

House Bill 2854

Sponsored by COMMITTEE ON JUDICIARY

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 person convicted of certain child abuse crimes to register with law enforcement agencies. Requires disclosure of registration information on request and authorizes disclosure via Internet.

Creates crime of failure to report as child abuser. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to crime; creating new provisions; amending ORS 132.320, 132.586 and 192.848; appropriat-
3 ing money; and declaring an emergency.

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

SECTION 1. As used in sections 1 to 6 of this 2013 Act:

6 (1) **"Another United States court," "attends," "correctional facility" and "works" have**
7 **the meanings given those terms in ORS 181.594.**

8 (2) **"Child abuse crime" means a person crime:**

9 (a) **Committed against a victim who, at the time the crime is committed, is under 18**
10 **years of age; and**

11 (b) **That is not a sex crime as defined in ORS 181.594.**

12 (3) **"Child abuser" means a person convicted of a child abuse crime.**

13 (4) **"Convicted" includes a finding of guilty except for insanity.**

14 (5) **"Person crime" means a person felony or a person Class A misdemeanor, as those**
15 **terms are defined in the rules of the Oregon Criminal Justice Commission.**

16 **SECTION 2. (1) A person who resides in this state and has been convicted of a child abuse**
17 **crime, or a statutory counterpart to a child abuse crime in another jurisdiction, shall make**
18 **an initial report, in person, to the Department of State Police, a city police department or**
19 **a county sheriff's office as follows:**

20 (a) **If the person is convicted of a child abuse crime in this state and, as a result of the**
21 **conviction, the person is:**

22 (A) **Discharged, released or placed on probation or any other form of supervised or con-**
23 **ditional release, the person shall make an initial report in the county in which the person is**
24 **discharged, released or placed on probation or other form of supervised or conditional re-**
25 **lease, no later than 10 days after the date the person is discharged, released or placed on**
26 **probation or other form of supervised or conditional release.**

27 (B) **Confined in a correctional facility, the person shall make the initial report in the**
28 **county in which the person is discharged or otherwise released from the facility, no later**
29 **than 10 days after the date the person is discharged or otherwise released.**

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 (b) If the person is convicted of a statutory counterpart to a child abuse crime in another
 2 United States court and, at the time of the conviction, the person is:

3 (A) Not a resident of this state, the person shall make the initial report to the Depart-
 4 ment of State Police in Marion County, Oregon, no later than 10 days after the date the
 5 person moves into this state.

6 (B) A resident of this state, the person shall make the initial report to the Department
 7 of State Police in Marion County, Oregon, no later than 10 days after the date the person is
 8 discharged, released or placed on probation or any other form of supervised or conditional
 9 release by the other United States court or, if the person is confined in a correctional facility
 10 by the other United States court, no later than 10 days after the date the person is dis-
 11 charged or otherwise released from the facility.

12 (2) After making the initial report required by subsection (1) of this section, the person
 13 shall report, in person, to the Department of State Police, a city police department or a
 14 county sheriff's office, in the county of the person's last reported residence:

15 (a) Within 10 days of a change of residence; and

16 (b) Once each year within 10 days of the person's birth date.

17 (3) When a person who has been convicted of a child abuse crime, or the statutory
 18 counterpart to a child abuse crime in another jurisdiction, resides in another state but at-
 19 tends school or works in this state, the person shall report, in person, to the Department
 20 of State Police, a city police department or a county sheriff's office, in the county in which
 21 the person attends school or works, no later than 10 days after:

22 (a) The first day of school attendance or the 14th day of employment; and

23 (b) A change in school enrollment or employment.

24 (4) The law enforcement agency to which a person reports under this section shall com-
 25 plete a child abuse registration form concerning the person when the person reports under
 26 this section. As part of the registration and reporting requirements of this section:

27 (a) The person required to report shall:

28 (A) Provide the information necessary to complete the child abuse registration form and
 29 sign the form as required; and

30 (B) Submit to the requirements described in paragraph (b) of this subsection.

31 (b) The Department of State Police, the city police department or the county sheriff's
 32 office:

33 (A) Shall photograph the person when the person initially reports under this section and
 34 each time the person reports annually under this section;

35 (B) May photograph the person or any identifying scars, marks or tattoos located on the
 36 person when the person reports under any of the circumstances described in this section;
 37 and

38 (C) Shall fingerprint the person if the person's fingerprints are not included in the record
 39 file of the Department of State Police.

