

A-Engrossed Senate Bill 769

Ordered by the Senate April 4
Including Senate Amendments dated April 4

Sponsored by Senator GELSER BLOUIN (at the request of Oulu Noonan)

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.

[Directs Department of Human Services to use information acquired during abuse investigations arising from actions of child in care to make certain assessments regarding placement. Prohibits department from finding that allegation of abuse is substantiated or founded. Creates exceptions.]

Prohibits department from determining that individual is unfit solely based on substantiated or founded allegation of abuse arising from acts of individual when under 18 years of age. *[Creates exceptions.]*

Creates exception to requirement to enroll in Central Background Registry if individual was under 18 years of age at time of incident resulting in substantiated or founded allegation of abuse. *[Creates exceptions.]*

Modifies definitions relating to child abuse investigations. Defines "qualified subject." Limits duty of Department of Human Services and law enforcement agency to investigate allegations of child abuse to only those allegations of child abuse committed by qualified subjects.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to abuse investigations involving alleged perpetrators who are under 18 years of age; cre-
3 ating new provisions; amending ORS 329A.030, 419B.005 and 419B.020; and declaring an emer-
4 gency.

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

6 **SECTION 1. If the Department of Human Services is required to complete a criminal**
7 **records check under ORS 181A.195 and make a determination of the fitness of an individual**
8 **to serve as a volunteer, intern, employee or licensee of any entity, the department may not**
9 **find that the individual is disqualified solely on the basis of a substantiated or founded**
10 **allegation of abuse, as defined in ORS 418.257 or 419B.005, if the incident that resulted in the**
11 **substantiated or founded allegation occurred before the individual attained 18 years of age.**

12 **SECTION 2.** ORS 329A.030, as amended by section 1, chapter 90, Oregon Laws 2022, is amended
13 to read:

14 329A.030. (1) The Office of Child Care shall establish a Central Background Registry and may
15 maintain information in the registry through electronic records systems.

16 (2)(a) A subject individual shall apply to and must be enrolled in the Central Background Reg-
17 istry as part of the individual's application to operate a program or serve in a position described in
18 subsection (10) of this section.

19 (b) An individual who has been the subject of a founded or substantiated report of child abuse
20 shall apply to and must be enrolled in the Central Background Registry prior to providing any of
21 the types of care identified in ORS 329A.250 (4)(b)(A), (G) or (H) if:

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 (A) The child abuse occurred on or after January 1, 2017, and involved a child who died or
2 suffered serious physical injury, as defined in ORS 161.015; or

3 (B) The child abuse occurred on or after September 1, 2019, and involved any child for whom
4 the individual was providing child care, as defined in ORS 329A.250 (4), or care identified in ORS
5 329A.250 (4)(b)(A), (C), (F), (G), (H) or (I).

6 (c) Notwithstanding paragraph (a) of this subsection, an individual described in paragraph (b)(B)
7 of this subsection is not required to enroll in the Central Background Registry if:

8 (A) More than seven years has elapsed since the date of the child abuse determination[.]; or

9 (B) **The individual was under 18 years of age at the time of the incident that resulted in**
10 **the child abuse finding.**

11 (3)(a) Upon receiving an application for enrollment in the Central Background Registry, the of-
12 fice shall complete:

13 (A) A criminal records check under ORS 181A.195;

14 (B) A criminal records check of other registries or databases in accordance with rules adopted
15 by the Early Learning Council;

16 (C) A child abuse and neglect records check in accordance with rules adopted by the council;
17 and

18 (D) A foster care certification check and an adult protective services check in accordance with
19 rules adopted by the council.

20 (b) In addition to the information that the office is required to check under paragraph (a) of this
21 subsection, the office may consider any other information obtained by the office that the office, by
22 rule, determines is relevant to enrollment in the Central Background Registry.

23 (4)(a) The office shall enroll the individual in the Central Background Registry if the individual:

24 (A) Is determined to have no criminal, child abuse and neglect, negative adult protective ser-
25 vices or negative foster home certification history, or to have dealt with the issues and provided
26 adequate evidence of suitability for the registry;

27 (B) Has paid the applicable fee established pursuant to ORS 329A.275; and

28 (C) Has complied with the rules of the Early Learning Council adopted pursuant to this section.

