

House Bill 3333

Sponsored by Representative NOSSE

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**.

Permits Department of Human Services to require specified providers to submit corrective action plan in lieu of investigating report of suspected abuse of child in care in certain circumstances. Modifies description of when report of suspected abuse of child in care may be found unsubstantiated.

Directs System of Care Advisory Council to establish and administer grant program for purpose of providing just culture model training. Appropriates moneys for grant program.

Directs System of Care Advisory Council to establish and administer grant program for purpose of providing trauma-informed practices and clinical best practices training to workforce providing residential services to children in care. Appropriates moneys for grant program.

A BILL FOR AN ACT

1
2 Relating to just culture model in the provision of services to children in care; creating new pro-
3 visions; and amending ORS 418.258 and 418.259.

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

5 **SECTION 1.** ORS 418.258 is amended to read:

6 418.258. (1) When the Department of Human Services becomes aware of a report of suspected
7 child abuse of a child in care, whether in the form of an allegation, complaint or formal report made
8 under this section, and whether made directly to the Director of Human Services, the department
9 or an employee of the department, to a hotline operated by the department, through the mandatory
10 abuse reporting process set forth in ORS 419B.005 to 419B.050 or otherwise, the department shall
11 immediately:

12 (a) Notify appropriate personnel within the department, including but not limited to employees
13 responsible for licensing, certifying or authorizing child-caring agencies, certified foster homes and
14 developmental disabilities residential facilities.

15 (b) Notify any governmental agency that has a contract with the child-caring agency, certified
16 foster home or developmental disabilities residential facility to provide care or services to the child
17 in care.

18 (c) Notify the placement authorities of any other state that retains jurisdiction over a child in
19 care receiving care or services from the child-caring agency, certified foster home or developmental
20 disabilities residential facility.

21 (d) Commence an investigation to determine whether the report of suspected abuse is substan-
22 tiated, unsubstantiated or inconclusive under ORS 418.259 if:

23 (A) The reported abuse occurred in this state;

24 (B) The reported abuse occurred in any other state and involves a child in care placed by the
25 department in an out-of-state child-caring agency; or

26 (C) The reported abuse occurred in any other state and the department reasonably believes that
27 the reported abuse poses a danger to the health, safety or wellness of a child in care placed by the

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 department in an out-of-state child-caring agency.

2 (e) Report to a law enforcement agency any crime that the department has reason to believe
3 has occurred with respect to a child in care or at a child-caring agency, proctor foster home, cer-
4 tified foster home or developmental disabilities residential facility even if the suspected crime is not
5 related to a report of abuse made under this section.

6 **(2)(a) If after screening or during the course of investigating a report of suspected child
7 abuse of a child in care the department determines that the incident meets the criteria de-
8 scribed in ORS 418.259 (1)(b)(B), the department may require the child-caring agency, proctor
9 foster home, certified foster home or developmental disabilities residential facility to submit
10 a corrective action plan.**

11 **(b) Notwithstanding subsection (1)(d) of this section, if the department requires a child-
12 caring agency, proctor foster home, certified foster home or developmental disabilities resi-
13 dential facility to submit a corrective action plan under paragraph (a) of this subsection, the
14 department is not required to commence or continue an investigation regarding the sus-
15 pected child abuse.**

16 [(2)(a)] **(3)(a)** As a condition for issuance or renewal of a license, certificate or authorization to
17 a child-caring agency, certified foster home or developmental disabilities residential facility, the de-
18 partment shall require and verify that the child-caring agency, certified foster home or develop-
19 mental disabilities residential facility has procedures and protocols that:

20 (A) Require employees of the child-caring agency, a proctor foster home certified by the child-
21 caring agency, the certified foster home or the developmental disabilities residential facility to im-
22 mediately report suspected abuse of a child in care to the director, the director's designee or
23 personnel within the department who have been specifically designated to receive reports of abuse
24 of children in care;

25 (B) Mandate that the child-caring agency, certified foster home or developmental disabilities
26 residential facility provide an annual training and written materials that include information about
27 the child abuse reporting hotline, and that the agency, home or facility advise and educate employ-
28 ees of the child-caring agency and any proctor foster home certified by the child-caring agency, of
29 the certified foster home or of the developmental disabilities residential facility of the duty under
30 this section and ORS 419B.005 to 419B.050 to report abuse of a child in care; and

31 (C) Inform employees of child-caring agencies, proctor foster homes, certified foster homes and
32 developmental disabilities residential facilities that the duty to report abuse of a child in care is
33 personal to the employee and that the duty is not fulfilled by reporting the abuse to the owner, op-
34 erator or any other employee of the child-caring agency, proctor foster home, certified foster home
35 or developmental disabilities residential facility even if the owner, operator or other employee re-
36 ports the abuse of a child in care to the director, the director's designee or the department.

37 (b) A child-caring agency, certified foster home or developmental disabilities residential facility
38 need not develop and maintain procedures and protocols or provide an annual training and written
39 materials under paragraph (a) of this subsection if the agency, home or facility does not have any
40 employees, staff or volunteers.

