

House Bill 3039

Sponsored by Representative MAURER; Representative FLORES

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**.

Establishes Office of Inspector General for Child Protective Services to investigate actions taken by Department of Human Services in response to allegations of child abuse or neglect. Authorizes Inspector General for Child Protective Services to supervise functions of office. Specifies powers and duties of inspector general. Abolishes Office of Children's Advocate and transfers duties, functions and powers to Office of Inspector General for Child Protective Services.

Creates Office of Inspector General for Child Protective Services Fund and continuously appropriates moneys in fund to office for purposes of Act.

A BILL FOR AN ACT

1
2 Relating to Office of Inspector General for Child Protective Services; creating new provisions;
3 amending ORS 409.185, 417.805, 417.825 and 419B.035; repealing ORS 417.810 and 417.815; and
4 appropriating money.

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

6 **SECTION 1. (1) The Office of Inspector General for Child Protective Services is estab-**
7 **lished.**

8 (2) **The Office of Inspector General for Child Protective Services shall be under the**
9 **supervision and control of the Inspector General for Child Protective Services, who is re-**
10 **sponsible for the performance of the duties, functions and powers of the office.**

11 (3) **The Governor shall appoint the inspector general, who holds office at the pleasure of**
12 **the Governor.**

13 (4) **The inspector general shall be paid a salary as provided by law or, if not so provided,**
14 **as prescribed by the Governor.**

15 (5) **For purposes of administration, subject to the approval of the Governor, the inspector**
16 **general may organize and reorganize the office as the inspector general considers necessary**
17 **to properly conduct the work of the office.**

18 **SECTION 2. The appointment of the Inspector General for Child Protective Services by**
19 **the Governor is subject to confirmation by the Senate in the manner prescribed in ORS**
20 **171.562 and 171.565.**

21 **SECTION 3. The Inspector General for Child Protective Services shall have the power:**

22 (1) **To investigate, in response to a complaint or at the inspector general's discretion, any**
23 **action taken by the Department of Human Services, its employees, agents or contractors**
24 **with respect to an allegation of child abuse or neglect.**

25 (2) **Notwithstanding any other law, to examine any records and documents relating to any**
26 **child who is or was in the custody of the department, or any child for whom the department**
27 **sought custody.**

28 (3) **To enter and inspect without notice any premises under the jurisdiction of the de-**

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 **partment.**

2 **(4) To bring suit in circuit court to enforce this section and section 4 of this 2007 Act.**

3 **SECTION 4. (1) The Inspector General for Child Protective Services shall investigate any**
4 **action by the Department of Human Services or any action by a person who contracts with**
5 **the department that is or alleged to be:**

6 **(a) Contrary to or inconsistent with law or established policy; or**

7 **(b) Unreasonable, unfair or otherwise objectionable, even though in accordance with law.**

8 **(2) The inspector general shall investigate any employee of the department, or an em-**
9 **ployee of any person who contracts with the department, who is alleged to have:**

10 **(a) Violated law or established policy;**

11 **(b) Failed to disclose relevant evidence;**

12 **(c) Obtained evidence or statements by duress, fraud or undue influence; or**

13 **(d) Otherwise failed to perform job duties efficiently or effectively.**

14 **(3) After investigation, if the inspector general makes a finding that an action described**
15 **in subsection (1) or (2) of this section has occurred, the inspector general shall report to the**
16 **Governor the inspector general's findings.**

17 **(4) A person who files a complaint under ORS 417.805 or section 3 of this 2007 Act or who**
18 **participates in any investigation under this section may not be, because of that action:**

19 **(a) Subject to any penalties, sanctions or restrictions connected with the person's em-**
20 **ployment; or**

21 **(b) Denied any right, privilege or benefit.**

22 **SECTION 5. The Inspector General for Child Protective Services shall report to the**
23 **Legislative Assembly each biennium. The report shall include recommendations about stat-**
24 **utory changes based on investigations completed by the inspector general.**

25 **SECTION 6. (1) The Inspector General for Child Protective Services shall, by written**
26 **order filed with the Secretary of State, appoint a deputy inspector general. The deputy in-**
27 **pector general serves at the pleasure of the inspector general, has authority to act for the**
28 **inspector general in the absence of the inspector general and is subject to the control of the**
29 **inspector general at all times.**

