 419B.005, 419B.035, 430.735 and 676.150 by sections 3 to
19 15 of this 2023 Act become operative on January 1, 2024.

20 “(2) The Department of Human Services may take any action before
21 the operative date specified in subsection (1) of this section that is
22 necessary to enable the department to exercise, on and after the op-
23 erative date specified in subsection (1) of this section, all the duties,
24 functions and powers conferred on the department by sections 2 and
25 16 of this 2023 Act and the amendments to ORS 339.285, 339.288, 339.291,
26 418.259, 418.519, 418.521, 418.523, 418.528, 419B.005, 419B.035, 430.735 and
27 676.150 by sections 3 to 15 of this 2023 Act.

28
29 “CAPTIONS
30

1 **“SECTION 19.** The unit captions used in this 2023 Act are provided
2 **only for the convenience of the reader and do not become part of the**
3 **statutory law of this state or express any legislative intent in the**
4 **enactment of this 2023 Act.**

5
6 **“EFFECTIVE DATE**

7
8 **“SECTION 20.** This 2023 Act takes effect on the 91st day after the
9 **date on which the 2023 regular session of the Eighty-second Legislative**
10 **Assembly adjourns sine die.”.**

11 _____