

Senate Bill 912

Sponsored by Senator PROZANSKI (at the request of Taylor Proden and Deborah & Shannon Hart)

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**.

Revises definition of terms "sexual conduct" and "substantiated report" for purposes of certain laws related to abuse and sexual conduct by school employees.

Requires report of suspected sexual conduct be made to law enforcement agency or Department of Human Services. Expands reporting and investigation requirements to sexual conduct by students.

Requires public or private official to report sexual conduct by regulated public or private official and to report student sexual conduct. Directs Department of Human Services and law enforcement to conduct investigation related to report.

Requires department and law enforcement agency to notify regulatory board of regulated public or private official of findings related to sexual conduct. Directs regulatory board to initiate disciplinary proceedings if department or law enforcement finds reasonable cause to believe that sexual conduct occurred.

Requires department and law enforcement agency to notify school district of findings related to student sexual conduct.

A BILL FOR AN ACT

1
2 Relating to sexual conduct toward children; creating new provisions; and amending ORS 339.370,
3 339.372 and 339.388.

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

5 **SECTION 1.** ORS 339.370 is amended to read:

6 339.370. As used in ORS 339.370 to 339.400:

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

8 (2) "Disciplinary records" means the records related to a personnel discipline action or materi-
9 als or documents supporting that action.

10 (3) "Education provider" means:

11 (a) A school district, as defined in ORS 332.002.

12 (b) The Oregon School for the Deaf.

13 (c) An educational program under the Youth Corrections Education Program.

14 (d) A public charter school, as defined in ORS 338.005.

15 (e) An education service district, as defined in ORS 334.003.

16 (f) Any state-operated program that provides educational services to kindergarten through grade
17 12 students.

18 (g) A private school.

19 (4) "Investigation" means a detailed inquiry into the factual allegations of a report of suspected
20 abuse or sexual conduct that:

21 (a) Is based on interviews with the complainant, witnesses and the school employee or student
22 who is the subject of the report; and

23 (b) If the subject of the report is a school employee, meets any negotiated standards of an em-
24 ployment contract or agreement.

25 (5) "Law enforcement agency" has the meaning given that term in ORS 419B.005.

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 (6) "Private school" means a school that provides to kindergarten through grade 12 students
 2 instructional programs that are not limited solely to dancing, drama, music, religious or athletic
 3 instruction.

4 (7) "School board" means the governing board or governing body of an education provider.

5 (8) "School employee" means an employee of an education provider.

6 (9)(a) "Sexual conduct" means any verbal or physical conduct by a school employee **or a stu-**
 7 **dent** that:

8 (A) Is sexual in nature;

9 (B) Is directed toward a kindergarten through grade 12 student;

10 (C) Has the effect of [*unreasonably*] interfering with a student's educational performance; and

11 (D) Creates an intimidating, hostile or offensive educational environment.

12 (b) "Sexual conduct" does not include abuse.

13 (10) "Substantiated report" means a report of abuse or sexual conduct that[:]

14 [(a)] an education provider has reasonable cause to believe is founded based on the available
 15 evidence after conducting an investigation. [; and]

16 [(b) *Involves conduct that the education provider determines is sufficiently serious to be documented*
 17 *in the school employee's personnel file or the student's education record.*]

18 **SECTION 2. The amendments to ORS 339.370 by section 1 of this 2019 Act apply to con-**
 19 **duct that occurs before, on or after the effective date of this 2019 Act for purposes of:**

20 (1) **Making reports of suspected abuse or sexual conduct;**

21 (2) **Investigations of suspected abuse or sexual conduct that are pending or initiated on**
 22 **or after the effective date of this 2019 Act; and**

23 (3) **A collective bargaining agreement, an employment contract, an agreement for resig-**
 24 **nation or termination, a severance agreement or any similar contract or agreement entered**
 25 **into on or after the effective date of this 2019 Act.**

26 **SECTION 3.** ORS 339.372 is amended to read:

27 339.372. Each school board shall adopt policies on the reporting of abuse and sexual conduct
 28 by school employees and [*the reporting of abuse by*] students. The policies shall:

29 (1) Specify that abuse and sexual conduct by school employees and [*abuse by*] students are not
 30 tolerated;

31 (2) Specify that all school employees and students are subject to the policies;

