

# House Bill 2435

Sponsored by Representative SCHARF (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**.

Requires reports of child abuse involving children in care or custody of Department of Human Services to be investigated by Criminal Justice Division of Department of Justice. Modifies definition of "law enforcement agency" to include Criminal Justice Division of Department of Justice.

## A BILL FOR AN ACT

1  
2 Relating to child abuse investigations; creating new provisions; and amending ORS 419B.005 and  
3 419B.020.

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

5 **SECTION 1.** ORS 419B.020 is amended to read:

6 419B.020. (1) If the Department of Human Services or a law enforcement agency receives a re-  
7 port of child abuse, the department or the agency shall immediately:

8 (a) Cause an investigation to be made to determine the nature and cause of the abuse of the  
9 child; and

10 (b) Make the following notifications:

11 (A) To the Office of Child Care if the alleged child abuse occurred in a child care facility as  
12 defined in ORS 329A.250; or

13 (B) To the Department of Education if the alleged child abuse occurred in a school or was re-  
14 lated to a school-sponsored activity.

15 **(2)(a) If the report of child abuse involves a child in the care or custody of the Depart-**  
16 **ment of Human Services, the report must be investigated by the Criminal Justice Division**  
17 **of the Department of Justice.**

18 **(b)** The Department of Human Services shall ensure that an investigation required by subsection  
19 (1) of this section is completed if the report is not investigated by a law enforcement agency.

20 (3) If the abuse reported in subsection (1) of this section is alleged to have occurred at a child  
21 care facility or in a school or was related to a school-sponsored activity:

22 (a) The Department of Human Services and the law enforcement agency shall jointly determine  
23 the roles and responsibilities of the department and the agency in their respective investigations;  
24 and

25 (b) The department and the agency shall each report the outcomes of their investigations:

26 (A) To the Office of Child Care if the alleged child abuse occurred in a child care facility as  
27 defined in ORS 329A.250; or

28 (B) To the Department of Education if the alleged child abuse occurred in a school or was re-  
29 lated to a school-sponsored activity.

30 (4) If the law enforcement agency conducting the investigation finds reasonable cause to believe  
31 that abuse has occurred, the law enforcement agency shall notify by oral report followed by written

**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 report the local office of the department. The Department of Human Services shall provide protec-  
 2 tive social services of its own or of other available social agencies if necessary to prevent further  
 3 abuses to the child or to safeguard the child’s welfare.

4 (5) If a child is taken into protective custody by the department, the department shall promptly  
 5 make reasonable efforts to ascertain the name and address of the child’s parents or guardian.

6 (6)(a) If a child is taken into protective custody by the department or a law enforcement official,  
 7 the department or law enforcement official shall, if possible, make reasonable efforts to advise the  
 8 parents or guardian immediately, regardless of the time of day, that the child has been taken into  
 9 custody, the reasons the child has been taken into custody and general information about the child’s  
 10 placement, and the telephone number of the local office of the department and any after-hours tele-  
 11 phone numbers.

12 (b) Notice may be given by any means reasonably certain of notifying the parents or guardian,  
 13 including but not limited to written, telephonic or in-person oral notification. If the initial notifica-  
 14 tion is not in writing, the information required by paragraph (a) of this subsection also shall be  
 15 provided to the parents or guardian in writing as soon as possible.

16 (c) The department also shall make a reasonable effort to notify the noncustodial parent of the  
 17 information required by paragraph (a) of this subsection in a timely manner.

18 (d) If a child is taken into custody while under the care and supervision of a person or organ-  
 19 ization other than the parent, the department, if possible, shall immediately notify the person or  
 20 organization that the child has been taken into protective custody.

21 (7) If a law enforcement officer or the department, when taking a child into protective custody,  
 22 has reasonable cause to believe that the child has been affected by sexual abuse and rape of a child  
 23 as defined in ORS 419B.005 (1)(a)(C) and that physical evidence of the abuse exists and is likely to  
 24 disappear, the court may authorize a physical examination for the purposes of preserving evidence  
 25 if the court finds that it is in the best interest of the child to have such an examination. Nothing  
 26 in this section affects the authority of the department to consent to physical examinations of the  
 27 child at other times.

