

Enrolled
Senate Bill 244

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)

CHAPTER

AN ACT

Relating to notifications required regarding child-caring agencies; amending ORS 418.205 and 418.260 and sections 37 and 38, chapter 106, Oregon Laws 2016; and declaring an emergency.

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

SECTION 1. ORS 418.205, as amended by section 1, chapter 106, Oregon Laws 2016, 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.

(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.

(B) Includes the following:

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

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

(iii) A private residential boarding school; and

(iv) A child-caring facility as defined in ORS 418.950.

(b) "Child-caring agency" does not include:

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

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

- (C) A youth job development organization as defined in ORS 344.415;
 - (D) A shelter-care home that is a foster home subject to ORS 418.625 to 418.645; or
 - (E) A foster home subject to ORS 418.625 to 418.645.
- (3) “Child-caring facility” has the meaning given that term in ORS 418.950.

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

[4] (5) “Independent residence facility” has the meaning given that term in ORS 418.475.

[5(a)] (6)(a) “Outdoor youth program” means a program that provides, in an outdoor living setting, services to children who have behavioral problems, mental health problems or problems with abuse of alcohol or drugs.

(b) “Outdoor youth program” does not include any program, facility or activity:

- (A) Operated by a governmental entity;
- (B) Operated or affiliated with the Oregon Youth Conservation Corps;
- (C) Licensed by the Department of Human Services under other authority of the department; or
- (D) Operated by a youth job development organization as defined in ORS 344.415.

[6] (7) “Private” means not owned, operated or administered by any governmental agency or unit.

[7] (8) “Private residential boarding school” means either of the following as the context requires:

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

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

[8] (9) “Proctor foster home” means a foster home certified by a child-caring agency under section 6, chapter 106, Oregon Laws 2016, that is not subject to ORS 418.625 to 418.645.

[9] (10) “Provider of care or services for children” means a person, entity or organization that provides care or services to children, regardless of whether the child is in the custody of the Department of Human Services, and that does not otherwise meet the definition of, or requirements for, a child-caring agency. “Provider of care or services for children” includes a proctor foster home certified by a child-caring agency under section 6, chapter 106, Oregon Laws 2016.

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

SECTION 2. ORS 418.260, as amended by section 11, chapter 106, Oregon Laws 2016, is amended to read:

418.260. (1) If the Department of Human Services **receives a report or otherwise** becomes aware that any suspected or founded abuses, deficiencies, violations or failures to comply with the full compliance requirements described in ORS 418.240 are occurring in a child-caring agency, whether as a part of the inspections undertaken pursuant to ORS 418.255 or otherwise, the department shall immediately **notify appropriate personnel within the department, including but not limited to employees responsible for licensing, certifying or authorizing child-caring agencies, who shall** investigate and take appropriate action **without undue delay**, with primary concern given to the health, safety and welfare of the children for whom the child-caring agency is responsible. *[The department shall immediately report the alleged abuses, deficiencies or violations to the state or governmental agency or unit, governing board, trustees, owners, managers or operators or other appropriate authorities responsible for the child-caring agency. The department shall immediately notify any governmental agency or unit that has a contract with the child-caring agency to provide care or services to a child of the alleged abuses, deficiencies, violations or failures to comply.]* The department may notify law enforcement agencies as necessary to coordinate and assist in the investigation and enforcement of corrective actions undertaken by the department. **If the child-caring agency is known or found to serve children also served by the Oregon Youth Authority, county juvenile departments or developmental disabilities services within the department, the department**

shall notify those entities of the report or suspected or founded abuses, deficiencies, violations or failures.

(2) If the department finds, after investigation by the department or law enforcement agencies, that the abuses, deficiencies, violations or failures to comply are founded, the department may suspend, revoke or place conditions on the license, certificate or other authorization of the child-caring agency. The conditions placed on a license, certificate or authorization may include, but are not limited to, placing full or partial restrictions on admission of children, temporary suspension, limitation of operations subject to an intent to revoke or limitation of operations subject to correction of violations as specified in a plan of correction. If the department imposes a plan of correction, and the corrections are not made within 45 days from the effective date of the plan of correction, the department may immediately suspend or revoke the license, certificate or authorization of the child-caring agency. The department shall immediately notify any governmental agency [*or unit*] that has a contract with the child-caring agency to provide care or services to a child of any suspension or revocation of, or conditions placed on, the license, certificate or other authorization of the child-caring agency.

(3) If the department determines at any time during or after an investigation that the abuses, deficiencies, violations or failures to comply are or threaten a serious danger to any child or to the public, or place a child at risk with respect to the child's health, safety or welfare, the department may immediately suspend or revoke the child-caring agency's license, certificate or authorization, subject to the provisions of ORS chapter 183. The department shall immediately notify any governmental agency [*or unit*] that has a contract with the child-caring agency to provide care or services to a child of any suspension or revocation of the license, certificate or other authorization of the child-caring agency **under this subsection and of any conditions placed on the child-caring agency's license, certificate or authorization pursuant to ORS 418.240. The department shall immediately report the alleged deficiencies or violations to the governmental agency and the governing board responsible for the oversight of the child-caring agency.**

(4) If the department determines that the abuses, deficiencies, violations or failures to comply are founded and the department imposes a plan of correction that the child-caring agency does not comply with in the time allotted for correction, the department shall immediately notify the following of the failure of the child-caring agency to comply with the plan of correction:

(a) The Legislative Assembly or the interim committees of the Legislative Assembly relating to child welfare.

