

Enrolled House Bill 2207

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

CHAPTER

AN ACT

Relating to Central Background Registry; creating new provisions; and amending ORS 419B.035, 657A.030 and 657A.275.

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

SECTION 1. ORS 657A.030 is amended to read:

657A.030. (1) The Child Care Division of the Employment Department shall establish a [*Criminal History*] **Central Background** Registry.

(2) All subject individuals shall be enrolled in the [*Criminal History*] **Central Background** Registry established by the division.

(3) Upon receiving an application for enrollment in the [*Criminal History*] **Central Background** Registry, the division shall complete a criminal records check under ORS 181.534 and shall complete a child protective services records check with the Department of Human Services. The division shall enroll the individual in the registry if the individual:

(a) Is determined to have no criminal or child protective services history or to have dealt with the issues and provided adequate evidence of suitability for the registry;

(b) Has paid the applicable fee established pursuant to ORS 657A.275; and

(c) Has complied with the rules of the division adopted pursuant to this section.

(4) The division may conditionally enroll an individual in the registry pending the results of a nationwide criminal records check through the Federal Bureau of Investigation if the individual has met other requirements of the division for enrollment in the registry.

(5) An enrollment in the [*Criminal History*] **Central Background** Registry shall expire two years from the date of enrollment and may be renewed upon application to the division, payment of the fee established pursuant to ORS 657A.275 and compliance with rules adopted by the division pursuant to this section. However, an individual who is determined to be ineligible for enrollment in the registry after the date of initial enrollment shall be removed from the registry by the division.

(6)(a) A child care facility shall not hire or employ an individual if the individual is not enrolled in the [*Criminal History*] **Central Background** Registry.

(b) Notwithstanding paragraph (a) of this subsection, a child care facility may employ on a probationary basis an individual who is conditionally enrolled in the [*Criminal History*] **Central Background** Registry.

(7) The division may adopt any rules necessary to carry out the purposes of this section and the criminal records check program.

(8) For purposes of this section, "subject individual" means a subject individual as defined by the division by rule or a person who applies to be:

- (a) The operator or an employee of a child care or treatment program;
- (b) The operator or an employee of an Oregon prekindergarten program under ORS 329.170 to 329.200;
- (c) The operator or an employee of a federal Head Start program regulated by the United States Department of Health and Human Services;
- (d) An individual in a child care facility who may have unsupervised contact with children as identified by the division;
- (e) A contractor or an employee of the contractor who provides early childhood special education or early intervention services pursuant to ORS 343.455 to 343.534; *[or]*
- (f) A child care provider who is required to be enrolled in the *[Criminal History]* **Central Background** Registry by any state agency*[,]*; **or**
- (g) **A contractor, employee or volunteer of a metropolitan service district organized under ORS chapter 268 who may have unsupervised contact with children and who is required to be enrolled in the Central Background Registry by the metropolitan service district.**

(9) Information provided to a metropolitan service district organized under ORS chapter 268 about the enrollment status of the persons described in subsection (8)(g) of this section shall be subject to a reciprocal agreement with the metropolitan service district. The agreement must provide for the recovery of administrative, including direct and indirect, costs incurred by the division from participation in the agreement. Any moneys collected under this subsection shall be deposited in the Child Care Fund established under ORS 657A.010.

SECTION 2. ORS 657A.275 is amended to read:

657A.275. (1) Subject to prior approval of the Oregon Department of Administrative Services and a report to the Legislative Assembly prior to adopting the fees and charges, the fees and charges established under ORS 181.534, 657A.030 and 657A.250 to 657A.450 may not exceed the cost of administering the program of the Child Care Division of the Employment Department pertaining to the purpose for which the fee is established, as authorized by the Legislative Assembly within the budget of the division.

(2) Notwithstanding subsection (1) of this section and any other provision of this chapter, the following fees established by the division under ORS 657A.030 and 657A.250 to 657A.450 may not exceed:

- (a) For Certified Family Child Care Home Initial Certification, \$25;
- (b) For Certified Family Child Care Home Annual Fee Per Certified Space, \$2;
- (c) For Child Care Center Initial Certification, \$100;
- (d) For Child Care Center Annual Fee Per Certified Space, \$2;
- (e) For Registered Family Child Care Home Registration, \$30;
- (f) For administering a class on child care abuse and neglect issues, \$10; and
- (g) For enrollment in the *[Criminal History]* **Central Background** Registry, the cost of administering the program, including fees for:
 - (A) Duplicate enrollment in the *[Criminal History]* **Central Background** Registry;
 - (B) Law Enforcement Data System criminal records check; and
 - (C) Federal Bureau of Investigation fingerprint check.

