

A-Engrossed
Senate Bill 832

Ordered by the Senate April 24
Including Senate Amendments dated April 24

Sponsored by Senators GELSER, WAGNER, Representative STARK; Senators FAGAN, HEARD, Representatives BOSHART DAVIS, HAYDEN, NOBLE, SPRENGER, WILDE, ZIKA

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.

Declares purpose of Critical Incident Review Teams.

Defines "critical incident." Directs Department of Human Services to assign team within *[seven]* 10 days after department becomes aware of critical incident. Modifies membership of team. Directs department to publish certain information regarding teams on department's website. **Modifies deadlines by which department shall publish team report. Modifies report requirements. Provides that statements in final report or document created during critical incident review process are inadmissible in civil or administrative proceedings.**

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to child fatalities; creating new provisions; and amending ORS 419B.022 and 419B.024; and
3 declaring an emergency.

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

5 **SECTION 1. ORS 419B.024 is added to and made a part of sections 2 to 5 of this 2019 Act.**

6 **SECTION 2. Definition. As used in sections 2 to 5 of this 2019 Act, "critical incident"**
7 **means an incident that resulted in the death of a child if the Department of Human Services**
8 **reasonably believes the death was the result of child abuse and:**

9 (1) **The child was in the custody of the department at the time of death;**

10 (2) **The child, the child's sibling or any other child living in the household with the child**
11 **was the subject of a child protective services assessment by the department within the 12**
12 **months preceding the fatality;**

13 (3) **The child, the child's sibling or any other child living in the household with the child**
14 **had a pending child welfare or adoption case with the department within the 12 months**
15 **preceding the fatality; or**

16 (4) **The child, the child's sibling or any other child living in the household with the child**
17 **was the subject of a report of abuse or neglect made to the department or a law enforcement**
18 **agency within the 12 months preceding the fatality, whether or not the report was closed at**
19 **screening without an investigation being commenced.**

20 **SECTION 3. Policy statement. (1) The purpose of the Critical Incident Review Teams**
21 **under sections 2 to 5 of this 2019 Act is to increase child safety by:**

22 (a) **Rapidly drawing lessons from a particular critical incident for the improvement of**
23 **systems administered by the Department of Human Services;**

24 (b) **Increasing the department's accountability to the public;**

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) Evaluating and learning from cases designated as critical incidents;

2 (d) Ensuring timely responses by the department with respect to critical incidents and
3 recommendations that result from critical incident reviews; and

4 (e) Increasing the department's ability to address and recommend necessary changes to
5 child welfare systems.

6 (2) Reviews conducted by teams under sections 2 to 5 of this 2019 Act are in addition to
7 and separate from reviews conducted by county multidisciplinary child abuse teams formed
8 under ORS 418.747, statewide interdisciplinary teams formed under ORS 418.748 and the
9 department's child welfare protocols regarding Notification and Review of Child Fatalities
10 and Notification and Review of Sensitive Issues.

11 **SECTION 4. Final report.** (1) Subject to subsection (2)(b) of this section, each Critical
12 Incident Review Team assigned under ORS 419B.024 shall submit a detailed, written final
13 report to the Department of Human Services no later than the 100th day following the date
14 the department assigned the team.

15 (2)(a) Prior to publishing a final report under this section, the department shall take into
16 consideration the following:

17 (A) Whether publication of the report is likely to compromise an ongoing investigation
18 of a law enforcement agency, after the team has communicated with and obtained agreement
19 of appropriate law enforcement agency representatives and the district attorney;

20 (B) Whether the report can be modified so as to permit publication of the report without
21 compromising a law enforcement agency investigation; and

22 (C) Whether, as determined by the team with the advice and consultation of the Director
23 of Human Services, the public interest outweighs the potential consequences to a law
24 enforcement agency investigation as provided in ORS 192.345 (3).

25 (b) The director may extend the deadline for publication of the final report if the director
26 determines that the report, even if modified, will compromise a law enforcement agency in-
27 vestigation and the public interest does not outweigh the potential consequences.

28 (3) Each final report must include, to the extent determined, at a minimum:

29 (a) A description of the critical incident.

30 (b) The date of the critical incident.

31 (c) The date the department first became aware of the fatality.

32 (d) The date the department or a law enforcement agency caused an investigation to be
33 made under ORS 419B.020 to determine the nature and cause of the fatality.

34 (e) The date the findings in the case were entered under ORS 419B.026.

35 (f) The date the department assigned the team.

36 (g) The dates of, and number of members in attendance at, each meeting of the team.

37 (h) Whether the director appointed members of the public to the team.

38 (i) The date the team submitted the final report to the department.

