

House Bill 2189

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 **as introduced**.

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.

A BILL FOR AN ACT

1
2 Relating to child abuse; amending ORS 146.750, 417.815, 419B.005, 419B.007, 419B.010, 419B.015,
3 419B.017, 419B.020, 419B.025, 419B.035, 419B.040 and 419B.045.

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

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

6 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (b) Dentist.

12 (c) School employee.

13 (d) Licensed practical nurse or registered nurse.

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

18 (f) Peace officer.

19 (g) Psychologist.

20 (h) Member of the clergy.

21 (i) Licensed clinical social worker.

22 (j) Optometrist.

23 (k) Chiropractor.

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

25 (m) Attorney.

26 (n) Naturopathic physician.

27 (o) Licensed professional counselor.

28 (p) Licensed marriage and family therapist.

29 (q) Firefighter or emergency medical technician.

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

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

32 (t) Member of the Legislative Assembly.

33 (4) "Law enforcement agency" means:

34 (a) Any city or municipal police department.

35 (b) Any county sheriff's office.

36 (c) The Oregon State Police.

37 (d) A county juvenile department.

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

39 419B.007. The Legislative Assembly finds that for the purpose of facilitating the use of protec-
40 tive social services to prevent [further] abuse, safeguard and enhance the welfare of abused children,
41 and preserve family life when consistent with the protection of the child by stabilizing the family
42 and improving parental capacity, it is necessary and in the public interest to require mandatory
43 reports and investigations of **situations in which children are abused or are likely to suffer**
44 abuse [of children] and to encourage voluntary reports.

45 **SECTION 3.** ORS 419B.010 is amended to read:

1 419B.010. (1)(a) Any public or private official having reasonable cause to believe that any child
 2 with whom the official comes in contact has suffered abuse or **is likely to suffer abuse, or** that
 3 any person with whom the official comes in contact has abused a child shall immediately report or
 4 cause a report to be made in the manner required in ORS 419B.015.

5 (b) Nothing contained in ORS 40.225 to 40.295 or 419B.234 (6) affects the duty to report imposed
 6 by this section, except that a psychiatrist, psychologist, member of the clergy, attorney or guardian
 7 ad litem appointed under ORS 419B.231 is not required to report such information communicated
 8 by a person if the communication is privileged under ORS 40.225 to 40.295 or 419B.234 (6).

9 (c) An attorney is not required to make a report under this section by reason of information
 10 communicated to the attorney in the course of representing a client if disclosure of the information
 11 would be detrimental to the client.

12 (2) Notwithstanding subsection (1) of this section, a report need not be made under this section
 13 if the public or private official acquires information relating to abuse by reason of a report made
 14 under this section, or by reason of a proceeding arising out of a report made under this section, and
 15 the public or private official reasonably believes that the information is already known by a law
 16 enforcement agency or the Department of Human Services.

17 (3) A person who violates subsection (1) of this section commits a Class A violation. Prosecution
 18 under this subsection shall be commenced at any time within 18 months after commission of the of-
 19 fense.

20 **SECTION 4.** ORS 419B.015 is amended to read:

21 419B.015. (1)(a) A person making a report [*of child abuse,*] **that a child is abused or is likely**
 22 **to suffer abuse, [whether voluntarily or pursuant to] whether the report is made voluntarily or**
 23 **as required by ORS 419B.010 or otherwise,** shall make an oral report by telephone or otherwise
 24 to the local office of the Department of Human Services, to the designee of the department or to a
 25 law enforcement agency within the county where the person making the report is located at the time
 26 of the contact. The report shall contain, if known, the names and addresses of the child and the
 27 parents of the child or other persons responsible for care of the child, the child's age, the nature
 28 and extent of the abuse, including any evidence of previous abuse, the explanation given for the
 29 abuse and any other information that the person making the report believes might be helpful in es-
 30 tablishing the cause of the abuse and the identity of the perpetrator.

31 (b) When a report [*of child abuse*] is received by the department, the department shall notify a
 32 law enforcement agency within the county where the report was made. When a report [*of child*
 33 *abuse*] is received by a designee of the department, the designee shall notify, according to the con-
 34 tract, either the department or a law enforcement agency within the county where the report was
 35 made. When a report [*of child abuse*] is received by a law enforcement agency, the agency shall
 36 notify the local office of the department within the county where the report was made.

