

House Bill 2849

Sponsored by Representative SANCHEZ, Senator GELSER

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**.

Heightens standards for taking child into protective custody with or without court order.

Permits application for protective custody order by declaration or sworn oral statement.

Permits person conducting child abuse investigation involving child with suspicious physical injuries to take child into protective custody only for period of time necessary to ensure that child is immediately photographed and, within 48 hours, assessed by medical professional.

A BILL FOR AN ACT

Relating to protective custody of children; amending ORS 419B.005, 419B.023 and 419B.150.

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

SECTION 1. ORS 419B.150 is amended to read:

419B.150. *[(1) A child may be taken into protective custody by a peace officer, counselor, employee of the Department of Human Services or any other person authorized by the juvenile court of the county in which the child is found, in the following circumstances:]*

[(a) When the child's condition or surroundings reasonably appear to be such as to jeopardize the child's welfare;]

[(b) When the juvenile court, by order indorsed on the summons as provided in ORS 419B.839 or otherwise, has ordered that the child be taken into protective custody; or]

[(c) When it reasonably appears that the child has run away from home.]

[(2)(a) Before issuing an order under subsection (1)(b) of this section, the court shall review an affidavit sworn on information and belief provided by a peace officer, counselor or employee of the department or other person authorized by the juvenile court that sets forth with particularity the facts and circumstances on which the request for protective custody is based, why protective custody is in the best interests of the child and the reasonable efforts or, if the Indian Child Welfare Act applies, active efforts made by the department to eliminate the need for protective custody of the child.]

[(b) Except as provided in paragraph (c) of this subsection, an order directing that a child be taken into protective custody under subsection (1) of this section shall contain written findings, including a brief description of the reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to eliminate the need for protective custody of the child that the department has made and why protective custody is in the best interests of the child.]

[(c) The court may issue an order even though no services have been provided if the court makes written findings that no existing services could eliminate the need for protective custody of the child and that protective custody is in the best interests of the child.]

(1) As used in this section:

(a) "Abuse" has the meaning given that term in ORS 419B.005.

(b) "Reasonable cause" means a subjectively and objectively reasonable belief, given all of the circumstances and based on specific and articulable facts.

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 (c) "Severe harm" means:

2 (A) Life-threatening damage; or

3 (B) Significant or acute injury to a person's physical, sexual or psychological functioning.

4 (2) The following persons are authorized to take a child into protective custody under this
5 section:

6 (a) A peace officer, as defined in ORS 420.905;

7 (b) A counselor; or

8 (c) An employee of the Department of Human Services.

9 (3)(a) Except as provided in paragraph (b) of this subsection, a child may be taken into
10 protective custody without a court order only when there is reasonable cause to believe that:

11 (A) There is an imminent threat of severe harm to the child;

12 (B) The child poses an imminent threat of severe harm to self or others;

13 (C) The child has run away from home; or

14 (D) There is an imminent threat that the child's parent or guardian will cause the child
15 to be beyond the reach of the juvenile court before the department can complete assessment
16 of an abuse allegation involving the child.

17 (b) If there is reason to know that the child is an Indian child, the child may be taken
18 into protective custody without a court order only when it is necessary to prevent imminent
19 physical damage or harm to the child.

20 (4) A person authorized to take a child into protective custody shall apply for a protective
21 custody order, as described in subsection (6) of this section, by submitting a declaration
22 based on information and belief that sets forth with particularity:

23 (a) Why protective custody is necessary and the least restrictive means available to:

24 (A) Protect the child from abuse;

25 (B) Prevent the child from inflicting harm on self or others;

26 (C) Ensure that the child remains within the reach of the juvenile court to protect the
27 child from abuse or to prevent the child from inflicting harm on self or others;

28 (D) Ensure the safety of a child who has run away from home; or

29 (E) If the department knows or has reason to know that the child is an Indian child,
30 prevent imminent physical damage or harm to the child.

31 (b) Why protective custody is in the best interests of the child.

32 (5)(a) The applicant under section (4) of this section shall deliver the declaration de-
33 scribed in subsection (4) of this section to the juvenile court.