39 (j) A description of all department contacts with the deceased child regarding the critical
40 incident, including contacts with the deceased child's siblings or the deceased child's parents,
41 foster parents or other caretakers. The description of the department's contacts under this
42 paragraph must include a description of any relevant prior reports of abuse the department
43 received involving the individuals identified in this paragraph. The description of relevant
44 prior reports of abuse must include:

45 (A) A summary of the specific nature of any allegations of abuse;

1 (B) A summary of the assessment or investigation activities related to any allegations
2 of abuse; and

3 (C) The disposition of the reports, including whether the reports were assigned for as-
4 sessment or investigation.

5 (k) A description of any concerns the team has regarding actions taken or not taken by
6 the department or law enforcement agencies in response to the critical incident or to the
7 events that led to the critical incident.

8 (L) Any recommendations for improvements in the administration and oversight of the
9 child welfare system that are specific to the critical incident and any historical information
10 reviewed by the team.

11 (4) A final report under this section may include the team's recommendations regarding
12 training and intervention to support the department personnel involved in responding to
13 critical incidents.

14 (5) Each final report shall be written in a manner that respects the dignity of the child,
15 the child's family and those involved in the critical incident case. Details about individuals
16 involved in the case may not be included in the report unless the details are relevant to:

17 (a) The history of alleged abuse and neglect of the deceased child and the history of rel-
18 evant alleged abuse and neglect of other children in the deceased child's home at the time
19 of the critical incident and the deceased child's siblings.

20 (b) The exposure of the deceased child or any other children in the deceased child's home
21 at the time of the critical incident to domestic violence or substance abuse.

22 (c) The history of the department's involvement with the family.

23 (d) The goal of constructively informing public policy related to child welfare, which may
24 include public policies related to health care coordination, public health, suicide prevention,
25 mental health and addiction services, poverty, law enforcement, chronic neglect, prevention
26 services or other issues that affect the safety and well-being of Oregon families.

27 (6) A final report may not include the names of any person assigned to the team or any
28 personally identifiable information regarding any person involved in the critical incident case,
29 including but not limited to employees of the department, the Oregon Health Authority or
30 law enforcement.

31 (7) Any statements contained in a final report or document created solely for the critical
32 incident review process that are or may be construed as an admission of error, liability or
33 violation of law, policy or practice are not admissible as evidence in any civil or administra-
34 tive proceeding. This restriction does not apply to any document that existed prior to its use
35 and consideration in a critical incident review or that is created independently of the critical
36 incident review process.

37 **SECTION 5. Website content.** (1) After assigning a Critical Incident Review Team under
38 ORS 419B.024, the Department of Human Services shall immediately make the following in-
39 formation regarding the critical incident available on the department's website:

40 (a) The date of the critical incident and the age of the deceased child.

41 (b) Whether the child was in the custody of the department at the time of the critical
42 incident or the fatality.

43 (c) Whether there was an open abuse investigation under ORS 419B.020 regarding the
44 child at the time of the critical incident or the fatality.

45 (d) The date the department assigned the team.

1 (e) The due date for the team's final report under section 4 of this 2019 Act.

2 (2)(a) The department shall publish the final report on the department's website no later
3 than 10 days after the department receives the report from the team.

4 (b) The department may redact the final report for purposes of publication only as nec-
5 essary to remove any confidential information or records that may not be disclosed under
6 state or federal law.

7 (c) If the Director of Human Services delays the publication of a final report under sec-
8 tion 4 (2)(b) of this 2019 Act, the department shall publish on the department's website:

9 (A) The status of and expected publication date for the report.

10 (B) Any information in the report that the department determines:

11 (i) Will not compromise a law enforcement agency investigation.

12 (ii) Does not require redaction under paragraph (b) of this subsection.

13 **SECTION 6.** ORS 419B.024 is amended to read:

14 419B.024. (1) **When the Department of Human Services becomes aware of a critical inci-**
15 **dent**, the department [*of Human Services*] shall assign a Critical Incident [*Response*] **Review Team.**
16 [*after the department becomes aware of a child fatality that was likely the result of child abuse or*
17 *neglect within timelines for assignment established by rules adopted by the department if:*]

18 [(a) *The child was in the custody of the department at the time of death;*]

19 [(b) *The child, the child's sibling or any other child living in the household with the child was the*
20 *subject of a child protective services assessment by the department within the 12 months preceding the*
21 *fatality;*]

22 [(c) *The child, the child's sibling or any other child living in the household with the child had a*
23 *pending child welfare or adoption case with the department within the 12 months preceding the fatality;*
24 *or*]