29 (b) Notwithstanding subsection (3) of this section and paragraph (a) of this subsection, the office
30 may enroll an individual in the registry if the Department of Human Services has completed a
31 background check on the individual and the individual has received approval from the department
32 for purposes of providing child care.

33 (5)(a) Notwithstanding subsections (3) and (4) of this section, the office may not enroll an indi-
34 vidual in the Central Background Registry if:

35 (A) The individual has a disqualifying condition as defined in rules adopted by the council; or

36 (B) The individual is an exempt prohibited individual, as provided by ORS 329A.252.

37 (b) If an individual prohibited from enrolling in the registry as provided by this subsection is
38 enrolled in the registry, the office shall remove the individual from the registry.

39 (6)(a) The office may conditionally enroll an individual in the Central Background Registry
40 pending the results of a nationwide criminal records check through the Federal Bureau of Investi-
41 gation if the individual has successfully completed the criminal records check and the child abuse
42 and neglect records check in this state and in the state of the individual's residence, if other than
43 Oregon.

44 (b) The office may enroll an individual in the registry subject to limitations identified in rules
45 adopted by the council.

1 (7) An enrollment in the Central Background Registry may be renewed upon application to the
2 office, payment of the fee established pursuant to ORS 329A.275 and compliance with rules adopted
3 by the Early Learning Council pursuant to this section. However, an individual who is determined
4 to be ineligible for enrollment in the registry after the date of initial enrollment shall be removed
5 or suspended from the registry by the office.

6 (8)(a) A child care facility, preschool recorded program or school-age recorded program may not
7 hire or employ an individual if the individual is not enrolled in the Central Background Registry.

8 (b) Notwithstanding paragraph (a) of this subsection, a child care facility, preschool recorded
9 program or school-age recorded program may employ on a probationary basis an individual who is
10 conditionally enrolled in the Central Background Registry.

11 (9) The Early Learning Council may adopt any rules necessary to carry out the purposes of this
12 section, including but not limited to rules regarding expiration and renewal periods and limitations
13 related to the subject individual's enrollment in the Central Background Registry.

14 (10) As used in this section, "subject individual" means a subject individual as defined by the
15 Early Learning Council by rule, an individual subject to subsection (2)(b) of this section or a person
16 who applies to be:

17 (a) The operator or an employee of a child care or treatment program;

18 (b) The operator or an employee of an Oregon prekindergarten program under ORS 329.170 to
19 329.200;

20 (c) The operator or an employee of a federal Head Start program regulated by the United States
21 Department of Health and Human Services;

22 (d) An individual in a child care facility, preschool recorded program or school-age recorded
23 program who may have unsupervised contact with children as identified by the office;

24 (e) A contractor or an employee of the contractor who provides early childhood special educa-
25 tion or early intervention services pursuant to ORS 343.455 to 343.534;

26 (f) A child care provider who is required to be enrolled in the Central Background Registry by
27 any state agency;

28 (g) A contractor, employee or volunteer of a metropolitan service district organized under ORS
29 chapter 268 who may have unsupervised contact with children and who is required to be enrolled
30 in the Central Background Registry by the metropolitan service district;

31 (h) A provider of respite services, as defined in ORS 418.205, for parents pursuant to a properly
32 executed power of attorney under ORS 109.056 who is providing respite services as a volunteer with
33 a private agency or organization that facilitates the provision of such respite services;

34 (i) The operator or an employee of an early learning program as defined in rules adopted by the
35 council; or

36 (j) The operator or an employee of a preschool recorded program or a school-age recorded pro-
37 gram.

38 (11)(a) Information provided to a metropolitan service district organized under ORS chapter 268
39 about the enrollment status of the persons described in subsection (10)(g) of this section shall be
40 subject to a reciprocal agreement with the metropolitan service district. The agreement must pro-
41 vide for the recovery of administrative, including direct and indirect, costs incurred by the office
42 from participation in the agreement. Any moneys collected under this paragraph shall be deposited
43 in the Child Care Fund established under ORS 329A.010.

44 (b) Information provided to a private agency or organization facilitating the provision of respite
45 services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney

1 under ORS 109.056 about the enrollment status of the persons described in subsection (10)(h) of this
2 section shall be subject to an agreement with the private agency or organization. The agreement
3 must provide for the recovery of administrative, including direct and indirect, costs incurred by the
4 office from participation in the agreement. Any moneys collected under this paragraph shall be de-
5 posited in the Child Care Fund established under ORS 329A.010.