30 **(2) Subject to any applicable provisions of ORS chapter 240, the inspector general shall**
31 **appoint all subordinate officers and employees of the Office of Inspector General for Child**
32 **Protective Services, prescribe their duties and fix their compensation.**

33 **SECTION 7. In accordance with applicable provisions of ORS chapter 183, the Inspector**
34 **General for Child Protective Services may adopt rules necessary for the administration of**
35 **the laws that the inspector general is charged with administering.**

36 **SECTION 8. The Inspector General for Child Protective Services, the deputy inspector**
37 **general and authorized representatives of the inspector general may administer oaths, take**
38 **depositions and issue subpoenas to compel the attendance of witnesses and the production**
39 **of documents or other written information necessary to carry out the provisions of sections**
40 **3 and 4 of this 2007 Act. If any person fails to comply with a subpoena issued under this**
41 **section or refuses to testify on matters on which the person lawfully may be interrogated,**
42 **the inspector general, deputy inspector general or authorized representative may follow the**
43 **procedure set out in ORS 183.440 to compel obedience.**

44 **SECTION 9. The Office of Inspector General for Child Protective Services Fund is es-**
45 **taablished separate and distinct from the General Fund. Moneys in the Office of Inspector**

1 General for Child Protective Services Fund are continuously appropriated to the Office of
 2 Inspector General for Child Protective Services for the purpose of carrying out the pro-
 3 visions of sections 1 to 8 of this 2007 Act.

4 **SECTION 10.** (1) The Office of Children’s Advocate is abolished. On the operative date
 5 of this section, the tenure of the Children’s Advocate ceases.

6 (2) All the duties, functions and powers of the Office of Children’s Advocate are imposed
 7 upon, transferred to and vested in the Office of Inspector General for Child Protective Ser-
 8 vices.

9 **SECTION 11.** (1) The Children’s Advocate shall:

10 (a) Deliver to the Office of Inspector General for Child Protective Services all records
 11 and property within the jurisdiction of the Children’s Advocate that relate to the duties,
 12 functions and powers transferred by section 10 of this 2007 Act; and

13 (b) Transfer to the Office of Inspector General for Child Protective Services those em-
 14 ployees engaged primarily in the exercise of the duties, functions and powers transferred by
 15 section 10 of this 2007 Act.

16 (2) The Inspector General for Child Protective Services shall take possession of the re-
 17 cords and property, and shall take charge of the employees and employ them in the exercise
 18 of the duties, functions and powers transferred by section 10 of this 2007 Act, without re-
 19 duction of compensation but subject to change or termination of employment or compen-
 20 sation as provided by law.

21 (3) The Governor shall resolve any dispute between the Office of Children’s Advocate and
 22 the Office of Inspector General for Child Protective Services relating to transfers of records,
 23 property and employees under this section, and the Governor’s decision is final.

24 **SECTION 12.** (1) The unexpended balances of amounts authorized to be expended by the
 25 Office of Children’s Advocate for the biennium beginning July 1, 2007, from revenues dedi-
 26 cated, continuously appropriated, appropriated or otherwise made available for the purpose
 27 of administering and enforcing the duties, functions and powers transferred by section 10 of
 28 this 2007 Act are transferred to and are available for expenditure by the Office of Inspector
 29 General for Child Protective Services for the biennium beginning July 1, 2007, for the purpose
 30 of administering and enforcing sections 1 to 8 of this 2007 Act and the duties, functions and
 31 powers transferred by section 10 of this 2007 Act.

32 (2) The expenditure classifications, if any, established by Acts authorizing or limiting
 33 expenditures by the Office of Children’s Advocate remain applicable to expenditures by the
 34 Office of Inspector General for Child Protective Services under this section.

35 **SECTION 13.** The transfer of duties, functions and powers to the Office of Inspector
 36 General for Child Protective Services by section 10 of this 2007 Act does not affect any
 37 action, proceeding or prosecution involving or with respect to such duties, functions and
 38 powers begun before and pending at the time of the transfer, except that the Office of In-
 39 spector General for Child Protective Services is substituted for the Office of Children’s Ad-
 40 vocate in the action, proceeding or prosecution.

41 **SECTION 14.** (1) Nothing in sections 10 to 12 of this 2007 Act relieves a person of a li-
 42 ability, duty or obligation accruing under or with respect to the duties, functions and powers
 43 transferred by section 10 of this 2007 Act. The Office of Inspector General for Child Protec-
 44 tive Services may undertake the collection or enforcement of any such liability, duty or ob-
 45 ligation.

