

B-Engrossed Senate Bill 991

Ordered by the House February 19
Including Senate Amendments dated February 10 and House Amendments
dated February 19

Sponsored by Senator COURTNEY; Senator MONNES ANDERSON (Presession filed.)

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.

Exempts facilitators and providers of certain parental respite services from regulation by Department of Human Services.

Makes employees of facilitators of certain parental respite services mandatory child abuse reporters.

Requires providers of certain parental respite services to enroll in Central Background Registry.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to respite services for parents; creating new provisions; amending ORS 418.205, 418.210,
3 418.625, 419B.005 and 657A.030; and declaring an emergency.

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

5 **SECTION 1.** ORS 418.205 is amended to read:

6 418.205. As used in ORS 418.205 to 418.310 and 418.992 to 418.998, unless the context requires
7 otherwise:

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

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

10 (A) Day treatment for children with emotional disturbances;

11 (B) Adoption placement services;

12 (C) Residential care, including but not limited to foster care or residential treatment for chil-
13 dren;

14 (D) Outdoor youth programs; or

15 (E) Other similar services for children.

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

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

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

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

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

5 (A) Operated by a governmental entity;

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

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

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

9 **SECTION 2.** ORS 418.210 is amended to read:

10 418.210. ORS 418.205 to 418.325 shall not apply to:

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

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

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

15 (4) **Any individual, or home of an individual, providing respite services, as defined in ORS**
16 **418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056;**
17 **or**

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

21 **SECTION 3.** ORS 418.625 is amended to read:

22 418.625. As used in ORS 418.625 to 418.645:

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

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

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

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

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

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

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

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

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

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

41 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

42 (1)(a) "Abuse" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (3) "Public or private official" means:

31 (a) Physician, osteopathic physician, physician assistant, naturopathic physician, podiatric phy-
32 sician and surgeon, including any intern or resident.

33 (b) Dentist.

34 (c) School employee.

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

37 (e) Employee of the Department of Human Services, Oregon Health Authority, State Commission
38 on Children and Families, Child Care Division of the Employment Department, the Oregon Youth
39 Authority, a county health department, a community mental health program, a community develop-
40 mental disabilities program, a county juvenile department, a licensed child-caring agency or an al-
41cohol and drug treatment program.

42 (f) Peace officer.

43 (g) Psychologist.

44 (h) Member of the clergy.

45 (i) Regulated social worker.

- 1 (j) Optometrist.
- 2 (k) Chiropractor.
- 3 (L) Certified provider of foster care, or an employee thereof.
- 4 (m) Attorney.
- 5 (n) Licensed professional counselor.
- 6 (o) Licensed marriage and family therapist.
- 7 (p) Firefighter or emergency medical technician.
- 8 (q) A court appointed special advocate, as defined in ORS 419A.004.
- 9 (r) A child care provider registered or certified under ORS 657A.030 and 657A.250 to 657A.450.
- 10 (s) Member of the Legislative Assembly.
- 11 (t) Physical, speech or occupational therapist.
- 12 (u) Audiologist.
- 13 (v) Speech-language pathologist.
- 14 (w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
- 15 gations or discipline by the commission.
- 16 (x) Pharmacist.
- 17 (y) An operator of a preschool recorded program under ORS 657A.255.
- 18 (z) An operator of a school-age recorded program under ORS 657A.257.

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

22 (4) "Law enforcement agency" means:

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

27 **SECTION 5.** ORS 419B.005, as operative until July 1, 2010, is amended to read:
28 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

29 (1)(a) "Abuse" means:

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

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

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

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

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

40 (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any
41 other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage
42 in the performing for people to observe or the photographing, filming, tape recording or other ex-
43 hibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or
44 described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-
45 cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or

1 which is designed to serve educational or other legitimate purposes; and

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

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

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

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

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

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

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

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

17 (3) "Public or private official" means:

18 (a) Physician, osteopathic physician, physician assistant, naturopathic physician, podiatric phy-
19 sician and surgeon, including any intern or resident.