32 (3) Require all school employees who have reasonable cause to believe that another school em-
 33 ployee has engaged in abuse or sexual conduct or that a student has engaged in abuse **or sexual**
 34 **conduct** to:

35 (a) Report suspected abuse **or sexual conduct** to a law enforcement agency, the Department
 36 of Human Services or a designee of the department as required by ORS 419B.010 and 419B.015; and

37 (b) Report suspected abuse or sexual conduct to the person designated as provided by subsection
 38 (4) of this section;

39 (4) Designate a person, and an alternate in the event the designated person is the suspected
 40 abuser, to receive reports of suspected abuse or sexual conduct by school employees or [*suspected*
 41 *abuse by*] students and specify the procedures to be followed by that person upon receipt of a report;

42 (5) Require the posting in each school building of the name and contact information for the
 43 person designated for the school building to receive reports of suspected abuse or sexual conduct
 44 by school employees or [*suspected abuse by*] students and the procedures the person will follow upon
 45 receipt of a report;

1 (6) Specify that the initiation of a report in good faith about suspected abuse or sexual conduct
 2 may not adversely affect any terms or conditions of employment or the work environment of the
 3 complainant;

4 (7) Specify that the school board or any school employee will not discipline a student for the
 5 initiation of a report in good faith about suspected abuse or sexual conduct by a school employee
 6 or [*suspected abuse by a*] student;

7 (8) Require notification by the education provider to the person who initiated the report about
 8 actions taken by the education provider based on the report; and

9 (9) Require the education provider to furnish to a school employee at the time of hire the fol-
 10 lowing:

11 (a) A description of conduct that may constitute abuse or sexual conduct; and

12 (b) A description of the information and records that will be disclosed as provided by ORS
 13 339.378 or 339.388 (8) if a report of suspected abuse or sexual conduct is substantiated.

14 **SECTION 4. The amendments to ORS 339.372 by section 3 of this 2019 Act apply to re-**
 15 **ports made on or after the effective date of this 2019 Act.**

16 **SECTION 5.** ORS 339.388 is amended to read:

17 339.388. (1)(a) A school employee having reasonable cause to believe that a child with whom the
 18 employee comes in contact has suffered abuse by another school employee or by a student, or that
 19 another school employee or a student with whom the employee comes in contact has abused a child,
 20 shall immediately report the information to:

21 (A) The person designated in the policy adopted under ORS 339.372; and

22 (B) A law enforcement agency, the Department of Human Services or a designee of the depart-
 23 ment as required by ORS 419B.010 and 419B.015.

24 (b) A school employee having reasonable cause to believe that a student with whom the em-
 25 ployee comes in contact has been subjected to sexual conduct by another school employee **or a**
 26 **student**, or that another school employee **or a student** with whom the employee comes in contact
 27 has engaged in sexual conduct, shall immediately report the information to the person designated
 28 in the policy adopted under ORS 339.372.

29 (2) A person who receives a report under subsection (1) of this section shall follow the proce-
 30 dures required by the policy adopted by the school board under ORS 339.372.

31 (3)(a) Except as provided in subsection (4) of this section, when an education provider receives
 32 a report of suspected abuse or sexual conduct by one of its employees, and the education provider's
 33 designee determines that there is reasonable cause to support the report, the education provider:

34 (A) In the case of suspected abuse, shall place the school employee on paid administrative leave;
 35 or

36 (B) In the case of suspected sexual conduct, may place the school employee on paid adminis-
 37 trative leave or in a position that does not involve direct, unsupervised contact with children.

38 (b) A school employee who is placed on paid administrative leave under paragraph (a)(A) of this
 39 subsection shall remain on administrative leave until:

40 (A) The Department of Human Services or a law enforcement agency determines that the report
 41 cannot be substantiated or that the report will not be pursued; or

42 (B) The Department of Human Services or a law enforcement agency determines that the report
 43 is substantiated and the education provider takes the appropriate disciplinary action against the
 44 school employee.

45 (4) An education provider may reinstate a school employee placed on paid administrative leave

1 for suspected abuse as provided under subsection (3) of this section or may take the appropriate
2 disciplinary action against the employee if the Department of Human Services or a law enforcement
3 agency is unable to determine, based on a report of suspected abuse, whether abuse occurred.