34 (b) The declaration may be delivered to the juvenile court in the form of an oral state-
35 ment taken by the juvenile court under oath consistent with rules made and orders issued
36 by the Chief Justice of the Supreme Court.

37 (6) The juvenile court may order that a child be taken into protective custody if, after
38 reviewing the declaration described in subsection (4) of this section, the court determines
39 that:

40 (a) Protective custody is necessary and the least restrictive means available to:

41 (A) Protect the child from abuse;

42 (B) Prevent the child from inflicting harm on self or others;

43 (C) Ensure that the child remains within the reach of the juvenile court to protect the
44 child from abuse or prevent the child from inflicting harm on self or others;

45 (D) Ensure the safety of a child has run away from home; or

1 **(E) If the department knows or has reason to know that the child is an Indian child,**
 2 **prevent imminent physical damage or harm to the child.**

3 **(b) Protective custody is in the best interests of the child.**

4 **(7) When the court issues a protective custody order under subsection (6) of this section,**
 5 **the court may transmit the signed order to the applicant by a form of electronic communi-**
 6 **cation approved by the court that delivers a complete printable image of the signed order.**
 7 **The court shall file the original order and the declaration in the court record.**

8 [(3)] **(8)** When a child is taken into protective custody as a runaway under [subsection (1) of] this
 9 section, the peace officer or other person who takes the child into custody:

10 (a)(A) Shall release the child without unnecessary delay to the custody of the child’s parent or
 11 guardian or to a shelter facility that has agreed to provide care and services to children who have
 12 run away from home and that has been designated by the juvenile court to provide such care and
 13 services; or

14 (B) Shall follow the procedures described in ORS 419B.160, 419B.165, 419B.168 and 419B.171;

15 (b) Shall, if possible, determine the preferences of the child and the child’s parent or guardian
 16 as to whether the best interests of the child are better served by placement in a shelter facility that
 17 has agreed to provide care and services to children who have run away from home and that has
 18 been designated by the juvenile court to provide such care and services or by release to the child’s
 19 parent or guardian; and

20 (c) Notwithstanding ORS 419B.165 [and subsection (1) of this section], shall release the child to
 21 a shelter facility that has agreed to provide care and services to children who have run away from
 22 home and that has been designated by the juvenile court to provide such care and services if it
 23 reasonably appears that the child would not willingly remain at home if released to the child’s
 24 parent or guardian.

25 **SECTION 2.** ORS 419B.023 is amended to read:

26 419B.023. (1) As used in this section:

27 (a) “Designated medical professional” means the person described in ORS 418.747 (9) or the
 28 person’s designee.

29 (b) “Suspicious physical injury” includes, but is not limited to:

30 (A) Burns or scalds;

31 (B) Extensive bruising or abrasions on any part of the body;

32 (C) Bruising, swelling or abrasions on the head, neck or face;

33 (D) Fractures of any bone in a child under the age of three;

34 (E) Multiple fractures in a child of any age;

35 (F) Dislocations, soft tissue swelling or moderate to severe cuts;

36 (G) Loss of the ability to walk or move normally according to the child’s developmental ability;

37 (H) Unconsciousness or difficulty maintaining consciousness;

38 (I) Multiple injuries of different types;

39 (J) Injuries causing serious or protracted disfigurement or loss or impairment of the function
 40 of any bodily organ; or

41 (K) Any other injury that threatens the physical well-being of the child.

42 (2)(a) If a person conducting an investigation under ORS 419B.020 observes a child who has
 43 suffered suspicious physical injury and the person is certain or has a reasonable suspicion that the
 44 injury is or may be the result of abuse, the person shall, in accordance with the protocols and pro-
 45 cedures of the county multidisciplinary child abuse team described in ORS 418.747:

1 [(a)] (A) Immediately photograph or cause to have photographed the suspicious physical injuries
 2 in accordance with ORS 419B.028; and

3 [(b)] (B) Ensure that a designated medical professional conducts a medical assessment within
 4 48 hours, or sooner if dictated by the child’s medical needs.