37 (2) When a report [*of child abuse*] is received under subsection (1)(a) of this section, the entity
 38 receiving the report shall make the notification required by subsection (1)(b) of this section accord-
 39 ing to rules adopted by the department under ORS 419B.017.

40 **SECTION 5.** ORS 419B.017 is amended to read:

41 419B.017. (1) The Department of Human Services shall adopt rules establishing:

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

44 (A) Establish which reports [*of child abuse*] require notification within 24 hours after receipt;

45 (B) Provide that all other reports [*of child abuse*] require notification within 10 days after re-

1 ceipt; and

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

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

6 (2) The department shall appoint an advisory committee to advise the department in adopting
7 rules required by this section. The department shall include as members of the advisory committee
8 representatives of law enforcement agencies and multidisciplinary teams formed pursuant to ORS
9 418.747 and other interested parties.

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

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

15 **SECTION 6.** ORS 419B.020 is amended to read:

16 419B.020. (1) Upon receipt of an oral report [*of child abuse*] **that a child is abused or is likely**
17 **to suffer abuse, whether the report is voluntary or is required by ORS 419B.010 or**
18 **otherwise**, the Department of Human Services or the law enforcement agency shall immediately:

19 (a) Cause an investigation to be made to determine the nature and cause of the abuse **or likely**
20 **abuse** of the child; and

21 (b) Notify the Child Care Division if the alleged child abuse **or alleged likely child abuse** oc-
22 curred in a child care facility as defined in ORS 657A.250.

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

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

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

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

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

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

45 (5) If a law enforcement officer or the department, when taking a child into protective custody,

1 has reasonable cause to believe that the child has been affected by sexual abuse and rape of a child
 2 as defined in ORS 419B.005 (1)(a)(C) and that physical evidence of the abuse exists and is likely to
 3 disappear, the court may authorize a physical examination for the purposes of preserving evidence
 4 if the court finds that it is in the best interest of the child to have such an examination. Nothing
 5 in this section affects the authority of the department to consent to physical examinations of the
 6 child at other times.

7 (6) A minor child of 12 years of age or older may refuse to consent to the examination described
 8 in subsection (5) of this section. The examination shall be conducted by or under the supervision
 9 of a physician licensed under ORS chapter 677 or a nurse practitioner licensed under ORS chapter
 10 678 and, whenever practicable, trained in conducting such examinations.

11 **SECTION 7.** ORS 419B.025 is amended to read:

12 419B.025. Anyone participating in good faith in the making of a report [*of child abuse*] **that a**
 13 **child is abused or is likely to suffer abuse, whether the report is voluntary or is required by**
 14 **ORS 419B.010 or otherwise**, and who has reasonable grounds for [*the making thereof*] **making the**
 15 **report** shall have immunity from any liability, civil or criminal, that might otherwise be incurred
 16 or imposed with respect to the making or content of such report. Any such participant shall have
 17 the same immunity with respect to participating in any judicial proceeding resulting from such re-
 18 port.

19 **SECTION 8.** ORS 419B.035 is amended to read:

20 419B.035. (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.505 and
 21 192.610 to 192.990 relating to confidentiality and accessibility for public inspection of public records
 22 and public documents, reports and records compiled under the provisions of ORS 419B.010 to
 23 419B.050 are confidential and may not be disclosed except as provided in this section. The Depart-
 24 ment of Human Services shall make the records available to:

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

27 (b) Any physician, at the request of the physician, regarding any child brought to the physician
 28 or coming before the physician for examination, care or treatment;

29 (c) Attorneys of record for the child or child's parent or guardian in any juvenile court pro-
 30 ceeding;

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

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

37 (f) The Child Care Division for certifying, registering or otherwise regulating child care facili-
 38 ties;

39 (g) The Office of Children's Advocate; and

40 (h) Any person, upon request to the Department of Human Services, if the reports or records
 41 requested regard an incident in which a child, as the result of abuse, died or suffered serious phys-
 42 ical injury as defined in ORS 161.015. Reports or records disclosed under this paragraph must be
 43 disclosed in accordance with ORS 192.410 to 192.505.

