

# House Bill 2941

Sponsored by Representative GELSER; Representatives BERGER, BREWER, DEMBROW, DOHERTY, J SMITH, SPRENGER (Pre-session 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 **as introduced**.

Creates defense to prostitution under certain circumstances for person under 18 years of age.  
Requires district attorney or juvenile department to file dependency petition when person under 18 years of age engages in certain prostitution activities. Authorizes placement of person under 18 years of age in protective custody.

## A BILL FOR AN ACT

1  
2 Relating to juveniles; creating new provisions; and amending ORS 167.007, 419B.100 and 419B.150.

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

4 **SECTION 1.** ORS 167.007 is amended to read:

5 167.007. (1) A person commits the crime of prostitution if:

6 (a) The person engages in or offers or agrees to engage in sexual conduct or sexual contact in  
7 return for a fee; or

8 (b) The person pays or offers or agrees to pay a fee to engage in sexual conduct or sexual  
9 contact.

10 (2) Prostitution is a Class A misdemeanor.

11 **(3) It is a defense to a charge of violating subsection (1)(a) of this section that the person**  
12 **who engaged in or offered or agreed to engage in sexual conduct or sexual contact in return**  
13 **for a fee was under 18 years of age at the time the offense is alleged to have been committed.**  
14 **Nothing in this subsection alters the criminal liability of any person other than the person**  
15 **under 18 years of age who is charged with violating subsection (1)(a) of this section.**

16 **SECTION 2.** **If a district attorney or juvenile department has reason to believe that a**  
17 **person under 18 years of age has engaged in conduct described in ORS 167.007 (1)(a), the**  
18 **district attorney or juvenile department shall file a petition alleging that the person is within**  
19 **the jurisdiction of the juvenile court under ORS 419B.100.**

20 **SECTION 3.** ORS 419B.100 is amended to read:

21 419B.100. (1) Except as otherwise provided in subsection (6) of this section and ORS 107.726, the  
22 juvenile court has exclusive original jurisdiction in any case involving a person who is under 18  
23 years of age and:

24 (a) Who is beyond the control of the person's parents, guardian or other person having custody  
25 of the person;

26 (b) Whose behavior is such as to endanger the welfare of the person or of others;

27 (c) Whose condition or circumstances are such as to endanger the welfare of the person or of  
28 others;

29 (d) Who is dependent for care and support on a public or private child-caring agency that needs  
30 the services of the court in planning for the best interest of the person;

**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 (e) Whose parents or any other person or persons having custody of the person have:
- 2 (A) Abandoned the person;
- 3 (B) Failed to provide the person with the care or education required by law;
- 4 (C) Subjected the person to cruelty, depravity or unexplained physical injury; or
- 5 (D) Failed to provide the person with the care, guidance and protection necessary for the
- 6 physical, mental or emotional well-being of the person;
- 7 (f) Who has run away from the home of the person;
- 8 (g) Who has filed a petition for emancipation pursuant to ORS 419B.550 to 419B.558; [or]
- 9 (h) Who is subject to an order entered under ORS 419C.411 (7)(a)[.]; **or**
- 10 **(i) Who has engaged in the conduct described in ORS 167.007 (1)(a).**

11 (2) The court shall have jurisdiction under subsection (1) of this section even though the child  
12 is receiving adequate care from the person having physical custody of the child.

13 (3) The practice of a parent who chooses for the parent or the child of the parent treatment by  
14 prayer or spiritual means alone may not be construed as a failure to provide physical care within  
15 the meaning of this chapter, but does not prevent a court of competent jurisdiction from exercising  
16 that jurisdiction under subsection (1)(c) of this section.

17 (4) The provisions of subsection (1) of this section do not prevent a court of competent juris-  
18 diction from entertaining a civil action or suit involving a child.

19 (5) The court does not have further jurisdiction as provided in subsection [(1)] **(1)(a) to (h)** of  
20 this section after a minor has been emancipated pursuant to ORS 419B.550 to 419B.558.

21 (6)(a) An Indian tribe has exclusive jurisdiction over any child custody proceeding involving an  
22 Indian child who resides or is domiciled within the reservation of the tribe, except where the juris-  
23 diction is otherwise vested in the state by existing federal law.