5 **(b) Notwithstanding ORS 419B.150, the person described in paragraph (a) of this sub-**
 6 **section may take the child into protective custody, without a court order, only for the period**
 7 **of time necessary to ensure compliance with the requirements of this subsection.**

8 (3) The requirement of subsection (2) of this section shall apply:

9 (a) Each time suspicious physical injury is observed by Department of Human Services or law
 10 enforcement personnel:

11 (A) During the investigation of a new allegation of abuse; or

12 (B) If the injury was not previously observed by a person conducting an investigation under ORS
 13 419B.020; and

14 (b) Regardless of whether the child has previously been photographed or assessed during an in-
 15 vestigation of an allegation of abuse.

16 (4)(a) Department or law enforcement personnel shall make a reasonable effort to locate a des-
 17 ignated medical professional. If after reasonable efforts a designated medical professional is not
 18 available to conduct a medical assessment within 48 hours, the child shall be evaluated by an
 19 available physician, a physician assistant licensed under ORS 677.505 to 677.525, naturopathic phy-
 20 sician licensed under ORS chapter 685 or a nurse practitioner licensed under ORS 678.375 to
 21 678.390.

22 (b) If the child is evaluated by a health care provider as defined in ORS 127.505 other than a
 23 designated medical professional, the health care provider shall make photographs, clinical notes,
 24 diagnostic and testing results and any other relevant materials available to the designated medical
 25 professional for consultation within 72 hours following evaluation of the child.

26 (c) The person conducting the medical assessment may consult with and obtain records from the
 27 child’s health care provider under ORS 419B.050.

28 (5) Nothing in this section prevents a person conducting a child abuse investigation from seek-
 29 ing immediate medical treatment from a hospital emergency room or other medical provider for a
 30 child who is physically injured or otherwise in need of immediate medical care.

31 (6) If the child described in subsection (2) of this section is less than five years of age, the des-
 32 ignated medical professional may, within 14 days, refer the child for a screening for early inter-
 33 vention services or early childhood special education, as those terms are defined in ORS 343.035.
 34 The referral may not indicate the child is subject to a child abuse investigation unless written
 35 consent is obtained from the child’s parent authorizing such disclosure. If the child is already re-
 36 ceiving those services, or is enrolled in the Head Start program, a person involved in the delivery
 37 of those services to the child shall be invited to participate in the county multidisciplinary child
 38 abuse team’s review of the case and shall be provided with paid time to do so by the person’s em-
 39 ployer.

40 (7) Nothing in this section limits the rights provided to minors in ORS chapter 109 or the ability
 41 of a minor to refuse to consent to the medical assessment described in this section.

42 **SECTION 3.** ORS 419B.005 is amended to read:

43 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

44 (1)(a) “Abuse” means:

45 (A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child

1 which has been caused by other than accidental means, including any injury which appears to be
 2 at variance with the explanation given of the injury.

3 (B) Any mental injury to a child, which shall include only observable and substantial impairment
 4 of the child’s mental or psychological ability to function caused by cruelty to the child, with due
 5 regard to the culture of the child.

6 (C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual pene-
 7 tration and incest, as those acts are described in ORS chapter 163.

8 (D) Sexual abuse, as described in ORS chapter 163.

9 (E) Sexual exploitation, including but not limited to:

10 (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any
 11 other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage
 12 in the performing for people to observe or the photographing, filming, tape recording or other ex-
 13 hibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or
 14 described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-
 15 cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or
 16 which is designed to serve educational or other legitimate purposes; and

17 (ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in
 18 ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as
 19 described in ORS 163.413 or to engage in commercial sexual solicitation as described in ORS 167.008.

20 (F) Negligent treatment or maltreatment of a child, including but not limited to the failure to
 21 provide adequate food, clothing, shelter or medical care that is likely to endanger the health or
 22 welfare of the child.

23 (G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm
 24 to the child’s health or welfare.

25 (H) Buying or selling a person under 18 years of age as described in ORS 163.537.

26 (I) Permitting a person under 18 years of age to enter or remain in or upon premises where
 27 methamphetamines are being manufactured.

28 (J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, or to the unlawful
 29 manufacturing of a cannabinoid extract, as defined in ORS 475B.015, that subjects a child to a sub-
 30 stantial risk of harm to the child’s health or safety.