1 **(2) The rights and obligations of the Office of Children’s Advocate legally incurred under**
2 **contracts, leases and business transactions executed, entered into or begun before the op-**
3 **erative date of section 10 of this 2007 Act are transferred to the Office of Inspector General**
4 **for Child Protective Services. For the purpose of succession to these rights and obligations,**
5 **the Office of Inspector General for Child Protective Services is a continuation of the Office**
6 **of Children’s Advocate and not a new authority.**

7 **SECTION 15. Notwithstanding the transfer of duties, functions and powers by section 10**
8 **of this 2007 Act, the rules of the Office of Children’s Advocate in effect on the operative date**
9 **of section 10 of this 2007 Act continue in effect until superseded or repealed by rules of the**
10 **Office of Inspector General for Child Protective Services. References in rules of the Office**
11 **of Children’s Advocate to the Office of Children’s Advocate, the Children’s Advocate, or an**
12 **officer or employee of the Office of Children’s Advocate are considered to be references to**
13 **the Office of Inspector General for Child Protective Services, the inspector general, or an**
14 **officer or employee of the Office of Inspector General for Child Protective Services.**

15 **SECTION 16. Whenever, in any uncodified law or resolution of the Legislative Assembly**
16 **or in any rule, document, record or proceeding authorized by the Legislative Assembly, ref-**
17 **erence is made to the Office of Children’s Advocate, the Children’s Advocate or an officer**
18 **or employee of the Office of Children’s Advocate, the reference is considered to be a refer-**
19 **ence to the Office of Inspector General for Child Protective Services, the Inspector General**
20 **or an officer or employee of the Office of Inspector General for Child Protective Services.**

21 **SECTION 17. The Inspector General for Child Protective Services may be appointed be-**
22 **fore the operative date of section 10 of this 2007 Act and may take any action before that**
23 **date that is necessary to enable the inspector general to exercise, on and after the operative**
24 **date of section 10 of this 2007 Act, the duties, functions and powers of the inspector general**
25 **under sections 1 to 8 of this 2007 Act.**

26 **SECTION 18. For the purpose of harmonizing and clarifying statute sections published**
27 **in Oregon Revised Statutes, the Legislative Counsel may substitute for words designating the**
28 **“Office of Children’s Advocate” or the “Children’s Advocate” wherever they occur in Oregon**
29 **Revised Statutes, words designating the “Office of Inspector General for Child Protective**
30 **Services” or “Inspector General for Child Protective Services.”**

31 **SECTION 19. ORS 409.185 is amended to read:**

32 409.185. (1) The Director of Human Services shall oversee the development of standards and
33 procedures for assessment, investigation and enforcement of child protective services.

34 (2)(a) The Department of Human Services shall take action to implement the provision of child
35 protective services as outlined in ORS 417.705 to 417.801 and 419A.170 and based on the recom-
36 mendations in the 1992 “Oregon Child Protective Services Performance Study” published by the
37 University of Southern Maine.

38 (b) In all substantiated cases of child abuse and neglect, the role of the department is to com-
39 plete a comprehensive family assessment of risk of abuse or neglect, or both, assess service needs
40 and provide immediate protective services as necessary.

41 (c) The department shall provide remedial services needed to ensure the safety of the child.

42 (d) In all cases of child abuse and neglect for which a criminal investigation is conducted, the
43 role of law enforcement agencies is to provide a legally sound, child sensitive investigation of
44 whether abuse or neglect or both have occurred and to gather other evidence and perform other
45 responsibilities in accordance with interagency agreements.

1 (e) The department and law enforcement agencies shall conduct the investigation and assess-
 2 ment concurrently, based upon the protocols and procedures of the county multidisciplinary child
 3 abuse team in each jurisdiction.

4 (f) When the department and law enforcement agencies conduct a joint investigation and as-
 5 sessment, the activities of the department and agencies are to be clearly differentiated by the pro-
 6 tocols of the county multidisciplinary child abuse team.

7 (g) Nothing in this subsection is intended to be inconsistent with ORS 418.702, 418.747 and
 8 418.748 and ORS chapter 419B.

9 (h) In all cases of child abuse for which an investigation is conducted, the department shall
 10 provide a child's parent, guardian or caregiver with a clear written explanation of the investigation
 11 process, the court hearing process and the rights of the parent, guardian or caregiver in the abuse
 12 investigation and in the court proceedings related to the abuse investigation.

