

# Senate Bill 409

Sponsored by Senator PROZANSKI (at the request of Taylor Proden and Deborah & Shannon Hart) (Pre-session 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 under 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.

1 Education.

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

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

7 (b) Results in a finding that the report:

8 (A) Is a substantiated report;

9 (B) Cannot be substantiated; or

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

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

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

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

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

17 (10) "School employee" means an employee of an education provider.

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

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

22 (B) Of a sexual nature that are directed toward the student or that have the effect of [*unrea-*  
23 *sonably*] interfering with the student's educational performance, or of creating an intimidating, hos-  
24 tile or offensive educational environment.

25 (b) "Sexual conduct" does not include touching:

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

28 (B) For which there is no sexual intent.

29 (12) "Student" means any person:

30 (a) Who is:

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

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

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

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

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

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

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

45 (2) **Investigations of suspected abuse or sexual conduct that are pending or initiated on**

1 **or after the effective date of this 2021 Act; and**

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

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

6 339.372. Each school board shall adopt policies on the reporting of suspected abuse and sus-  
 7 pected sexual conduct by school employees, contractors, agents, [*and*] volunteers and [*the reporting*  
 8 *of suspected abuse by*] students. The policies shall:

9 (1) Specify that abuse and sexual conduct by school employees, contractors, agents, [*and*] vol-  
 10 unteers and [*abuse by*] students are not tolerated.

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

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

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

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

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

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

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

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

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

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

36 (c) An education provider will take necessary actions as provided by ORS 339.388 to ensure the  
 37 student's safety after a report is received, including placing a school employee on paid administra-  
 38 tive leave pending an investigation or prohibiting a contractor, an agent or a volunteer from pro-  
 39 viding services to the education provider.

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

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

45 (b) The contact information for making a report of suspected abuse to a law enforcement agency,

1 the Department of Human Services or a designee of the department as required by ORS 419B.010  
2 and 419B.015 and a statement that the duty to report abuse is in addition to any requirement to  
3 make a report to a licensed administrator.

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

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

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

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

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

18 (b) A description of the investigatory process and possible consequences if a report of suspected  
19 abuse or suspected sexual conduct is substantiated; and

20 (c) A description of the prohibitions imposed on school employees, contractors and agents when  
21 another school employee, contractor or agent attempts to obtain a new job, as provided by ORS  
22 339.378 (2).

23 (11) Specify and make available to students, school employees, contractors, agents and volun-  
24 teers a policy of appropriate electronic communications with students.

25 **SECTION 4. The amendments to ORS 339.372 by section 3 of this 2021 Act apply to re-**  
26 **ports made on or after the effective date of this 2021 Act.**

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

28 339.388. (1)(a) A school employee shall immediately submit a report as provided by paragraph (b)  
29 of this subsection if the school employee has reasonable cause to believe that:

30 (A) A student has been subjected to abuse by another school employee or by a contractor, an  
31 agent, a volunteer or a student;

32 (B) A student has been subjected to sexual conduct by another school employee or by a con-  
33 tractor, an agent, [or] a volunteer **or a student**; or

34 (C) Another school employee or a contractor, an agent, [or] a volunteer **or a student** has en-  
35 gaged in sexual conduct.

36 (b) The report required under paragraph (a) of this subsection shall be made to:

37 (A) The licensed administrator designated in the policies adopted under ORS 339.372, for all  
38 reports of suspected abuse or suspected sexual conduct; and

39 (B) A law enforcement agency, the Department of Human Services or a designee of the depart-  
40 ment as required by ORS 419B.010 and 419B.015, for all reports of suspected abuse.

41 (2) The licensed administrator who receives a report under subsection (1) of this section shall:

42 (a) **Make a record of all reports received under subsection (1) of this section and make**  
43 **the record available if a claim is brought under ORS 339.396; and**

44 (b) Follow the procedures required by the policies adopted by the school board under ORS  
45 339.372, including:

1        [(a)] (A) Notifying the Teacher Standards and Practices Commission as soon as possible of any  
2 reports of suspected sexual conduct that may have been committed by a person who is licensed by  
3 the commission; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34          (4)(a) Except as provided in paragraph (c) of this subsection, when a licensed administrator re-  
35 ceives a report of suspected abuse or suspected sexual conduct by a contractor, an agent or a vol-  
36 unteer, the education provider:

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

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

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

45            (A) For a report of suspected abuse, a law enforcement agency or the Department of Human