31 (b) “Abuse” does not include reasonable discipline unless the discipline results in one of the
 32 conditions described in paragraph (a) of this subsection.

33 (2) “Child” means an unmarried person who[:]

34 [(a)] is under 18 years of age[: or]

35 [(b) *Is under 21 years of age and residing in or receiving care or services at a child-caring agency*
 36 *as that term is defined in ORS 418.205].*

37 (3) “Higher education institution” means:

38 (a) A community college as defined in ORS 341.005;

39 (b) A public university listed in ORS 352.002;

40 (c) The Oregon Health and Science University; and

41 (d) A private institution of higher education located in Oregon.

42 (4) “Law enforcement agency” means:

43 (a) A city or municipal police department.

44 (b) A county sheriff’s office.

45 (c) The Oregon State Police.

- 1 (d) A police department established by a university under ORS 352.121 or 353.125.
- 2 (e) A county juvenile department.
- 3 (5) "Public or private official" means:
- 4 (a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician,
- 5 including any intern or resident.
- 6 (b) Dentist.
- 7 (c) School employee, including an employee of a higher education institution.
- 8 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide
- 9 or employee of an in-home health service.
- 10 (e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning
- 11 Division, Youth Development Division, Office of Child Care, the Oregon Youth Authority, a local
- 12 health department, a community mental health program, a community developmental disabilities
- 13 program, a county juvenile department, a child-caring agency as that term is defined in ORS 418.205
- 14 or an alcohol and drug treatment program.
- 15 (f) Peace officer.
- 16 (g) Psychologist.
- 17 (h) Member of the clergy.
- 18 (i) Regulated social worker.
- 19 (j) Optometrist.
- 20 (k) Chiropractor.
- 21 (L) Certified provider of foster care, or an employee thereof.
- 22 (m) Attorney.
- 23 (n) Licensed professional counselor.
- 24 (o) Licensed marriage and family therapist.
- 25 (p) Firefighter or emergency medical services provider.
- 26 (q) A court appointed special advocate, as defined in ORS 419A.004.
- 27 (r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.
- 28 (s) Member of the Legislative Assembly.
- 29 (t) Physical, speech or occupational therapist.
- 30 (u) Audiologist.
- 31 (v) Speech-language pathologist.
- 32 (w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
- 33 gations or discipline by the commission.
- 34 (x) Pharmacist.
- 35 (y) An operator of a preschool recorded program under ORS 329A.255.
- 36 (z) An operator of a school-age recorded program under ORS 329A.257.
- 37 (aa) Employee of a private agency or organization facilitating the provision of respite services,
- 38 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS
- 39 109.056.
- 40 (bb) Employee of a public or private organization providing child-related services or activities:
- 41 (A) Including but not limited to youth groups or centers, scout groups or camps, summer or day
- 42 camps, survival camps or groups, centers or camps that are operated under the guidance, super-
- 43 vision or auspices of religious, public or private educational systems or community service organ-
- 44 izations; and
- 45 (B) Excluding community-based, nonprofit organizations whose primary purpose is to provide

1 confidential, direct services to victims of domestic violence, sexual assault, stalking or human traf-
2 ficking.

3 (cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete,
4 if compensated and if the athlete is a child.

5 (dd) Personal support worker, as defined by rule adopted by the Home Care Commission.

6 (ee) Home care worker, as defined in ORS 410.600.

7 **SECTION 4.** ORS 419B.005, as amended by section 21, chapter 75, Oregon Laws 2018, is
8 amended to read:

9 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

10 (1)(a) "Abuse" means:

11 (A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child
12 which has been caused by other than accidental means, including any injury which appears to be
13 at variance with the explanation given of the injury.

14 (B) Any mental injury to a child, which shall include only observable and substantial impairment
15 of the child's mental or psychological ability to function caused by cruelty to the child, with due
16 regard to the culture of the child.

17 (C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual pene-
18 tration and incest, as those acts are described in ORS chapter 163.

19 (D) Sexual abuse, as described in ORS chapter 163.