40 (5) The obligation to report under this section is terminated if the conviction that gave
 41 rise to the obligation is reversed or vacated.

42 **SECTION 3.** (1) The Department of State Police shall create a child abuse registration
 43 form for use by law enforcement agencies under section 2 (4) of this 2013 Act. The form must
 44 include a place to list all the names used by the offender.

45 (2) No later than three working days after registering an offender under section 2 of this

1 2013 Act, a city police department or a county sheriff's office shall:

2 (a) Send the original copy of the registration form to the Department of State Police; or

3 (b) Forward the registration information to the Department of State Police by any means
4 and, within 10 working days after registration, send the original copy of the registration form
5 to the Department of State Police.

6 (3) The Department of State Police shall enter into the Law Enforcement Data System
7 the child abuser information obtained from the child abuse registration forms. The depart-
8 ment shall remove from the Law Enforcement Data System the child abuser information
9 obtained from the child abuse registration form submitted under sections 1 to 6 of this 2013
10 Act if the conviction or adjudication that gave rise to the registration obligation is reversed
11 or vacated or if the registrant is pardoned.

12 (4) The Department of State Police may adopt rules to carry out the provisions of
13 sections 1 to 6 of this 2013 Act.

14 **SECTION 4.** (1) The Department of State Police, a city police department or a county
15 sheriff's office shall release, upon request, any information that may be necessary to protect
16 the public concerning child abusers who reside in a specific area or concerning a specific
17 child abuser.

18 (2) The Department of State Police may use the Internet to make the following infor-
19 mation about a child abuser available to the public:

20 (a) The person's name and address;

21 (b) A physical description of the person;

22 (c) The type of vehicle that the person is known to drive;

23 (d) Any conditions or restrictions of the person's probation, parole, post-prison super-
24 vision or conditional release;

25 (e) A description of the person's primary and secondary targets;

26 (f) A description of the person's method of offense;

27 (g) A current photograph of the person;

28 (h) If the person is under supervision, the name or telephone number of the person's
29 parole and probation officer; and

30 (i) If the person is not under supervision, contact information for the Department of
31 State Police.

32 (3) The Department of State Police shall assess a person who is required to report under
33 section 2 of this 2013 Act and who is not under supervision a fee of \$70 each year. Moneys
34 received by the Department of State Police under this subsection are continuously appro-
35 priated to the department for the purpose of carrying out the department's duties under
36 sections 1 to 6 of this 2013 Act.

37 **SECTION 5.** (1) A person who is required to report in accordance with the applicable
38 provisions of section 2 of this 2013 Act and who has knowledge of the reporting requirements
39 commits the crime of failure to report as a child abuser if the person:

40 (a) Fails to make the initial report to a law enforcement agency;

41 (b) Fails to report following a change of school enrollment or employment status;

42 (c) Moves to a new residence and fails to report the move and the person's new address;

43 (d) Fails to make an annual report;

44 (e) Fails to provide the accurate information necessary to complete the child abuse reg-
45 istration form;

1 (f) Fails to sign the child abuse registration form as required; or

2 (g) Fails to submit to fingerprinting or to having a photograph taken of the person's face,
3 identifying scars, marks or tattoos.

4 (2) It is an affirmative defense in a prosecution under:

5 (a) Subsection (1)(a) of this section that a person required to report under section 2
6 (1)(b)(A) or (B) of this 2013 Act reported, in person, to the Department of State Police, a city
7 police department or a county sheriff's office, in the county of the person's residence, if the
8 person otherwise complied with all reporting requirements.

9 (b) Subsection (1)(c) of this section that the person reported, in person, to the Depart-
10 ment of State Police, a city police department or a county sheriff's office, in the county of
11 the person's new residence, if the person otherwise complied with all reporting requirements.

12 (3)(a) Except as otherwise provided in paragraph (b) of this subsection, failure to report
13 as a child abuser is a Class C felony.

14 (b) Failure to report as a child abuser under subsection (1)(d) or (e) of this section is a
15 Class A misdemeanor.

16 **SECTION 6.** (1) The purpose of sections 1 to 6 of this 2013 Act is to assist law enforce-
17 ment agencies in preventing the commission of future child abuse crimes.

