

A-Engrossed
Senate Bill 243

Ordered by the Senate February 20
Including Senate Amendments dated February 20

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Human Services and Early Childhood)

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.

Expands definition of "child in care" to include children receiving care and services from certified foster homes and developmental disabilities residential facilities. **Excludes child from definition of "child in care" when care is provided in child's home by child's parent.**

Defines "involuntary seclusion" for purposes of definition of "abuse."

Expands abuse reporting requirements and responsibilities to certified foster homes and developmental disabilities residential facilities.

Exempts certain entities from having procedures and protocols to report abuse, and from providing annual trainings and written materials, if entity has no employees, staff or volunteers.

Becomes operative on January 1, 2018.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to abuse reporting regarding children in care; creating new provisions; amending sections
3 36, 37 and 38, chapter 106, Oregon Laws 2016; and declaring an emergency.

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

5 **SECTION 1.** Section 36, chapter 106, Oregon Laws 2016, is amended to read:

6 **Sec. 36.** As used in sections 36 to 38, [*of this 2016 Act*] **chapter 106, Oregon Laws 2016:**

7 (1) "Abuse" means one or more of the following:

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

10 (b) Neglect of a child in care.

11 (c) Abandonment, including desertion or willful forsaking of a child in care or the withdrawal
12 or neglect of duties and obligations owed a child in care by a child-caring agency, caretaker, **cer-**
13 **tified foster home, developmental disabilities residential facility** or other person.

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

15 (e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427,
16 163.465, 163.467 or 163.525.

17 (f) Verbal abuse.

18 (g) Financial exploitation.

19 (h) Sexual abuse.

20 (i) Involuntary seclusion of a child in care for the convenience of a child-caring agency, [*or*]
21 caretaker, **certified foster home or developmental disabilities residential facility** or to discipline
22 the child in care.

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

4 **(2) “Certified foster home” means a foster home certified by the Department of Human**
5 **Services and subject to ORS 418.625 to 418.645.**

6 [(2)] **(3)(a)** “Child in care” means a person under 21 years of age who is residing in or receiving
7 care or services from:

8 **(A)** A child-caring agency or proctor foster home subject to ORS 418.205 to 418.327, 418.470,
9 418.475 or 418.950 to 418.970[.];

10 **(B)** A certified foster home; or

11 **(C)** A developmental disabilities residential facility.

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

15 [(3)] **(4)** “Child-caring agency” has the meaning given that term in ORS 418.205.

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

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

22 [(4)] **(7)** “Proctor foster home” has the meaning given that term in ORS 418.205.

23 [(5)(a)] **(8)(a)** “Financial exploitation” means:

24 **(A)** Wrongfully taking the assets, funds or property belonging to or intended for the use of a
25 child in care.

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

29 **(C)** Misappropriating, misusing or transferring without authorization any moneys from any ac-
30 count held jointly or singly by a child in care.

31 **(D)** Failing to use the income or assets of a child in care effectively for the support and main-
32 tenance of the child in care.

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

35 [(6)] **(9)** “Intimidation” means compelling or deterring conduct by threat. “Intimidation” does not
36 include age-appropriate discipline that may involve the threat to withhold privileges.

37 [(7)] **(10)** “Law enforcement agency” means:

38 **(a)** Any city or municipal police department.

39 **(b)** Any county sheriff’s office.

40 **(c)** The Oregon State Police.

41 **(d)** Any district attorney.

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

43 [(8)] **(11)** “Neglect” means:

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

1 (b) The failure of a child-caring agency, proctor foster home, **certified foster home, develop-**
2 **mental disabilities residential facility**, caretaker or other person to make a reasonable effort to
3 protect a child in care from abuse.

4 [(9)] (12) "Services" includes but is not limited to the provision of food, clothing, medicine,
5 housing, medical services, assistance with bathing or personal hygiene or any other service essential
6 to the well-being of a child in care.

7 [(10)] (13) "Sexual abuse" means:

8 (a) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit mate-
9 rial or language;

10 (b) Any sexual contact between a child in care and an employee of a child-caring agency, [or]
11 proctor foster home, **certified foster home, developmental disabilities residential facility**, care-
12 taker or other person responsible for the provision of care or services to a child in care;

13 (c) Any sexual contact between a person and a child in care that is unlawful under ORS chapter
14 163 and not subject to a defense under that chapter; or

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

16 [(11)] (14) "Sexual contact" has the meaning given that term in ORS 163.305 [(1)(a)(E)].