41 [(3)] **(4)** Interference or hindering an investigation of abuse of a child in care, including but not
42 limited to the intimidation of witnesses, falsification of records or denial or limitation of interviews
43 with the child in care who is the subject of the investigation or with witnesses, may constitute
44 grounds for the revocation, suspension or placing of conditions on the license, certificate or other
45 authorization of a child-caring agency, proctor foster home, certified foster home or developmental

1 disabilities residential facility.

2 [(4)(a)] (5)(a) Anyone, including but not limited to an employee of a child-caring agency, proctor
 3 foster home, certified foster home or developmental disabilities residential facility, who makes a re-
 4 port of suspected abuse of a child in care to the Governor, the Department of Justice, the Director
 5 of Human Services, the director’s designee or the department under this section in good faith and
 6 who has reasonable grounds for the making of the report shall have immunity:

7 (A) From any liability, civil or criminal, that might otherwise be incurred or imposed with re-
 8 spect to the making or content of such report;

9 (B) From disciplinary action taken by the person’s employer; and

10 (C) With respect to participating in any judicial proceeding resulting from or involving the re-
 11 port.

12 (b) A person making a report under this section may include references to otherwise confidential
 13 information for the sole purpose of making the report, and any such disclosure must be protected
 14 from further disclosure to other persons or entities for any other purpose not related to the making
 15 of the report.

16 **SECTION 2.** ORS 418.259 is amended to read:

17 418.259. (1) The investigation conducted by the Department of Human Services under ORS
 18 418.258 must result in one of the following findings:

19 (a) That the report is substantiated. **Except as provided in paragraph (b)(B) of this sub-**
 20 **section,** a report is substantiated when there is reasonable cause to believe that the abuse of a child
 21 in care occurred.

22 (b) That the report is unsubstantiated. A report is unsubstantiated when:

23 (A) There is no evidence that the abuse of a child in care occurred[.]; or

24 (B)(i) **There is evidence that the abuse of a child in care occurred but the child in care**
 25 **was unharmed or the harm to the child in care was not significant;**

26 (ii) **There is no evidence of intent to cause harm to the child in care; and**

27 (iii) **The behavior that resulted in the report of abuse was reasonably necessary to pro-**
 28 **tect the child in care or others from greater harm or was due to human error or a doc-**
 29 **umentation error or omission.**

30 (c) That the report is inconclusive. **Except as provided in paragraph (b)(B) of this sub-**
 31 **section,** a report is inconclusive when there is some indication that the abuse occurred but there
 32 is insufficient evidence to conclude that there is reasonable cause to believe that the abuse oc-
 33 curred.

34 (2) When a report is received under ORS 418.258 alleging that a child in care may have been
 35 subjected to abuse, the department shall notify the case managers for the child, the attorney for the
 36 child, the child’s court appointed special advocate, the parents or guardians of the child, any attor-
 37 ney representing a parent or guardian of the child and any governmental agency that has a contract
 38 with the child-caring agency or developmental disabilities residential facility to provide care or
 39 services to the child that a report has been received.

40 (3)(a) The department may interview the child in care who is the subject of suspected abuse and
 41 any witnesses, including other children, without the presence of employees of the child-caring
 42 agency, proctor foster home or developmental disabilities residential facility, the provider of services
 43 at a certified foster home or department personnel. The department shall inform the child in care
 44 that the child may have the child’s parent or guardian, if the child has not been committed to the
 45 custody of the department or the Oregon Youth Authority, or attorney present when participating

1 in an interview conducted in the course of an abuse investigation.

2 (b) When investigating an allegation of inappropriate use of restraint or involuntary seclusion,
3 the department shall:

4 (A) Conduct the interviews described in paragraph (a) of this subsection;

5 (B) Review all relevant incident reports related to the child in care and other reports related
6 to the restraint or involuntary seclusion of the child in care;

7 (C) Review any audio, video or photographic recordings of the restraint or involuntary seclusion,
8 including the circumstances immediately before and following the incident;

9 (D) During an interview with the child in care who is the subject of the suspected abuse, ask
10 the child about whether they experienced any reportable injury or pain as a result of the restraint
11 or involuntary seclusion;

12 (E) Review the training records related to all of the individuals who were involved in the use
13 of restraint or involuntary seclusion; and

14 (F) Make all reasonable efforts to conduct trauma-informed interviews of each child witness,
15 including the child in care who is the subject of suspected abuse unless the investigator makes a
16 specific determination that the interview may significantly traumatize the child and is not in the
17 best interests of the child.

18 (4) The department shall notify the following when a report of abuse is substantiated:

19 (a) The Director of Human Services.

20 (b) Personnel in the department responsible for the licensing, certificate or authorization of
21 child-caring agencies.

22 (c) The department's lead personnel in that part of the department that is responsible for child
23 welfare generally.

