

# Senate Bill 182

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)

## 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**.

Modifies definition of "child-caring agency" to include certain residential facilities.

## A BILL FOR AN ACT

1  
2 Relating to child caring agencies that provide developmental disability services to children; amend-  
3 ing ORS 418.205, 418.257, 418.258 and 418.259.

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

5 **SECTION 1.** ORS 418.205 is amended to read:

6 418.205. As used in ORS 418.205 to 418.327, 418.470, 418.475, 418.950 to 418.970 and 418.992 to  
7 418.998, unless the context requires otherwise:

8 (1) "Child" means an unmarried person under 21 years of age who resides in or receives care  
9 or services from a child-caring agency.

10 (2)(a) "Child-caring agency":

11 (A) Means any private school, private agency or private organization providing:

12 (i) Day treatment for children with emotional disturbances;

13 (ii) Adoption placement services;

14 (iii) Residential care, including but not limited to foster care or residential treatment for chil-  
15 dren;

16 (iv) Residential care in combination with academic education and therapeutic care, including but  
17 not limited to treatment for emotional, behavioral or mental health disturbances;

18 (v) Outdoor youth programs; or

19 (vi) Other similar care or services for children.

20 (B) Includes the following:

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

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

23 (iii) A private residential boarding school; *[and]*

24 (iv) A child-caring facility as defined in ORS 418.950[.]; **and**

25 **(v) Residential facilities licensed by the Department of Human Services under ORS**  
26 **443.400 to 443.455 for children receiving developmental disability services.**

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

28 (A) *[Residential facilities or]* Foster care homes certified *[or licensed]* by the Department of Hu-  
29 man Services under ORS *[443.400 to 443.455,]* 443.830 and 443.835 for children receiving develop-  
30 mental disability services;

31 (B) Any private agency or organization facilitating the provision of respite services for parents

**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 pursuant to a properly executed power of attorney under ORS 109.056. For purposes of this subpar-  
 2 agraph, “respite services” means the voluntary assumption of short-term care and control of a minor  
 3 child without compensation or reimbursement of expenses for the purpose of providing a parent in  
 4 crisis with relief from the demands of ongoing care of the parent’s child;

5 (C) A youth job development organization as defined in ORS 344.415;

6 (D) A shelter-care home that is a foster home subject to ORS 418.625 to 418.645;

7 (E) A foster home subject to ORS 418.625 to 418.645;

8 (F) A facility that exclusively serves individuals 18 years of age and older; or

9 (G) A facility that primarily serves both adults and children but requires that any child must  
 10 be accompanied at all times by at least one custodial parent or guardian.

11 (3) “Child-caring facility” has the meaning given that term in ORS 418.950.

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

15 (5) “Independent residence facility” means a facility established or certified under ORS 418.475.

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

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

20 (A) Operated by a governmental entity;

21 (B) Operated or affiliated with the Oregon Youth Conservation Corps;

22 (C) Licensed by the Department of Human Services under other authority of the department; or

23 (D) Operated by a youth job development organization as defined in ORS 344.415.

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

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

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

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

31 (9) “Proctor foster home” means a foster home certified by a child-caring agency under ORS  
 32 418.248 that is not subject to ORS 418.625 to 418.645.

33 (10) “Provider of care or services for children” means a person, entity or organization that  
 34 provides care or services to children, regardless of whether the child is in the custody of the De-  
 35 partment of Human Services, and that does not otherwise meet the definition of, or requirements for,  
 36 a child-caring agency. “Provider of care or services for children” includes a proctor foster home  
 37 certified by a child-caring agency under ORS 418.248.

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

39 **SECTION 2.** ORS 418.257 is amended to read:

40 418.257. As used in ORS 418.257 to 418.259:

41 (1) “Abuse” means one or more of the following:

42 (a) Any physical injury to a child in care caused by other than accidental means, or that appears  
 43 to be at variance with the explanation given of the injury.

44 (b) Neglect of a child in care.

45 (c) Abandonment, including desertion or willful forsaking of a child in care or the withdrawal

1 or neglect of duties and obligations owed a child in care by a child-caring agency, caretaker, certi-  
 2 fied foster home, developmental disabilities [*residential facility*] **foster home** or other person.

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

4 (e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427,  
 5 163.465, 163.467 or 163.525.

6 (f) Verbal abuse.

7 (g) Financial exploitation.

8 (h) Sexual abuse.

