Senate Bill 409

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

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.

Expands applicability of certain laws requiring reporting and investigating of sexual conduct in schools to include sexual conduct by students.

 Creates civil action for damages for failure by certain school employees to make report of suspected sexual conduct.

Directs Department of Education to evaluate criminal records checks to determine percentage of total number of criminal records checks requested by private schools that indicated person being checked engaged in sexual conduct toward child. Requires department to report results of evaluation to interim committee of Legislative Assembly related to education.

Declares emergency, effective July 1, 2021.

A BILL FOR AN ACT

Relating to sexual conduct toward children; creating new provisions; amending ORS 339.370, 339.372, 339.388 and 339.396; and declaring an emergency.

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

SECTION 1. ORS 339.370 is amended to read:

339.370. As used in ORS 339.370 to 339.400:

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

(2) “Agent” means a person acting as an agent for an education provider in a manner that requires the person to have direct, unsupervised contact with students.

(3) “Contractor” means a person providing services to an education provider in a contract in a manner that requires the person to have direct, unsupervised contact with students.

(4)(a) “Education provider” means:

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

(B) The Oregon School for the Deaf.

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

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

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

(F) Any state-operated program that provides educational services to students.

(G) A private school.

(b) “Education provider” does not include:

(A) The Oregon Youth Authority;

(B) The Department of Corrections; or

(C) The Department of Education, except when functioning as an education provider on behalf of:

(i) The Oregon School for the Deaf;

(ii) An educational program under the Youth Corrections Education Program; or

(iii) A public charter school, as defined in ORS 338.005, that is sponsored by the Department of

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.

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(5) “Investigation” means a detailed inquiry into the factual allegations of a report of suspected abuse or suspected sexual conduct that:

(a) Is based on interviews with the person who initiated the report, the person who may have been subjected to abuse or sexual conduct, witnesses and the person who is the subject of the report; and

(b) Results in a finding that the report:

(A) Is a substantiated report;

(B) Cannot be substantiated; or

(C) Is not a report of abuse or sexual conduct.

(6) “Law enforcement agency” has the meaning given that term in ORS 419B.005.

(7) “License” includes a license, registration or certificate issued by the Teacher Standards and Practices Commission.

(8) “Private school” means a school that provides to students instructional programs that are not limited solely to dancing, drama, music, religious or athletic instruction.

(9) “School board” means the entity charged with adopting policies for an education provider.

(10) “School employee” means an employee of an education provider.

(11)(a) “Sexual conduct” means verbal or physical conduct or verbal, written or electronic communications that involve a student, that are made by a school employee, a contractor, an agent, [or] a volunteer or another student [that involve a student] and that are:

(A) Sexual advances or requests for sexual favors directed toward the student; or

(B) Of a sexual nature that are directed toward the student or that have the effect of [unreasonably] interfering with the student's educational performance, or of creating an intimidating, hostile or offensive educational environment.

(b) “Sexual conduct” does not include touching:

(A) That is necessitated by the nature of the school employee's job duties or by the services required to be provided by the contractor, agent or volunteer; and

(B) For which there is no sexual intent.

(12) “Student” means any person:

(a) Who is:

(A) In any grade from prekindergarten through grade 12; or

(B) Twenty-one years of age or younger and receiving educational or related services from an education provider that is not a post-secondary institution of education; or

(b) Who was previously known as a student by the person engaging in sexual conduct and who left school or graduated from high school within 90 days prior to the sexual conduct.

(13) “Substantiated report” means a report of abuse or sexual conduct that a law enforcement agency, the Department of Human Services, the Teacher Standards and Practices Commission, the Department of Education or an education provider has reasonable cause to believe, based on the available evidence after conducting an investigation, is founded.

(14) “Volunteer” means a person acting as a volunteer for an education provider in a manner that requires the person to have direct, unsupervised contact with students.

SECTION 2. The amendments to ORS 339.370 by section 1 of this 2021 Act apply to conduct that occurs before, on or after the effective date of this 2021 Act for purposes of:

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

(2) Investigations of suspected abuse or sexual conduct that are pending or initiated on
or after the effective date of this 2021 Act; and

(3) A collective bargaining agreement, an employment contract, an agreement for resignation or termination, a severance agreement or any similar contract or agreement entered into on or after the effective date of this 2021 Act.

