

DRAFT

SUMMARY

Modifies definition of “child-caring agency” to include certain residential facilities.

A BILL FOR AN ACT

Relating to child caring agencies that provide developmental disability services to children; amending ORS 418.205, 418.257, 418.258 and 418.259.

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

SECTION 1. ORS 418.205 is amended to read:

418.205. As used in ORS 418.205 to 418.327, 418.470, 418.475, 418.950 to 418.970 and 418.992 to 418.998, unless the context requires otherwise:

(1) “Child” means an unmarried person under 21 years of age who resides in or receives care or services from a child-caring agency.

(2)(a) “Child-caring agency”:

(A) Means any private school, private agency or private organization providing:

(i) Day treatment for children with emotional disturbances;

(ii) Adoption placement services;

(iii) Residential care, including but not limited to foster care or residential treatment for children;

(iv) Residential care in combination with academic education and therapeutic care, including but not limited to treatment for emotional, behavioral or mental health disturbances;

(v) Outdoor youth programs; or

(vi) Other similar care or services for children.

1 (B) Includes the following:

2 (i) A shelter-care home that is not a foster home subject to ORS 418.625
3 to 418.645;

4 (ii) An independent residence facility as described in ORS 418.475;

5 (iii) A private residential boarding school; *[and]*

6 (iv) A child-caring facility as defined in ORS 418.950[.]; **and**

7 **(v) Residential facilities licensed by the Department of Human**
8 **Services under ORS 443.400 to 443.455 for children receiving develop-**
9 **mental disability services.**

10 (b) “Child-caring agency” does not include:

11 (A) *[Residential facilities or]* Foster care homes certified *[or licensed]* by
12 the Department of Human Services under ORS *[443.400 to 443.455,]* 443.830
13 and 443.835 for children receiving developmental disability services;

14 (B) Any private agency or organization facilitating the provision of re-
15 spite services for parents pursuant to a properly executed power of attorney
16 under ORS 109.056. For purposes of this subparagraph, “respite services”
17 means the voluntary assumption of short-term care and control of a minor
18 child without compensation or reimbursement of expenses for the purpose
19 of providing a parent in crisis with relief from the demands of ongoing care
20 of the parent’s child;

21 (C) A youth job development organization as defined in ORS 344.415;

22 (D) A shelter-care home that is a foster home subject to ORS 418.625 to
23 418.645;

24 (E) A foster home subject to ORS 418.625 to 418.645;

25 (F) A facility that exclusively serves individuals 18 years of age and older;
26 or

27 (G) A facility that primarily serves both adults and children but requires
28 that any child must be accompanied at all times by at least one custodial
29 parent or guardian.

30 (3) “Child-caring facility” has the meaning given that term in ORS
31 418.950.

1 (4) "Governmental agency" means an executive, legislative or judicial
2 agency, department, board, commission, authority, institution or
3 instrumentality of this state or of a county, municipality or other political
4 subdivision of this state.

5 (5) "Independent residence facility" means a facility established or certi-
6 fied under ORS 418.475.

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

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

12 (A) Operated by a governmental entity;

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

14 (C) Licensed by the Department of Human Services under other authority
15 of the department; or

16 (D) Operated by a youth job development organization as defined in ORS
17 344.415.

18 (7) "Private" means not owned, operated or administered by any govern-
19 mental agency or unit.

20 (8) "Private residential boarding school" means either of the following as
21 the context requires:

22 (a) A child-caring agency that is a private school that provides residential
23 care in combination with academic education and therapeutic care, including
24 but not limited to treatment for emotional, behavioral or mental health dis-
25 turbances; or

26 (b) A private school providing residential care that is primarily engaged
27 in educational work under ORS 418.327.

28 (9) "Proctor foster home" means a foster home certified by a child-caring
29 agency under ORS 418.248 that is not subject to ORS 418.625 to 418.645.

30 (10) "Provider of care or services for children" means a person, entity or
31 organization that provides care or services to children, regardless of whether

1 the child is in the custody of the Department of Human Services, and that
2 does not otherwise meet the definition of, or requirements for, a child-caring
3 agency. “Provider of care or services for children” includes a proctor foster
4 home certified by a child-caring agency under ORS 418.248.

5 (11) “Shelter-care home” has the meaning given that term in ORS 418.470.

6 **SECTION 2.** ORS 418.257 is amended to read:

7 418.257. As used in ORS 418.257 to 418.259:

8 (1) “Abuse” means one or more of the following:

9 (a) Any physical injury to a child in care caused by other than accidental
10 means, or that appears to be at variance with the explanation given of the
11 injury.

12 (b) Neglect of a child in care.

13 (c) Abandonment, including desertion or willful forsaking of a child in
14 care or the withdrawal or neglect of duties and obligations owed a child in
15 care by a child-caring agency, caretaker, certified foster home, developmental
16 disabilities [*residential facility*] **foster home** or other person.