28 (8) A minor child of 12 years of age or older may refuse to consent to the examination described  
 29 in subsection (7) of this section. The examination shall be conducted by or under the supervision  
 30 of a physician licensed under ORS chapter 677, a physician assistant licensed under ORS 677.505 to  
 31 677.525 or a nurse practitioner licensed under ORS chapter 678 and, whenever practicable, trained  
 32 in conducting such examinations.

33 (9) When the department completes an investigation under this section, if the person who made  
 34 the report of child abuse provided contact information to the department, the department shall no-  
 35 tify the person about whether contact with the child was made, whether the department determined  
 36 that child abuse occurred and whether services will be provided. The department is not required to  
 37 disclose information under this subsection if the department determines that disclosure is not per-  
 38 mitted under ORS 419B.035.

39 (10) When the Department of Education receives a notification under subsection (1) of this sec-  
 40 tion or a report on the outcomes of an investigation under subsection (3) of this section, the de-  
 41 partment shall act under, and is subject to, ORS 339.389.

42 **SECTION 2.** ORS 419B.005, as amended by section 8, chapter 90, Oregon Laws 2022, is amended  
 43 to read:

44 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

45 (1)(a) “Abuse” means:

1 (A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child  
 2 which has been caused by other than accidental means, including any injury which appears to be  
 3 at variance with the explanation given of the injury.

4 (B) Any mental injury to a child, which shall include only observable and substantial impairment  
 5 of the child's mental or psychological ability to function caused by cruelty to the child, with due  
 6 regard to the culture of the child.

7 (C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual pene-  
 8 tration and incest, as those acts are described in ORS chapter 163.

9 (D) Sexual abuse, as described in ORS chapter 163.

10 (E) Sexual exploitation, including but not limited to:

11 (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any  
 12 other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage  
 13 in the performing for people to observe or the photographing, filming, tape recording or other ex-  
 14 hibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or  
 15 described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-  
 16 cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or  
 17 which is designed to serve educational or other legitimate purposes; and

18 (ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in  
 19 ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as  
 20 described in ORS 163.413 or to engage in commercial sexual solicitation as described in ORS 167.008.

21 (F) Negligent treatment or maltreatment of a child, including but not limited to the failure to  
 22 provide adequate food, clothing, shelter or medical care that is likely to endanger the health or  
 23 welfare of the child.

24 (G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm  
 25 to the child's health or welfare.

26 (H) Buying or selling a person under 18 years of age as described in ORS 163.537.

27 (I) Permitting a person under 18 years of age to enter or remain in or upon premises where  
 28 methamphetamines are being manufactured.

29 (J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, or to the unlawful  
 30 manufacturing of a cannabinoid extract, as defined in ORS 475C.009, that subjects a child to a sub-  
 31 stantial risk of harm to the child's health or safety.

32 (b) "Abuse" does not include reasonable discipline unless the discipline results in one of the  
 33 conditions described in paragraph (a) of this subsection.

34 (2) "Child" means an unmarried person who:

35 (a) Is under 18 years of age; or

36 (b) Is under 21 years of age and residing in or receiving care or services at a child-caring  
 37 agency as that term is defined in ORS 418.205.

38 (3) "Higher education institution" means:

39 (a) A community college as defined in ORS 341.005;

40 (b) A public university listed in ORS 352.002;

41 (c) The Oregon Health and Science University; and

42 (d) A private institution of higher education located in Oregon.

43 (4)(a) "Investigation" means a detailed inquiry into or assessment of the safety of a child alleged  
 44 to have experienced abuse.

45 (b) "Investigation" does not include screening activities conducted upon the receipt of a report.