SECTION 3. ORS 339.372 is amended to read:

339.372. Each school board shall adopt policies on the reporting of suspected abuse and suspected sexual conduct by school employees, contractors, agents, [and] volunteers and [the reporting of suspected abuse by] students. The policies shall:

(1) Specify that abuse and sexual conduct by school employees, contractors, agents, [and] volunteers and [abuse by] students are not tolerated.

(2) Specify that all school employees, contractors, agents, volunteers and students are subject to the policies.

(3) Require all school employees who have reasonable cause to believe that another school employee or a contractor, an agent, [or] a volunteer or a student has engaged in abuse or sexual conduct [or that a student has engaged in abuse] to report:

(a) To the licensed administrator designated as provided by subsection (4) of this section all incidents of suspected abuse or suspected sexual conduct; and

(b) To a law enforcement agency, the Department of Human Services or a designee of the department as required by ORS 419B.010 and 419B.015 all incidents of suspected abuse, in addition to any report made as required under paragraph (a) of this subsection.

(4) Designate a licensed administrator, and an alternate licensed administrator in the event the designated licensed administrator is the suspected abuser, to:

(a) Receive reports of suspected abuse or suspected sexual conduct by school employees, contractors, agents, [or] volunteers or [suspected abuse by] students and specify the procedures to be followed by the licensed administrator upon receipt of a report; and

(b) In the manner required by ORS 339.388 (2)(b), inform the Teacher Standards and Practices Commission or the Department of Education of reports of suspected sexual conduct received under paragraph (a) of this subsection.

(5) Specify the procedures to be followed after a report of suspected abuse or suspected sexual conduct is received, including notification that:

(a) All suspected abuse or suspected sexual conduct by school employees, contractors, agents, [or] volunteers or students will be reported to a law enforcement agency or to a state agency, as appropriate, for investigation;

(b) A law enforcement agency or a state agency will complete an investigation regardless of any changes in the relationship or duties of the person about whom the report was made; and

(c) An education provider will take necessary actions as provided by ORS 339.388 to ensure the student’s safety after a report is received, including placing a school employee on paid administrative leave pending an investigation or prohibiting a contractor, an agent or a volunteer from providing services to the education provider.

(6) Require the posting in each school building of:

(a) The name and contact information for the licensed administrator and alternate licensed administrator designated for the school building to receive reports of suspected abuse or suspected sexual conduct by school employees, contractors, agents, [and] volunteers or suspected abuse by students and the procedures the licensed administrator will follow upon receipt of a report; and

(b) The contact information for making a report of suspected abuse to a law enforcement agency,
the Department of Human Services or a designee of the department as required by ORS 419B.010 and 419B.015 and a statement that the duty to report abuse is in addition to any requirement to make a report to a licensed administrator.

(7) Specify that the initiation of a report in good faith about suspected abuse or suspected sexual conduct may not adversely affect any terms or conditions of employment or the work environment of the person who initiated the report or who may have been subjected to abuse or sexual conduct.

(8) Specify that the education provider or any school employee, contractor, agent or volunteer will not discipline a student for the initiation of a report in good faith about suspected abuse or suspected sexual conduct by a school employee, a contractor, an agent, [or] a volunteer or [suspected abuse by] a student.

(9) Require notification, as allowed by state and federal law, by the education provider to the person who was subjected to the suspected abuse or suspected sexual conduct about any actions taken by the education provider based on the report.

(10) Require the education provider to furnish to a school employee at the time of hire, or to a contractor, an agent or a volunteer at the time of beginning service for the education provider, the following:

(a) A description of conduct that may constitute abuse or sexual conduct;
(b) A description of the investigatory process and possible consequences if a report of suspected abuse or suspected sexual conduct is substantiated; and
(c) A description of the prohibitions imposed on school employees, contractors and agents when another school employee, contractor or agent attempts to obtain a new job, as provided by ORS 339.378 (2).

(11) Specify and make available to students, school employees, contractors, agents and volunteers a policy of appropriate electronic communications with students.

SECTION 4. The amendments to ORS 339.372 by section 3 of this 2021 Act apply to reports made on or after the effective date of this 2021 Act.