(b) [*The state or governmental agency or unit, governing board, trustees, owners, managers or operators or other appropriate authorities*] **Members of the governing board** responsible for the child-caring agency.

(c) Any governmental agency [*or unit*] that has a contract with the child-caring agency to provide care or services to a child.

(5) Any employee of the department that has reasonable cause to believe that a child-caring agency has committed an abuse or incurred a deficiency or violation, or that grounds for immediate suspension or revocation of a license, certificate or authorization exist under ORS 418.240, and that such abuse, deficiency, violation or grounds is or threatens a danger to any child at the child-caring agency or to the public, or places a child at risk with respect to the child's health, safety or welfare, is required to immediately inform the Director of Human Services, the director's designee or such other personnel in the department designated to receive such information. Upon receipt of an employee report under this subsection, the director and department personnel shall immediately commence an investigation and take all reasonably prudent and necessary actions to ensure the health, safety and welfare of children at the child-caring agency. Failure to commence an investigation and take actions as required by this subsection constitutes official misconduct in the second degree under ORS 162.405.

SECTION 3. Section 37, chapter 106, Oregon Laws 2016, is amended to read:

Sec. 37. (1) When the Department of Human Services becomes aware of a report of suspected child abuse of a child in care, whether in the form of an allegation, complaint or formal report made

under this section, and whether made directly to the Director of Human Services, the department or an employee of the department, to a hotline operated by the department, through the mandatory abuse reporting process set forth in ORS 419B.005 to 419B.050 or otherwise, the department shall immediately:

(a) Notify appropriate personnel within the department, including but not limited to employees responsible for licensing, certifying or authorizing [*child-care*] **child-caring** agencies.

(b) Notify any governmental agency [*or unit*] that has a contract with the child-caring agency to provide care or services to the child in care.

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

(d) Report to a law enforcement agency any crime that the department has reason to believe has occurred with respect to a child in care or at a child-caring agency or proctor foster home, even if the suspected crime is not related to a report of abuse made under this section.

(2) As a condition for issuance or renewal of a license, certificate or authorization to a child-caring agency under ORS 418.205 to 418.327, 418.470, 418.475 or 418.950 to 418.970, the department shall require and verify that the child-caring agency has procedures and protocols that:

(a) Require employees of the child-caring agency, or a proctor foster home certified by the child-caring agency, to immediately report suspected abuse of a child in care to the director, the director's designee or personnel within the department who have been specifically designated to receive reports of abuse of children in care;

(b) Mandate that the child-caring agency provide an annual training and written materials that include information about the child abuse reporting hotline, and that the agency advise and educate employees of the child-caring agency, and employees of any proctor foster home certified by the child-caring agency, of the duty under this section **and ORS 419B.005 to 419B.050** to report abuse of a child in care; and

(c) Inform employees of child-caring agencies and proctor foster homes that the duty to report abuse of a child in care is personal to the employee and that the duty is not fulfilled by reporting the abuse to the owner, operator or any other employee of the child-caring agency or proctor foster home even if the owner, operator or other employee reports the abuse of a child in care to the director, the director's designee or the department.

(3) Interference or hindering an investigation of abuse of a child in care, including but not limited to the intimidation of witnesses, falsification of records or denial or limitation of interviews with the child in care who is the subject of the investigation or with witnesses, may constitute grounds for the revocation, suspension or placing of conditions on the license, certificate or other authorization of a child-caring agency or proctor foster home.

(4)(a) Anyone, including but not limited to an employee of a child-caring agency or proctor foster home, who makes a report of suspected abuse of a child in care to the Governor, the Department of Justice, the Director of Human Services, the director's designee or the department under this section in good faith and who has reasonable grounds for the making of the report shall have immunity:

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

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

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

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

SECTION 4. Section 38, chapter 106, Oregon Laws 2016, is amended to read:

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

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

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

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

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

(3) The department may interview the child in care who is the subject of suspected abuse and witnesses without the presence of child-caring agency or proctor foster home employees or department personnel. The department shall inform the child in care that the child may have the child's parent or guardian, if the child has not been committed to the custody of the department or the Oregon Youth Authority, or attorney present when participating in an interview conducted in the course of an abuse investigation.

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

(a) The Director of Human Services.

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

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

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

[(A) Case managers for the child in care;]

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

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

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

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

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

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

(5) The department shall report on a quarterly basis to the interim legislative committees on child welfare for the purposes of public review and oversight of the quality and safety of child-caring agencies that are licensed, certified or authorized by the department in this state and of proctor foster homes that are certified by the child-caring agencies. Information provided in reports under

this subsection may not contain the name or any identifying information of a child in care but must contain all of the following:

(a) The name of any child-caring agency or proctor foster home where the department conducted an investigation pursuant to section 37, **chapter 106, Oregon Laws 2016**, [of this 2016 Act] that resulted in a finding that the report of abuse was substantiated during that quarter;

(b) The approximate date that the abuse occurred;

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

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

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

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

Passed by Senate February 23, 2017

Received by Governor:

Repassed by Senate June 12, 2017

.....M.,....., 2017

Approved:

.....
Lori L. Brocker, Secretary of Senate

.....M.,....., 2017

.....
Peter Courtney, President of Senate

.....
Kate Brown, Governor

Passed by House June 6, 2017

Filed in Office of Secretary of State:

.....
Tina Kotek, Speaker of House

.....M.,....., 2017

.....
Dennis Richardson, Secretary of State