

# House Bill 2516

Sponsored by Representative GARRARD; Representatives BENTZ, BERGER, BRUUN, CAMERON, ESQUIVEL, FREEMAN, GILMAN, HANNA, HUFFMAN, KRIEGER, MAURER, OLSON, G SMITH, SPRENGER, THATCHER, THOMPSON, WEIDNER, WHISNANT, WINGARD, Senators KRUSE, MORRISSETTE, WHITSETT, WINTERS

## 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 Department of Human Services, law enforcement agency and other entity or person responsible for taking child into protective custody to provide parents or guardian with written information about parents' and guardian's rights and responsibilities, and resources for legal assistance, when child is taken into protective custody.

Specifies additional rights of noncustodial parent, subject to court order and best interests of child.

## A BILL FOR AN ACT

1  
2 Relating to custody of children; creating new provisions; and amending ORS 107.154, 419B.020 and  
3 419B.160.

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

5 **SECTION 1.** ORS 419B.020 is amended to read:

6 419B.020. (1) If the Department of Human Services or a law enforcement agency receives a re-  
7 port of child abuse, the department or the agency shall immediately:

8 (a) Cause an investigation to be made to determine the nature and cause of the abuse of the  
9 child; and

10 (b) Notify the Child Care Division if the alleged child abuse occurred in a child care facility as  
11 defined in ORS 657A.250.

12 (2) If the abuse reported in subsection (1) of this section is alleged to have occurred at a child  
13 care facility:

14 (a) The department and the law enforcement agency shall jointly determine the roles and re-  
15 sponsibilities of the department and the agency in their respective investigations; and

16 (b) The department and the agency shall each report the outcomes of their investigations to the  
17 Child Care Division.

18 (3) If the law enforcement agency conducting the investigation finds reasonable cause to believe  
19 that abuse has occurred, the law enforcement agency shall notify by oral report followed by written  
20 report the local office of the department. The department shall provide protective social services  
21 of its own or of other available social agencies if necessary to prevent further abuses to the child  
22 or to safeguard the child's welfare.

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

25 (5)(a) If a child is taken into protective custody by the department or a law enforcement official,  
26 the department or law enforcement official shall, if possible, make reasonable efforts to advise the  
27 parents or guardian immediately, regardless of the time of day, that the child has been taken into

**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 custody, the reasons the child has been taken into custody, [and] general information about the  
 2 child's placement, [and] the telephone number of the local office of the department and any after-  
 3 hours telephone numbers, **and the parents' or guardian's rights and responsibilities, including,**  
 4 **but not limited to, resources that are available for legal assistance. The information provided**  
 5 **to the parents or guardian must include, but need not be limited to, information provided**  
 6 **under ORS 419B.117 (1).**

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

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

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

16 (6) If a law enforcement officer or the department, when taking a child into protective custody,  
 17 has reasonable cause to believe that the child has been affected by sexual abuse and rape of a child  
 18 as defined in ORS 419B.005 (1)(a)(C) and that physical evidence of the abuse exists and is likely to  
 19 disappear, the court may authorize a physical examination for the purposes of preserving evidence  
 20 if the court finds that it is in the best interest of the child to have such an examination. Nothing  
 21 in this section affects the authority of the department to consent to physical examinations of the  
 22 child at other times.

23 (7) A minor child of 12 years of age or older may refuse to consent to the examination described  
 24 in subsection (6) of this section. The examination shall be conducted by or under the supervision  
 25 of a physician licensed under ORS chapter 677 or a nurse practitioner licensed under ORS chapter  
 26 678 and, whenever practicable, trained in conducting such examinations.

27 (8) When the department completes an investigation under this section, if the person who made  
 28 the report of child abuse provided contact information to the department, the department shall no-  
 29 tify the person about whether contact with the child was made, whether the department determined  
 30 that child abuse occurred and whether services will be provided. The department is not required to  
 31 disclose information under this subsection if the department determines that disclosure is not per-  
 32 mitted under ORS 419B.035.