20 (E) Sexual exploitation, including but not limited to:

21 (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any
22 other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage
23 in the performing for people to observe or the photographing, filming, tape recording or other ex-
24 hibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or
25 described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-
26 cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or
27 which is designed to serve educational or other legitimate purposes; and

28 (ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in
29 ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as
30 described in ORS 163.413 or to engage in commercial sexual solicitation as described in ORS 167.008.

31 (F) Negligent treatment or maltreatment of a child, including but not limited to the failure to
32 provide adequate food, clothing, shelter or medical care that is likely to endanger the health or
33 welfare of the child.

34 (G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm
35 to the child's health or welfare.

36 (H) Buying or selling a person under 18 years of age as described in ORS 163.537.

37 (I) Permitting a person under 18 years of age to enter or remain in or upon premises where
38 methamphetamines are being manufactured.

39 (J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, or to the unlawful
40 manufacturing of a cannabinoid extract, as defined in ORS 475B.015, that subjects a child to a sub-
41 stantial risk of harm to the child's health or safety.

42 (b) "Abuse" does not include reasonable discipline unless the discipline results in one of the
43 conditions described in paragraph (a) of this subsection.

44 (2) "Child" means an unmarried person who[:]

45 [(a)] is under 18 years of age[: or]

1 *[(b) Is under 21 years of age and residing in or receiving care or services at a child-caring agency*
 2 *as that term is defined in ORS 418.205].*

3 (3) “Higher education institution” means:

- 4 (a) A community college as defined in ORS 341.005;
- 5 (b) A public university listed in ORS 352.002;
- 6 (c) The Oregon Health and Science University; and
- 7 (d) A private institution of higher education located in Oregon.

8 (4) “Law enforcement agency” means:

- 9 (a) A city or municipal police department.
- 10 (b) A county sheriff’s office.
- 11 (c) The Oregon State Police.
- 12 (d) A police department established by a university under ORS 352.121 or 353.125.
- 13 (e) A county juvenile department.

14 (5) “Public or private official” means:

15 (a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician,
 16 including any intern or resident.

17 (b) Dentist.

18 (c) School employee, including an employee of a higher education institution.

19 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse’s aide, home health aide
 20 or employee of an in-home health service.

21 (e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning
 22 Division, Youth Development Division, Office of Child Care, the Oregon Youth Authority, a local
 23 health department, a community mental health program, a community developmental disabilities
 24 program, a county juvenile department, a child-caring agency as that term is defined in ORS 418.205
 25 or an alcohol and drug treatment program.

26 (f) Peace officer.

27 (g) Psychologist.

28 (h) Member of the clergy.

29 (i) Regulated social worker.

30 (j) Optometrist.

31 (k) Chiropractor.

32 (L) Certified provider of foster care, or an employee thereof.

33 (m) Attorney.

34 (n) Licensed professional counselor.

35 (o) Licensed marriage and family therapist.

36 (p) Firefighter or emergency medical services provider.

37 (q) A court appointed special advocate, as defined in ORS 419A.004.

38 (r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.

39 (s) Member of the Legislative Assembly.

40 (t) Physical, speech or occupational therapist.

41 (u) Audiologist.

42 (v) Speech-language pathologist.

43 (w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
 44 gations or discipline by the commission.

45 (x) Pharmacist.

- 1 (y) An operator of a preschool recorded program under ORS 329A.255.
- 2 (z) An operator of a school-age recorded program under ORS 329A.257.
- 3 (aa) Employee of a private agency or organization facilitating the provision of respite services,
4 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS
5 109.056.
- 6 (bb) Employee of a public or private organization providing child-related services or activities:
 - 7 (A) Including but not limited to youth groups or centers, scout groups or camps, summer or day
8 camps, survival camps or groups, centers or camps that are operated under the guidance, super-
9 vision or auspices of religious, public or private educational systems or community service organ-
10 izations; and
 - 11 (B) Excluding community-based, nonprofit organizations whose primary purpose is to provide
12 confidential, direct services to victims of domestic violence, sexual assault, stalking or human traf-
13 ficking.
- 14 (cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete,
15 if compensated and if the athlete is a child.
- 16 (dd) Personal support worker, as defined in ORS 410.600.
- 17 (ee) Home care worker, as defined in ORS 410.600.

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