SECTION 3. ORS 419B.035 is amended to read:

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

- (a) Any law enforcement agency or a child abuse registry in any other state for the purpose of subsequent investigation of child abuse;
- (b) Any physician, at the request of the physician, regarding any child brought to the physician or coming before the physician for examination, care or treatment;

(c) Attorneys of record for the child or child's parent or guardian in any juvenile court proceeding;

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

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

(f) The Child Care Division for certifying, registering or otherwise regulating child care facilities;

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

(h) Any person, upon request to the Department of Human Services, if the reports or records requested regard an incident in which a child, as the result of abuse, died or suffered serious physical injury as defined in ORS 161.015. Reports or records disclosed under this paragraph must be disclosed in accordance with ORS 192.410 to 192.505[.]; **and**

(i) The Child Care Division of the Employment Department for purposes of ORS 657A.030 (8)(g).

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4. ORS 419B.035, as amended by section 3 of this 2009 Act, is amended to read:

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

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

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

(c) Attorneys of record for the child or child's parent or guardian in any juvenile court proceeding;

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

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

(f) The Child Care Division for certifying, registering or otherwise regulating child care facilities;

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

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

[(i) The Child Care Division of the Employment Department for purposes of ORS 657A.030 (8)(g).]

(2)(a) When disclosing reports and records pursuant to subsection (1)(h) of this section, the Department of Human Services may exempt from disclosure the names, addresses and other identifying information about other children, witnesses, victims or other persons named in the report or record if the department determines, in written findings, that the safety or well-being of a person named in

the report or record may be jeopardized by disclosure of the names, addresses or other identifying information, and if that concern outweighs the public's interest in the disclosure of that information.

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

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

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

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

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

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

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

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

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

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

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

SECTION 5. ORS 657A.030, as amended by section 1 of this 2009 Act, is amended to read:
657A.030. (1) The Child Care Division of the Employment Department shall establish a Central Background Registry.

(2) All subject individuals shall be enrolled in the Central Background Registry established by the division.

(3) Upon receiving an application for enrollment in the Central Background Registry, the division shall complete a criminal records check under ORS 181.534 and shall complete a child protective services records check with the Department of Human Services. The division shall enroll the individual in the registry if the individual:

(a) Is determined to have no criminal or child protective services history or to have dealt with the issues and provided adequate evidence of suitability for the registry;

(b) Has paid the applicable fee established pursuant to ORS 657A.275; and

(c) Has complied with the rules of the division adopted pursuant to this section.

(4) The division may conditionally enroll an individual in the registry pending the results of a nationwide criminal records check through the Federal Bureau of Investigation if the individual has met other requirements of the division for enrollment in the registry.

(5) An enrollment in the Central Background Registry shall expire two years from the date of enrollment and may be renewed upon application to the division, payment of the fee established pursuant to ORS 657A.275 and compliance with rules adopted by the division pursuant to this section. However, an individual who is determined to be ineligible for enrollment in the registry after the date of initial enrollment shall be removed from the registry by the division.

(6)(a) A child care facility shall not hire or employ an individual if the individual is not enrolled in the Central Background Registry.

(b) Notwithstanding paragraph (a) of this subsection, a child care facility may employ on a probationary basis an individual who is conditionally enrolled in the Central Background Registry.

(7) The division may adopt any rules necessary to carry out the purposes of this section and the criminal records check program.

(8) For purposes of this section, "subject individual" means a subject individual as defined by the division by rule or a person who applies to be:

(a) The operator or an employee of a child care or treatment program;

(b) The operator or an employee of an Oregon prekindergarten program under ORS 329.170 to 329.200;

(c) The operator or an employee of a federal Head Start program regulated by the United States Department of Health and Human Services;

(d) An individual in a child care facility who may have unsupervised contact with children as identified by the division;

(e) A contractor or an employee of the contractor who provides early childhood special education or early intervention services pursuant to ORS 343.455 to 343.534; **or**

(f) A child care provider who is required to be enrolled in the Central Background Registry by any state agency.]; *or*]

[(g) A contractor, employee or volunteer of a metropolitan service district organized under ORS chapter 268 who may have unsupervised contact with children and who is required to be enrolled in the Central Background Registry by the metropolitan service district.]

[(9) Information provided to a metropolitan service district organized under ORS chapter 268 about the enrollment status of the persons described in subsection (8)(g) of this section shall be subject to a reciprocal agreement with the metropolitan service district. The agreement must provide for the recovery of administrative, including direct and indirect, costs incurred by the division from participation in the agreement. Any moneys collected under this subsection shall be deposited in the Child Care Fund established under ORS 657A.010.]

SECTION 6. The amendments to ORS 419B.035 and 657A.030 by sections 4 and 5 of this 2009 Act become operative on January 1, 2014.

Passed by House May 7, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate May 20, 2009

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President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State