33 **SECTION 2.** ORS 419B.160 is amended to read:

34 419B.160. (1) A child or ward may not be detained at any time in a police station, jail, prison  
 35 or other place where adults are detained, except that a child or ward may be detained in a police  
 36 station for up to five hours when necessary to obtain the child or ward's name, age, residence and  
 37 other identifying information.

38 (2) All peace officers shall keep a record of children taken into protective custody and shall  
 39 promptly notify the juvenile court or counselor of all children taken into protective custody.

40 (3) As soon as practicable after the child is taken into custody, the person taking the child into  
 41 custody shall notify the child's parent, guardian or other person responsible for the child. The notice  
 42 shall inform the parent, guardian or other person of the action taken, [and] the time and place of  
 43 the hearing **and the parent's or guardian's rights and responsibilities, including, but not lim-**  
 44 **ited to, resources that are available for legal assistance. The information provided to the**  
 45 **parent or guardian must include, but need not be limited to, information provided under ORS**

1 **419B.117 (1).**

2 **SECTION 3.** ORS 107.154 is amended to read:

3 107.154. (1) Unless otherwise ordered by the court, an order of sole custody to one parent shall  
4 not deprive the other parent of the following authority:

5 [(1)] (a) To inspect and receive school records and to consult with school staff concerning the  
6 child’s welfare and education, to the same extent as the custodial parent may inspect and receive  
7 such records and consult with such staff;

8 [(2)] (b) To inspect and receive governmental agency and law enforcement records concerning  
9 the child to the same extent as the custodial parent may inspect and receive such records;

10 [(3)] (c) To consult with any person who may provide care or treatment for the child and to  
11 inspect and receive the child’s medical, dental and psychological records, to the same extent as the  
12 custodial parent may consult with such person and inspect and receive such records;

13 [(4)] (d) To authorize emergency medical, dental, psychological, psychiatric or other health care  
14 for the child if the custodial parent is, for practical purposes, unavailable **and to receive notice  
15 and relevant information as soon as practicable, but within 24 hours at the latest, of any  
16 event of hospitalization, major illness or death of the child;** or

17 [(5)] (e) To apply to be the child’s conservator, guardian ad litem or both.

18 (2) **Upon petition by a noncustodial parent for whom parental rights have not been ter-  
19 minated, and subject to consideration of the best interests and welfare of the child, the court  
20 shall order the following parental rights:**

21 (a) **The right to unimpeded telephone conversations with the child at least twice a week  
22 at reasonable times and for reasonable durations.**

23 (b) **The right to send mail, including electronic mail, to the child that the custodial par-  
24 ent or guardian may not open, read or censor.**

25 (3) **The court may deny any of the rights granted in this section in whole or in part if  
26 the court, taking into account the factors set forth in ORS 107.137, determines the denial to  
27 be in the best interests of the child.**

28 **SECTION 4.** The amendments to ORS 419B.020 and 419B.160 by sections 1 and 2 of this  
29 2009 Act apply to persons taking a child into protective custody on or after the operative date  
30 of the amendments to ORS 419B.020 and 419B.160 by sections 1 and 2 of this 2009 Act.

31 **SECTION 5.** The amendments to ORS 107.154 by section 3 of this 2009 Act apply to judg-  
32 ments entered on or after the effective date of this 2009 Act.

33 **SECTION 6.** The amendments to ORS 419B.020 and 419B.160 by sections 1 and 2 of this  
34 2009 Act become operative on June 30, 2010.

35 **SECTION 7.** The Department of Human Services, any law enforcement agency and any  
36 other entity or person responsible for taking a child into protective custody under ORS  
37 419B.020 and 419B.160, as amended by sections 1 and 2 of this 2009 Act, may take any action  
38 before the operative date of the amendments to ORS 419B.020 and 419B.160 by sections 1 and  
39 2 of this 2009 Act that are necessary to enable the department, agency, entity or person to  
40 provide the notices required by the amendments to ORS 419B.020 and 419B.160 by sections 1  
41 and 2 of this 2009 Act on and after the operative date of the amendments to ORS 419B.020  
42 and 419B.160 by sections 1 and 2 of this 2009 Act.