

Enrolled
Senate Bill 991

Sponsored by Senator COURTNEY; Senator MONNES ANDERSON (Pre-session filed.)

CHAPTER

AN ACT

Relating to respite services for parents; creating new provisions; amending ORS 418.205, 418.210, 418.625, 419B.005 and 657A.030; and declaring an emergency.

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

SECTION 1. ORS 418.205 is amended to read:

418.205. As used in ORS 418.205 to 418.310 and 418.992 to 418.998, unless the context requires otherwise:

(1) "Child" means an unmarried person under 18 years of age.

(2)(a) "Child-caring agency" means any private agency or private organization providing:

(A) Day treatment for children with emotional disturbances;

(B) Adoption placement services;

(C) Residential care, including but not limited to foster care or residential treatment for children;

(D) Outdoor youth programs; or

(E) Other similar services for children.

(b) "Child-caring agency" does not include:

(A) Residential facilities or foster care homes certified or licensed by the Department of Human Services under ORS 443.400 to 443.455, 443.830 and 443.835 for children receiving developmental disability services[.]; or

(B) Any private agency or organization facilitating the provision of respite services for parents pursuant to a properly executed power of attorney under ORS 109.056. For purposes of this subparagraph, "respite services" means the voluntary assumption of short-term care and control of a minor child without compensation or reimbursement of expenses for the purpose of providing a parent in crisis with relief from the demands of ongoing care of the parent's child.

(3)(a) "Outdoor youth program" means a program that provides, in an outdoor living setting, services to children who have behavioral problems, mental health problems or problems with abuse of alcohol or drugs.

(b) "Outdoor youth program" does not include any program, facility or activity:

(A) Operated by a governmental entity;

(B) Operated or affiliated with the Oregon Youth Conservation Corps; or

(C) Licensed by the Department of Human Services under other authority of the department.

(4) "Private" means not owned, operated or administered by any governmental agency or unit.

SECTION 2. ORS 418.210 is amended to read:

418.210. ORS 418.205 to 418.325 shall not apply to:

(1) Homes established and maintained by fraternal organizations wherein only members, their wives, widows and children are admitted as residents;

(2) Any family foster home that is subject to ORS 418.625 to 418.645; [or]

(3) Any child care facility that is subject to ORS 657A.030 and 657A.250 to 657A.450;

(4) Any individual, or home of an individual, providing respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056; or

(5) Any private agency or organization facilitating the provision of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056.

SECTION 3. ORS 418.625 is amended to read:

418.625. As used in ORS 418.625 to 418.645:

(1) "Certificate" means a written approval to operate a foster home issued by the Department of Human Services on a form prescribed by the department that states the name of the foster parent, the address of the premises to which the certificate applies and the maximum number of children to be maintained or boarded in the foster home at any one time.

(2) "Department" means the Department of Human Services.

(3) "Foster home" means any home maintained by a person who has under the care of the person in the home any child under the age of 21 years unattended by the child's parent or guardian, for the purpose of providing the child with care, food and lodging, but does not include:

(a) Any boarding school that is essentially and primarily engaged in educational work;

(b) Any home in which a child is provided board and room by a school board;

(c) Any foster home under the direct supervision of a private child-caring agency or institution certified by the department;

(d) Any home under the direct supervision of a custodial parent for the purpose of providing respite care as defined by rule; [or]

(e) Any developmental disability child foster home as defined in ORS 443.830[.]; or

(f) Any home of a provider of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056.

SECTION 4. ORS 419B.005 is amended to read:

419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

(1)(a) "Abuse" means:

(A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

(B) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.

(C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are described in ORS chapter 163.

(D) Sexual abuse, as described in ORS chapter 163.

(E) Sexual exploitation, including but not limited to:

(i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; and

(ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution, as defined in ORS chapter 167.

(F) Negligent treatment or maltreatment of a child, including but not limited to the failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child.

(G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.

(H) Buying or selling a person under 18 years of age as described in ORS 163.537.

(I) Permitting a person under 18 years of age to enter or remain in or upon premises where methamphetamines are being manufactured.

(J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, that subjects a child to a substantial risk of harm to the child's health or safety.

(b) "Abuse" does not include reasonable discipline unless the discipline results in one of the conditions described in paragraph (a) of this subsection.

(2) "Child" means an unmarried person who is under 18 years of age.

(3) "Public or private official" means:

(a) Physician, osteopathic physician, physician assistant, naturopathic physician, podiatric physician and surgeon, including any intern or resident.

(b) Dentist.

(c) School employee.

(d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide or employee of an in-home health service.

(e) Employee of the Department of Human Services, Oregon Health Authority, State Commission on Children and Families, Child Care Division of the Employment Department, the Oregon Youth Authority, a county health department, a community mental health program, a community developmental disabilities program, a county juvenile department, a licensed child-caring agency or an alcohol and drug treatment program.

(f) Peace officer.

(g) Psychologist.

(h) Member of the clergy.

(i) Regulated social worker.

(j) Optometrist.

(k) Chiropractor.

(L) Certified provider of foster care, or an employee thereof.

(m) Attorney.

(n) Licensed professional counselor.

(o) Licensed marriage and family therapist.

(p) Firefighter or emergency medical technician.

(q) A court appointed special advocate, as defined in ORS 419A.004.

(r) A child care provider registered or certified under ORS 657A.030 and 657A.250 to 657A.450.

(s) Member of the Legislative Assembly.

(t) Physical, speech or occupational therapist.