24 (b) Upon the petition of either parent, the Indian custodian or the Indian child's tribe, the ju-  
25 venile court, absent good cause to the contrary and absent objection by either parent, shall transfer  
26 a proceeding for the foster care placement of, or termination of parental rights to, an Indian child  
27 not domiciled or residing within the reservation of the Indian child's tribe, to the jurisdiction of the  
28 tribe.

29 (c) The juvenile court shall give full faith and credit to the public acts, records and judicial  
30 proceedings of an Indian tribe applicable to an Indian child custody proceeding to the same extent  
31 that the juvenile court gives full faith and credit to the public acts, records and judicial proceedings  
32 of any other entity.

33 **SECTION 4.** ORS 419B.150 is amended to read:

34 419B.150. (1) A child may be taken into protective custody by a peace officer, counselor, em-  
35 ployee of the Department of Human Services or any other person authorized by the juvenile court  
36 of the county in which the child is found, in the following circumstances:

37 (a) When the child's condition or surroundings reasonably appear to be such as to jeopardize the  
38 child's welfare;

39 (b) When the juvenile court, by order indorsed on the summons as provided in ORS 419B.839 or  
40 otherwise, has ordered that the child be taken into protective custody; [or]

41 (c) When it reasonably appears that the child has run away from home[.]; **or**

42 **(d) When the child has engaged in the conduct described in ORS 167.007 (1)(a).**

43 (2)(a) Before issuing an order under subsection (1)(b) of this section, the court shall review an  
44 affidavit sworn on information and belief provided by a peace officer, counselor or employee of the  
45 department or other person authorized by the juvenile court that sets forth with particularity the

1 facts and circumstances on which the request for protective custody is based, why protective cus-  
2 tody is in the best interests of the child and the reasonable efforts or, if the Indian Child Welfare  
3 Act applies, active efforts made by the department to eliminate the need for protective custody of  
4 the child.

5 (b) Except as provided in paragraph (c) of this subsection, an order directing that a child be  
6 taken into protective custody under subsection (1) of this section shall contain written findings, in-  
7 cluding a brief description of the reasonable efforts or, if the Indian Child Welfare Act applies, ac-  
8 tive efforts to eliminate the need for protective custody of the child that the department has made  
9 and why protective custody is in the best interests of the child.

10 (c) The court may issue an order even though no services have been provided if the court makes  
11 written findings that no existing services could eliminate the need for protective custody of the child  
12 and that protective custody is in the best interests of the child.

13 (3) When a child is taken into protective custody as a runaway under subsection (1) of this  
14 section, the peace officer or other person who takes the child into custody:

15 (a)(A) Shall release the child without unnecessary delay to the custody of the child's parent or  
16 guardian or to a shelter facility that has agreed to provide care and services to children who have  
17 run away from home and that has been designated by the juvenile court to provide such care and  
18 services; or

19 (B) Shall follow the procedures described in ORS 419B.160, 419B.165, 419B.168 and 419B.171;

20 (b) Shall, if possible, determine the preferences of the child and the child's parent or guardian  
21 as to whether the best interests of the child are better served by placement in a shelter facility that  
22 has agreed to provide care and services to children who have run away from home and that has  
23 been designated by the juvenile court to provide such care and services or by release to the child's  
24 parent or guardian; and

25 (c) Notwithstanding ORS 419B.165 and subsection (1) of this section, shall release the child to  
26 a shelter facility that has agreed to provide care and services to children who have run away from  
27 home and that has been designated by the juvenile court to provide such care and services if it  
28 reasonably appears that the child would not willingly remain at home if released to the child's  
29 parent or guardian.

30 **(4) When a child is taken into protective custody under subsection (1)(d) of this section,**  
31 **the peace officer or other person who takes the child into custody shall:**

32 **(a) Release the child without unnecessary delay to the custody of a shelter facility that**  
33 **has agreed to provide care and services to children who are victims of human trafficking and**  
34 **that has been designated by the juvenile court to provide such care and services; or**

35 **(b) Follow the procedures described in ORS 419B.160, 419B.165, 419B.168 and 419B.171.**

36 **SECTION 5. Section 2 of this 2011 Act and the amendments to ORS 167.007, 419B.100 and**  
37 **419B.150 by sections 1, 3 and 4 of this 2011 Act apply to conduct occurring on or after the**  
38 **effective date of this 2011 Act.**

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