25 [(d) *The child, the child's sibling or any other child living in the household with the child was the*
26 *subject of a report of abuse or neglect made to the department or a law enforcement agency within the*
27 *12 months preceding the fatality, whether or not the report was closed at screening without an inves-*
28 *tigation being commenced.*]

29 (2) **The department shall assign the team required under subsection (1) of this section**
30 **no later than the earlier of:**

31 (a) **Ten days after the department becomes aware of a fatality that the department rea-**
32 **sonably believes is the result of child abuse; or**

33 (b) **Seven days after the department causes an investigation under ORS 419B.020 to be**
34 **made into the nature and cause of a fatality when the department reasonably believes the**
35 **fatality is the result of child abuse.**

36 [(2)(a)] (3)(a) Members of the [*Critical Incident Response*] team shall include, at a minimum, the
37 following:

38 (A) The Director of Human Services **or a deputy director of the department;**

39 (B) The lead department [*of Human Services*] personnel responsible for the administration and
40 oversight of the child welfare system within the department **or the lead personnel's deputy;** and

41 (C) The department personnel responsible for media and communications.

42 (b) [*The following may be assigned to a Critical Incident Response Team:*] **Members of the team**
43 **may include:**

44 (A) Members of the public, appointed by the director [*of Human Services*], as appropriate;

45 (B) A juvenile court judge appointed by the Chief Justice of the Supreme Court; [*and*]

1 [(C) A state Senator appointed by the President of the Senate and a state Representative appointed
2 by the Speaker of the House of Representatives.]

3 **(C) A member of a local citizen review board established under ORS 419A.090 whose ser-**
4 **vice area does not include the location where the critical incident occurred; or**

5 **(D) If the director determines it is appropriate to include one or more legislators as**
6 **members of the team, up to one state Senator appointed by the President of the Senate and**
7 **one state Representative appointed by the Speaker of the House of Representatives. A person**
8 **is ineligible for appointment to a team under this subparagraph if the critical incident oc-**
9 **curred in the person's district, the person had prior contact with or knowledge of the de-**
10 **ceased child or the deceased child's family, or the person is a family member of any person**
11 **associated with the case.**

12 [(3)(a)] **(4)(a)** During the course of its review of the case, the [Critical Incident Response] team
13 may include or consult with the district attorney from the county in which the **critical** incident
14 [resulting in the fatality] occurred.

15 (b) All members of the team must attend meetings of the team in person, by telephone or by
16 other two-way electronic communication device. A team member may not send a delegate to
17 meetings of the team to appear on the member's behalf. Notwithstanding the provisions of this
18 paragraph, a meeting of the team may be convened and held even if one or more members are unable
19 to attend the meeting.

20 [(4)] **(5)(a)** All information and records available to the department [of Human Services regarding
21 the incident that led to the fatality shall be provided to Critical Incident Response] **regarding the**
22 **critical incident shall be provided to** team members. Information and records under this sub-
23 section include, but are not limited to, medical records, hospital records, records maintained by any
24 state, county or local agency, police investigative data, coroner or medical examiner investigative
25 data and social services records, as necessary to complete a case review under this section.

26 **(b)** Information and records provided to team members are confidential and may be disclosed
27 only as necessary to carry out the purposes of the team's case review.

28 [(5)] **(6)** In reviewing the case to which the [Critical Incident Response] team has been assigned,
29 the team shall, with the assistance and cooperation of the department [of Human Services]:

30 (a) Review [and investigate] the case with the primary focus on **the history of** the safety and
31 well-being of the child who was involved in the **critical** incident [that led to the fatality] and any
32 other children who may be impacted by the circumstances surrounding the **critical** incident.

33 (b) Document and make a part of the record of the case review all team conclusions and deci-
34 sions.

35 (c) Complete the case review even if:

36 **(A)** The team concludes that the **critical** incident [that led to the fatality] was the result of the
37 actions of one or more department employees or staff and that such actions were inconsistent with
38 department policy or administrative rule[.]; **or**

39 **(B) The department's investigation into the critical incident results in a finding that the**
40 **report of child abuse is unfounded or cannot be determined, as described in ORS 419B.026.**

41 **(d) Prepare and submit the final report required under section 4 of this 2019 Act.**

42 [(d) Subject to subsection (6) of this section, submit an initial written report to the department that
43 includes information about the team's case review status, team conclusions and recommendations at the
44 time of the initial report and identification of systemic issues that the team has concluded led to the
45 fatality. The initial report may not contain confidential information or records that may not be dis-

1 closed to members of the public. The initial report must be submitted as soon as possible but no later
2 than 60 days following assignment of the team under this section.]