9 (i) Involuntary seclusion of a child in care for the convenience of a child-caring agency, care-  
 10 taker, certified foster home or developmental disabilities [*residential facility*] **foster home** or to  
 11 discipline the child in care.

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

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

17 (3)(a) "Child in care" means a person under 21 years of age who is residing in or receiving care  
 18 or services from:

19 (A) A child-caring agency or proctor foster home subject to ORS 418.205 to 418.327, 418.470,  
 20 418.475 or 418.950 to 418.970;

21 (B) A certified foster home; or

22 (C) A developmental disabilities [*residential facility*] **foster home**.

23 (b) "Child in care" does not include a person under 21 years of age who is residing in any of  
 24 the entities listed in paragraph (a) of this subsection when the care provided is in the home of the  
 25 child by the child's parent.

26 [(4) "*Child-caring agency*" has the meaning given that term in ORS 418.205.]

27 [(5)] (4) "Developmental disabilities [*residential facility*] **foster home**" means a [*residential fa-*  
 28 *ility or*] foster home for children who are 18 years of age or younger and receiving developmental  
 29 disability services that is subject to ORS [443.400 to 443.455,] 443.830 and 443.835.

30 [(6)] (5) "Involuntary seclusion" means the confinement of a child in care alone in a room from  
 31 which the child in care is physically prevented from leaving. "Involuntary seclusion" does not in-  
 32 clude age-appropriate discipline, including but not limited to a time-out.

33 [(7)] (6) "Proctor foster home" has the meaning given that term in ORS 418.205.

34 [(8)(a)] (7)(a) "Financial exploitation" means:

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

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

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

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

44 (b) "Financial exploitation" does not include age-appropriate discipline that may involve the  
 45 threat to withhold, or the withholding of, privileges.

1        [(9)] (8) “Intimidation” means compelling or deterring conduct by threat. “Intimidation” does not  
2 include age-appropriate discipline that may involve the threat to withhold privileges.

3        [(10)] (9) “Law enforcement agency” means:

- 4        (a) Any city or municipal police department.
- 5        (b) Any county sheriff’s office.
- 6        (c) The Oregon State Police.
- 7        (d) Any district attorney.
- 8        (e) A police department established by a university under ORS 352.121 or 353.125.

9        [(11)] (10) “Neglect” means:

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

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

15        [(12)] (11) “Services” includes but is not limited to the provision of food, clothing, medicine,  
16 housing, medical services, assistance with bathing or personal hygiene or any other service essential  
17 to the well-being of a child in care.

18        [(13)] (12) “Sexual abuse” means:

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

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

24        (c) Any sexual contact between a person and a child in care that is unlawful under ORS chapter  
25 163 and not subject to a defense under that chapter; or

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

27        [(14)] (13) “Sexual contact” has the meaning given that term in ORS 163.305.

28        [(15)] (14) “Sexual exploitation” means sexual exploitation as described in ORS 419B.005  
29 (1)(a)(E).

30        [(16)] (15) “Verbal abuse” means to threaten significant physical or emotional harm to a child  
31 in care through the use of:

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

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

35        **SECTION 3.** ORS 418.258 is amended to read:

36        418.258. (1) When the Department of Human Services becomes aware of a report of suspected  
37 child abuse of a child in care, whether in the form of an allegation, complaint or formal report made  
38 under this section, and whether made directly to the Director of Human Services, the department  
39 or an employee of the department, to a hotline operated by the department, through the mandatory  
40 abuse reporting process set forth in ORS 419B.005 to 419B.050 or otherwise, the department shall  
41 immediately:

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

45        (b) Notify any governmental agency that has a contract with the child-caring agency, certified

1 foster home or developmental disabilities [*residential facility*] **foster home** to provide care or ser-  
 2 vices to the child in care.

3 (c) Commence an investigation to determine whether the report of suspected abuse is substan-  
 4 tiated, unsubstantiated or inconclusive under ORS 418.259.

5 (d) Report to a law enforcement agency any crime that the department has reason to believe  
 6 has occurred with respect to a child in care or at a child-caring agency, proctor foster home, cer-  
 7 tified foster home or developmental disabilities [*residential facility*] **foster home** even if the sus-  
 8 pected crime is not related to a report of abuse made under this section.

