

Senate Bill 187

Sponsored by Senator KRUSE (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 **as introduced**.

Requires Department of Human Services to release and disclose reports and records of child abuse investigations upon request of member of Legislative Assembly for purposes of responding to constituent's complaint or grievance or for the conduct of legislative business.

Requires department to implement training and continuing education curriculum for employees conducting child abuse investigations that includes training in determining appropriate protective social services and when protective custody is necessary.

A BILL FOR AN ACT

1
2 Relating to child abuse investigations; creating new provisions; and amending ORS 418.702 and
3 419B.035.

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

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

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

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

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

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

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

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

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

25 (g) The Office of Children's Advocate;

26 (h) The Teacher Standards and Practices Commission for investigations conducted under ORS
27 342.176 involving any child or any student in grade 12 or below;

28 (i) Any person, upon request to the Department of Human Services, if the reports or records
29 requested regard an incident in which a child, as the result of abuse, died or suffered serious phys-

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 ical injury as defined in ORS 161.015. Reports or records disclosed under this paragraph must be
2 disclosed in accordance with ORS 192.410 to 192.505; [and]

3 (j) The Child Care Division of the Employment Department for purposes of ORS 657A.030
4 (8)(g); **and**

5 **(k) A member of the Legislative Assembly pursuant to section 4 of this 2011 Act.**

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

12 (b) If the Department of Human Services does not have a report or record of abuse regarding
13 a child who, as the result of abuse, died or suffered serious physical injury as defined in ORS
14 161.015, the department may disclose that information.

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

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

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

41 (6)(a) Any record made available to a law enforcement agency or community corrections agency
42 in this state, to the Department of Corrections or the State Board of Parole and Post-Prison Super-
43 vision, [or] to a physician in this state **or to a member of the Legislative Assembly pursuant**
44 **to section 4 of this 2011 Act**, as authorized by subsections (1) to (5) of this section, shall be kept
45 confidential by the agency, department, board, [or] physician **or member of the Legislative As-**

1 **sembly.** Any record or report disclosed by the Department of Human Services to other persons or
2 entities pursuant to subsections (1) and (3) of this section shall be kept confidential.

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

4 (A) A law enforcement agency, a community corrections agency, the Department of Corrections
5 and the State Board of Parole and Post-Prison Supervision may disclose records made available to
6 them under subsection (5) of this section to each other, to law enforcement, community corrections,
7 corrections and parole agencies of other states and to authorized treatment providers for the pur-
8 pose of managing and supervising offenders in custody or on probation, parole, post-prison super-
9 vision or other form of conditional or supervised release.

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

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

15 (8) As used in this section, "law enforcement agency" has the meaning given that term in ORS
16 181.010.

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

18 **SECTION 2.** ORS 419B.035, as amended by section 4, chapter 348, Oregon Laws 2009, is
19 amended to read:

20 419B.035. (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.505 and
21 192.610 to 192.990 relating to confidentiality and accessibility for public inspection of public records
22 and public documents, reports and records compiled under the provisions of ORS 419B.010 to
23 419B.050 are confidential and may not be disclosed except as provided in this section. The Depart-
24 ment of Human Services shall make the records available to:

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

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

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

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

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

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

39 (g) The Office of Children's Advocate;

40 (h) The Teacher Standards and Practices Commission for investigations conducted under ORS
41 342.176 involving any child or any student in grade 12 or below; *and*

42 (i) Any person, upon request to the Department of Human Services, if the reports or records
43 requested regard an incident in which a child, as the result of abuse, died or suffered serious phys-
44 ical injury as defined in ORS 161.015. Reports or records disclosed under this paragraph must be
45 disclosed in accordance with ORS 192.410 to 192.505; **and**

1 **(j) A member of the Legislative Assembly pursuant to section 4 of this 2011 Act.**

2 (2)(a) When disclosing reports and records pursuant to subsection (1)(i) of this section, the De-
3 partment of Human Services may exempt from disclosure the names, addresses and other identifying
4 information about other children, witnesses, victims or other persons named in the report or record
5 if the department determines, in written findings, that the safety or well-being of a person named in
6 the report or record may be jeopardized by disclosure of the names, addresses or other identifying
7 information, and if that concern outweighs the public's interest in the disclosure of that 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 **or to a member of the Legislative Assembly pursuant**
40 **to section 4 of this 2011 Act**, as authorized by subsections (1) to (5) of this section, shall be kept
41 confidential by the agency, department, board, [or] physician **or member of the Legislative As-**
42 **sembly**. Any record or report disclosed by the Department of Human Services to other persons or
43 entities pursuant to subsections (1) and (3) of this section shall be kept confidential.

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

45 (A) A law enforcement agency, a community corrections agency, the Department of Corrections

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

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

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

11 (8) As used in this section, "law enforcement agency" has the meaning given that term in ORS
12 181.010.