17 [(12)] (15) "Sexual exploitation" **means sexual exploitation** as described in ORS 419B.005
18 (1)(a)(E).

19 [(13)] (16) "Verbal abuse" means to threaten significant physical or emotional harm to a child
20 in care through the use of:

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

22 (b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate
23 sexual comments.

24 **SECTION 2.** Section 37, chapter 106, Oregon Laws 2016, is amended to read:

25 **Sec. 37.** (1) When the Department of Human Services becomes aware of a report of suspected
26 child abuse of a child in care, whether in the form of an allegation, complaint or formal report made
27 under this section, and whether made directly to the Director of Human Services, the department
28 or an employee of the department, to a hotline operated by the department, through the mandatory
29 abuse reporting process set forth in ORS 419B.005 to 419B.050 or otherwise, the department shall
30 immediately:

31 (a) Notify appropriate personnel within the department, including but not limited to employees
32 responsible for licensing, certifying or authorizing [*child-care*] **child-caring** agencies, **certified fos-**
33 **ter homes and developmental disabilities residential facilities.**

34 (b) Notify any governmental agency or unit that has a contract with the child-caring agency,
35 **certified foster home or developmental disabilities residential facility** to provide care or ser-
36 vices to the child in care.

37 (c) Commence an investigation to determine whether the report of suspected abuse is substan-
38 tiated, unsubstantiated or inconclusive under section 38, [*of this 2016 Act*] **chapter 106, Oregon**
39 **Laws 2016.**

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

44 (2)(a) As a condition for issuance or renewal of a license, certificate or authorization to a
45 child-caring agency, [*under ORS 418.205 to 418.327, 418.470, 418.475 or 418.950 to 418.970*] **certified**

1 **foster home or developmental disabilities residential facility**, the department shall require and
 2 verify that the child-caring agency, **certified foster home or developmental disabilities residen-**
 3 **tial facility** has procedures and protocols that:

4 [(a)] (A) Require employees of the child-caring agency, [or] a proctor foster home certified by
 5 the child-caring agency, **the certified foster home or the developmental disabilities residential**
 6 **facility** to immediately report suspected abuse of a child in care to the director, the director's
 7 designee or personnel within the department who have been specifically designated to receive re-
 8 ports of abuse of children in care;

9 [(b)] (B) Mandate that the child-caring agency, **certified foster home or developmental disa-**
 10 **bilities residential facility** provide an annual training and written materials that include informa-
 11 tion about the child abuse reporting hotline, and that the agency, **home or facility** advise and
 12 educate employees of the child-caring agency[,] and [*employees of*] any proctor foster home certified
 13 by the child-caring agency, **of the certified foster home or of the developmental disabilities**
 14 **residential facility** of the duty under this section to report abuse of a child in care; and

15 [(c)] (C) Inform employees of child-caring agencies, [*and*] proctor foster homes, **certified foster**
 16 **homes and developmental disabilities residential facilities** that the duty to report abuse of a
 17 child in care is personal to the employee and that the duty is not fulfilled by reporting the abuse
 18 to the owner, operator or any other employee of the child-caring agency, [or] proctor foster home,
 19 **certified foster home or developmental disabilities residential facility** even if the owner, oper-
 20 ator or other employee reports the abuse of a child in care to the director, the director's designee
 21 or the department.

22 (b) **A child-caring agency, certified foster home or developmental disabilities residential**
 23 **facility need not develop and maintain procedures and protocols or provide an annual train-**
 24 **ing and written materials under paragraph (a) of this subsection if the agency, home or fa-**
 25 **ility does not have any employees, staff or volunteers.**

26 (3) Interference or hindering an investigation of abuse of a child in care, including but not lim-
 27 ited to the intimidation of witnesses, falsification of records or denial or limitation of interviews
 28 with the child in care who is the subject of the investigation or with witnesses, may constitute
 29 grounds for the revocation, suspension or placing of conditions on the license, certificate or other
 30 authorization of a child-caring agency, [or] proctor foster home, **certified foster home or devel-**
 31 **opmental disabilities residential facility.**

32 (4)(a) Anyone, including but not limited to an employee of a child-caring agency, [or] proctor
 33 foster home, **certified foster home or developmental disabilities residential facility**, who makes
 34 a report of suspected abuse of a child in care to the Governor, the Department of Justice, the Di-
 35 rector of Human Services, the director's designee or the department under this section in good faith
 36 and who has reasonable grounds for the making of the report shall have immunity:

37 (A) From any liability, civil or criminal, that might otherwise be incurred or imposed with re-
 38 spect to the making or content of such report;

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

40 (C) With respect to participating in any judicial proceeding resulting from or involving the re-
 41 port.

