

Enrolled
Senate Bill 846

Sponsored by Senators GELSER, FREDERICK, MANNING JR, THATCHER; Representatives BYNUM, LININGER, POST, STARK, WILLIAMSON

CHAPTER

AN ACT

Relating to restraint of youth in custodial circumstances.

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

SECTION 1. Sections 2 and 3 of this 2017 Act are added to and made a part of ORS chapter 419A.

SECTION 2. During any juvenile court proceeding under this chapter and ORS chapters 419B and 419C regarding a youth, youth offender or young person:

(1)(a) Instruments of physical restraint, such as handcuffs, chains, irons, straitjackets, cloth restraints, leather restraints, plastic restraints and other similar items, may not be used during the juvenile court proceeding and must be removed prior to the youth, youth offender or young person being brought into the courtroom unless the court finds that the use of restraints is necessary due to an immediate and serious risk of dangerous or disruptive behavior and there are no less restrictive alternatives that will alleviate the immediate and serious risk of dangerous or disruptive behavior.

(b) If the means do not exist to remove instruments of physical restraint as described in paragraph (a) of this subsection prior to the youth, youth offender or young person being brought into the courtroom, such restraints shall be removed prior to commencement of the proceeding.

(c) Instruments of physical restraint removed under this subsection must remain removed for the duration of the proceeding.

(2) In determining whether an immediate and serious risk of dangerous or disruptive behavior exists, the court may consider:

(a) Whether the youth, youth offender or young person has a history of dangerous or disruptive behavior that has placed the youth, youth offender or young person or others in potentially harmful situations as evidenced by recent behavior;

(b) Whether the youth, youth offender or young person presents a substantial risk of inflicting physical harm on himself or others; and

(c) Whether the youth, youth offender or young person presents a substantial risk of flight from the courtroom or courtroom premises.

(3) In determining whether a less restrictive alternative will alleviate the immediate and serious risk of dangerous or disruptive behavior, the court may consider the presence of court personnel, law enforcement officers, juvenile department staff or counselors, or bailiffs.

(4) When the use of restraints is requested by a law enforcement agency, the juvenile department or other party to the juvenile court proceeding, the request must be made in writing and presented to the court and other parties prior to the youth, youth offender or young person's appearance in the courtroom for the juvenile court proceeding. The request must describe discrete, recent, concrete and observable examples of behaviors or risk factors that justify the use of restraints.

(5) The court shall provide the attorney for the youth, youth offender or young person an opportunity to be heard prior to ordering the use of restraints. If restraints are ordered, the court shall make written findings of fact in support of the order.

(6) Any restraints used must allow the youth, youth offender or young person limited movement of the hands to read and handle documents and writings necessary to the juvenile court proceeding. Under no circumstances should a youth, youth offender or young person be restrained to a stationary object or another person.

(7) Restraints may not be used as punishment, for convenience or as a substitute for staff supervision.

SECTION 3. During the transportation of a youth, youth offender, young person, ward or child by the Department of Human Services, the Oregon Health Authority or an agent of the department or authority:

(1) Instruments of physical restraint, such as handcuffs, chains, irons, straitjackets, cloth restraints, leather restraints, plastic restraints and other similar items, may not be used unless:

(a) The transportation is secure transportation to a detention facility, youth correction facility, secure hospital, secure intensive community inpatient facility or other secure facility; or

(b) Restraints are necessary due to an immediate and serious risk of dangerous or disruptive behavior and there are no less restrictive alternatives that will alleviate the immediate and serious risk of dangerous or disruptive behavior.

(2) Prior to the use of restraints during transportation, a transportation safety plan, including documentation of the need for restraints, must be created. The transportation safety plan must address intervention strategies designed to modify behavior without the use of restraints and recommend the least restrictive effective alternative.

(3) Only staff who have been adequately trained in restraint device usage may use and apply restraints during transportation.

(4) Restraints during transportation may not be used as punishment, for convenience or as a substitute for staff supervision.

(5) This section applies to all circumstances of transportation of a ward or child by the Department of Human Services, the Oregon Health Authority or an agent of the department or authority, including but not limited to transportation between placements with child-caring agencies, foster homes, shelter homes, treatment and residential facilities or any other type of placement destination for a ward or child in the custody of the Department of Human Services.

(6) As used in this section:

(a) "Detention facility" has the meaning given that term in ORS 419A.004.

(b) "Youth correction facility" has the meaning given that term in ORS 420.005.

Passed by Senate April 3, 2017

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 25, 2017

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2017

Approved:

.....M,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2017

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Dennis Richardson, Secretary of State