

Senate Bill 123

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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 to release records related to child abuse to Teacher Standards and Practices Commission for investigations conducted by commission.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to child abuse records; amending ORS 342.176 and 419B.035; and declaring an emergency.

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

4 **SECTION 1.** ORS 419B.035 is amended to read:

5 419B.035. (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.505 and
6 192.610 to 192.990 relating to confidentiality and accessibility for public inspection of public records
7 and public documents, reports and records compiled under the provisions of ORS 419B.010 to
8 419B.050 are confidential and may not be disclosed except as provided in this section. The Depart-
9 ment of Human Services shall make the records available to:

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

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

14 (c) Attorneys of record for the child or child's parent or guardian in any juvenile court pro-
15 ceeding;

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

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

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

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

25 **(h) The Teacher Standards and Practices Commission for investigations conducted under**
26 **ORS 342.176; and**

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

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

8 (b) If the Department of Human Services does not have a report or record of abuse regarding
9 a child who, as the result of abuse, died or suffered serious physical injury as defined in ORS
10 161.015, the department may disclose that information.

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

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

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

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

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

44 (A) A law enforcement agency, a community corrections agency, the Department of Corrections
45 and the State Board of Parole and Post-Prison Supervision may disclose records made available to

1 them under subsection (5) of this section to each other, to law enforcement, community corrections,
 2 corrections and parole agencies of other states and to authorized treatment providers for the pur-
 3 pose of managing and supervising offenders in custody or on probation, parole, post-prison super-
 4 vision or other form of conditional or supervised release.

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

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

10 (8) As used in this section, "law enforcement agency" has the meaning given that term in ORS
 11 181.010.

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

13 **SECTION 2.** ORS 342.176 is amended to read:

14 342.176. (1) [Upon receipt of a complaint or information that a person has violated ORS 342.143
 15 or 342.175,] The Teacher Standards and Practices Commission shall promptly undertake an investi-
 16 gation **upon receipt of a complaint or information that may constitute grounds for:**

17 (a) **Refusal to issue a license or registration, as provided under ORS 342.143; or**

18 (b) **Suspension or revocation of a license or registration, discipline of a person holding a**
 19 **license or registration, or suspension or revocation of the right to apply for a license or**
 20 **registration, as provided under ORS 342.175.**

21 (2) The commission may appoint an investigator and shall furnish the investigator with appro-
 22 priate professional and other special assistance reasonably required to conduct the investigation,
 23 and the investigator is empowered to subpoena witnesses over the signature of the executive direc-
 24 tor, swear witnesses and compel obedience in the same manner as provided under ORS 183.440 (2).

25 (3) Following completion of the investigation, the executive director shall report in writing any
 26 findings and recommendations to:

27 (a) The commission, meeting in executive session, at its next regular meeting following com-
 28 pletion of the investigation; and

29 (b) The person against whom the charge is made.

30 (4)(a) **Except as provided in paragraph (b) of this subsection,** the documents and materials
 31 used in the investigation and the report of the executive director are confidential and not subject
 32 to public inspection unless the commission makes a final determination [*that the person charged has*
 33 *violated ORS 342.143 or 342.175*] **to:**

34 (A) **Refuse to issue a license or registration, as provided under ORS 342.143; or**

35 (B) **Suspend or revoke a license or registration, discipline a person holding a license or**
 36 **registration, or suspend or revoke the right to apply for a license or registration, as provided**
 37 **under ORS 342.175.**

38 (b) **Records made available to the commission under ORS 419B.035 (1)(h) shall be kept**
 39 **confidential.**

40 (5) If the commission finds from the report that there is sufficient cause to justify holding a
 41 hearing under ORS 342.177, it shall notify in writing:

42 (a) The person charged, enclosing a statement of the charges and a notice of opportunity for
 43 hearing;

44 (b) The complainant; and

45 (c) The employing district or public charter school, if any.

1 (6) If the commission finds from the report that there is not sufficient cause to justify holding
2 a hearing under ORS 342.177, it shall notify in writing:

3 (a) The person charged;

4 (b) The complainant; and

5 (c) The employing district or public charter school, if any.

6 (7) Notwithstanding ORS 192.660 (6), the commission may make its findings under this section
7 in executive session. However, the provisions of ORS 192.660 (4) apply to the sessions.

8 **SECTION 3. This 2009 Act being necessary for the immediate preservation of the public**
9 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
10 **on its passage.**

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