

B-Engrossed
House Bill 3328

Ordered by the Senate May 22
Including House Amendments dated April 19 and Senate Amendments
dated May 22

Sponsored by Representative GELSER; Representatives BARKER, BARNHART, CAMERON, CANNON, D
EDWARDS, FLORES, HUNT, KOTEK, KRIEGER, MERKLEY, NELSON, OLSON, READ, ROBLAN, TOMEI

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.

Modifies procedures involved in child abuse investigations.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to child abuse investigations; creating new provisions; amending ORS 418.747, 418.785 and
3 419B.028; and declaring an emergency.

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

5 **SECTION 1. Sections 3 and 4 of this 2007 Act shall be known and may be cited as "Karly's**
6 **Law."**

7 **SECTION 2. Section 3 of this 2007 Act is added to and made a part of ORS 419B.005 to**
8 **419B.050.**

9 **SECTION 3. (1) As used in this section:**

10 (a) **"Designated medical professional" means the person described in ORS 418.747 (9) or**
11 **the person's designee.**

12 (b) **"Suspicious physical injury" includes, but is not limited to:**

13 (A) **Burns or scalds;**

14 (B) **Extensive bruising or abrasions on any part of the body;**

15 (C) **Bruising, swelling or abrasions on the head, neck or face;**

16 (D) **Fractures of any bone in a child under the age of three;**

17 (E) **Multiple fractures in a child of any age;**

18 (F) **Dislocations, soft tissue swelling or moderate to severe cuts;**

19 (G) **Loss of the ability to walk or move normally according to the child's developmental**
20 **ability;**

21 (H) **Unconsciousness or difficulty maintaining consciousness;**

22 (I) **Multiple injuries of different types;**

23 (J) **Injuries causing serious or protracted disfigurement or loss of impairment of the**
24 **function of any bodily organ; or**

25 (K) **Any other injury that threatens the physical well-being of the child.**

26 (2) **If a person conducting an investigation under ORS 419B.020 observes a child who has**
27 **suffered suspicious physical injury and the person has a reasonable suspicion that the injury**

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 may be the result of abuse, the person shall, in accordance with the protocols and procedures
2 of the county multidisciplinary child abuse team described in ORS 418.747:

3 (a) Immediately photograph or cause to have photographed the suspicious physical inju-
4 ries in accordance with ORS 419B.028; and

5 (b) Ensure that a designated medical professional conducts a medical assessment within
6 48 hours, or sooner if dictated by the child's medical needs.

7 (3) The requirement of subsection (2) of this section shall apply:

8 (a) Each time suspicious physical injury is observed by Department of Human Services
9 or law enforcement personnel:

10 (A) During the investigation of a new allegation of abuse; or

11 (B) If the injury was not previously observed by a person conducting an investigation
12 under ORS 419B.020; and

13 (b) Regardless of whether the child has previously been photographed or assessed during
14 an investigation of an allegation of abuse.

15 (4)(a) Department or law enforcement personnel shall make a reasonable effort to locate
16 a designated medical professional. If after reasonable efforts a designated medical profes-
17 sional is not available to conduct a medical assessment within 48 hours, the child shall be
18 evaluated by an available physician.

19 (b) If the child is evaluated by a physician, physician assistant or nurse practitioner other
20 than a designated medical professional, the evaluating physician, physician assistant or nurse
21 practitioner shall make photographs, clinical notes, diagnostic and testing results and any
22 other relevant materials available to the designated medical professional for consultation
23 within 72 hours following evaluation of the child.

24 (c) The person conducting the medical assessment may consult with and obtain records
25 from the child's regular pediatrician or family physician under ORS 419B.050.

26 (5) Nothing in this section prevents a person conducting a child abuse investigation from
27 seeking immediate medical treatment from a hospital emergency room or other medical
28 provider for a child who is physically injured or otherwise in need of immediate medical care.

29 (6) If the child described in subsection (2) of this section is less than five years of age,
30 the designated medical professional may, within 14 days, refer the child for a screening for
31 early intervention services or early childhood special education, as those terms are defined
32 in ORS 343.035. The referral may not indicate the child is subject to a child abuse investi-
33 gation unless written consent is obtained from the child's parent authorizing such disclosure.
34 If the child is already receiving those services, or is enrolled in the Head Start program, a
35 person involved in the delivery of those services to the child shall be invited to participate
36 in the county multidisciplinary child abuse team's review of the case and shall be provided
37 with paid time to do so by the person's employer.

38 (7) Nothing in this section limits the rights provided to minors in ORS chapter 109 or the
39 ability of a minor to refuse to consent to the medical assessment described in this section.

40 **SECTION 4.** (1) The Department of Human Services shall assign a Critical Incident Re-
41 sponse Team within 24 hours after the department determines that a child fatality was likely
42 the result of child abuse or neglect if:

43 (a) The child was in the custody of the department at the time of death; or

44 (b) The child was the subject of a child protective services assessment by the department
45 within the 12 months preceding the fatality.