4 (5) If, following an investigation, an education provider determines that a report of suspected
5 abuse or sexual conduct by a school employee is a substantiated report, the education provider shall:

6 (a) Inform the school employee that the education provider has determined that the report has
7 been substantiated.

8 (b) Provide the school employee with information about the appropriate appeal process for the
9 determination made by the education provider. The appeal process may be the process provided by
10 a collective bargaining agreement or a process administered by a neutral third party and paid for
11 by the school district.

12 (c) Following notice of a school employee's decision not to appeal the determination or following
13 the determination of an appeal that sustained the substantiated report, create a record of the sub-
14 substantiated report and place the record in the personnel file of the school employee. Records created
15 pursuant to this paragraph are confidential and are not public records as defined in ORS 192.311.
16 An education provider may use the record as a basis for providing the information required to be
17 disclosed under ORS 339.378.

18 (d) Inform the school employee that information about substantiated reports may be disclosed
19 to a potential employer as provided by subsection (8) of this section and ORS 339.378.

20 (6)(a) Notwithstanding the requirements of subsections (3), (4) and (5) of this section, an educa-
21 tion provider that is a private school:

22 (A) May discipline or terminate a school employee according to:

23 (i) The provisions of subsections (3) and (4) of this section; or

24 (ii) The standards and policies of the private school if the standards and policies provide the
25 same or greater safeguards for the protection of children compared to the safeguards described in
26 subsections (3) and (4) of this section.

27 (B) May follow the procedures described in subsection (5) of this section or may follow any ap-
28 peals process established by the private school related to suspected child abuse or sexual conduct.

29 (b) A private school that chooses to discipline or terminate a school employee according to the
30 standards and policies of the school must provide the information required to be disclosed under
31 ORS 339.378.

32 (7) Upon request from a law enforcement agency, the Department of Human Services or the
33 Teacher Standards and Practices Commission, a school district shall provide the records of investi-
34 gations of suspected abuse by a school employee or former school employee.

35 (8)(a) The disciplinary records of a school employee or former school employee convicted of a
36 crime listed in ORS 342.143 are not exempt from disclosure under ORS 192.345 or 192.355.

37 (b) If a school employee is convicted of a crime listed in ORS 342.143, the education provider
38 that is the employer of the employee shall disclose the disciplinary records of the employee to any
39 person upon request.

40 (c) If a former school employee is convicted of a crime listed in ORS 342.143, the education
41 provider that was the employer of the former employee when the crime was committed shall disclose
42 the disciplinary records of the former employee to any person upon request.

43 (9) Prior to disclosure of a disciplinary record under subsection (8) of this section, an education
44 provider shall remove any personally identifiable information from the record that would disclose
45 the identity of a child, a crime victim or a school employee or former school employee who is not

1 the subject of the disciplinary record.

2 **SECTION 6.** Section 7 of this 2019 Act is added to and made a part of ORS chapter 419B.

3 **SECTION 7.** (1) As used in this section:

4 (a) "Child" means an unmarried person who:

5 (A) Is under 18 years of age; or

6 (B) Is under 21 years of age and residing in or receiving care or services at a child-caring
7 agency as defined in ORS 418.205.

8 (b) "Public or private official" has the meaning given that term in ORS 419B.005.

9 (c) "Regulated public or private official" means any public or private official who is li-
10 censed, registered, certified or otherwise authorized by a regulatory board to practice a
11 profession or to provide professional services.

12 (d) "Regulatory board" means a state agency or board that licenses, registers, certifies
13 or otherwise authorizes individuals to practice a profession or to provide professional ser-
14 vices.

15 (e) "Sexual conduct" means any verbal or physical conduct by a regulated public or pri-
16 vate official that:

17 (A) Is sexual in nature;

18 (B) Is directed toward a child;

19 (C) Occurs during the course of the professional relationship between the regulated
20 public or private official and the child; and

21 (D) Creates an intimidating, hostile or offensive environment.

22 (f) "Student sexual conduct" means any verbal or physical conduct by a child in any
23 grade from kindergarten through grade 12 that:

24 (A) Is sexual in nature;

25 (B) Is directed toward another child in any grade from kindergarten through grade 12;
26 and

27 (C) Is known or should be known by the public or private official to create an intimidat-
28 ing, hostile or offensive educational environment.