- 1 Services determines that the report:
- 2 (i) Is substantiated and the education provider takes the appropriate actions to protect students;
- 3 or
- 4 (ii) Cannot be substantiated or is not a report of abuse and the education provider:
- 5 (I) Takes the appropriate actions to protect students; or
- 6 (II) Determines that no other actions are required to protect students.
- 7 (B) For a report of suspected sexual conduct, the Teacher Standards and Practices Commission
- 8 or the Department of Education determines that the report:
- 9 (i) Is substantiated and the education provider takes the appropriate actions to protect students;
- 10 or
- 11 (ii) Cannot be substantiated or is not a report of sexual conduct and the education provider:
- 12 (I) Takes the appropriate actions to protect students; or
- 13 (II) Determines that no other actions are required to protect students.
- 14 (c) If a contract under which a contractor provides services to an education provider or an
- 15 agreement under which an agent provides services to an education provider sets forth any negoti-
- 16 ated standards for the relationship between the contractor or agent and the education provider, the
- 17 education provider shall comply with those standards but may not in any instance grant the con-
- 18 tractor or agent more rights than granted to a school employee under subsection (3) of this section.
- 19 (d) Nothing in this subsection:
- 20 (A) Establishes an employment relationship between an education provider and a contractor or
- 21 an agent; or
- 22 (B) Confers onto a contractor or an agent any rights of employment.
- 23 (5)(a) When a report of suspected abuse or suspected sexual conduct is investigated by a law
- 24 enforcement agency, the Department of Human Services, the Teacher Standards and Practices
- 25 Commission or the Department of Education, an education provider may use the findings of the en-
- 26 tity that conducted the investigation for the purpose of subsection (3) or (4) of this section and for
- 27 making any determinations described in subsection (6) of this section.
- 28 (b) Nothing in this subsection prohibits an education provider from:
- 29 (A) Conducting an investigation related to a report of suspected abuse or suspected sexual
- 30 conduct, except that the education provider must:
- 31 (i) If requested, allow the investigation to be led by an entity identified in paragraph (a) of this
- 32 subsection, as applicable;
- 33 (ii) Follow any protocols and procedures of entities identified in paragraph (a) of this subsection
- 34 that are involved in the investigation; and
- 35 (iii) Cooperate with the entities identified in paragraph (a) of this subsection that are involved
- 36 in the investigation, including by:
- 37 (I) Suspending any investigations of the education provider at the request of the entity; and
- 38 (II) Sharing information with the entity as provided by subsection (10) of this section.
- 39 (B) Taking an employment action, based on information available to the education provider, be-
- 40 fore an investigation conducted by an entity identified in paragraph (a) of this subsection is com-
- 41 pleted.
- 42 (6)(a) For each report of suspected abuse or suspected sexual conduct by a school employee, an
- 43 education provider must determine if:
- 44 (A) An employment policy of the education provider was violated; and
- 45 (B) The education provider will take any employment actions, including disciplinary action

1 against the school employee or changes to the employment relationship or duties of the school em-  
2 ployee.

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

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

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

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

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

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

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

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

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

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

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

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

33 (7) If, in the course of an investigation by an education provider, the education provider becomes  
34 aware of new information that gives rise to a reasonable cause to believe that abuse or sexual  
35 conduct occurred, the education provider shall ensure that a report is made to a law enforcement  
36 agency, the Department of Human Services, a designee of the department as required by ORS  
37 419B.010 and 419B.015, the Teacher Standards and Practices Commission or the Department of Ed-  
38 ucation.

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

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

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

1 for by the education provider.

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

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

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

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

16 (i) The provisions of this section; or

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

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

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

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

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

33 **SECTION 7.** ORS 339.396 is amended to read:

34 339.396. (1) **Except as provided in subsections (2) and (3) of this section,** nothing in ORS  
35 339.370 to 339.400 creates a new public or private cause of action or precludes an existing cause  
36 of action.

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

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

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

45 **(C) The sexual conduct described in subparagraph (B) of this paragraph occurred after**



1 the school employee should have had a reasonable cause to believe that the other school  
2 employee or the contractor, agent or volunteer had engaged in sexual conduct; and

3 (D) The school employee who failed to make the report cannot be subjected to discipline  
4 by the Teacher Standards and Practices Commission for failure to make a report.

5 (b) A court may award reasonable attorney fees to the prevailing plaintiff in an action  
6 under this subsection.

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

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

12 (B) The student is subjected to sexual conduct by another student about whom the school  
13 employee should have had a reasonable cause to believe has engaged in sexual conduct;

14 (C) The sexual conduct described in subparagraph (B) of this paragraph occurred after  
15 the school employee should have had a reasonable cause to believe that the other student  
16 had engaged in sexual conduct; and

17 (D) The school employee who failed to make the report cannot be subjected to discipline  
18 by the Teacher Standards and Practices Commission for failure to make a report.

19 (b) A court may award reasonable attorney fees to the prevailing plaintiff in an action  
20 under this subsection.

21 **SECTION 8.** (1) The Department of Education shall evaluate criminal records checks that  
22 were made under ORS 326.603 by the department from 2011-2021 and that were made at the  
23 request of private schools. The evaluation shall include a determination of the percentage  
24 of the total number of criminal records checks requested by private schools that indicated  
25 a person being checked engaged in sexual conduct toward a child.

26 (2) The department shall report the results of the evaluation, and may include recom-  
27 mendations for legislation, to an interim committee of the Legislative Assembly related to  
28 education no later than September 15, 2022.

29 **SECTION 9.** Section 8 of this 2021 Act is repealed on December 31, 2022.

30 **SECTION 10.** This 2021 Act being necessary for the immediate preservation of the public  
31 peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect  
32 July 1, 2021.