

Senate Bill 823

Sponsored by Senator GELSER BLOUIN

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 disclosure, in response to public records request, of reports of investigations of child abuse occurring at specified state-authorized programs. Exempts specified information and documents.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to records of investigations of child abuse occurring in state programs; creating new pro-
3 visions; amending ORS 419B.035; and declaring an emergency.

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

SECTION 1. (1) As used in this section:

5
6 (a) **"State-authorized program" means a child-caring agency, as defined in ORS 418.205,**
7 **an education provider, as defined in ORS 339.370, a program certified, authorized or regulated**
8 **by the Early Learning Division and any setting, other than a child-caring agency, in which**
9 **a youth in the custody of the state is placed.**

10 (b) **"Youth" has the meaning given that term in ORS 419A.004.**

11 (2) **The Legislative Assembly finds that it is in the interest of the public and of children**
12 **who are receiving services from state-authorized programs that reports related to the De-**
13 **partment of Human Services' response to and investigation of allegations of child abuse in**
14 **such state-authorized programs be available for public inspection in order to ensure the ef-**
15 **fective oversight, regulation and improvement of such state-authorized programs.**

16 (3) **Reports compiled under ORS 418.257 to 418.259 and 419B.010 to 419B.050 relating to**
17 **investigations of allegations of child abuse occurring at a state-authorized program are**
18 **public records subject to inspection under ORS 192.314 except to the extent that a report**
19 **discloses the following information:**

20 (a) **The name, contact information and any other personally identifying information of**
21 **any person who reported the alleged abuse, witnesses who are not alleged to have committed**
22 **or facilitated the abuse and the victim of the alleged abuse.**

23 (b) **If the investigation results in a finding that the allegation of abuse was unsubstanti-**
24 **ated or could not be determined, the name, contact information and any other personally**
25 **identifying information of the person alleged to have committed the alleged abuse.**

26 (c) **Photographs of the victim of the alleged abuse.**

27 (d) **Any individually identifiable health information, as defined in ORS 192.556.**

28 (4) **Disclosures of reports under subsection (3) of this section may not be made until:**

29 (a) **The investigation has concluded with a finding that the allegation of abuse is unsub-**
30 **stantiated or could not be determined; or**

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 **(b) If an investigation concludes with a finding that the allegation of abuse is substanti-**
 2 **ated, the Department of Human Services has issued a final order after opportunity for a**
 3 **contested case hearing under ORS chapter 183.**

4 **(5)(a) Subsection (3)(a) of this section does not apply if the person who reported the al-**
 5 **leged abuse is a state-authorized program.**

6 **(b) Subsection (3)(b) of this section does not apply if:**

7 **(A) The person alleged to have committed the abuse is a state-authorized program;**

8 **(B) The allegation of abuse is later found to be substantiated; or**

9 **(C) The request for disclosure is made by a party to the investigation, the victim or the**
 10 **victim’s representative.**

11 **(c) Subsection (3)(c) of this section does not apply if the request for disclosure made by**
 12 **the victim or the victim’s representative.**

13 **SECTION 2.** ORS 419B.035, as amended by section 10, chapter 27, Oregon Laws 2022, and sec-
 14 tion 9, chapter 90, Oregon Laws 2022, is amended to read:

15 419B.035. (1) Notwithstanding the provisions of ORS 192.001 to 192.170, [192.210] **192.311** to
 16 192.478 and 192.610 to 192.810 relating to confidentiality and accessibility for public inspection of
 17 public records and public documents, **and except as provided in section 1 of this 2023 Act**, reports
 18 and records compiled under the provisions of ORS 419B.010 to 419B.050 are confidential and may
 19 not be disclosed except as provided in this section. The Department of Human Services shall make
 20 the records available to:

21 (a) Any law enforcement agency or a child abuse registry in any other state for the purpose of
 22 subsequent investigation of child abuse;

23 (b) Any physician, physician assistant licensed under ORS 677.505 to 677.525 or nurse practi-
 24 tioner licensed under ORS 678.375 to 678.390, at the request of the physician, physician assistant
 25 or nurse practitioner, regarding any child brought to the physician, physician assistant or nurse
 26 practitioner or coming before the physician, physician assistant or nurse practitioner for examina-
 27 tion, care or treatment;

28 (c) Attorneys of record for the child or child’s parent or guardian in any juvenile court pro-
 29 ceeding;

30 (d) Citizen review boards established by the Judicial Department for the purpose of periodically
 31 reviewing the status of children, youths and adjudicated youths under the jurisdiction of the juvenile
 32 court under ORS 419B.100 and 419C.005. Citizen review boards may make such records available to
 33 participants in case reviews;

34 (e) A court appointed special advocate in any juvenile court proceeding in which it is alleged
 35 that a child has been subjected to child abuse or neglect;

36 (f) The Early Learning Division for the purpose of carrying out the functions of the division,
 37 including the certification, registration or regulation of child care facilities and child care providers
 38 and the administration of enrollment in the Central Background Registry;

39 (g) The Office of Children’s Advocate;

40 (h) The Teacher Standards and Practices Commission for investigations conducted under ORS
 41 339.390 or 342.176 involving any child or any student;

42 (i) Any person, upon request to the Department of Human Services, if the reports or records
 43 requested regard an incident in which a child, as the result of abuse, died or suffered serious phys-
 44 ical injury as defined in ORS 161.015. Reports or records disclosed under this paragraph must be
 45 disclosed in accordance with ORS 192.311 to 192.478;

1 (j) The Office of Child Care for purposes of applications described in ORS 329A.030 (10)(c)(G) to
2 (J);

3 (k) With respect to a report of abuse occurring at a school or in an educational setting that
4 involves a child with a disability, Disability Rights Oregon;

5 (L) The Department of Education for purposes of investigations conducted under ORS 339.391;
6 and

7 (m) An education provider for the purpose of making determinations under ORS 339.388.