SECTION 5. ORS 339.388 is amended to read:

339.388. (1)(a) A school employee shall immediately submit a report as provided by paragraph (b) of this subsection if the school employee has reasonable cause to believe that:
(A) A student has been subjected to abuse by another school employee or by a contractor, an agent, a volunteer or a student;
(B) A student has been subjected to sexual conduct by another school employee or by a contractor, an agent, or a volunteer or a student; or
(C) Another school employee or a contractor, an agent, [or] a volunteer or a student has engaged in sexual conduct.
(b) The report required under paragraph (a) of this subsection shall be made to:
(A) The licensed administrator designated in the policies adopted under ORS 339.372, for all reports of suspected abuse or suspected sexual conduct; and
(B) A law enforcement agency, the Department of Human Services or a designee of the department as required by ORS 419B.010 and 419B.015, for all reports of suspected abuse.
(2) The licensed administrator who receives a report under subsection (1) of this section shall:
(a) Make a record of all reports received under subsection (1) of this section and make the record available if a claim is brought under ORS 339.396; and
(b) Follow the procedures required by the policies adopted by the school board under ORS 339.372, including:
(a) Notifying the Teacher Standards and Practices Commission as soon as possible of any reports of suspected sexual conduct that may have been committed by a person who is licensed by the commission; and

(b) Notifying the Department of Education as soon as possible of any reports of suspected sexual conduct that may have been committed by a person who is not licensed by the commission.

(3)(a) When a licensed administrator receives a report of suspected abuse or suspected sexual conduct by a school employee and there is reasonable cause to support the report, the education provider shall:

(A) Place the school employee on paid administrative leave; and

(B) Take necessary actions to ensure the student’s safety.

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

(A) For a report of suspected abuse, a law enforcement agency or the Department of Human Services determines that the report:

(i) Is substantiated and the education provider takes the appropriate employment action against the school employee; or

(ii) Cannot be substantiated or is not a report of abuse and the education provider:

(I) Determines that an employment policy has been violated and takes appropriate employment action against the school employee; or

(II) Determines that an employment policy has not been violated and employment action against the school employee is not required.

(B) For a report of suspected sexual conduct, the Teacher Standards and Practices Commission or the Department of Education determines that the report:

(i) Is substantiated and the education provider takes the appropriate employment action against the school employee; or

(ii) Cannot be substantiated or is not a report of sexual conduct and the education provider:

(I) Determines that an employment policy has been violated and takes appropriate employment action against the school employee; or

(II) Determines that an employment policy has not been violated and that employment action against the school employee is not required.

(c) When a school employee is placed on paid administrative leave under paragraph (a) of this subsection, the education provider may not require the school employee to use any accrued leave during the paid administrative leave.

(4)(a) Except as provided in paragraph (c) of this subsection, when a licensed administrator receives a report of suspected abuse or suspected sexual conduct by a contractor, an agent or a volunteer, the education provider:

(A) May immediately prohibit the contractor, agent or volunteer from providing services to the education provider.

(B) Shall prohibit the contractor, agent or volunteer from providing services to the education provider if the education provider determines that there is reasonable cause to support a report of abuse or sexual conduct.

(b) Except as provided in paragraph (c) of this subsection, an education provider is not required to reinstate a contractor, an agent or a volunteer. Any reinstatement of a contractor, an agent or a volunteer that does occur may not occur until:

(A) For a report of suspected abuse, a law enforcement agency or the Department of Human Services determines that the report:

(i) Is substantiated and the education provider takes the appropriate employment action against the contractor, agent or volunteer; or

(ii) Cannot be substantiated or is not a report of abuse and the education provider:

(I) Determines that an employment policy has been violated and takes appropriate employment action against the contractor, agent or volunteer; or

(II) Determines that an employment policy has not been violated and employment action against the contractor, agent or volunteer is not required.
Services determines that the report:

(i) Is substantiated and the education provider takes the appropriate actions to protect students; or

(ii) Cannot be substantiated or is not a report of abuse and the education provider:

(I) Takes the appropriate actions to protect students; or

(II) Determines that no other actions are required to protect students.

(B) For a report of suspected sexual conduct, the Teacher Standards and Practices Commission or the Department of Education determines that the report:

(i) Is substantiated and the education provider takes the appropriate actions to protect students; or

(ii) Cannot be substantiated or is not a report of sexual conduct and the education provider:

(I) Takes the appropriate actions to protect students; or

(II) Determines that no other actions are required to protect students.

(c) If a contract under which a contractor provides services to an education provider or an agreement under which an agent provides services to an education provider sets forth any negotiated standards for the relationship between the contractor or agent and the education provider, the education provider shall comply with those standards but may not in any instance grant the contractor or agent more rights than granted to a school employee under subsection (3) of this section.