18 (2) When the court imposes sentence upon a person convicted of a child abuse crime, the
19 court shall ensure that the person completes a form that documents the person's obligation
20 to report under section 2 of this 2013 Act. No later than three working days after the person
21 completes the form required by this subsection, the court shall ensure that the form is sent
22 to the Department of State Police.

23 (3) At the initial intake for incarceration or release on any type of supervised release,
24 the child abuser shall complete a form that documents the offender's obligation to report
25 under section 2 of this 2013 Act. The Department of State Police shall develop and provide
26 the form. No later than three working days after the child abuser completes the form, the
27 person responsible for the intake process shall send the form to the Department of State
28 Police.

29 (4) A public agency and its employees are immune from liability, both civil and criminal,
30 for the good faith performance of the agency's or the employee's duties under sections 1 to
31 6 of this 2013 Act.

32 **SECTION 7.** ORS 132.586 is amended to read:

33 132.586. (1) As used in this section[,]:

34 (a) "Child abuse crime" has the meaning given that term in section 1 of this 2013 Act.

35 (b) "Domestic violence" has the meaning given that term in ORS 135.230.

36 (2) When a crime involves domestic violence, the accusatory instrument may plead, and the
37 prosecution may prove at trial, domestic violence as an element of the crime. When a crime is so
38 pleaded, the words "constituting domestic violence" may be added to the title of the crime.

39 (3) When a crime is a child abuse crime, the accusatory instrument may plead, and the
40 prosecution may prove at trial, that the crime is a child abuse crime as an element of the
41 crime. When a crime is so pleaded, the words "constituting a child abuse crime" may be
42 added to the title of the crime.

43 **SECTION 8.** ORS 132.320 is amended to read:

44 132.320. (1) Except as provided in subsections (2) to (11) of this section, in the investigation of
45 a charge for the purpose of indictment, the grand jury shall receive no other evidence than such

1 as might be given on the trial of the person charged with the crime in question.

2 (2) A report or a copy of a report made by a physicist, chemist, medical examiner, physician,
3 firearms identification expert, examiner of questioned documents, fingerprint technician, or an ex-
4 pert or technician in some comparable scientific or professional field, concerning the results of an
5 examination, comparison or test performed by such person in connection with a case which is the
6 subject of a grand jury proceeding, shall, when certified by such person as a report made by such
7 person or as a true copy thereof, be received in evidence in the grand jury proceeding.

8 (3) An affidavit of a witness who is unable to appear before the grand jury shall be received in
9 evidence in the grand jury proceeding if, upon application by the district attorney, the presiding
10 judge for the judicial district in which the grand jury is sitting authorizes such receipt after good
11 cause has been shown for the witness' inability to appear. An affidavit taken in another state or
12 territory of the United States, the District of Columbia or in a foreign country must be
13 authenticated as provided in ORS 194.505 to 194.575 before it can be used in this state.

14 (4) A grand jury that is investigating a charge of criminal driving while suspended or revoked
15 under ORS 811.182 may receive in evidence an affidavit of a peace officer with a report or copy of
16 a report of the peace officer concerning the peace officer's investigation of the violation of ORS
17 811.182 by the defendant.

18 (5) A grand jury may receive testimony of a witness by means of simultaneous television trans-
19 mission allowing the grand jury and district attorney to observe and communicate with the witness
20 and the witness to observe and communicate with the grand jury and the district attorney.

21 (6) A grand jury that is investigating a charge of failure to appear under ORS 133.076, 153.992,
22 162.195 or 162.205 may receive in evidence an affidavit of a court employee certifying that the de-
23 fendant failed to appear as required by law and setting forth facts sufficient to support that con-
24 clusion.

25 (7)(a) Except as otherwise provided in this subsection, a grand jury may receive in evidence
26 through the testimony of one peace officer involved in the criminal investigation under grand jury
27 inquiry information from an official report of another peace officer involved in the same criminal
28 investigation concerning the other peace officer's investigation of the matter before the grand jury.
29 The statement of a person suspected of committing an offense or inadmissible hearsay of persons
30 other than the peace officer who compiled the official report may not be presented to a grand jury
31 under this paragraph.