9 (2)(a) As a condition for issuance or renewal of a license, certificate or authorization to a  
 10 child-caring agency, certified foster home or developmental disabilities [*residential facility*] **foster**  
 11 **home**, the department shall require and verify that the child-caring agency, certified foster home  
 12 or developmental disabilities [*residential facility*] **foster home** has procedures and protocols that:

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

18 (B) Mandate that the child-caring agency, certified foster home or developmental disabilities  
 19 [*residential facility*] **foster home** provide an annual training and written materials that include in-  
 20 formation about the child abuse reporting hotline, and that the agency[,] **or** home [*or facility*] advise  
 21 and educate employees of the child-caring agency and any proctor foster home certified by the  
 22 child-caring agency, of the certified foster home or of the developmental disabilities [*residential fa-*  
 23 *city*] **foster home** of the duty under this section and ORS 419B.005 to 419B.050 to report abuse of  
 24 a child in care; and

25 (C) Inform employees of child-caring agencies, proctor foster homes, certified foster homes and  
 26 developmental disabilities [*residential facilities*] **foster homes** that the duty to report abuse of a  
 27 child in care is personal to the employee and that the duty is not fulfilled by reporting the abuse  
 28 to the owner, operator or any other employee of the child-caring agency, proctor foster home, cer-  
 29 tified foster home or developmental disabilities [*residential facility*] **foster home** even if the owner,  
 30 operator or other employee reports the abuse of a child in care to the director, the director's  
 31 designee or the department.

32 (b) A child-caring agency, certified foster home or developmental disabilities [*residential*  
 33 *facility*] **foster home** need not develop and maintain procedures and protocols or provide an annual  
 34 training and written materials under paragraph (a) of this subsection if the agency[,] **or** home [*or*  
 35 *facility*] does not have any employees, staff or volunteers.

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

42 (4)(a) Anyone, including but not limited to an employee of a child-caring agency, proctor foster  
 43 home, certified foster home or developmental disabilities [*residential facility*] **foster home**, who  
 44 makes a report of suspected abuse of a child in care to the Governor, the Department of Justice,  
 45 the Director of Human Services, the director's designee or the department under this section in good

1 faith and who has reasonable grounds for the making of the report shall have immunity:

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

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

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

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

11 **SECTION 4.** ORS 418.259 is amended to read:

12 418.259. (1) The investigation conducted by the Department of Human Services under ORS  
13 418.258 must result in one of the following findings:

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

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

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

21 (2) When a report is received under ORS 418.258 alleging that a child in care may have been  
22 subjected to abuse, the department shall notify the case managers for the child, the attorney for the  
23 child, the child's court appointed special advocate, the parents or guardians of the child, any attor-  
24 ney representing a parent or guardian of the child and any governmental agency that has a contract  
25 with the child-caring agency or developmental disabilities [*residential facility*] **foster home** to pro-  
26 vide care or services to the child that a report has been received.

27 (3) The department may interview the child in care who is the subject of suspected abuse and  
28 witnesses without the presence of employees of the child-caring agency, proctor foster home or de-  
29 velopmental disabilities [*residential facility*] **foster home**, the provider of services at a certified  
30 foster home or department personnel. The department shall inform the child in care that the child  
31 may have the child's parent or guardian, if the child has not been committed to the custody of the  
32 department or the Oregon Youth Authority, or attorney present when participating in an interview  
33 conducted in the course of an abuse investigation.

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

35 (a) The Director of Human Services.

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

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

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

45 (e) The parents or guardians of the child in care who is the subject of the abuse report and in-

1 vestigation if the child in care has not been committed to the custody of the department or the  
 2 youth authority. Notification under this paragraph may not include any details or information other  
 3 than that a report of abuse has been substantiated.

4 (f) Any governmental agency that has a contract with the child-caring agency to provide care  
 5 or services to a child in care.

6 (g) The local citizen review board established by the Judicial Department under ORS 419A.090.

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

14 (a) The name of any child-caring agency, proctor foster home or developmental disabilities [*res-*  
 15 *idential facility*] **foster home**, or, provided there are five or more certified foster homes in the  
 16 county, the name of the county where a certified foster home is located, where the department  
 17 conducted an investigation pursuant to ORS 418.258 that resulted in a finding that the report of  
 18 abuse was substantiated during that quarter;

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

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

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

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

24 (6) In compiling records, reports and other information during an investigation under ORS  
 25 418.258 (1) and in issuing findings, letters of concern or reprimands, the Director of Human Services  
 26 or the director's designee and the department may not refer to the employee, person or entity that  
 27 is the subject of the investigation as an "alleged perpetrator" but must refer to the employee, person  
 28 or entity as the "respondent."

29 \_\_\_\_\_