(d) Nothing in this subsection:

(A) Establishes an employment relationship between an education provider and a contractor or an agent; or

(B) Confers onto a contractor or an agent any rights of employment.

(5)(a) When a report of suspected abuse or suspected sexual conduct is investigated by a law enforcement agency, the Department of Human Services, the Teacher Standards and Practices Commission or the Department of Education, an education provider may use the findings of the entity that conducted the investigation for the purpose of subsection (3) or (4) of this section and for making any determinations described in subsection (6) of this section.

(b) Nothing in this subsection prohibits an education provider from:

(A) Conducting an investigation related to a report of suspected abuse or suspected sexual conduct, except that the education provider must:

(i) If requested, allow the investigation to be led by an entity identified in paragraph (a) of this subsection, as applicable;

(ii) Follow any protocols and procedures of entities identified in paragraph (a) of this subsection that are involved in the investigation; and

(iii) Cooperate with the entities identified in paragraph (a) of this subsection that are involved in the investigation, including by:

(I) Suspending any investigations of the education provider at the request of the entity; and

(II) Sharing information with the entity as provided by subsection (10) of this section.

(B) Taking an employment action, based on information available to the education provider, before an investigation conducted by an entity identified in paragraph (a) of this subsection is completed.

(6)(a) For each report of suspected abuse or suspected sexual conduct by a school employee, an education provider must determine if:

(A) An employment policy of the education provider was violated; and

(B) The education provider will take any employment actions, including disciplinary action
against the school employee or changes to the employment relationship or duties of the school em-
ployee.

(b) Determinations made under paragraph (a) of this subsection must be based on the findings
of an investigation conducted by:

(A) A law enforcement agency, the Department of Human Services, the Teacher Standards and
Practices Commission or the Department of Education; or

(B) The education provider, if the education provider conducts an investigation.

(c) A final determination by a law enforcement agency, the Department of Human Services, the
Teacher Standards and Practices Commission or the Department of Education that a report of sus-
pected abuse or suspected sexual conduct cannot be substantiated or is not a report of abuse or
sexual conduct does not:

(A) Relieve an education provider of the requirement to make determinations under paragraph
(a) of this subsection; or

(B) Prohibit an education provider from taking any employment actions against a school em-
ployee.

(d) Except as provided by paragraph (e) of this subsection, determinations made under paragraph
(a) of this subsection must be made:

(A) Within 60 calendar days from the date the education provider received from a law enforce-
ment agency, the Department of Human Services, the Teacher Standards and Practices Commission
or the Department of Education a final determination that a report of suspected abuse or suspected
sexual conduct involving a school employee is a substantiated report; or

(B) Within 90 calendar days from the date the education provider:

(i) Received from a law enforcement agency, the Department of Human Services, the Teacher
Standards and Practices Commission or the Department of Education a final determination that a
report of suspected abuse or suspected sexual conduct involving a school employee cannot be sub-
stantiated or is not a report of abuse or sexual conduct; or

(ii) Received a report of suspected abuse or suspected sexual conduct if the education provider
conducts an investigation.

(e) The timelines prescribed by paragraph (d) of this subsection may be extended if, for good
cause, a longer period of time is necessary. For an education provider that conducts an investi-
gation, good cause may include suspending an investigation as required by subsection (5)(b) of this
section.

(7) If, in the course of an investigation by an education provider, the education provider becomes
aware of new information that gives rise to a reasonable cause to believe that abuse or sexual
conduct occurred, the education provider shall ensure that a report is made to a law enforcement
agency, the Department of Human Services, a designee of the department as required by ORS
419B.010 and 419B.015, the Teacher Standards and Practices Commission or the Department of Ed-
ucation.

(8) If, following an investigation, an education provider determines that the education provider
will take an employment action, the education provider shall:

(a) Inform the school employee of the employment action that will be taken by the education
provider.

(b) Provide the school employee with information about the appropriate appeal process for the
employment action taken by the education provider. The appeal process may be the process provided
by a collective bargaining agreement or a process administered by a neutral third party and paid
for by the education provider.

