

From the Desk of
Senator Ted Ferrioli

Senate Bill 646

Sponsored by Senator GELSER; Senators MONNES ANDERSON, WINTERS

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 charge of prostitution for person under 18 years of age.

Allows district attorney or juvenile department to file dependency petition when person under 18 years of age engages in prostitution.

Authorizes detention of child taken into protective custody for engaging in prostitution for duration of investigation. Permits release of child to custody of shelter facility upon conclusion of investigation.

A BILL FOR AN ACT

1
2 Relating to juveniles; creating new provisions; and amending ORS 167.007, 419B.150, 419B.160,
3 419B.168 and 419B.175.

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

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

6 167.007. (1) A person commits the crime of prostitution if the person engages in, or offers or
7 agrees to engage in, sexual conduct or sexual contact in return for a fee.

8 (2) Prostitution is a Class A misdemeanor.

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

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

18 **SECTION 3.** ORS 419B.150 is amended to read:

19 419B.150. (1) A child may be taken into protective custody by a peace officer, counselor, em-
20 ployee of the Department of Human Services or any other person authorized by the juvenile court
21 of the county in which the child is found, in the following circumstances:

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

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

26 (c) When it reasonably appears that the child has run away from home; **or**

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

28 (2)(a) Before issuing an order under subsection (1)(b) of this section, the court shall review an
29 affidavit sworn on information and belief provided by a peace officer, counselor or employee of the

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 department or other person authorized by the juvenile court that sets forth with particularity the
 2 facts and circumstances on which the request for protective custody is based, why protective cus-
 3 tody is in the best interests of the child and the reasonable efforts or, if the Indian Child Welfare
 4 Act applies, active efforts made by the department to eliminate the need for protective custody of
 5 the child.

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

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

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

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

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

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

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

31 **(4) When a child is taken into protective custody under subsection (1)(d) of this section,**
 32 **and upon conclusion of an investigation, if any, into the circumstances surrounding the**
 33 **conduct undertaken by the peace officer, counselor, employee of the department or any other**
 34 **person authorized by the juvenile court, the peace officer or other person shall:**

35 **(a) Release the child to the custody of a shelter facility that has agreed to provide care**
 36 **and services to children who are victims of human trafficking and that has been designated**
 37 **by the juvenile court to provide such care and services; or**

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

39 **SECTION 4.** ORS 419B.160 is amended to read:

40 419B.160. (1) A child or ward may not be detained at any time in a police station, jail, prison
 41 or other place where adults are detained, except that:

42 (a) A child or ward may be detained in a police station for up to five hours when necessary to
 43 obtain the child or ward's name, age, residence and other identifying information; and

44 (b) **Notwithstanding ORS 419B.183, a child taken into protective custody for engaging in**
 45 **conduct described in ORS 167.007 (1) may be detained for the duration of an investigation into**

1 **the circumstances surrounding the child's conduct undertaken by the peace officer, counse-**
2 **lor, employee of the Department of Human Services or any other person authorized by the**
3 **juvenile court who takes the child into protective custody under ORS 419B.150.**

4 (2) All peace officers shall keep a record of children taken into protective custody and shall
5 promptly notify the juvenile court or counselor of all children taken into protective custody.

6 (3) As soon as practicable after the child is taken into custody, the person taking the child into
7 custody shall notify the child's parent, guardian or other person responsible for the child. The notice
8 shall inform the parent, guardian or other person of the action taken and the time and place of the
9 hearing.

10 **SECTION 5.** ORS 419B.168 is amended to read:

11 419B.168. (1) If a child taken into protective custody is not released as provided in ORS 419B.165
12 and the juvenile court for the county has not established the alternative procedure authorized in
13 subsection (4) of this section, the person taking the child into custody shall, without unnecessary
14 delay, do one of the following:

15 (a) Take the child before the court or a person appointed by the court to effect disposition under
16 ORS 419B.165.

17 (b) Take the child to a place of detention or shelter care or a public or private agency desig-
18 nated by the court and as soon as possible thereafter notify the court that the child has been taken
19 into custody.

20 (c) **Where the child was taken into protective custody for engaging in conduct described**
21 **in ORS 167.007 (1), detain the child for the duration of an investigation into the circum-**
22 **stances surrounding the child's conduct undertaken by the peace officer, counselor, employee**
23 **of the Department of Human Services or any other person authorized by the juvenile court**
24 **who takes the child into protective custody under ORS 419B.150.**

25 (2) Where a child residing in some other county is taken into protective custody the child may
26 be:

27 (a) Released to the child's parent or other responsible person in this state as provided in ORS
28 419B.165.

29 (b) Delivered to a peace officer or juvenile counselor in the county in which the child resides,
30 if such delivery can be made without unnecessary delay. In such event, the person to whom the child
31 is delivered shall assume protective custody of the child and shall proceed as provided in this
32 chapter.

33 (3) Where a child is released or delivered as provided in subsection (2) of this section, the ju-
34 risdiction of the juvenile court of the county in which the child resides shall attach from the time
35 the child is taken into custody.

36 (4) The juvenile court may establish, as an alternative to the provisions of subsection (1) of this
37 section, that if a child taken into protective custody is not released as provided in ORS 419B.165,
38 procedures shall be followed that comply with the following:

39 (a) The person taking the child into custody may communicate, by telecommunications or oth-
40 erwise, with the person appointed by the court to effect disposition under ORS 419B.175.

41 (b) After interviewing the person taking the child into custody and obtaining such other infor-
42 mation as is considered necessary, the person appointed by the court under ORS 419B.175 to effect
43 disposition may exercise the authority granted under that section and shall, in such case, direct that
44 the person taking the child into custody release the child or deliver the child in accordance with
45 such direction.

1 (c) The person taking the child into custody shall comply with the direction of the person ap-
 2 pointed by the court to effect disposition.

3 **SECTION 6.** ORS 419B.175 is amended to read:

4 419B.175. (1) This subsection establishes the authority and procedures that apply to a person
 5 designated by a court to effect disposition of a child taken into protective custody or brought before
 6 the court under ORS 419B.160, 419B.165, 419B.168 or 419B.171. The person shall, when the person
 7 has taken custody of a child or has authority to effect disposition of a child taken into custody, **do**
 8 **one or more of the following:**

9 (a) Release the child to the custody of a parent, guardian or other responsible person[;].

10 (b) Release the child on the child's own recognizance when appropriate[;].

11 (c) Subject to ORS 419B.121 or 419B.180, place the child in shelter care or detention. The child
 12 shall be placed in shelter care rather than detention, unless the person has probable cause to believe
 13 that the court will be able to detain the child under ORS 419B.121[; *or*].

14 (d) Pursuant to order of the court made after the filing of a petition, hold, retain or place the
 15 child in shelter care subject to further order.

16 (e) **When the child was taken into protective custody for engaging in conduct described**
 17 **in ORS 167.007 (1), hold the child in detention for the duration of an investigation into the**
 18 **circumstances surrounding the conduct that gave rise to the child being taken into protec-**
 19 **tive custody under ORS 419B.150.**

20 (2) If the child is released under subsection (1)(a) of this section, the person releasing the child
 21 shall inform the juvenile court.

22 **SECTION 7.** Section 2 of this 2015 Act and the amendments to ORS 167.007, 419B.150,
 23 419B.160, 419B.168 and 419B.175 by sections 1 and 3 to 6 of this 2015 Act apply to conduct and
 24 actions for taking a child into protective custody occurring on or after the effective date of
 25 this 2015 Act.

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