6 (c) Information provided to a private agency or organization about the enrollment status of the
7 persons described in subsection (10)(i) of this section shall be subject to an agreement with the pri-
8 vate agency or organization. The agreement must provide for the recovery of administrative, in-
9 cluding direct and indirect, costs incurred by the office from participation in the agreement. Any
10 moneys collected under this paragraph shall be deposited in the Child Care Fund established under
11 ORS 329A.010.

12 **SECTION 3.** ORS 329A.030, as amended by section 26, chapter 27, Oregon Laws 2022, and sec-
13 tion 1, chapter 90, Oregon Laws 2022, is amended to read:

14 329A.030. (1) The Office of Child Care shall establish a Central Background Registry and may
15 maintain information in the registry through electronic records systems.

16 (2)(a) A subject individual described in subsection (10)(a), (c) or (d) of this section shall apply
17 to and must be enrolled in the Central Background Registry prior to the provision of care.

18 (b) An individual who has been the subject of a founded or substantiated report of child abuse
19 shall apply to and must be enrolled in the Central Background Registry prior to providing any of
20 the types of care identified in ORS 329A.250 (4)(b)(A), (G) or (H) if:

21 (A) The child abuse occurred on or after January 1, 2017, and involved a child who died or
22 suffered serious physical injury, as defined in ORS 161.015; or

23 (B) The child abuse occurred on or after September 1, 2019, and involved any child for whom
24 the individual was providing child care, as defined in ORS 329A.250 (4), or care identified in ORS
25 329A.250 (4)(b)(A), (C), (F), (G), (H) or (I).

26 (c) Notwithstanding paragraph (a) of this subsection, an individual described in paragraph (b)(B)
27 of this subsection is not required to enroll in the Central Background Registry if:

28 (A) More than seven years has elapsed since the date of the child abuse determination[.]; or

29 (B) **The individual was under 18 years of age at the time of the incident that resulted in**
30 **the child abuse finding.**

31 (3)(a) Upon receiving an application for enrollment in the Central Background Registry, the of-
32 fice shall complete:

33 (A) A criminal records check under ORS 181A.195;

34 (B) A criminal records check of other registries or databases in accordance with rules adopted
35 by the Early Learning Council;

36 (C) A child abuse and neglect records check in accordance with rules adopted by the council;
37 and

38 (D) A foster care certification check and an adult protective services check in accordance with
39 rules adopted by the council.

40 (b) In addition to the information that the office is required to check under paragraph (a) of this
41 subsection, the office may consider any other information obtained by the office that the office, by
42 rule, determines is relevant to enrollment in the Central Background Registry.

43 (4) The office shall enroll the individual in the Central Background Registry if the individual:

44 (a) Is determined to have no criminal, child abuse and neglect, negative adult protective services
45 or negative foster home certification history, or to have dealt with the issues and provided adequate

1 evidence of suitability for the registry;

2 (b) Has paid the applicable fee established pursuant to ORS 329A.275; and

3 (c) Has complied with the rules of the Early Learning Council adopted pursuant to this section.

4 (5)(a) Notwithstanding subsections (3) and (4) of this section, the office may not enroll an indi-
5 vidual in the Central Background Registry if:

6 (A) The individual has a disqualifying condition as defined in rules adopted by the council; or

7 (B) The individual is an exempt prohibited individual, as provided by ORS 329A.252.

8 (b) If an individual prohibited from enrolling in the registry as provided by this subsection is
9 enrolled in the registry, the office shall remove the individual from the registry.

10 (6)(a) The office may conditionally enroll an individual in the Central Background Registry
11 pending the results of a nationwide criminal records check through the Federal Bureau of Investi-
12 gation if the individual has successfully completed the criminal records check and the child abuse
13 and neglect records check in this state and in the state of the individual's residence, if other than
14 Oregon.

15 (b) The office may enroll an individual in the registry subject to limitations identified in rules
16 adopted by the council.