32 (b) If the official report contains evidence other than chain of custody, venue or the name of the
33 person suspected of committing an offense, the grand jurors must be notified that the evidence is
34 being submitted by report and that the peace officer who compiled the report will be made available
35 for testimony at the request of the grand jury. When a grand jury requests the testimony of a peace
36 officer under this paragraph, the peace officer may present sworn testimony by telephone if requir-
37 ing the peace officer's presence before the grand jury would constitute an undue hardship on the
38 peace officer or the agency that employs or utilizes the peace officer.

39 (8)(a) A grand jury that is investigating a charge of failure to report as a sex offender under
40 ORS 181.599 may receive in evidence certified copies of the form required by ORS 181.603 (2) and
41 sex offender registration forms and an affidavit of a representative of the Oregon State Police, as
42 keepers of the state's sex offender registration records, certifying that the [*certified*] copies of the
43 forms constitute the complete record for the defendant.

44 (b) **A grand jury that is investigating a charge of failure to report as a child abuser under**
45 **section 5 of this 2013 Act may receive in evidence certified copies of the forms required by**

1 **section 6 of this 2013 Act and child abuse registration forms and an affidavit of a represen-**
 2 **tative of the Oregon State Police, as keepers of the state’s child abuse registration records,**
 3 **certifying that the copies of the forms constitute the complete record for the defendant.**

4 (9) The grand jury is not bound to hear evidence for the defendant, but it shall weigh all the
 5 evidence submitted to it; and when it believes that other evidence within its reach will explain away
 6 the charge, it should order such evidence to be produced, and for that purpose may require the
 7 district attorney to issue process for the witnesses.

8 (10) A grand jury that is investigating a charge of driving while under the influence of
 9 intoxicants in violation of ORS 813.010 may receive in evidence an affidavit of a peace officer re-
 10 garding any or all of the following:

11 (a) Whether the defendant was driving.

12 (b) Whether the defendant took or refused to take tests under any provision of ORS chapter 813.

13 (c) The administration of tests under any provision of ORS chapter 813 and the results of such
 14 tests.

15 (d) The officer’s observations of physical or mental impairment of the defendant.

16 (11)(a) A grand jury may receive in evidence an affidavit of a representative of a financial in-
 17 stitution for the purpose of authenticating records of the financial institution.

18 (b) As used in this subsection, “financial institution” means a financial institution as defined in
 19 ORS 706.008, an entity that regularly issues, processes or services credit cards or any other com-
 20 parable entity that regularly produces financial records.

21 **SECTION 9.** ORS 192.848 is amended to read:

22 192.848. (1) The Attorney General may not disclose the actual address or telephone number of
 23 a program participant, except under either of the following circumstances:

24 (a) Upon receipt of a court order signed by a judge pursuant to a finding of good cause. Good
 25 cause exists when disclosure is sought for a lawful purpose that outweighs the risk of the disclosure
 26 and, in the case of a request for disclosure received from a federal, state or local law enforcement
 27 agency, district attorney or other public body, when information is provided to the court that de-
 28 scribes the official purpose for which the actual address or telephone number of the program par-
 29 ticipant will be used. If a judge finds that good cause exists, the terms of the court order shall
 30 address, as much as practicable, the safety and protection of the program participant. In cases
 31 where the Attorney General has not received prior notice of a court order, not later than three
 32 business days after receiving the order, the Attorney General may object to the order and request
 33 a hearing before the judge who signed the order.

34 (b) Where the program participant is required to disclose the actual address of the program
 35 participant as part of a registration for:

36 **(A) Sex offenders as required under ORS 181.598 and 181.599; or**

37 **(B) Child abusers as required under sections 1 to 6 of this 2013 Act.**

38 (2) A person to whom an actual address or telephone number of a program participant has been
 39 disclosed pursuant to a court order may not disclose the actual address or telephone number to any
 40 other person unless permitted to do so by order of the court.

41 (3) The Attorney General shall notify a program participant within one business day after the
 42 Attorney General discloses an actual address under subsection (1)(a) of this section.

43 (4) Upon request by a public body, the Attorney General may verify whether or not a person is
 44 a program participant when the verification is for official use only.

45 **SECTION 10. Sections 1 to 6 of this 2013 Act and the amendments to ORS 132.320, 132.586**

1 and 192.848 by sections 7 to 9 of this 2013 Act apply to persons convicted of a child abuse
2 crime that is committed on or after the effective date of this 2013 Act.

3 SECTION 11. This 2013 Act being necessary for the immediate preservation of the public
4 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
5 on its passage.
6