17 (d) Willful infliction of physical pain or injury upon a child in care.

18 (e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411,
19 163.415, 163.425, 163.427, 163.465, 163.467 or 163.525.

20 (f) Verbal abuse.

21 (g) Financial exploitation.

22 (h) Sexual abuse.

23 (i) Involuntary seclusion of a child in care for the convenience of a
24 child-caring agency, caretaker, certified foster home or developmental disa-
25 bilities [*residential facility*] **foster home** or to discipline the child in care.

26 (j) A wrongful use of a physical or chemical restraint of a child in care,
27 excluding an act of restraint prescribed by a physician licensed under ORS
28 chapter 677 and any treatment activities that are consistent with an ap-
29 proved treatment plan or in connection with a court order.

30 (2) “Certified foster home” means a foster home certified by the Depart-
31 ment of Human Services and subject to ORS 418.625 to 418.645.

1 (3)(a) “Child in care” means a person under 21 years of age who is resid-
2 ing in or receiving care or services from:

3 (A) A child-caring agency or proctor foster home subject to ORS 418.205
4 to 418.327, 418.470, 418.475 or 418.950 to 418.970;

5 (B) A certified foster home; or

6 (C) A developmental disabilities [*residential facility*] **foster home**.

7 (b) “Child in care” does not include a person under 21 years of age who
8 is residing in any of the entities listed in paragraph (a) of this subsection
9 when the care provided is in the home of the child by the child’s parent.

10 [(4) “*Child-caring agency*” has the meaning given that term in ORS
11 418.205.]

12 [(5)] (4) “Developmental disabilities [*residential facility*] **foster home**”
13 means a [*residential facility or*] foster home for children who are 18 years
14 of age or younger and receiving developmental disability services that is
15 subject to ORS [443.400 to 443.455,] 443.830 and 443.835.

16 [(6)] (5) “Involuntary seclusion” means the confinement of a child in care
17 alone in a room from which the child in care is physically prevented from
18 leaving. “Involuntary seclusion” does not include age-appropriate discipline,
19 including but not limited to a time-out.

20 [(7)] (6) “Proctor foster home” has the meaning given that term in ORS
21 418.205.

22 [(8)(a)] (7)(a) “Financial exploitation” means:

23 (A) Wrongfully taking the assets, funds or property belonging to or in-
24 tended for the use of a child in care.

25 (B) Alarming a child in care by conveying a threat to wrongfully take or
26 appropriate moneys or property of the child in care if the child would rea-
27 sonably believe that the threat conveyed would be carried out.

28 (C) Misappropriating, misusing or transferring without authorization any
29 moneys from any account held jointly or singly by a child in care.

30 (D) Failing to use the income or assets of a child in care effectively for
31 the support and maintenance of the child in care.

1 (b) “Financial exploitation” does not include age-appropriate discipline
2 that may involve the threat to withhold, or the withholding of, privileges.

3 [(9)] (8) “Intimidation” means compelling or deterring conduct by threat.
4 “Intimidation” does not include age-appropriate discipline that may involve
5 the threat to withhold privileges.

6 [(10)] (9) “Law enforcement agency” means:

7 (a) Any city or municipal police department.

8 (b) Any county sheriff’s office.

9 (c) The Oregon State Police.

10 (d) Any district attorney.

11 (e) A police department established by a university under ORS 352.121 or
12 353.125.

13 [(11)] (10) “Neglect” means:

14 (a) Failure to provide the care, supervision or services necessary to
15 maintain the physical and mental health of a child in care; or

16 (b) The failure of a child-caring agency, proctor foster home, certified
17 foster home, developmental disabilities [*residential facility*] **foster home**,
18 caretaker or other person to make a reasonable effort to protect a child in
19 care from abuse.

20 [(12)] (11) “Services” includes but is not limited to the provision of food,
21 clothing, medicine, housing, medical services, assistance with bathing or
22 personal hygiene or any other service essential to the well-being of a child
23 in care.

24 [(13)] (12) “Sexual abuse” means:

25 (a) Sexual harassment, sexual exploitation or inappropriate exposure to
26 sexually explicit material or language;

27 (b) Any sexual contact between a child in care and an employee of a
28 child-caring agency, proctor foster home, certified foster home, develop-
29 mental disabilities [*residential facility*] **foster home**, caretaker or other
30 person responsible for the provision of care or services to a child in care;

31 (c) Any sexual contact between a person and a child in care that is un-

1 lawful under ORS chapter 163 and not subject to a defense under that
2 chapter; or

3 (d) Any sexual contact that is achieved through force, trickery, threat or
4 coercion.

5 [(14)] (13) "Sexual contact" has the meaning given that term in ORS
6 163.305.