(u) Audiologist.

(v) Speech-language pathologist.

(w) Employee of the Teacher Standards and Practices Commission directly involved in investigations or discipline by the commission.

(x) Pharmacist.

(y) An operator of a preschool recorded program under ORS 657A.255.

(z) An operator of a school-age recorded program under ORS 657A.257.

(aa) Employee of a private agency or organization facilitating the provision of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056.

(4) "Law enforcement agency" means:

(a) Any city or municipal police department.

- (b) Any county sheriff's office.
- (c) The Oregon State Police.
- (d) A county juvenile department.

SECTION 5. ORS 419B.005, as operative until July 1, 2010, is amended to read:
419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

(1)(a) "Abuse" means:

(A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

(B) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.

(C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are described in ORS chapter 163.

(D) Sexual abuse, as described in ORS chapter 163.

(E) Sexual exploitation, including but not limited to:

(i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; and

(ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution, as defined in ORS chapter 167.

(F) Negligent treatment or maltreatment of a child, including but not limited to the failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child.

(G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.

(H) Buying or selling a person under 18 years of age as described in ORS 163.537.

(I) Permitting a person under 18 years of age to enter or remain in or upon premises where methamphetamines are being manufactured.

(J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, that subjects a child to a substantial risk of harm to the child's health or safety.

(b) "Abuse" does not include reasonable discipline unless the discipline results in one of the conditions described in paragraph (a) of this subsection.

(2) "Child" means an unmarried person who is under 18 years of age.

(3) "Public or private official" means:

(a) Physician, osteopathic physician, physician assistant, naturopathic physician, podiatric physician and surgeon, including any intern or resident.

(b) Dentist.

(c) School employee.

(d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide or employee of an in-home health service.

(e) Employee of the Department of Human Services, Oregon Health Authority, State Commission on Children and Families, Child Care Division of the Employment Department, the Oregon Youth Authority, a county health department, a community mental health program, a community developmental disabilities program, a county juvenile department, a licensed child-caring agency or an alcohol and drug treatment program.

(f) Peace officer.

(g) Psychologist.

- (h) Member of the clergy.
- (i) Regulated social worker.
- (j) Optometrist.
- (k) Chiropractor.
- (L) Certified provider of foster care, or an employee thereof.
- (m) Attorney.
- (n) Licensed professional counselor.
- (o) Licensed marriage and family therapist.
- (p) Firefighter or emergency medical technician.
- (q) A court appointed special advocate, as defined in ORS 419A.004.
- (r) A child care provider registered or certified under ORS 657A.030 and 657A.250 to 657A.450.
- (s) Member of the Legislative Assembly.
- (t) Physical, speech or occupational therapist.
- (u) Audiologist.
- (v) Speech-language pathologist.
- (w) Employee of the Teacher Standards and Practices Commission directly involved in investigations or discipline by the commission.
- (x) Pharmacist.

(y) Employee of a private agency or organization facilitating the provision of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056.

(4) "Law enforcement agency" means:

- (a) Any city or municipal police department.
- (b) Any county sheriff's office.
- (c) The Oregon State Police.
- (d) A county juvenile department.

SECTION 6. ORS 657A.030 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.]

(2) A subject individual shall apply to and must be enrolled in the Central Background Registry as part of the individual's application to operate a program or serve in a position described in subsection (8) of this section.

(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;

(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.*]; or*

(h) A provider of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056 who is providing respite services as a volunteer with a private agency or organization that facilitates the provision of such respite services.

(9)(a) 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]* **paragraph** shall be deposited in the Child Care Fund established under ORS 657A.010.

(b) Information provided to a private agency or organization facilitating the provision of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056 about the enrollment status of the persons described in subsection (8)(h) of this section shall be subject to an agreement with the private agency or organization. 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 paragraph shall be deposited in the Child Care Fund established under ORS 657A.010.

SECTION 7. ORS 657A.030, as amended by section 5, chapter 348, Oregon Laws 2009, 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.]

(2) A subject individual shall apply to and must be enrolled in the Central Background Registry as part of the individual's application to operate a program or serve in a position described in subsection (8) of this section.

(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 provider of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056 who is providing respite services as a volunteer with a private agency or organization that facilitates the provision of such respite services.

(9) Information provided to a private agency or organization facilitating the provision of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056 about the enrollment status of the persons described in subsection (8)(g) of this section shall be subject to an agreement with the private agency or organization. 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 8. (1) The amendments to ORS 418.205, 418.210, 418.625, 419B.005 and 657A.030 by sections 1 to 7 of this 2010 Act become operative 90 days following the effective date of this 2010 Act.

(2) The amendments to ORS 418.205, 418.210, 418.625, 419B.005 and 657A.030 by sections 1 to 7 of this 2010 Act apply to respite services provided on or after the operative date specified in subsection (1) of this section.

(3) The Child Care Division of the Employment Department may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the

division to implement the amendments to ORS 657A.030 by sections 6 and 7 of this 2010 Act on and after the operative date specified in subsection (1) of this section.

SECTION 9. This 2010 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect on its passage.

Passed by Senate February 12, 2010

Received by Governor:

Repassed by Senate February 23, 2010

.....M,....., 2010

Approved:

.....
Secretary of Senate

.....M,....., 2010

.....
President of Senate

.....
Governor

Passed by House February 23, 2010

Filed in Office of Secretary of State:

.....M,....., 2010

.....
Speaker of House

.....
Secretary of State