

House Bill 2195

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**.

Permits Department of Human Services employee to take child into protective custody under certain circumstances. Requests that Department of Human Services and law enforcement agencies cooperate in investigations and assessments of child welfare. Requires Department of Human Services employees to seek court order or law enforcement agency assistance when employees meet with resistance.

A BILL FOR AN ACT

1
2 Relating to protective custody of children; amending ORS 419B.150.

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

4 **SECTION 1.** ORS 419B.150 is amended to read:

5 419B.150. (1) **Subject to subsection (3) of this section**, a child may be taken into protective
6 custody by a peace officer, counselor, employee of the Department of Human Services or any other
7 person authorized by the juvenile court of the county in which the child is found, in the following
8 circumstances:

9 (a) When the child's condition or surroundings reasonably appear to be such as to jeopardize the
10 child's welfare;

11 (b) When the juvenile court, by order indorsed on the summons as provided in ORS 419B.839 or
12 otherwise, has ordered that the child be taken into protective custody; or

13 (c) When it reasonably appears that the child has run away from home.

14 **(2) When making a decision whether to take a child into protective custody, the depart-**
15 **ment and a law enforcement agency shall investigate the safety and welfare of the child and**
16 **be present to assist in the decision-making process, whenever possible.**

17 **(3) A department employee may take a child into protective custody under this section**
18 **if:**

19 **(a) Law enforcement agency personnel are present to assist the employee;**

20 **(b) The child is immediately endangered; or**

21 **(c) The employee has obtained an order of protective custody as provided in subsection**
22 **(5) of this section.**

23 **(4)(a) If a parent, guardian, caregiver, or other person having physical custody of the**
24 **child resists the employee's efforts to take the child into protective custody, the employee:**

25 **(A) Shall obtain a court order as provided in subsection (5) of this section, if the child is**
26 **not immediately endangered; or**

27 **(B) Shall seek law enforcement assistance, if the child is immediately endangered. The**
28 **law enforcement agency shall make every reasonable effort to be present and assist the**
29 **employee in taking the child into protective custody.**

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 **(b) As used in this subsection, “resist” includes the use or threatened use of violence,**
 2 **physical force or other means that creates a substantial risk of physical injury to any per-**
 3 **son, regardless of whether the behavior results in physical injury.**

4 [(2)(a)] **(5)(a)** Before issuing [an order under subsection (1)(b) of] **a protective order as de-**
 5 **scribed in** this section, the court shall review an affidavit sworn on information and belief provided
 6 by a peace officer, counselor or employee of the department or other person authorized by the ju-
 7 venile court that sets forth with particularity the facts and circumstances on which the request for
 8 protective custody is based, why protective custody is in the best interests of the child and the
 9 reasonable efforts or, if the Indian Child Welfare Act applies, active efforts made by the department
 10 to eliminate the need for protective custody of the child.

11 (b) Except as provided in paragraph (c) of this subsection, an order directing that a child be
 12 taken into protective custody [under subsection (1) of this section] shall contain written findings, in-
 13 cluding a brief description of the reasonable efforts or, if the Indian Child Welfare Act applies, ac-
 14 tive efforts to eliminate the need for protective custody of the child that the department has made
 15 and why protective custody is in the best interests of the child.

16 (c) The court may issue an order even though no services have been provided if the court makes
 17 written findings that no existing services could eliminate the need for protective custody of the child
 18 and that protective custody is in the best interests of the child.

19 [(3)] **(6)** When a child is taken into protective custody as a runaway under subsection (1) **or (3)**
 20 of this section, the peace officer or other person who takes the child into custody:

21 (a)(A) Shall release the child without unnecessary delay to the custody of the child’s parent or
 22 guardian or to a shelter facility that has agreed to provide care and services to children who have
 23 run away from home and that has been designated by the juvenile court to provide such care and
 24 services; or

25 (B) Shall follow the procedures described in ORS 419B.160, 419B.165, 419B.168 and 419B.171;

26 (b) Shall, if possible, determine the preferences of the child and the child’s parent or guardian
 27 as to whether the best interests of the child are better served by placement in a shelter facility that
 28 has agreed to provide care and services to children who have run away from home and that has
 29 been designated by the juvenile court to provide such care and services or by release to the child’s
 30 parent or guardian; and

31 (c) Notwithstanding ORS 419B.165 and [subsection] **subsections (1) and (3)** of this section, shall
 32 release the child to a shelter facility that has agreed to provide care and services to children who
 33 have run away from home and that has been designated by the juvenile court to provide such care
 34 and services if it reasonably appears that the child would not willingly remain at home if released
 35 to the child’s parent or guardian.

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