7 [(15)] (14) "Sexual exploitation" means sexual exploitation as described
8 in ORS 419B.005 (1)(a)(E).

9 [(16)] (15) "Verbal abuse" means to threaten significant physical or emo-
10 tional harm to a child in care through the use of:

11 (a) Derogatory or inappropriate names, insults, verbal assaults, profanity
12 or ridicule; or

13 (b) Harassment, coercion, threats, intimidation, humiliation, mental cru-
14 elty or inappropriate sexual comments.

15 **SECTION 3.** ORS 418.258 is amended to read:

16 418.258. (1) When the Department of Human Services becomes aware of
17 a report of suspected child abuse of a child in care, whether in the form of
18 an allegation, complaint or formal report made under this section, and
19 whether made directly to the Director of Human Services, the department
20 or an employee of the department, to a hotline operated by the department,
21 through the mandatory abuse reporting process set forth in ORS 419B.005 to
22 419B.050 or otherwise, the department shall immediately:

23 (a) Notify appropriate personnel within the department, including but not
24 limited to employees responsible for licensing, certifying or authorizing
25 child-caring agencies, certified foster homes and developmental disabilities
26 [*residential facilities*] **foster homes**.

27 (b) Notify any governmental agency that has a contract with the child-
28 caring agency, certified foster home or developmental disabilities [*residential*
29 *facility*] **foster home** to provide care or services to the child in care.

30 (c) Commence an investigation to determine whether the report of sus-
31 pected abuse is substantiated, unsubstantiated or inconclusive under ORS

1 418.259.

2 (d) Report to a law enforcement agency any crime that the department
3 has reason to believe has occurred with respect to a child in care or at a
4 child-caring agency, proctor foster home, certified foster home or develop-
5 mental disabilities [*residential facility*] **foster home** even if the suspected
6 crime is not related to a report of abuse made under this section.

7 (2)(a) As a condition for issuance or renewal of a license, certificate or
8 authorization to a child-caring agency, certified foster home or develop-
9 mental disabilities [*residential facility*] **foster home**, the department shall
10 require and verify that the child-caring agency, certified foster home or de-
11 velopmental disabilities [*residential facility*] **foster home** has procedures and
12 protocols that:

13 (A) Require employees of the child-caring agency, a proctor foster home
14 certified by the child-caring agency, the certified foster home or the devel-
15 opmental disabilities [*residential facility*] **foster home** to immediately report
16 suspected abuse of a child in care to the director, the director's designee or
17 personnel within the department who have been specifically designated to
18 receive reports of abuse of children in care;

19 (B) Mandate that the child-caring agency, certified foster home or devel-
20 opmental disabilities [*residential facility*] **foster home** provide an annual
21 training and written materials that include information about the child
22 abuse reporting hotline, and that the agency[,] **or** home [*or facility*] advise
23 and educate employees of the child-caring agency and any proctor foster
24 home certified by the child-caring agency, of the certified foster home or of
25 the developmental disabilities [*residential facility*] **foster home** of the duty
26 under this section and ORS 419B.005 to 419B.050 to report abuse of a child
27 in care; and

28 (C) Inform employees of child-caring agencies, proctor foster homes, cer-
29 tified foster homes and developmental disabilities [*residential facilities*] **fos-**
30 **ter homes** that the duty to report abuse of a child in care is personal to the
31 employee and that the duty is not fulfilled by reporting the abuse to the

1 owner, operator or any other employee of the child-caring agency, proctor
2 foster home, certified foster home or developmental disabilities [*residential*
3 *facility*] **foster home** even if the owner, operator or other employee reports
4 the abuse of a child in care to the director, the director's designee or the
5 department.

6 (b) A child-caring agency, certified foster home or developmental disabil-
7 ities [*residential facility*] **foster home** need not develop and maintain pro-
8 cedures and protocols or provide an annual training and written materials
9 under paragraph (a) of this subsection if the agency[,] **or** home [*or facility*]
10 does not have any employees, staff or volunteers.

11 (3) Interference or hindering an investigation of abuse of a child in care,
12 including but not limited to the intimidation of witnesses, falsification of
13 records or denial or limitation of interviews with the child in care who is
14 the subject of the investigation or with witnesses, may constitute grounds
15 for the revocation, suspension or placing of conditions on the license, cer-
16 tificate or other authorization of a child-caring agency, proctor foster home,
17 certified foster home or developmental disabilities [*residential facility*] **foster**
18 **home**.

19 (4)(a) Anyone, including but not limited to an employee of a child-caring
20 agency, proctor foster home, certified foster home or developmental disabili-
21 ties [*residential facility*] **foster home**, who makes a report of suspected abuse
22 of a child in care to the Governor, the Department of Justice, the Director
23 of Human Services, the director's designee or the department under this
24 section in good faith and who has reasonable grounds for the making of the
25 report shall have immunity:

26 (A) From any liability, civil or criminal, that might otherwise be incurred
27 or imposed with respect to the making or content of such report;

28 (B) From disciplinary action taken by the person's employer; and

29 (C) With respect to participating in any judicial proceeding resulting from
30 or involving the report.