17 (7) An enrollment in the Central Background Registry may be renewed upon application to the
18 office, payment of the fee established pursuant to ORS 329A.275 and compliance with rules adopted
19 by the Early Learning Council pursuant to this section. However, an individual who is determined
20 to be ineligible for enrollment in the registry after the date of initial enrollment shall be removed
21 or suspended from the registry by the office.

22 (8)(a) A child care facility, preschool recorded program or school-age recorded program may not
23 hire or employ an individual if the individual is not enrolled in the Central Background Registry.

24 (b) Notwithstanding paragraph (a) of this subsection, a child care facility, preschool recorded
25 program or school-age recorded program may employ on a probationary basis an individual who is
26 conditionally enrolled in the Central Background Registry.

27 (9) The Early Learning Council may adopt any rules necessary to carry out the purposes of this
28 section, including but not limited to rules regarding expiration and renewal periods and limitations
29 related to the subject individual's enrollment in the Central Background Registry.

30 (10) As used in this section, "subject individual" means:

31 (a) A subject individual as defined by the Early Learning Council by rule;

32 (b) An individual subject to subsection (2)(b) of this section;

33 (c) A person who applies to be:

34 (A) The operator or an employee of a child care or treatment program;

35 (B) The operator or an employee of an Oregon prekindergarten program under ORS 329.170 to
36 329.200;

37 (C) The operator or an employee of a federal Head Start program regulated by the United States
38 Department of Health and Human Services;

39 (D) An individual in a child care facility, preschool recorded program or school-age recorded
40 program who may have unsupervised contact with children, as determined by the council by rule;

41 (E) A contractor or an employee of the contractor who provides early childhood special educa-
42 tion or early intervention services pursuant to ORS 343.455 to 343.534;

43 (F) A child care provider who is required to be enrolled in the Central Background Registry by
44 any state agency;

45 (G) A contractor, employee or volunteer of a metropolitan service district organized under ORS

1 chapter 268 who may have unsupervised contact with children and who is required to be enrolled
2 in the Central Background Registry by the metropolitan service district;

3 (H) A provider of respite services, as defined in ORS 418.205, for parents pursuant to a properly
4 executed power of attorney under ORS 109.056 who is providing respite services as a volunteer with
5 a private agency or organization that facilitates the provision of such respite services;

6 (I) The operator or an employee of an early learning program as defined in rules adopted by the
7 council; or

8 (J) The operator or an employee of a preschool recorded program or a school-age recorded
9 program; or

10 (d)(A) An individual who operates a subsidized care facility;

11 (B) An individual who has attained 18 years of age and resides in a subsidized care facility; or

12 (C) An individual in a subsidized care facility who has attained 18 years of age and who may
13 have unsupervised contact with children, as determined by the council by rule.

14 (11)(a) Information provided to a metropolitan service district organized under ORS chapter 268
15 about the enrollment status of the persons described in subsection (10)(c)(G) of this section shall be
16 subject to a reciprocal agreement with the metropolitan service district. The agreement must pro-
17 vide for the recovery of administrative, including direct and indirect, costs incurred by the office
18 from participation in the agreement. Any moneys collected under this paragraph shall be deposited
19 in the Child Care Fund established under ORS 329A.010.

20 (b) Information provided to a private agency or organization facilitating the provision of respite
21 services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney
22 under ORS 109.056 about the enrollment status of the persons described in subsection (10)(c)(H) of
23 this section shall be subject to an agreement with the private agency or organization. The agree-
24 ment must provide for the recovery of administrative, including direct and indirect, costs incurred
25 by the office from participation in the agreement. Any moneys collected under this paragraph shall
26 be deposited in the Child Care Fund established under ORS 329A.010.

27 (c) Information provided to a private agency or organization about the enrollment status of the
28 persons described in subsection (10)(c)(I) of this section shall be subject to an agreement with the
29 private agency or organization. The agreement must provide for the recovery of administrative, in-
30 cluding direct and indirect, costs incurred by the office from participation in the agreement. Any
31 moneys collected under this paragraph shall be deposited in the Child Care Fund established under
32 ORS 329A.010.

33 **SECTION 4.** ORS 419B.005, as amended by section 8, chapter 90, Oregon Laws 2022, is amended
34 to read:

35 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (b) *[Is under 21 years of age and residing in or receiving care or services at a child-caring agency*
28 *as that term is defined in ORS 418.205]* **Is a child in care, as defined in ORS 418.257.**

29 (3) "Higher education institution" means:

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

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

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

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

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

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

37 (5) "Law enforcement agency" means:

38 (a) A city or municipal police department.