- 1 (5) “Law enforcement agency” means:
- 2 (a) A city or municipal police department.
- 3 (b) A county sheriff’s office.
- 4 (c) The Oregon State Police.
- 5 (d) A police department established by a university under ORS 352.121 or 353.125.
- 6 (e) A county juvenile department.
- 7 **(f) The Criminal Justice Division of the Department of Justice.**
- 8 (6) “Public or private official” means:
- 9 (a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician,
- 10 including any intern or resident.
- 11 (b) Dentist.
- 12 (c) School employee, including an employee of a higher education institution.
- 13 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse’s aide, home health aide
- 14 or employee of an in-home health service.
- 15 (e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning
- 16 Division, Department of Education, Youth Development Division, Office of Child Care, the Oregon
- 17 Youth Authority, a local health department, a community mental health program, a community de-
- 18 velopmental disabilities program, a county juvenile department, a child-caring agency as that term
- 19 is defined in ORS 418.205 or an alcohol and drug treatment program.
- 20 (f) Peace officer.
- 21 (g) Psychologist.
- 22 (h) Member of the clergy.
- 23 (i) Regulated social worker.
- 24 (j) Optometrist.
- 25 (k) Chiropractor.
- 26 (L) Certified provider of foster care, or an employee thereof.
- 27 (m) Attorney.
- 28 (n) Licensed professional counselor.
- 29 (o) Licensed marriage and family therapist.
- 30 (p) Firefighter or emergency medical services provider.
- 31 (q) A court appointed special advocate, as defined in ORS 419A.004.
- 32 (r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.
- 33 (s) An elected official of a branch of government of this state or a state agency, board, com-
- 34 mission or department of a branch of government of this state or of a city, county or other political
- 35 subdivision in this state.
- 36 (t) Physical, speech or occupational therapist.
- 37 (u) Audiologist.
- 38 (v) Speech-language pathologist.
- 39 (w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
- 40 gations or discipline by the commission.
- 41 (x) Pharmacist.
- 42 (y) An operator of a preschool recorded program under ORS 329A.255.
- 43 (z) An operator of a school-age recorded program under ORS 329A.255.
- 44 (aa) Employee of a private agency or organization facilitating the provision of respite services,
- 45 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS

1 109.056.

2 (bb) An employee of a public or private organization providing child-related services or activ-  
3 ities:

4 (A) Including but not limited to an employee of a:

5 (i) Youth group or center;

6 (ii) Scout group or camp;

7 (iii) Summer or day camp;

8 (iv) Survival camp; or

9 (v) Group, center or camp that is operated under the guidance, supervision or auspices of a re-  
10 ligious, public or private educational system or a community service organization; and

11 (B) Excluding an employee of a qualified victim services program as defined in ORS 147.600 that  
12 provides confidential, direct services to victims of domestic violence, sexual assault, stalking or hu-  
13 man trafficking.

14 (cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete,  
15 if compensated and if the athlete is a child.

16 (dd) Personal support worker, as defined in ORS 410.600.

17 (ee) Home care worker, as defined in ORS 410.600.

18 (ff) Animal control officer, as defined in ORS 609.500.

19 (gg) Member of a school district board, an education service district board or a public charter  
20 school governing body.

21 (hh) An individual who is paid by a public body, in accordance with ORS 430.215, to provide a  
22 service identified in an individualized written service plan of a child with a developmental disability.

23 (ii) Referral agent, as defined in ORS 418.351.

24 **SECTION 3.** ORS 419B.005, as amended by section 58, chapter 631, Oregon Laws 2021, section  
25 16, chapter 27, Oregon Laws 2022, and section 7, chapter 90, Oregon Laws 2022, is amended to read:  
26 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

27 (1)(a) "Abuse" means:

28 (A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child  
29 which has been caused by other than accidental means, including any injury which appears to be  
30 at variance with the explanation given of the injury.

31 (B) Any mental injury to a child, which shall include only observable and substantial impairment  
32 of the child's mental or psychological ability to function caused by cruelty to the child, with due  
33 regard to the culture of the child.

34 (C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual pene-  
35 tration and incest, as those acts are described in ORS chapter 163.

36 (D) Sexual abuse, as described in ORS chapter 163.

37 (E) Sexual exploitation, including but not limited to:

38 (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any  
39 other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage  
40 in the performing for people to observe or the photographing, filming, tape recording or other ex-  
41 hibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or  
42 described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-  
43 cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or  
44 which is designed to serve educational or other legitimate purposes; and

45 (ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in

1 ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as  
 2 described in ORS 163.413 or to engage in commercial sexual solicitation as described in ORS 167.008.

3 (F) Negligent treatment or maltreatment of a child, including but not limited to the failure to  
 4 provide adequate food, clothing, shelter or medical care that is likely to endanger the health or  
 5 welfare of the child.

6 (G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm  
 7 to the child's health or welfare.

8 (H) Buying or selling a person under 18 years of age as described in ORS 163.537.

9 (I) Permitting a person under 18 years of age to enter or remain in or upon premises where  
 10 methamphetamines are being manufactured.