44 (2)(a) When disclosing reports and records pursuant to subsection (1)(h) of this section, the De-
 45 partment of Human Services may exempt from disclosure the names, addresses and other identifying

1 information about other children, witnesses, victims or other persons named in the report or record
2 if the department determines, in written findings, that the safety or well-being of a person named in
3 the report or record may be jeopardized by disclosure of the names, addresses or other identifying
4 information, and if that concern outweighs the public's interest in the disclosure of that information.

5 (b) If the Department of Human Services does not have a report or record of abuse regarding
6 a child who, as the result of abuse, died or suffered serious physical injury as defined in ORS
7 161.015, the department may disclose that information.

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

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

23 (5) A law enforcement agency, upon completing an investigation and closing the file in a specific
24 case relating to child abuse or neglect, shall make reports and records in the case available upon
25 request to any law enforcement agency or community corrections agency in this state, to the De-
26 partment of Corrections or to the State Board of Parole and Post-Prison Supervision for the purpose
27 of managing and supervising offenders in custody or on probation, parole, post-prison supervision
28 or other form of conditional or supervised release. A law enforcement agency may make reports and
29 records compiled under the provisions of ORS 419B.010 to 419B.050 available to law enforcement,
30 community corrections, corrections or parole agencies in an open case when the law enforcement
31 agency determines that the disclosure will not interfere with an ongoing investigation in the case.
32 The name, address and other identifying information about the person who made the report may not
33 be disclosed under this subsection or subsection (6)(b) of this section.

34 (6)(a) Any record made available to a law enforcement agency or community corrections agency
35 in this state, to the Department of Corrections or the State Board of Parole and Post-Prison Super-
36 vision or to a physician in this state, as authorized by subsections (1) to (5) of this section, shall be
37 kept confidential by the agency, department, board or physician. Any record or report disclosed by
38 the Department of Human Services to other persons or entities pursuant to subsections (1) and (3)
39 of this section shall be kept confidential.

40 (b) Notwithstanding paragraph (a) of this subsection:

41 (A) A law enforcement agency, a community corrections agency, the Department of Corrections
42 and the State Board of Parole and Post-Prison Supervision may disclose records made available to
43 them under subsection (5) of this section to each other, to law enforcement, community corrections,
44 corrections and parole agencies of other states and to authorized treatment providers for the pur-
45 pose of managing and supervising offenders in custody or on probation, parole, post-prison super-

1 vision or other form of conditional or supervised release.

2 (B) A person may disclose records made available to the person under subsection (1)(h) of this
 3 section if the records are disclosed for the purpose of advancing the public interest.

4 (7) An officer or employee of the Department of Human Services or of a law enforcement agency
 5 or any person or entity to whom disclosure is made pursuant to subsections (1) to (6) of this section
 6 may not release any information not authorized by subsections (1) to (6) of this section.

7 (8) As used in this section, "law enforcement agency" has the meaning given that term in ORS
 8 181.010.

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

10 **SECTION 9.** ORS 419B.040 is amended to read:

11 419B.040. (1) In the case of **child** abuse [*of a child*] **or when a child is likely to suffer abuse**,
 12 the privileges created in ORS 40.230 to 40.255, including the psychotherapist-patient privilege, the
 13 physician-patient privilege, the privileges extended to nurses, to staff members of schools and to
 14 registered clinical social workers and the husband-wife privilege, shall not be a ground for excluding
 15 evidence regarding [*a child's*] **the abuse or likelihood of abuse**, or the cause thereof, in any judicial
 16 proceeding resulting from a report made pursuant to ORS 419B.010 to 419B.050.

17 (2) In any judicial proceedings resulting from a report made pursuant to ORS 419B.010 to
 18 419B.050, either spouse shall be a competent and compellable witness against the other.