1 **(2) During the course of its review of the case, the Critical Incident Response Team may**
2 **include or consult with the district attorney from the county in which the incident resulting**
3 **in the fatality occurred.**

4 **(3) The department shall adopt rules necessary to carry out the provisions of this sec-**
5 **tion. The rules adopted by the department shall substantially conform with the department's**
6 **child welfare protocol regarding Notification and Review of Critical Incidents.**

7 **SECTION 5.** ORS 419B.028 is amended to read:

8 419B.028. (1) In carrying out its duties under ORS 419B.020, any law enforcement agency or the
9 Department of Human Services may photograph or cause to have photographed any child subject
10 of the investigation for purposes of preserving evidence of the child's condition at the time of the
11 investigation. **Photographs of the anal or genital region may be taken only by medical per-**
12 **sonnel.**

13 **(2) When a child is photographed pursuant to section 3 of this 2007 Act, the person taking**
14 **the photographs or causing to have the photographs taken shall, within 48 hours or by the**
15 **end of the next regular business day, whichever occurs later:**

16 **(a) Provide hard copies or prints of the photographs and, if available, copies of the pho-**
17 **tographs in an electronic format to the designated medical professional described in ORS**
18 **418.747 (9); and**

19 **(b) Place hard copies or prints of the photographs and, if available, copies of the pho-**
20 **graphs in an electronic format in any relevant files pertaining to the child maintained by the**
21 **law enforcement agency or the department.**

22 [(2)] **(3) For purposes of ORS 419B.035, photographs taken under authority of [subsection (1) of]**
23 **this section shall be considered records.**

24 **SECTION 6.** ORS 418.747 is amended to read:

25 418.747. (1) The district attorney in each county shall be responsible for developing county
26 multidisciplinary child abuse teams to consist of but not be limited to law enforcement personnel,
27 Department of Human Services child protective service workers, school officials, county health de-
28 partment personnel, county mental health department personnel who have experience with children
29 and family mental health issues, child abuse intervention center workers, if available, and juvenile
30 department representatives, as well as others specially trained in child abuse, child sexual abuse and
31 rape of children investigation.

32 (2) The teams shall develop a written protocol for immediate investigation of and notification
33 procedures for child abuse cases and for interviewing child abuse victims. Each team also shall de-
34 velop written agreements signed by member agencies that are represented on the team that specify:

35 (a) The role of each agency;

36 (b) Procedures to be followed to assess risks to the child;

37 (c) Guidelines for timely communication between member agencies;

38 (d) Guidelines for completion of responsibilities by member agencies;

39 (e) That upon clear disclosure that the alleged child abuse occurred in a child care facility as
40 defined in ORS 657A.250, immediate notification of parents or guardians of children attending the
41 child care facility is required regarding any abuse allegation and pending investigation; and

42 (f) Criteria and procedures to be followed when removal of the child is necessary for the child's
43 safety.

44 (3) Each team member and the personnel conducting child abuse investigations and interviews
45 of child abuse victims shall be trained in risk assessment, dynamics of child abuse, child sexual

1 abuse and rape of children and legally sound and age appropriate interview and investigatory tech-
2 niques.

3 (4) All investigations of child abuse and interviews of child abuse victims shall be carried out
4 by appropriate personnel using the protocols and procedures called for in this section. If trained
5 personnel are not available in a timely fashion and, in the judgment of a law enforcement officer
6 or child protective services worker, there is reasonable cause to believe a delay in investigation or
7 interview of the child abuse victim could place the child in jeopardy of physical harm, the investi-
8 gation may proceed without full participation of all personnel. This authority applies only for as
9 long as reasonable danger to the child exists. A law enforcement officer or child protective services
10 worker shall make a reasonable effort to find and provide a trained investigator or interviewer.

11 (5) To ensure the protection and safe placement of a child, the Department of Human Services
12 may request that team members obtain criminal history information on any person who is part of
13 the household where the department may place or has placed a child who is in the department's
14 custody. All information obtained by the team members and the department in the exercise of their
15 duties is confidential and may be disclosed only when necessary to ensure the safe placement of a
16 child.

17 (6) Each team shall classify, assess and review cases under investigation.

18 (7)(a) Each team shall develop and implement procedures for evaluating and reporting compli-
19 ance of member agencies with the protocols and procedures required under this section. Each team
20 shall submit to the administrator of the Child Abuse Multidisciplinary Intervention Program copies
21 of the protocols and procedures required under this section and the results of the evaluation as re-
22 quested.