31 (b) A person making a report under this section may include references

1 to otherwise confidential information for the sole purpose of making the re-
2 port, and any such disclosure must be protected from further disclosure to
3 other persons or entities for any other purpose not related to the making of
4 the report.

5 **SECTION 4.** ORS 418.259 is amended to read:

6 418.259. (1) The investigation conducted by the Department of Human
7 Services under ORS 418.258 must result in one of the following findings:

8 (a) That the report is substantiated. A report is substantiated when there
9 is reasonable cause to believe that the abuse of a child in care occurred.

10 (b) That the report is unsubstantiated. A report is unsubstantiated when
11 there is no evidence that the abuse of a child in care occurred.

12 (c) That the report is inconclusive. A report is inconclusive when there
13 is some indication that the abuse occurred but there is insufficient evidence
14 to conclude that there is reasonable cause to believe that the abuse occurred.

15 (2) When a report is received under ORS 418.258 alleging that a child in
16 care may have been subjected to abuse, the department shall notify the case
17 managers for the child, the attorney for the child, the child's court appointed
18 special advocate, the parents or guardians of the child, any attorney repre-
19 senting a parent or guardian of the child and any governmental agency that
20 has a contract with the child-caring agency or developmental disabilities
21 [*residential facility*] **foster home** to provide care or services to the child that
22 a report has been received.

23 (3) The department may interview the child in care who is the subject of
24 suspected abuse and witnesses without the presence of employees of the
25 child-caring agency, proctor foster home or developmental disabilities [*resi-*
26 *dential facility*] **foster home**, the provider of services at a certified foster
27 home or department personnel. The department shall inform the child in care
28 that the child may have the child's parent or guardian, if the child has not
29 been committed to the custody of the department or the Oregon Youth Au-
30 thority, or attorney present when participating in an interview conducted in
31 the course of an abuse investigation.

1 (4) The department shall notify the following when a report of abuse is
2 substantiated:

3 (a) The Director of Human Services.

4 (b) Personnel in the department responsible for the licensing, certificate
5 or authorization of child-caring agencies.

6 (c) The department's lead personnel in that part of the department that
7 is responsible for child welfare generally.

8 (d) With respect to the child in care who is the subject of the abuse report
9 and investigation, the case managers for the child, the attorney for the child,
10 the child's court appointed special advocate, the parents or guardians of the
11 child, any attorney representing a parent or guardian of the child and any
12 governmental agency that has a contract with the child-caring agency to
13 provide care or services to the child.

14 (e) The parents or guardians of the child in care who is the subject of the
15 abuse report and investigation if the child in care has not been committed
16 to the custody of the department or the youth authority. Notification under
17 this paragraph may not include any details or information other than that
18 a report of abuse has been substantiated.

19 (f) Any governmental agency that has a contract with the child-caring
20 agency to provide care or services to a child in care.

21 (g) The local citizen review board established by the Judicial Department
22 under ORS 419A.090.

23 (5) The department shall report on a quarterly basis to the interim legis-
24 lative committees on child welfare for the purposes of public review and
25 oversight of the quality and safety of child-caring agencies, certified foster
26 homes and developmental disabilities [*residential facilities*] **foster homes**
27 that are licensed, certified or authorized by the department in this state and
28 of proctor foster homes that are certified by the child-caring agencies. In-
29 formation provided in reports under this subsection may not contain the
30 name or any identifying information of a child in care but must contain all
31 of the following:

1 (a) The name of any child-caring agency, proctor foster home or develop-
2 mental disabilities [*residential facility*] **foster home**, or, provided there are
3 five or more certified foster homes in the county, the name of the county
4 where a certified foster home is located, where the department conducted an
5 investigation pursuant to ORS 418.258 that resulted in a finding that the
6 report of abuse was substantiated during that quarter;

7 (b) The approximate date that the abuse occurred;

8 (c) The nature of the abuse and a brief narrative description of the abuse
9 that occurred;

10 (d) Whether physical injury, sexual abuse or death resulted from the
11 abuse; and

12 (e) Corrective actions taken or ordered by the department and the out-
13 come of the corrective actions.

14 (6) In compiling records, reports and other information during an inves-
15 tigation under ORS 418.258 (1) and in issuing findings, letters of concern or
16 reprimands, the Director of Human Services or the director's designee and
17 the department may not refer to the employee, person or entity that is the
18 subject of the investigation as an "alleged perpetrator" but must refer to the
19 employee, person or entity as the "respondent."

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