24 (d) With respect to the child in care who is the subject of the abuse report and investigation,
25 the case managers for the child, the attorney for the child, the child's court appointed special ad-
26 vocate, the parents or guardians of the child, any attorney representing a parent or guardian of the
27 child and any governmental agency that has a contract with the child-caring agency to provide care
28 or services to the child.

29 (e) The parents or guardians of the child in care who is the subject of the abuse report and in-
30 vestigation if the child in care has not been committed to the custody of the department or the
31 youth authority. Notification under this paragraph may not include any details or information other
32 than that a report of abuse has been substantiated.

33 (f) Any governmental agency that has a contract with the child-caring agency to provide care
34 or services to a child in care.

35 (g) The local citizen review board established by the Judicial Department under ORS 419A.090.

36 (5) The department shall report on a quarterly basis to the interim legislative committees on
37 child welfare for the purposes of public review and oversight of the quality and safety of child-caring
38 agencies, certified foster homes and developmental disabilities residential facilities that are licensed,
39 certified or authorized by the department in this state and of proctor foster homes that are certified
40 by the child-caring agencies. Information provided in reports under this subsection may not contain
41 the name or any identifying information of a child in care but must contain all of the following:

42 (a) The name of any child-caring agency, including an out-of-state child-caring agency, proctor
43 foster home or developmental disabilities residential facility, or, provided there are five or more
44 certified foster homes in the county, the name of the county where a certified foster home is located,
45 where the department conducted an investigation pursuant to ORS 418.258 that resulted in a finding

1 that the report of abuse was substantiated during that quarter;

2 (b) The approximate date that the abuse occurred;

3 (c) The nature of the abuse and a brief narrative description of the abuse that occurred;

4 (d) Whether physical injury, sexual abuse or death resulted from the abuse;

5 (e) Corrective actions taken or ordered by the department and the outcome of the corrective
6 actions; and

7 (f) Information the department received in that quarter regarding any substantiated allegations
8 of child abuse made by any other state involving a congregate care residential setting, as defined
9 in ORS 418.322, in which the department has placed Oregon children.

10 (6) The department's quarterly report under subsection (5) of this section must also contain all
11 of the following:

12 (a) The total number of restraints used in programs that quarter;

13 (b) The total number of programs that reported the use of restraints of children in care that
14 quarter;

15 (c) The total number of individual children in care who were placed in restraints by programs
16 that quarter;

17 (d) The number of reportable injuries to children in care that resulted from those restraints;

18 (e) The number of incidents in which an individual who was not appropriately trained in the use
19 of the restraint used on a child in care in a program; and

20 (f) The number of incidents that were reported for potential inappropriate use of restraint.

21 (7) In compiling records, reports and other information during an investigation under ORS
22 418.258 (1) and in issuing findings, letters of concern or reprimands, the Director of Human Services
23 or the director's designee and the department may not refer to the employee, person or entity that
24 is the subject of the investigation as an "alleged perpetrator" but must refer to the employee, person
25 or entity as the "respondent."

26 (8) As used in this section, "program," "reportable injury" and "restraint" have the meanings
27 given those terms in ORS 418.519.

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

29 (a) "Children in care" means one or more child in care, as defined in ORS 418.257.

30 (b) "Just culture model" means a culture where a person is not punished for actions,
31 omissions, suggestions or decisions taken by the person that are commensurate with the
32 person's experience and training, but where gross negligence, willful violations and destruc-
33 tive acts are not tolerated.

34 (2) The System of Care Advisory Council shall establish and administer a grant program
35 for the purpose of providing just culture model training to Department of Human Services
36 employees who conduct investigations under ORS 418.257 to 418.259, staff working in a
37 child-caring agency, as defined in ORS 418.205, and behavioral health care providers who
38 work with children in care. Grants under this section may be used for initial training as
39 well as ongoing training and supervision.

40 **SECTION 4. (1) As used in this section, "children in care" means one or more child in**
41 **care, as defined in ORS 418.257.**

42 (2) The System of Care Advisory Council shall establish and administer a grant program
43 for the purpose of providing grants for training regarding trauma-informed practices and
44 clinical best practices to the workforce providing residential services to children in care.

45 **SECTION 5. In addition to and not in lieu of any other appropriation, there is appropri-**

1 ated to the System of Care Advisory Council, for the biennium beginning July 1, 2023, out
2 of the General Fund, the amount of \$___ for the purpose of carrying out the provisions of
3 section 3 of this 2023 Act.

4 SECTION 6. In addition to and not in lieu of any other appropriation, there is appropri-
5 ated to the System of Care Advisory Council, for the biennium beginning July 1, 2023, out
6 of the General Fund, the amount of \$___ for the purpose of carrying out the provisions of
7 section 4 of this 2023 Act.

8 SECTION 7. The amendments to ORS 418.258 and 418.259 by sections 1 and 2 of this 2023
9 Act apply to actions or behavior occurring on or after the effective date of this 2023 Act.

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