23 (b) The administrator may:

24 (A) Consider the evaluation results when making eligibility determinations under ORS 418.746
25 (3);

26 (B) If requested by the Advisory Council on Child Abuse Assessment, ask a team to revise the
27 protocols and procedures being used by the team based on the evaluation results; or

28 (C) Ask a team to evaluate the team's compliance with the protocols and procedures in a par-
29 ticular case.

30 (c) The information and records compiled under this subsection are exempt from ORS 192.410
31 to 192.505.

32 (8) Each team shall develop policies that provide for an independent review of investigation
33 procedures of sensitive cases after completion of court actions on particular cases. The policies shall
34 include independent citizen input. Parents of child abuse victims shall be notified of the review
35 procedure.

36 **(9) Each team shall designate at least one physician, physician assistant or nurse prac-**
37 **titioner who has been trained to conduct child abuse medical assessments, as defined in ORS**
38 **418.782, and who is, or who may designate another physician, physician assistant or nurse**
39 **practitioner who is, regularly available to conduct the medical assessment described in sec-**
40 **tion 3 of this 2007 Act.**

41 **(10) If photographs are taken pursuant to ORS 419B.028, and if the team meets to discuss**
42 **the case, the photographs shall be made available to each member of the team at the first**
43 **meeting regarding the child's case following the taking of the photographs.**

44 **(11) No later than September 1, 2008, each team shall submit to the Department of Jus-**
45 **tice a written summary identifying the designated medical professional described in sub-**

1 section (9) of this section. After that date, this information shall be included in each regular
2 report to the Department of Justice.

3 (12) If, after reasonable effort, the team is not able to identify a designated medical
4 professional described in subsection (9) of this section, the team shall develop a written plan
5 outlining the necessary steps, recruitment and training needed to make such a medical pro-
6 fessional available to the children of the county. The team shall also develop a written
7 strategy to ensure that each child in the county who is a suspected victim of child abuse
8 will receive a medical assessment in compliance with section 3 of this 2007 Act. This strat-
9 egy, and the estimated fiscal impact of any necessary recruitment and training, shall be
10 submitted to the Department of Justice no later than September 1, 2008. This information
11 shall be included in each regular report to the Department of Justice for each reporting pe-
12 riod in which a team is not able to identify a designated medical professional described in
13 subsection (9) of this section.

14 **SECTION 7.** No later than October 1, 2008, the Department of Justice shall submit to the
15 appropriate interim legislative committee a report documenting the progress in the imple-
16 mentation of section 3 of this 2007 Act and the amendments to ORS 418.747, 418.785 and
17 419B.028 by sections 5, 6 and 8 of this 2007 Act. The report shall also include, but is not
18 limited to, any fiscal constraints encountered in the implementation of section 3 of this 2007
19 Act and the amendments to ORS 418.747, 418.485 and 419B.028 by sections 5, 6 and 8 of this
20 2007 Act.

21 **SECTION 8.** ORS 418.785 is amended to read:

22 418.785. (1) Each county multidisciplinary child abuse team shall establish a child fatality review
23 team to conduct child fatality reviews. The purpose of the review process is to help prevent severe
24 and fatal child abuse and neglect by:

- 25 (a) Identifying local and state issues related to preventable child fatalities; and
- 26 (b) Promoting implementation of recommendations at the county level.

27 (2) In establishing the review process and carrying out reviews, the child fatality review team
28 shall be assisted by the county medical examiner or county health officer as well as other profes-
29 sionals who are specially trained in areas relevant to the purpose of the team.

30 (3) The categories of fatalities reviewed by the child fatality review team include:

- 31 (a) Child fatalities in which child abuse or neglect may have occurred at any time prior to death
32 or may have been a factor in the fatality;
- 33 (b) Any category established by the county multidisciplinary child abuse team;
- 34 (c) All child fatalities where the child is less than 18 years of age and there is an autopsy per-
35 formed by the medical examiner; and
- 36 (d) Any specific cases recommended for local review by the statewide interdisciplinary team
37 established under ORS 418.748.

38 (4) A child fatality review team shall develop a written protocol for review of child fatalities.
39 The protocol shall be designed to facilitate communication and the exchange of information between
40 persons who perform autopsies and those professionals and agencies concerned with the prevention,
41 investigation and treatment of child abuse and neglect.

42 (5) Within the guidelines, and in a format, established by the statewide interdisciplinary team
43 established under ORS 418.748, the child fatality review team shall provide the statewide interdis-
44 ciplinary team with information regarding the categories of child fatalities described under sub-
45 section (3) of this section.

1 **(6) Upon the conclusion of a criminal case involving a child fatality, or upon the conclu-**
2 **sion of a direct appeal if one is taken, the district attorney may submit a letter to the Gov-**
3 **ernor and the Director of Human Services outlining recommendations for the systemic**
4 **improvement of child abuse investigations.**

5 **SECTION 9.** **This 2007 Act being necessary for the immediate preservation of the public**
6 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**
7 **on its passage.**

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