(c) Following notice of a school employee’s decision not to appeal the employment action of an
education provider or following the determination of an appeal that sustained the employment action
taken by the education provider, create a record of the findings of the substantiated report and the
employment action taken by the education provider and place the record in any documents main-
tained by the education provider on the school employee. Records created pursuant to this para-
graph are confidential and are not public records as defined in ORS 192.311. An education provider
may use the record as a basis for providing the information required to be disclosed about a school
employee under ORS 339.378 (1).

(d) Inform the school employee that information about substantiated reports may be disclosed
to a potential employer as provided by ORS 339.378 (1).

(9)(a) Notwithstanding the requirements of this section, an education provider that is a private
school:

(A) May take an employment action in relation to a school employee, a contractor, an agent or
a volunteer according to:

(i) The provisions of this section; or

(ii) The standards and policies of the private school if the standards and policies provide the
same or greater safeguards for the protection of students compared to the safeguards described in
this section.

(B) May follow the procedures described in subsection (8) of this section or may follow any ap-
peals process established by the private school related to suspected abuse or suspected sexual con-
duct.

(b) A private school that chooses to take an employment action or other action in relation to
a school employee, a contractor, an agent or a volunteer according to the standards and policies
of the private school must provide the information required to be disclosed under ORS 339.378 (1).

(10) Upon request from a law enforcement agency, the Department of Human Services, the
Teacher Standards and Practices Commission or the Department of Education, in conducting an in-
vestigation related to suspected abuse or suspected sexual conduct, an education provider shall im-
nediately provide any requested documents or materials, to the extent allowed by state and federal
law, including laws protecting a person from self-incrimination.

SECTION 6. The amendments to ORS 339.388 by section 5 of this 2021 Act apply to re-
ports made on or after the effective date of this 2021 Act.

SECTION 7. ORS 339.396 is amended to read:

339.396. (1) Except as provided in subsections (2) and (3) of this section, nothing in ORS
339.370 to 339.400 creates a new public or private cause of action or precludes an existing cause
of action.

(2)(a) A student, or the parent or guardian of a student, may bring a civil action and
recover damages for the greater of $1,000 or the total amount for special and general dam-
ages, including damages for emotional distress, if:

(A) A school employee required to make a report of suspected sexual conduct fails to
make the report as required by ORS 339.388 (1)(a)(B) or (C);

(B) The student is subjected to sexual conduct by another school employee or a con-
tractor, an agent, or a volunteer about whom the school employee should have had a rea-
sonable cause to believe has engaged in sexual conduct;

(C) The sexual conduct described in subparagraph (B) of this paragraph occurred after
the school employee should have had a reasonable cause to believe that the other school 
employee or the contractor, agent or volunteer had engaged in sexual conduct; and 
(D) The school employee who failed to make the report cannot be subjected to discipline 
by the Teacher Standards and Practices Commission for failure to make a report. 
(b) A court may award reasonable attorney fees to the prevailing plaintiff in an action 
under this subsection. 
(3)(a) A student, or the parent or guardian of a student, may bring a civil action and 
recover damages for the greater of $1,000 or the total amount for special and general dam-
ages, including damages for emotional distress, if:
(A) A school employee required to make a report of suspected sexual conduct fails to 
make the report as required by ORS 339.388 (1)(a)(B) or (C);
(B) The student is subjected to sexual conduct by another student about whom the school 
employee should have had a reasonable cause to believe has engaged in sexual conduct;
(C) The sexual conduct described in subparagraph (B) of this paragraph occurred after 
The school employee should have had a reasonable cause to believe that the other student 
had engaged in sexual conduct; and 
(D) The school employee who failed to make the report cannot be subjected to discipline 
by the Teacher Standards and Practices Commission for failure to make a report. 
(b) A court may award reasonable attorney fees to the prevailing plaintiff in an action 
under this subsection. 
SECTION 8. (1) The Department of Education shall evaluate criminal records checks that 
were made under ORS 326.603 by the department from 2011-2021 and that were made at the 
request of private schools. The evaluation shall include a determination of the percentage 
of the total number of criminal records checks requested by private schools that indicated 
a person being checked engaged in sexual conduct toward a child. 
(2) The department shall report the results of the evaluation, and may include recom-
endations for legislation, to an interim committee of the Legislative Assembly related to 
education no later than September 15, 2022. 
SECTION 9. Section 8 of this 2021 Act is repealed on December 31, 2022. 
SECTION 10. This 2021 Act being necessary for the immediate preservation of the public 
peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect 
July 1, 2021.