39 (b) A county sheriff's office.

40 (c) The Oregon State Police.

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

42 (e) A county juvenile department.

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

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

- 1 (b) Dentist.
- 2 (c) School employee, including an employee of a higher education institution.
- 3 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide
4 or employee of an in-home health service.
- 5 (e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning
6 Division, Department of Education, Youth Development Division, Office of Child Care, the Oregon
7 Youth Authority, a local health department, a community mental health program, a community de-
8 velopmental disabilities program, a county juvenile department, a child-caring agency as that term
9 is defined in ORS 418.205 or an alcohol and drug treatment program.
- 10 (f) Peace officer.
- 11 (g) Psychologist.
- 12 (h) Member of the clergy.
- 13 (i) Regulated social worker.
- 14 (j) Optometrist.
- 15 (k) Chiropractor.
- 16 (L) Certified provider of foster care, or an employee thereof.
- 17 (m) Attorney.
- 18 (n) Licensed professional counselor.
- 19 (o) Licensed marriage and family therapist.
- 20 (p) Firefighter or emergency medical services provider.
- 21 (q) A court appointed special advocate, as defined in ORS 419A.004.
- 22 (r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.
- 23 (s) An elected official of a branch of government of this state or a state agency, board, com-
24 mission or department of a branch of government of this state or of a city, county or other political
25 subdivision in this state.
- 26 (t) Physical, speech or occupational therapist.
- 27 (u) Audiologist.
- 28 (v) Speech-language pathologist.
- 29 (w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
30 gations or discipline by the commission.
- 31 (x) Pharmacist.
- 32 (y) An operator of a preschool recorded program under ORS 329A.255.
- 33 (z) An operator of a school-age recorded program under ORS 329A.255.
- 34 (aa) Employee of a private agency or organization facilitating the provision of respite services,
35 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS
36 109.056.
- 37 (bb) An employee of a public or private organization providing child-related services or activ-
38 ities:
 - 39 (A) Including but not limited to an employee of a:
 - 40 (i) Youth group or center;
 - 41 (ii) Scout group or camp;
 - 42 (iii) Summer or day camp;
 - 43 (iv) Survival camp; or
 - 44 (v) Group, center or camp that is operated under the guidance, supervision or auspices of a re-
45 ligious, public or private educational system or a community service organization; and

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

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

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

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

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

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

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

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

14 **(jj) Parole and probation officer, as defined in ORS 181A.355.**

15 **(7) “Qualified subject” means:**

16 **(a) A parent, guardian or custodian of the child;**

17 **(b) A person who has attained 18 years of age and who:**

18 **(A) Lives in the child’s home and is not a child in care, as defined in ORS 418.257;**

19 **(B) Has access to the child based on the person’s relationship to the child’s parent,**
20 **guardian, custodian, household member or caregiver or to any other person who may have**
21 **authority or control over the child;**

22 **(C) Is in a role, position or occupation in which the person has access to, responsibility**
23 **for, power over or the trust of the child; or**

24 **(D) Has been accused of subjecting the child to involuntary servitude, as described in**
25 **ORS 163.263 or 163.264, or trafficking, as described in ORS 163.266;**

26 **(c) A child care facility, as defined in ORS 329A.250; or**

27 **(d) An education provider, as defined in ORS 339.370.**

28 **SECTION 5.** ORS 419B.005, as amended by section 58, chapter 631, Oregon Laws 2021, section
29 16, chapter 27, Oregon Laws 2022, and section 7, chapter 90, Oregon Laws 2022, is amended to read:
30 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

31 (1)(a) “Abuse” means:

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

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

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

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

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

42 (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any
43 other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage
44 in the performing for people to observe or the photographing, filming, tape recording or other ex-
45 hibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or

1 described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-
2 cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or
3 which is designed to serve educational or other legitimate purposes; and

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

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

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

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

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

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

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

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

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

22 (b) *[Is under 21 years of age and residing in or receiving care or services at a child-caring agency*
23 *as that term is defined in ORS 418.205]* **Is a child in care, as defined in ORS 418.257.**

24 (3) "Higher education institution" means:

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

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

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

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

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

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

32 (5) "Law enforcement agency" means:

33 (a) A city or municipal police department.