3 [(e) Subject to subsection (6) of this section and if the team's case review is not complete prior to
4 preparation of an initial report, submit a progress report to the department every 30 days following
5 submission of the initial report.]

6 [(f) Subject to subsection (6) of this section, submit a detailed final written report to the department
7 upon conclusion of the team's case review that includes, but is not limited to:]

8 [(A) A description of the incident that resulted in the fatality and of the events that led to the in-
9 cident;]

10 [(B) A description of any concerns raised by actions taken or not taken by the department or law
11 enforcement agencies in response to the incident or to the events that led to the incident;]

12 [(C) Recommendations for improvements in the administration and oversight of the child welfare
13 system that are specific to the case reviewed by the team;]

14 [(D) A description of actions that are necessary to implement the recommendations and of timelines,
15 tasks and responsible individuals to implement the recommendations; and]

16 [(E) Methods to evaluate implementation of the recommendations and expected outcomes.]

17 [(g) Prepare a version of the final written report described in paragraph (f) of this subsection that
18 does not contain confidential information or records that may not be disclosed and that may be made
19 accessible to members of the public.]

20 [(6)(a) Prior to submitting an initial report, a progress report or a final report to the department
21 as described in subsection (5) of this section, the Critical Incident Response Team shall take into con-
22 sideration the following:]

23 [(A) Whether submission of the report is likely to compromise an ongoing investigation of a law
24 enforcement agency, after the team has communicated with and obtained agreement of appropriate law
25 enforcement agency representatives and the district attorney;]

26 [(B) Whether the report can be modified so as to permit submission of the report to the department
27 without compromising a law enforcement agency investigation; and]

28 [(C) Whether, as determined by the team with the advice and consultation of the Director of Human
29 Services, the public interest outweighs the potential consequences to a law enforcement agency investi-
30 gation as provided in ORS 192.345 (3).]

31 [(b) The director may extend the deadline for submission of an initial report, a progress report or
32 a final report if the director determines that a delay is reasonable or if the report, even if modified,
33 will compromise a law enforcement agency investigation and the public interest does not outweigh the
34 potential consequences.]

35 [(c) If the director delays the submission of a report under this subsection, the department's website
36 must reflect the status of and expected submission date for the report.]

37 (7) If the [Critical Incident Response] team concludes that the **critical** incident [that led to the
38 fatality] involves personnel matters relevant to the department [of Human Services], the [team] **de-**
39 **partment** shall refer the matters to the human resources or personnel divisions of the department.

40 (8) The [Critical Incident Response] team may meet, upon conclusion of a criminal investigation
41 or prosecution arising out of a child fatality to which the team was assigned for review, with
42 members of law enforcement that investigated the child fatality or with the prosecuting attorneys
43 who prosecuted the case for the purpose of reviewing the conclusions and recommendations of the
44 team and the reports prepared and submitted by the team.

45 (9) The department [of Human Services] shall adopt rules necessary to carry out the provisions

1 of *[this section]* **sections 2 to 5 of this 2019 Act**. The rules adopted by the department shall sub-
2 stantially conform with the department's child welfare protocol regarding Notification and Review
3 of Critical Incidents.

4 **SECTION 7.** ORS 419B.022 is amended to read:

5 419B.022. ORS 419B.023 and *[419B.024]* **sections 2 to 5 of this 2019 Act** shall be known and
6 may be cited as "Karly's Law."

7 **SECTION 8. Applicability.** Sections 2 to 5 of this 2019 Act and the amendments to ORS
8 419B.022 and 419B.024 by sections 6 and 7 of this 2019 Act apply to Critical Incident Review
9 Teams assigned on or after the effective date of this 2019 Act.

10 **SECTION 9. Captions.** The section captions used in this 2019 Act are provided only for
11 the convenience of the reader and do not become part of the statutory law of this state or
12 express any legislative intent in the enactment of this 2019 Act.

13 **SECTION 10.** (1) Sections 2 to 5 of this 2019 Act and the amendments to ORS 419B.022
14 and 419B.024 by sections 6 and 7 of this 2019 Act become operative on October 1, 2019.

15 (2) The Department of Human Services may take any action before the operative date
16 specified in subsection (1) of this section that is necessary for the department to exercise,
17 on and after the operative date specified in subsection (1) of this section, all of the duties,
18 functions and powers conferred on the department by sections 2 to 5 of this 2019 Act and the
19 amendments to ORS 419B.022 and 419B.024 by sections 6 and 7 of this 2019 Act.

20 **SECTION 11.** This 2019 Act being necessary for the immediate preservation of the public
21 peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect
22 on its passage.