42 (b) A person making a report under this section may include references to otherwise confidential
 43 information for the sole purpose of making the report, and any such disclosure must be protected
 44 from further disclosure to other persons or entities for any other purpose not related to the making
 45 of the report.

1 **SECTION 3.** Section 38, chapter 106, Oregon Laws 2016, is amended to read:

2 **Sec. 38.** (1) The investigation conducted by the Department of Human Services under section
3 37, [of this 2016 Act] **chapter 106, Oregon Laws 2016**, must result in one of the following findings:

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

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

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

11 (2) When a report is received under section 37, [of this 2016 Act] **chapter 106, Oregon Laws**
12 **2016**, alleging that a child in care may have been subjected to abuse, the department shall notify the
13 attorney for the child, the child's court appointed special advocate, the parents or guardians of the
14 child, any attorney representing a parent or guardian of the child and any governmental agency or
15 unit that has a contract with the child-caring agency **or developmental disabilities residential**
16 **facility** to provide care or services to the child that a report has been received.

17 (3) The department may interview the child in care who is the subject of suspected abuse and
18 witnesses without the presence of **employees of the** child-caring agency, [or] proctor foster home
19 [employees] **or developmental disabilities residential facility, the provider of services at a cer-**
20 **tified foster home** or department personnel. The department shall inform the child in care that the
21 child may have the child's parent or guardian, if the child has not been committed to the custody
22 of the department or the Oregon Youth Authority, or attorney present when participating in an
23 interview conducted in the course of an abuse investigation.

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

25 (a) The Director of Human Services.

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

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

30 (d) With respect to the child in care who is the subject of the abuse report and investigation:

31 (A) Case managers for the child in care;

32 (B) The court appointed special advocate, if any, for the child in care; and

33 (C) The attorney for the child in care, if any.

34 (e) The parents or guardians of the child in care who is the subject of the abuse report and in-
35 vestigation if the child in care has not been committed to the custody of the department or the
36 youth authority. Notification under this paragraph may not include any details or information other
37 than that a report of abuse has been substantiated.

38 [f] *The parents or guardians of each child in care that is residing, or receiving care or services,*
39 *at the child-caring agency or proctor foster home that is the subject of the report and investigation, if*
40 *the child in care has not been committed to the custody of the department or the youth authority. No-*
41 *notification under this paragraph may not include any details or information other than that a report of*
42 *abuse has been substantiated.*

43 [g] (f) Any governmental agency or unit that has a contract with the child-caring agency to
44 provide care or services to a child in care.

45 (g) **The local citizen review board established by the Judicial Department under ORS**

1 **419A.090.**

2 (5) The department shall report on a quarterly basis to the interim legislative committees on
3 child welfare for the purposes of public review and oversight of the quality and safety of child-caring
4 agencies, **certified foster homes and developmental disabilities residential facilities** that are
5 licensed, certified or authorized by the department in this state and of proctor foster homes that are
6 certified by the child-caring agencies. Information provided in reports under this subsection may
7 not contain the name or any identifying information of a child in care but must contain all of the
8 following:

9 (a) The name of any child-caring agency, [or] proctor foster home **or developmental disabilities**
10 **residential facility, or, provided there are five or more certified foster homes in the county,**
11 **the name of the county where a certified foster home is located,** where the department con-
12 ducted an investigation pursuant to section 37, [of this 2016 Act] **chapter 106, Oregon Laws 2016,**
13 that resulted in a finding that the report of abuse was substantiated during that quarter;

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

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

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

17 (e) Corrective actions taken or ordered by the department and the outcome of the corrective
18 actions.

19 **SECTION 4. (1) The amendments to sections 36, 37 and 38, chapter 106, Oregon Laws**
20 **2016, by sections 1 to 3 of this 2017 Act become operative on January 1, 2018.**

21 **(2) The Director of Human Services may take any action that is necessary to enable the**
22 **director to exercise, on and after the operative date specified in subsection (1) of this section,**
23 **all the duties, functions and powers conferred on the director by the amendments to sections**
24 **36, 37 and 38, chapter 106, Oregon Laws 2016, by sections 1 to 3 of this 2017 Act.**

25 **SECTION 5. This 2017 Act being necessary for the immediate preservation of the public**
26 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
27 **on its passage.**

28