34 (b) A county sheriff's office.

35 (c) The Oregon State Police.

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

37 (e) A county juvenile department.

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

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

41 (b) Dentist.

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

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

45 (e) Employee of the Department of Human Services, Oregon Health Authority, Department of

1 Early Learning and Care, Department of Education, Youth Development Division, Office of Child
2 Care, the Oregon Youth Authority, a local health department, a community mental health program,
3 a community developmental disabilities program, a county juvenile department, a child-caring
4 agency as that term is defined in ORS 418.205 or an alcohol and drug treatment program.

5 (f) Peace officer.

6 (g) Psychologist.

7 (h) Member of the clergy.

8 (i) Regulated social worker.

9 (j) Optometrist.

10 (k) Chiropractor.

11 (L) Certified provider of foster care, or an employee thereof.

12 (m) Attorney.

13 (n) Licensed professional counselor.

14 (o) Licensed marriage and family therapist.

15 (p) Firefighter or emergency medical services provider.

16 (q) A court appointed special advocate, as defined in ORS 419A.004.

17 (r) A child care provider registered or certified under ORS 329A.250 to 329A.450.

18 (s) An elected official of a branch of government of this state or a state agency, board, com-
19 mission or department of a branch of government of this state or of a city, county or other political
20 subdivision in this state.

21 (t) Physical, speech or occupational therapist.

22 (u) Audiologist.

23 (v) Speech-language pathologist.

24 (w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
25 gations or discipline by the commission.

26 (x) Pharmacist.

27 (y) An operator of a preschool recorded program under ORS 329A.255.

28 (z) An operator of a school-age recorded program under ORS 329A.255.

29 (aa) Employee of a private agency or organization facilitating the provision of respite services,
30 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS
31 109.056.

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

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

35 (i) Youth group or center;

36 (ii) Scout group or camp;

37 (iii) Summer or day camp;

38 (iv) Survival camp; or

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

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

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

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

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

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

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

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

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

9 **(jj) Parole and probation officer, as defined in ORS 181A.355.**

10 **(7) “Qualified subject” means:**

11 **(a) A parent, guardian or custodian of the child;**

12 **(b) A person who has attained 18 years of age and who:**

13 **(A) Lives in the child’s home and is not a child in care, as defined in ORS 418.257;**

14 **(B) Has access to the child based on the person’s relationship to the child’s parent,
15 guardian, custodian, household member or caregiver or to any other person who may have
16 authority or control over the child;**

17 **(C) Is in a role, position or occupation in which the person has access to, responsibility
18 for, power over or the trust of the child; or**

19 **(D) Has been accused of subjecting the child to involuntary servitude, as described in
20 ORS 163.263 or 163.264, or trafficking, as described in ORS 163.266;**

21 **(e) A child care facility, as defined in ORS 329A.250; or**

22 **(d) An education provider, as defined in ORS 339.370.**

23 **SECTION 6.** ORS 419B.020 is amended to read:

24 419B.020. (1) If the Department of Human Services or a law enforcement agency receives a re-
25 port of child abuse **by a qualified subject**, the department or the agency shall immediately:

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

28 (b) Make the following notifications:

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

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

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

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

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

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

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

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

45 (4) If the law enforcement agency conducting the investigation finds reasonable cause to believe

1 that abuse has occurred, the law enforcement agency shall notify by oral report followed by written
2 report the local office of the department. The Department of Human Services shall provide protec-
3 tive social services of its own or of other available social agencies if necessary to prevent further
4 abuses to the child or to safeguard the child's welfare.

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

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

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

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

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

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

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

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

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

43 **SECTION 7. (1) Section 1 of this 2023 Act and the amendments to ORS 329A.030 by**
44 **sections 2 and 3 of this 2023 Act apply to background checks completed on or after the ef-**
45 **fective date of this 2023 Act.**

1 **(2) The amendments to ORS 419B.005 and 419B.020 by sections 4 to 6 of this 2023 Act**
2 **apply to abuse investigations arising from acts occurring on or after the effective date of this**
3 **2023 Act.**

4 **SECTION 8.** **This 2023 Act being necessary for the immediate preservation of the public**
5 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**
6 **on its passage.**

7