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

14 **SECTION 3. Section 4 of this 2011 Act is added to and made a part of ORS 419B.005 to**
15 **419B.050.**

16 **SECTION 4. (1) A member of the Legislative Assembly may request that the Department**
17 **of Human Services release and disclose reports and records regarding an open or closed in-**
18 **vestigation of child abuse under ORS 419B.020 about which the member has received a com-**
19 **plaint or grievance from a constituent for whom the member is an elected representative**
20 **or that is the subject of legislative business. The request shall be in writing and sent in the**
21 **member's official capacity as a member of the Legislative Assembly. The member may not**
22 **request release and disclosure under this subsection unless, after consideration of all infor-**
23 **mation and written materials made available to the member, the member determines that**
24 **the member cannot be responsive to the constituent's complaint or grievance without release**
25 **and disclosure of the reports and records.**

26 (2) In making the request for release and disclosure, the member shall provide the de-
27 partment with information about the nature of the constituent's complaint or grievance,
28 including the names of the person making the complaint or grievance and the child who is
29 the subject of the investigation and other information that is necessary to identify the spe-
30 cific investigation about which the member has received a complaint or grievance.

31 (3) Within 15 days of receipt of a request for release and disclosure from a member of
32 the Legislative Assembly under this section, the department shall provide the member with
33 all reports and records that the department determines, in consultation with the member,
34 are necessary to enable the member to respond to the constituent's complaint or grievance
35 or that are necessary for the conduct of legislative business. The department may exempt
36 from disclosure the names, addresses and other identifying information about other children,
37 witnesses, victims or other persons named in the report or record if the department deter-
38 mines, in written findings that are provided to the member, that the safety or well-being of
39 a person named in the report or record may be jeopardized by disclosure of the names, ad-
40 dresses or other identifying information.

41 (4) A member may not disclose reports or records received under this section except:

42 (a) To legislative staff subject to the member's direction;

43 (b) To other members of the Legislative Assembly; and

44 (c) As necessary for the conduct of legislative business except that:

45 (A) All identifying information shall be redacted from reports or records disclosed under

1 **this paragraph; and**

2 **(B) Reports and records may not be disclosed under this paragraph if identifying infor-**
 3 **mation cannot be removed from the reports or records and the unredacted reports or re-**
 4 **ords would be subject to public disclosure.**

5 **(5) The Director of Human Services shall adopt rules for complying with requests for**
 6 **reports and records under this section, in consultation with members of the Legislative As-**
 7 **sembly.**

8 **(6) As used in this section, “legislative business” means official business of the Legisla-**
 9 **tive Assembly and of legislative interim and statutory committees, including advisory com-**
 10 **mittees and subcommittees of advisory committees, and task forces.**

11 **SECTION 5.** ORS 418.702 is amended to read:

12 418.702. (1) The Department of Human Services shall implement a training and continuing edu-
 13 cation curriculum for persons other than law enforcement officers required by law to investigate
 14 allegations of child abuse, **including but not limited to department staff, employees and per-**
 15 **sonnel that conduct investigations under ORS 419B.020.** The curriculum shall address the areas
 16 of training and education necessary to *[facilitate the skills necessary]* **acquire and exercise the skill**
 17 **and judgment required** to investigate reports of child abuse and **to make sound, fair and im-**
 18 **partial decisions and recommendations regarding appropriate protective social services nec-**
 19 **essary to safeguard the child. The curriculum** shall include but not be limited to:

- 20 (a) Assessment of risk to the child;
- 21 (b) Dynamics of child abuse, child sexual abuse and rape of children; *[and]*
- 22 (c) Legally sound and age appropriate interview and investigatory techniques; **and**
- 23 **(d) Considerations and best practices for determining when protective custody under ORS**
 24 **419B.150 is appropriate and necessary.**

25 (2) The Oregon State Bar and each board that licenses, certifies or registers public and private
 26 officials required to report child abuse under ORS 419B.010 shall identify those persons regulated
 27 by the board who in their official capacity have regular and on-going contact with children and shall
 28 notify those persons every two years of their duty to report child abuse. Such notice shall contain
 29 what the person is required to report and where such report shall be made and also advise of the
 30 symptoms to look for and provide a contact number for further information.

31 (3) The department shall develop content of the notice for such a mailing. The cost of distrib-
 32 ution shall be paid by the board.

33 (4) The department shall develop and make available, at cost, training materials that may be
 34 used at training conferences and other similar events involving such public and private officials, as
 35 defined in ORS 419B.005.

36 **SECTION 6. Section 4 of this 2011 Act and the amendments to ORS 419B.035 and 418.702**
 37 **by sections 1, 2 and 5 of this 2011 Act apply to child abuse investigations conducted on or**
 38 **after the effective date of this 2011 Act.**