11 (J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, or to the unlawful  
 12 manufacturing of a cannabinoid extract, as defined in ORS 475C.009, that subjects a child to a sub-  
 13 stantial risk of harm to the child's health or safety.

14 (b) "Abuse" does not include reasonable discipline unless the discipline results in one of the  
 15 conditions described in paragraph (a) of this subsection.

16 (2) "Child" means an unmarried person who:

17 (a) Is under 18 years of age; or

18 (b) Is under 21 years of age and residing in or receiving care or services at a child-caring  
 19 agency as that term is defined in ORS 418.205.

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 26 to have experienced abuse.

27 (b) "Investigation" does not include screening activities conducted upon the receipt of a report.

28 (5) "Law enforcement agency" means:

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30 (b) A county sheriff's office.

31 (c) The Oregon State Police.

32 (d) A police department established by a university under ORS 352.121 or 353.125.

33 (e) A county juvenile department.

34 **(f) The Criminal Justice Division of the Department of Justice.**

35 (6) "Public or private official" means:

36 (a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician,  
 37 including any intern or resident.

38 (b) Dentist.

39 (c) School employee, including an employee of a higher education institution.

40 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide  
 41 or employee of an in-home health service.

42 (e) Employee of the Department of Human Services, Oregon Health Authority, Department of  
 43 Early Learning and Care, Department of Education, Youth Development Division, Office of Child  
 44 Care, the Oregon Youth Authority, a local health department, a community mental health program,  
 45 a community developmental disabilities program, a county juvenile department, a child-caring

- 1 agency as that term is defined in ORS 418.205 or an alcohol and drug treatment program.
- 2 (f) Peace officer.
- 3 (g) Psychologist.
- 4 (h) Member of the clergy.
- 5 (i) Regulated social worker.
- 6 (j) Optometrist.
- 7 (k) Chiropractor.
- 8 (L) Certified provider of foster care, or an employee thereof.
- 9 (m) Attorney.
- 10 (n) Licensed professional counselor.
- 11 (o) Licensed marriage and family therapist.
- 12 (p) Firefighter or emergency medical services provider.
- 13 (q) A court appointed special advocate, as defined in ORS 419A.004.
- 14 (r) A child care provider registered or certified under ORS 329A.250 to 329A.450.
- 15 (s) An elected official of a branch of government of this state or a state agency, board, com-
- 16 mission or department of a branch of government of this state or of a city, county or other political
- 17 subdivision in this state.
- 18 (t) Physical, speech or occupational therapist.
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- 21 (w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
- 22 gations or discipline by the commission.
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- 24 (y) An operator of a preschool recorded program under ORS 329A.255.
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- 27 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS
- 28 109.056.
- 29 (bb) An employee of a public or private organization providing child-related services or activ-
- 30 ities:
- 31 (A) Including but not limited to an employee of a:
- 32 (i) Youth group or center;
- 33 (ii) Scout group or camp;
- 34 (iii) Summer or day camp;
- 35 (iv) Survival camp; or
- 36 (v) Group, center or camp that is operated under the guidance, supervision or auspices of a re-
- 37 ligious, public or private educational system or a community service organization; and
- 38 (B) Excluding an employee of a qualified victim services program as defined in ORS 147.600 that
- 39 provides confidential, direct services to victims of domestic violence, sexual assault, stalking or hu-
- 40 man trafficking.
- 41 (cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete,
- 42 if compensated and if the athlete is a child.
- 43 (dd) Personal support worker, as defined in ORS 410.600.
- 44 (ee) Home care worker, as defined in ORS 410.600.
- 45 (ff) Animal control officer, as defined in ORS 609.500.

1 (gg) Member of a school district board, an education service district board or a public charter  
2 school governing body.

3 (hh) An individual who is paid by a public body, in accordance with ORS 430.215, to provide a  
4 service identified in an individualized written service plan of a child with a developmental disability.

5 (ii) Referral agent, as defined in ORS 418.351.

6 **SECTION 4. The amendments to ORS 419B.005 and 419B.020 by sections 1 to 3 of this 2023**  
7 **Act apply to child abuse investigations in progress on the effective date of this 2023 Act and**  
8 **investigations initiated on or after the effective date of this 2023 Act.**

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