

A-Engrossed
House Bill 2189

Ordered by the House March 21
Including House Amendments dated March 21

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Human Services)

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.

[Requires mandatory child abuse reporters to report likely and actual child abuse. Increases scope of child abuse investigations to include investigations of likely child abuse.]

Modifies definition of "abuse" for purposes of child abuse reporting to include existence of circumstances that create substantial threat to child. Extends immunity from liability to persons voluntarily reporting child abuse in good faith.

A BILL FOR AN ACT

1
2 Relating to child abuse; amending ORS 419B.005, 419B.007, 419B.017, 419B.020 and 419B.025.

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

4 **SECTION 1.** ORS 419B.005 is amended to read:

5 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

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

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

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

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

15 (D) Sexual abuse, as defined in ORS chapter 163.

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

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

24 (ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution, as defined in
25 ORS chapter 167.

26 (F) Negligent treatment or maltreatment of a child, including but not limited to the failure to

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 provide adequate food, clothing, shelter, **supervision, protection** or medical care that is likely to
2 endanger the health or [*welfare*] **safety** of the child.

3 [(G) *Threatened harm to a child, which means subjecting a child to a substantial risk of harm to*
4 *the child's health or welfare.*]

5 [(H)] (G) Buying or selling a person under 18 years of age as described in ORS 163.537.

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

8 [(J)] (I) Unlawful exposure to a controlled substance, as defined in ORS 475.005, that subjects
9 a child to a substantial risk of harm to the child's health or safety.

10 (J) **The existence of circumstances that create a substantial threat that a child will ex-**
11 **perience or be subjected to any of the conditions or circumstances described in this para-**
12 **graph.**

13 (b) "Abuse" does not include reasonable discipline unless the discipline results in one of the
14 conditions described in paragraph (a) of this subsection.

15 (2) "Child" means an unmarried person who is under 18 years of age.

16 (3) "Public or private official" means:

17 (a) Physician, including any intern or resident.

18 (b) Dentist.

19 (c) School employee.

20 (d) Licensed practical nurse or registered nurse.

21 (e) Employee of the Department of Human Services, State Commission on Children and Families,
22 Child Care Division of the Employment Department, the Oregon Youth Authority, a county health
23 department, a community mental health and developmental disabilities program, a county juvenile
24 department, a licensed child-caring agency or an alcohol and drug treatment program.

25 (f) Peace officer.

26 (g) Psychologist.

27 (h) Member of the clergy.

28 (i) Licensed clinical social worker.

29 (j) Optometrist.

30 (k) Chiropractor.

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

32 (m) Attorney.

33 (n) Naturopathic physician.

34 (o) Licensed professional counselor.

35 (p) Licensed marriage and family therapist.

36 (q) Firefighter or emergency medical technician.

37 (r) A court appointed special advocate, as defined in ORS 419A.004.

38 (s) A child care provider registered or certified under ORS 657A.030 and 657A.250 to 657A.450.

39 (t) Member of the Legislative Assembly.

40 (4) "Law enforcement agency" means:

41 (a) Any city or municipal police department.

42 (b) Any county sheriff's office.

43 (c) The Oregon State Police.

44 (d) A county juvenile department.

45 **SECTION 2.** ORS 419B.007 is amended to read:

1 419B.007. The Legislative Assembly finds that for the purpose of facilitating the use of protec-
2 tive social services to prevent *[further]* abuse, safeguard and enhance the welfare of abused children,
3 and preserve family life when consistent with the protection of the child by stabilizing the family
4 and improving parental capacity, it is necessary and in the public interest to require mandatory
5 reports and investigations of abuse of children and to encourage voluntary reports.

6 **SECTION 3.** ORS 419B.017 is amended to read:

7 419B.017. (1) The Department of Human Services shall adopt rules establishing:

8 (a) The time within which the notification required by ORS 419B.015 *[(1)(a)]* (1)(b) must be made.
9 At a minimum, the rules shall:

10 (A) Establish which reports of child abuse require notification within 24 hours after receipt;

11 (B) Provide that all other reports of child abuse require notification within 10 days after receipt;
12 and

13 (C) Establish criteria that enable the department, the designee of the department or a law
14 enforcement agency to quickly and easily identify reports that require notification within 24 hours
15 after receipt.