20 (b) Dentist.

21 (c) School employee.

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

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

29 (f) Peace officer.

30 (g) Psychologist.

31 (h) Member of the clergy.

32 (i) Regulated social worker.

33 (j) Optometrist.

34 (k) Chiropractor.

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

36 (m) Attorney.

37 (n) Licensed professional counselor.

38 (o) Licensed marriage and family therapist.

39 (p) Firefighter or emergency medical technician.

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

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

42 (s) Member of the Legislative Assembly.

43 (t) Physical, speech or occupational therapist.

44 (u) Audiologist.

45 (v) Speech-language pathologist.

1 (w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
2 gations or discipline by the commission.

3 (x) Pharmacist.

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

7 (4) "Law enforcement agency" means:

8 (a) Any city or municipal police department.

9 (b) Any county sheriff's office.

10 (c) The Oregon State Police.

11 (d) A county juvenile department.

12 **SECTION 6.** ORS 657A.030 is amended to read:

13 657A.030. (1) The Child Care Division of the Employment Department shall establish a Central
14 Background Registry.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 329.200;

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

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

6 (e) A contractor or an employee of the contractor who provides early childhood special educa-
7 tion or early intervention services pursuant to ORS 343.455 to 343.534;

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

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

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

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

23 **(b) Information provided to a private agency or organization facilitating the provision of**
24 **respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power**
25 **of attorney under ORS 109.056 about the enrollment status of the persons described in sub-**
26 **section (8)(h) of this section shall be subject to an agreement with the private agency or**
27 **organization. The agreement must provide for the recovery of administrative, including di-**
28 **rect and indirect, costs incurred by the division from participation in the agreement. Any**
29 **moneys collected under this paragraph shall be deposited in the Child Care Fund established**
30 **under ORS 657A.010.**

31 **SECTION 7.** ORS 657A.030, as amended by section 5, chapter 348, Oregon Laws 2009, is
32 amended to read:

33 657A.030. (1) The Child Care Division of the Employment Department shall establish a Central
34 Background Registry.

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (b) The operator or an employee of an Oregon prekindergarten program under ORS 329.170 to
21 329.200;

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

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

26 (e) A contractor or an employee of the contractor who provides early childhood special educa-
27 tion or early intervention services pursuant to ORS 343.455 to 343.534; [or]

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

30 **(g) A provider of respite services, as defined in ORS 418.205, for parents pursuant to a**
31 **properly executed power of attorney under ORS 109.056 who is providing respite services as**
32 **a volunteer with a private agency or organization that facilitates the provision of such re-**
33 **spite services.**

34 **(9) Information provided to a private agency or organization facilitating the provision of**
35 **respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power**
36 **of attorney under ORS 109.056 about the enrollment status of the persons described in sub-**
37 **section (8)(g) of this section shall be subject to an agreement with the private agency or**
38 **organization. The agreement must provide for the recovery of administrative, including di-**
39 **rect and indirect, costs incurred by the division from participation in the agreement. Any**
40 **moneys collected under this subsection shall be deposited in the Child Care Fund established**
41 **under ORS 657A.010.**

42 **SECTION 8. (1) The amendments to ORS 418.205, 418.210, 418.625, 419B.005 and 657A.030**
43 **by sections 1 to 7 of this 2010 Act become operative 90 days following the effective date of**
44 **this 2010 Act.**

45 **(2) The amendments to ORS 418.205, 418.210, 418.625, 419B.005 and 657A.030 by sections 1**

1 to 7 of this 2010 Act apply to respite services provided on or after the operative date specified
2 in subsection (1) of this section.

3 (3) The Child Care Division of the Employment Department may take any action before
4 the operative date specified in subsection (1) of this section that is necessary to enable the
5 division to implement the amendments to ORS 657A.030 by sections 6 and 7 of this 2010 Act
6 on and after the operative date specified in subsection (1) of this section.

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

10