29 (2)(a) Any public or private official shall immediately report or cause a report to be made
30 by telephone or otherwise to the local office of the Department of Human Services if the
31 official has reasonable cause to believe that:

32 (A) Any child with whom the official comes in contact has been subjected to sexual con-
33 duct or student sexual conduct;

34 (B) Any child with whom the official comes in contact has engaged in student sexual
35 conduct; or

36 (C) Any regulated public or private official with whom the official comes in contact has
37 engaged in sexual conduct.

38 (b) Nothing contained in ORS 40.225 to 40.295 or 419B.234 (6) affects the duty to report
39 imposed by this section, except that a psychiatrist, psychologist, member of the clergy, at-
40 torney or guardian ad litem appointed under ORS 419B.231 is not required to report such
41 information communicated by a public or private official if the communication is privileged
42 under ORS 40.225 to 40.295 or 419B.234 (6). An attorney is not required to make a report
43 under this section by reason of information communicated to the attorney in the course of
44 representing a client if disclosure of the information would be detrimental to the client.

45 (c) Notwithstanding paragraph (a) of this subsection, a report need not be made under

1 this section if the public or private official acquires information relating to sexual conduct
2 or student sexual conduct by reason of a report made under this section, or by reason of a
3 proceeding arising out of a report made under this section, and the public or private official
4 reasonably believes that the information is already known by the department.

5 (d) The duty to report under this section is personal to the public or private official
6 alone, regardless of whether the official is employed by, a volunteer of or a representative
7 or agent for any type of entity or organization that employs persons or uses persons as
8 volunteers who are public or private officials in its operations.

9 (e) The duty to report under this section exists regardless of whether the entity or or-
10 ganization that employs the public or private official or uses the public or private official as
11 a volunteer has its own procedures or policies for making reports internally within the entity
12 or organization.

13 (f) Any person who makes a report in good faith under this section:

14 (A) Shall have immunity from any liability, civil or criminal, that might otherwise be
15 incurred or imposed with respect to the making or content of the report.

16 (B) May not be adversely affected in terms or conditions of employment or the work
17 environment of the person.

18 (3)(a) Upon receiving a report of sexual conduct under this section, the department shall:

19 (A) Notify a law enforcement agency within the county where the public or private offi-
20 cial making the report is located at the time of contact if the sexual conduct may constitute
21 a crime.

22 (B) Notify the regulatory board of the regulated public or private official that a report
23 of sexual conduct has been received.

24 (C) Cause an investigation to be made to determine whether sexual conduct occurred.

25 (b) If the department or the law enforcement agency finds reasonable cause to believe
26 that sexual conduct has occurred, the department or the law enforcement agency shall notify
27 the regulatory board of the regulated public or private official of the department's or the law
28 enforcement agency's findings. The department or the law enforcement agency shall make
29 records of the investigation available to the regulatory board.

30 (c) Based on records received by a regulatory board under paragraph (b) of this sub-
31 section, a regulatory board must initiate disciplinary proceedings, including any appeal pro-
32 cesses, against the regulated public or private official to determine whether to:

33 (A) Suspend the license, registration, certification or other authorization of the regulated
34 public or private official;

35 (B) Revoke the license, registration, certification or other authorization of the regulated
36 public or private official; or

37 (C) Otherwise discipline the regulated public or private official.

38 (4)(a) Upon receiving a report of student sexual conduct under this section, the depart-
39 ment shall:

40 (A) Notify a law enforcement agency within the county where the public or private offi-
41 cial making the report is located at the time of contact if the student sexual conduct may
42 constitute a crime.

43 (B) Cause an investigation to be made to determine whether student sexual conduct oc-
44 curred.

45 (b) If the department or the law enforcement agency finds reasonable cause to believe

1 that student sexual conduct has occurred, the department or the law enforcement agency
2 shall make records of the investigation available to the school district or school districts
3 attended by the student who engaged in student sexual conduct or who was subjected to
4 student sexual conduct.

5 (5)(a) The department and any regulatory board subject to this section shall adopt any
6 rules necessary for the implementation of this section.

7 (b) The department may recommend practices and procedures to local law enforcement
8 agencies to meet the requirements of rules adopted under this section.

9 (6) A person who violates subsection (2) of this section commits a Class A violation.
10 Prosecution under this subsection shall be commenced at any time within 18 months after
11 commission of the offense.

12
