

SB 1540 A STAFF MEASURE SUMMARY

Carrier: Rep. Keny-Guyer

House Committee On Human Services and Housing

Action Date: 02/22/18

Action: Do pass the A-Eng bill.

Vote: 5-4-0-0

Yeas: 5 - Gorsek, Keny-Guyer, Meek, Piluso, Sanchez

Nays: 4 - Nearman, Noble, Olson, Stark

Fiscal: Fiscal impact issued

Revenue: No revenue impact

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WHAT THE MEASURE DOES:

Modifies the mandatory reporting law for children by excluding from the definition of "abuse" consensual sexual contact between a child over the age of 12 and a person under the age of 21, unless there is a difference of three or more years in age; includes provisions related to child abuse investigations conducted on school premises; and modifies definitions of "adult", "community health program", and "sexual abuse" for the purposes of abuse reporting for adults with mental illnesses or development disabilities.

Modifies the definition of "abuse" for mandatory reporting of child abuse to not include consensual sexual contact or intercourse between a child over age 12 and a person under age 21 if the person is not three or more years older than the child and sexual contact is not the result of force, intimidation, or coercion.

Authorizes the Department of Human Services (DHS) or law enforcement agency to conduct abuse investigations on school premises. Requires DHS or law enforcement agency conducting the investigation to present adequate identification to school staff members. Requires school staff members to cooperate with investigation and, at a minimum, allow DHS or law enforcement agency conducting the investigation access to the child and a private space to interview the child. Prohibits school administrators and staff from notifying any person of the investigation other than DHS, law enforcement, and school employees necessary to enable the investigation. Clarifies that information obtained during the investigation is not part of the child's school record.

Expands definition of "adult" within abuse reporting for adults with mental illness or developmental disabilities to include a person who is receiving mental health treatment in a community program, facility, or state hospital for treatment of substance use disorders or mental illness. Includes in the definition of "community program" providers whose services are paid for, directly or indirectly, by the Oregon Health Authority. Clarifies the definition of "sexual abuse" to include any sexual contact between a recipient of mental health or substance use disorder treatment and the provider of the treatment.

Declares emergency, effective upon passage.

ISSUES DISCUSSED:

- Clarification needed for child abuse investigations on school premises
- Lack of abuse reporting for adults with severe and persistent mental health illnesses or adults receiving treatment for substance use disorders
- Mandatory reporting of consensual sexual contact between teenagers
- Concerns about the age for mandatory reporting of sexual contact
- Potential decrease in voluntary discussions between teenagers and adults regarding sexual activity
- Need for broad mandatory reporting to avoid missing potential child abuse cases

EFFECT OF AMENDMENT:

No amendment.

This Summary has not been adopted or officially endorsed by action of the committee.

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BACKGROUND:

School teachers and employees are required under Oregon law to report suspected child abuse and neglect for any person who is under 18 years of age (ORS 419B.005). An Oregon school district recently instructed teachers and staff to report any sexual contact between students as child abuse, understanding the mandatory reporting law to assert that children and youth under the age of 18 cannot consent to sexual activity. "Sexual contact" is defined in Oregon law as any touching of the sexual or other intimate parts of a person or causing such a person to touch the sexual or intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party (ORS 163.305). In regard to sexual offenses, Oregon law considers a person under 18 years of age incapable of consenting to a sexual act (ORS 163.315). Oregon law provides a defense for certain consensual sexual offenses, if the individual was less than three years older than the other person and the lack of consent was due solely to the age of the other person (ORS 163.345). Senate Bill 1540-A modifies the mandatory reporting law for children by excluding from the definition of "abuse" consensual sexual contact between teenagers over the age of 12 and under the age of 21, unless there is a difference of three or more years in age.

Senate Bill 101, passed during the 2017 legislative session, made changes to child abuse investigations conducted by DHS and law enforcement agencies on school premises. Senate Bill 1540-A clarifies the authority DHS and law enforcement agencies have to conduct child abuse investigations on school premises. The measure requires school staff members to cooperate with investigations by allowing DHS or the law enforcement agency conducting the investigation access to the child and a private space to interview the child. Senate Bill 1540-A also prohibits school administrators and staff from notifying any person other than DHS, law enforcement, and school employees necessary to enable the investigation. The measure additionally clarifies that information obtained during the investigation is not part of the child's school record.

Oregon Health Authority has received complaints of abuse occurring within residential treatment programs but is unable to investigate specific abuse allegations and only able to examine complaints as licensing violations. Adults receiving treatment for severe and persistent mental health illnesses and adults receiving treatment for substance use disorders lack protections under Oregon law regarding abuse reporting for adults with mental illness or development disabilities. Senate Bill 1540-A includes adults with persistent and severe mental illnesses and adults with substance use disorders who are receiving services or treatment within the definition of "adult" for the purpose of mandatory abuse reporting and investigations. Senate Bill 1540-A also clarifies the definition of "sexual abuse" to include any sexual contact between a recipient of mental health or substance use disorder treatment and the provider of the treatment.