13 *[(3) Upon receipt of a recommendation of the Children's Advocate under ORS 417.815 (2)(e), the*
 14 *department shall implement the recommendation or give the Children's Advocate written notice of an*
 15 *intent not to implement the recommendation.]*

16 **SECTION 20.** ORS 417.805 is amended to read:

17 417.805. The Office of [*Children's Advocate*] **Inspector General for Child Protective Services**
 18 shall maintain a state toll-free telephone line to allow the public to:

19 (1) Access information and be referred to the appropriate services in matters of child abuse.

20 (2) Voice concerns regarding the actions and conduct of the Department of Human Services re-
 21 lating to child abuse.

22 (3) Have a single place to file complaints concerning the actions and conduct of the Department
 23 of Human Services relating to child abuse.

24 **SECTION 21.** ORS 417.825 is amended to read:

25 417.825. (1) In addition to any other fees provided by law, the appropriate agency:

26 (a) When birth certificates are registered with the state, shall pay a \$1 fee on each birth cer-
 27 tificate registered with the agency.

28 (b) That issues birth certificates for the state or a county, shall collect a \$1 fee on each birth
 29 certificate issued by the agency.

30 (c) When adoptions and divorces are filed with the court, shall collect a \$1 fee on each adoption
 31 and divorce filed with the agency.

32 (2) The agencies paying or collecting the fees described in subsection (1) of this section shall
 33 transfer moneys from the fees imposed by this section to the State Treasurer for deposit in the
 34 [*Department of Human Services Account established under ORS 409.060. The moneys deposited under*
 35 *this section are appropriated continuously to the Department of Human Services for use by the Office*
 36 *of Children's Advocate for the administration of ORS 417.805, 417.810 and 417.815]* **Office of In-**
 37 **pector General for Child Protective Services Fund established by section 9 of this 2007 Act.**

38 **SECTION 22.** ORS 419B.035 is amended to read:

39 419B.035. (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.505 and
 40 192.610 to 192.990 relating to confidentiality and accessibility for public inspection of public records
 41 and public documents, reports and records compiled under the provisions of ORS 419B.010 to
 42 419B.050 are confidential and may not be disclosed except as provided in this section. The Depart-
 43 ment of Human Services shall make the records available to:

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

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

3 (c) Attorneys of record for the child or child’s parent or guardian in any juvenile court pro-
 4 ceeding;

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

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

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

13 (g) The Office of [*Children’s Advocate*] **Inspector General for Child Protective Services**; and

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

18 (2)(a) When disclosing reports and records pursuant to subsection (1)(h) of this section, the De-
 19 partment of Human Services may exempt from disclosure the names, addresses and other identifying
 20 information about other children, witnesses, victims or other persons named in the report or record
 21 if the department determines, in written findings, that the safety or well-being of a person named in
 22 the report or record may be jeopardized by disclosure of the names, addresses or other identifying
 23 information, and if that concern outweighs the public’s interest in the disclosure of that information.

24 (b) If the Department of Human Services does not have a report or record of abuse regarding
 25 a child who, as the result of abuse, died or suffered serious physical injury as defined in ORS
 26 161.015, the department may disclose that information.

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

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

42 (5) A law enforcement agency, upon completing an investigation and closing the file in a specific
 43 case relating to child abuse or neglect, shall make reports and records in the case available upon
 44 request to any law enforcement agency or community corrections agency in this state, to the De-
 45 partment of Corrections or to the State Board of Parole and Post-Prison Supervision for the purpose

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

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

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

15 (A) A law enforcement agency, a community corrections agency, the Department of Corrections
 16 and the State Board of Parole and Post-Prison Supervision may disclose records made available to
 17 them under subsection (5) of this section to each other, to law enforcement, community corrections,
 18 corrections and parole agencies of other states and to authorized treatment providers for the pur-
 19 pose of managing and supervising offenders in custody or on probation, parole, post-prison super-
 20 vision or other form of conditional or supervised release.

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

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

26 (8) As used in this section, "law enforcement agency" has the meaning given that term in ORS
 27 181.010.

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

29 **SECTION 23. Section 10 of this 2007 Act becomes operative on March 1, 2008.**

30 **SECTION 24. ORS 417.805 and 417.825 are added to and made a part of sections 1 to 8 of**
 31 **this 2007 Act.**

32 **SECTION 25. ORS 417.810 and 417.815 are repealed.**

33