8 (2)(a) When disclosing reports and records pursuant to subsection (1)(i) of this section, the De-
9 partment of Human Services may exempt from disclosure the names, addresses and other identifying
10 information about other children, witnesses, victims or other persons named in the report or record
11 if the department determines, in written findings, that the safety or well-being of a person named in
12 the report or record may be jeopardized by disclosure of the names, addresses or other identifying
13 information, and if that concern outweighs the public's interest in the disclosure of that information.

14 (b) If the Department of Human Services does not have a report or record of abuse regarding
15 a child who, as the result of abuse, died or suffered serious physical injury as defined in ORS
16 161.015, the department may disclose that information.

17 (3) The Department of Human Services may make reports and records compiled under the pro-
18 visions of ORS 419B.010 to 419B.050 available to any person, administrative hearings officer, court,
19 agency, organization or other entity when the department determines that such disclosure is neces-
20 sary to administer its child welfare services and is in the best interests of the affected child, or that
21 such disclosure is necessary to investigate, prevent or treat child abuse and neglect, to protect
22 children from abuse and neglect or for research when the Director of Human Services gives prior
23 written approval. The Department of Human Services shall adopt rules setting forth the procedures
24 by which it will make the disclosures authorized under this subsection or subsection (1) or (2) of this
25 section. The name, address and other identifying information about the person who made the report
26 may not be disclosed pursuant to this subsection and subsection (1) of this section.

27 (4) A law enforcement agency may make reports and records compiled under the provisions of
28 ORS 419B.010 to 419B.050 available to other law enforcement agencies, district attorneys, city at-
29 torneys with criminal prosecutorial functions and the Attorney General when the law enforcement
30 agency determines that disclosure is necessary for the investigation or enforcement of laws relating
31 to child abuse and neglect or necessary to determine a claim for crime victim compensation under
32 ORS 147.005 to 147.367.

33 (5) A law enforcement agency, upon completing an investigation and closing the file in a specific
34 case relating to child abuse or neglect, shall make reports and records in the case available upon
35 request to any law enforcement agency or community corrections agency in this state, to the De-
36 partment of Corrections, to the Oregon Youth Authority or to the State Board of Parole and Post-
37 Prison Supervision for the purpose of managing and supervising offenders in custody or on
38 probation, parole, post-prison supervision or other form of conditional or supervised release. A law
39 enforcement agency may make reports and records compiled under the provisions of ORS 419B.010
40 to 419B.050 available to the Oregon Youth Authority, law enforcement, community corrections,
41 corrections or parole agencies in an open case when the law enforcement agency determines that
42 the disclosure will not interfere with an ongoing investigation in the case. The name, address and
43 other identifying information about the person who made the report may not be disclosed under this
44 subsection or subsection (6)(b) of this section.

45 (6)(a) Any record made available to a law enforcement agency or community corrections agency

1 in this state, to the Department of Corrections, the Oregon Youth Authority or the State Board of
 2 Parole and Post-Prison Supervision or to a physician, physician assistant or nurse practitioner in
 3 this state, as authorized by subsections (1) to (5) of this section, shall be kept confidential by the
 4 agency, department, board, physician, physician assistant or nurse practitioner. Any record or report
 5 disclosed by the Department of Human Services to other persons or entities pursuant to subsections
 6 (1) and (3) of this section shall be kept confidential.

7 (b) Notwithstanding paragraph (a) of this subsection:

8 (A) A law enforcement agency, a community corrections agency, the Department of Corrections,
 9 the Oregon Youth Authority and the State Board of Parole and Post-Prison Supervision may disclose
 10 records made available to them under subsection (5) of this section to each other, to law enforce-
 11 ment, community corrections, corrections and parole agencies of other states and to authorized
 12 treatment providers for the purpose of managing and supervising offenders in custody or on pro-
 13 bation, parole, post-prison supervision or other form of conditional or supervised release.

14 (B) The Department of Corrections and the Oregon Youth Authority may disclose records made
 15 available to them under subsection (5) of this section regarding a person in the custody of the De-
 16 partment of Corrections or the Oregon Youth Authority to each other, to the court, to the district
 17 attorney and to the person’s attorney for the purpose of the person’s hearing under ORS 420A.200
 18 to 420A.206.

19 (C) A person may disclose records made available to the person under subsection (1)(i) of this
 20 section if the records are disclosed for the purpose of advancing the public interest.

21 (7) Except as provided by ORS 339.389, an officer or employee of the Department of Human
 22 Services or of a law enforcement agency or any person or entity to whom disclosure is made pur-
 23 suant to subsections (1) to (6) of this section may not release any information not authorized by
 24 subsections (1) to (6) of this section.

25 (8) As used in this section, “law enforcement agency” has the meaning given that term in ORS
 26 181A.010.

27 (9) A person who violates subsection (6)(a) or (7) of this section commits a Class A violation.

28 **SECTION 3. This 2023 Act being necessary for the immediate preservation of the public**
 29 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**
 30 **on its passage.**