16 (b) How the notification is to be made.

17 (2) The department shall appoint an advisory committee to advise the department in adopting
18 rules required by this section. The department shall include as members of the advisory committee
19 representatives of law enforcement agencies and multidisciplinary teams formed pursuant to ORS
20 418.747 and other interested parties.

21 (3) In adopting rules required by this section, the department shall balance the need for pro-
22 viding other entities with the information contained in a report received under ORS 419B.015 with
23 the resources required to make the notification.

24 (4) The department may recommend practices and procedures to local law enforcement agencies
25 to meet the requirements of rules adopted under this section.

26 **SECTION 4.** ORS 419B.020 is amended to read:

27 419B.020. (1) Upon receipt of an oral report of child abuse, the Department of Human Services
28 or the law enforcement agency shall immediately:

29 (a) Cause an investigation to be made to determine the nature and cause of the abuse of the
30 child; and

31 (b) Notify the Child Care Division if the alleged child abuse occurred in a child care facility as
32 defined in ORS 657A.250.

33 (2) If the law enforcement agency conducting the investigation finds reasonable cause to believe
34 that abuse has occurred, the law enforcement agency shall notify by oral report followed by written
35 report the local office of the department. The department shall provide protective social services
36 of its own or of other available social agencies if necessary to **protect the child and to prevent**
37 *[further abuses to] abuse of* the child *[or to safeguard the child's welfare]*.

38 (3) If a child is taken into protective custody by the department, the department shall promptly
39 make reasonable efforts to ascertain the name and address of the child's parents or guardian.

40 (4)(a) If a child is taken into protective custody by the department or a law enforcement official,
41 the department or law enforcement official shall, if possible, make reasonable efforts to advise the
42 parents or guardian immediately, regardless of the time of day, that the child has been taken into
43 custody, the reasons the child has been taken into custody and general information about the child's
44 placement, and the telephone number of the local office of the department and any after-hours tele-
45 phone numbers.

1 (b) Notice may be given by any means reasonably certain of notifying the parents or guardian,
2 including but not limited to written, telephonic or in-person oral notification. If the initial notifica-
3 tion is not in writing, the information required by paragraph (a) of this subsection also shall be
4 provided to the parents or guardian in writing as soon as possible.

5 (c) The department also shall make a reasonable effort to notify the noncustodial parent of the
6 information required by paragraph (a) of this subsection in a timely manner.

7 (d) If a child is taken into custody while under the care and supervision of a person or organ-
8 ization other than the parent, the department, if possible, shall immediately notify the person or
9 organization that the child has been taken into protective custody.

10 (5) If a law enforcement officer or the department, when taking a child into protective custody,
11 has reasonable cause to believe that the child has been affected by sexual abuse and rape of a child
12 as defined in ORS 419B.005 (1)(a)(C) and that physical evidence of the abuse exists and is likely to
13 disappear, the court may authorize a physical examination for the purposes of preserving evidence
14 if the court finds that it is in the best interest of the child to have such an examination. Nothing
15 in this section affects the authority of the department to consent to physical examinations of the
16 child at other times.

17 (6) A minor child of 12 years of age or older may refuse to consent to the examination described
18 in subsection (5) of this section. The examination shall be conducted by or under the supervision
19 of a physician licensed under ORS chapter 677 or a nurse practitioner licensed under ORS chapter
20 678 and, whenever practicable, trained in conducting such examinations.

21 **SECTION 5.** ORS 419B.025 is amended to read:

22 419B.025. Anyone participating in good faith in the making of a report of child abuse, **whether**
23 **the report is voluntary or is required by ORS 419B.010**, and who has reasonable grounds for [*the*
24 *making thereof*] **making the report** shall have immunity from any liability, civil or criminal, that
25 might otherwise be incurred or imposed with respect to the making or content of such report. Any
26 such participant shall have the same immunity with respect to participating in any judicial pro-
27 ceeding resulting from such report.

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