19 **SECTION 10.** ORS 419B.045 is amended to read:

20 419B.045. If an investigation [*of a report of child abuse*] is conducted **under ORS 419B.020** on
 21 public school premises, the school administrator shall first be notified that the investigation is to
 22 take place, unless the school administrator is a subject of the investigation. The school administra-
 23 tor or a school staff member designated by the administrator may, at the investigator's discretion,
 24 be present to facilitate the investigation. The Department of Human Services or the law enforcement
 25 agency making the investigation shall be advised of the child's disabling conditions, if any, prior to
 26 any interview with the affected child. A school administrator or staff member is not authorized to
 27 reveal anything that transpires during an investigation in which the administrator or staff member
 28 participates nor shall the information become part of the child's school records. The school admin-
 29 istrator or staff member may testify at any subsequent trial resulting from the investigation and may
 30 be interviewed by the respective litigants prior to any such trial.

31 **SECTION 11.** ORS 146.750 is amended to read:

32 146.750. (1) Except as required in subsection (3) of this section, any physician, including any
 33 intern and resident, having reasonable cause to suspect that a person brought to the physician or
 34 coming before the physician for examination, care or treatment has had injury, as defined in ORS
 35 146.710, inflicted upon the person other than by accidental means, shall report or cause reports to
 36 be made in accordance with the provisions of subsection (2) of this section.

37 (2) An oral report shall be made immediately by telephone or otherwise, and followed as soon
 38 thereafter as possible by a report in writing, to the appropriate medical examiner.

39 (3) When either an injury as defined in ORS 146.710 or abuse as defined in ORS 419B.005
 40 occurs, **or is likely to occur**, to an unmarried person who is under 18 years of age, the provisions
 41 of ORS 419B.005 to 419B.050 shall apply.

42 **SECTION 12.** ORS 417.815 is amended to read:

43 417.815. (1) The Office of Children's Advocate shall be accessible to the public through the state
 44 toll-free telephone line maintained pursuant to ORS 417.805 and through other electronic and writ-
 45 ten forms of communication. The office shall:

1 (a) Disseminate information and educate the public about the detection and prevention of child
2 abuse and about the prosecution of persons accused of child abuse;

3 (b) Cooperate with other units within the Department of Human Services and law enforcement
4 officials in performing duties under ORS 418.747 and 418.748 and 419B.005 to 419B.050 when the in-
5 vestigation involves alleged child abuse **or the likelihood of abuse**;

6 (c) Provide technical assistance in the development and implementation of state and local pro-
7 grams that relate to child abuse;

8 (d) In cooperation with the department, objectively review the department's systems for handling
9 child abuse cases; and

10 (e) Analyze data collected by the office to discern general patterns and trends, chronic problems
11 and other systemic difficulties in the detection, reporting, investigation, prosecution and resolution
12 of cases of child abuse.

13 (2) In addition to the duties required under subsection (1) of this section, the office shall:

14 (a) Review any complaint regarding the department's involvement in a specific child abuse case,
15 unless the office determines there is an adequate remedy for the complaint;

16 (b) Make any appropriate referrals of the complaint or complainant at the time the office re-
17 ceives the complaint or during the office's review process;

18 (c) Inform the complainant of the referral of the complaint or any other action taken by the
19 office on the complaint;

20 (d) Inform the department of the office's intention to review the department's action, unless the
21 office determines that advance notice will unduly hinder the review; and

22 (e) Conduct a review of the department's action when appropriate, and inform the department
23 of the results of the review, including any recommendation the Children's Advocate believes would
24 resolve any case or any systemic issues identified in the review.

25 (3) If the office has knowledge of confidential information relating to a child involved or
26 allegedly **or likely to be** involved in child abuse, the office shall keep the information confidential
27 from public disclosure. However, the office is subject to legal mandates in ORS 418.747 and 418.748
28 and 419B.005 to 419B.050.

29 (4) A person who files a complaint under this section or ORS 417.805 or participates in any in-
30 vestigation under this section may not be, because of that action:

31 (a) Subject to any penalties, sanctions or restrictions imposed by the department;

32 (b) Subject to any penalties, sanctions or restrictions connected with the person's employment;

33 or

34 (c) Denied any right, privilege or benefit.

35 (5) If deemed necessary by the Children's Advocate for the purposes of carrying out the duties
36 of the office, the office may conduct criminal records checks pursuant to ORS 181.537 on a person
37 through the Law Enforcement Data System maintained by the Department of State Police.

38