

Senate Bill 243

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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**.

Expands definition of "child in care" to include children receiving care and services from certified foster homes and developmental disabilities residential facilities.

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

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to abuse reporting regarding children in care; amending sections 36, 37 and 38, chapter 106,
3 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.

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

26 (2) "**Certified foster home**" means a foster home certified by the Department of Human
27 Services and subject to ORS 418.625 to 418.645.

28 [(2)] (3) "Child in care" means a person under 21 years of age who is residing in or receiving

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 care or services from:

2 (a) A child-caring agency or proctor foster home subject to ORS 418.205 to 418.327, 418.470,
3 418.475 or 418.950 to 418.970[.];

4 (b) **A certified foster home; or**

5 (c) **A developmental disabilities residential facility.**

6 [(3)] (4) “Child-caring agency” has the meaning given that term in ORS 418.205.

7 (5) **“Developmental disabilities residential facility” means a residential facility or foster**
8 **home for children receiving developmental disability services that is subject to ORS 443.400**
9 **to 443.455, 443.830 and 443.835.**

10 [(4)] (6) “Proctor foster home” has the meaning given that term in ORS 418.205.

11 [(5)(a)] (7)(a) “Financial exploitation” means:

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

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

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

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

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

23 [(6)] (8) “Intimidation” means compelling or deterring conduct by threat. “Intimidation” does not
24 include age-appropriate discipline that may involve the threat to withhold privileges.

25 [(7)] (9) “Law enforcement agency” means:

26 (a) Any city or municipal police department.

27 (b) Any county sheriff’s office.

28 (c) The Oregon State Police.

29 (d) Any district attorney.

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

31 [(8)] (10) “Neglect” means:

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

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

37 [(9)] (11) “Services” includes but is not limited to the provision of food, clothing, medicine,
38 housing, medical services, assistance with bathing or personal hygiene or any other service essential
39 to the well-being of a child in care.

40 [(10)] (12) “Sexual abuse” means:

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

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

1 (c) Any sexual contact between a person and a child in care that is unlawful under ORS chapter
2 163 and not subject to a defense under that chapter; or

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

4 [(11)] (13) "Sexual contact" has the meaning given that term in ORS 163.305 [(1)(a)(E)].

5 [(12)] (14) "Sexual exploitation" **means sexual exploitation** as described in ORS 419B.005
6 (1)(a)(E).

7 [(13)] (15) "Verbal abuse" means to threaten significant physical or emotional harm to a child
8 in care through the use of:

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

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

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

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

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

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

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

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

32 (2) As a condition for issuance or renewal of a license, certificate or authorization to a child-
33 caring agency, [*under ORS 418.205 to 418.327, 418.470, 418.475 or 418.950 to 418.970*] **certified foster**
34 **home or developmental disabilities residential facility**, the department shall require and verify
35 that the child-caring agency, **certified foster home or developmental disabilities residential fa-**
36 **ility** has procedures and protocols that:

37 (a) Require employees of the child-caring agency, [*or*] a proctor foster home certified by the
38 child-caring agency, **the certified foster home or the developmental disabilities residential fa-**
39 **ility** to immediately report suspected abuse of a child in care to the director, the director's
40 designee or personnel within the department who have been specifically designated to receive re-
41 ports of abuse of children in care;

42 (b) Mandate that the child-caring agency, **certified foster home or developmental disabilities**
43 **residential facility** provide an annual training and written materials that include information about
44 the child abuse reporting hotline, and that the agency, **home or facility** advise and educate em-
45 ployees of the child-caring agency[,] and [*employees of*] any proctor foster home certified by the

1 child-caring agency, **of the certified foster home or of the developmental disabilities residential**
 2 **facility** of the duty under this section to report abuse of a child in care; and

3 (c) Inform employees of child-caring agencies, [and] proctor foster homes, **certified foster**
 4 **homes and developmental disabilities residential facilities** that the duty to report abuse of a
 5 child in care is personal to the employee and that the duty is not fulfilled by reporting the abuse
 6 to the owner, operator or any other employee of the child-caring agency, [or] proctor foster home,
 7 **certified foster home or developmental disabilities residential facility** even if the owner, oper-
 8 ator or other employee reports the abuse of a child in care to the director, the director's designee
 9 or the department.

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

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

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

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

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

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

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

31 **Sec. 38.** (1) The investigation conducted by the Department of Human Services under section
 32 37, [of this 2016 Act] **chapter 106, Oregon Laws 2016**, must result in one of the following findings:

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

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

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

40 (2) When a report is received under section 37, [of this 2016 Act] **chapter 106, Oregon Laws**
 41 **2016**, alleging that a child in care may have been subjected to abuse, the department shall notify the
 42 attorney for the child, the child's court appointed special advocate, the parents or guardians of the
 43 child, any attorney representing a parent or guardian of the child and any governmental agency or
 44 unit that has a contract with the child-caring agency **or developmental disabilities residential**
 45 **facility** to provide care or services to the child that a report has been received.

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

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

9 (a) The Director of Human Services.

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

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

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

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

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

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

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

22 (f) The parents or guardians of each child in care that is residing, or receiving care or services,
23 at the child-caring agency, [or] proctor foster home, **certified foster home or developmental dis-**
24 **abilities residential facility** that is the subject of the report and investigation, if the child in care
25 has not been committed to the custody of the department or the youth authority. Notification under
26 this paragraph may not include any details or information other than that a report of abuse has been
27 substantiated.

28 (g) Any governmental agency or unit that has a contract with the child-caring agency to provide
29 care or services to a child in care.

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

37 (a) The name of any child-caring agency, [or] proctor foster home **or developmental disabilities**
38 **residential facility, or the name of the county where a certified foster home is located**, where
39 the department conducted an investigation pursuant to section 37, [of this 2016 Act] **chapter 106,**
40 **Oregon Laws 2016**, that resulted in a finding that the report of abuse was substantiated during that
41 quarter;

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

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

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

45 (e) Corrective actions taken or ordered by the department and the outcome of the corrective

1 actions.

2 **SECTION 4. This 2017 Act being necessary for the immediate preservation of the public**
3 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
4 **on its passage.**

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