

Requested by Representative NOSSE

**PROPOSED AMENDMENTS TO
HOUSE BILL 3333**

1 On page 1 of the printed bill, delete lines 5 through 27 and delete pages
2 2 through 4.

3 On page 5, delete lines 1 through 27 and insert:

4 **“SECTION 1.** ORS 418.258 is amended to read:

5 “418.258. (1) When the Department of Human Services becomes aware of
6 a report of suspected child abuse of a child in care, whether in the form of
7 an allegation, complaint or formal report made under this section, and
8 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,
10 through the mandatory abuse reporting process set forth in ORS 419B.005 to
11 419B.050 or otherwise, the department shall immediately:

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

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

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

1 facility.

2 “(d) Commence an investigation to determine whether the report of sus-
3 pected abuse is substantiated, unsubstantiated or inconclusive under ORS
4 418.259 if:

5 “(A) The reported abuse occurred in this state;

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

8 “(C) The reported abuse occurred in any other state and the department
9 reasonably believes that the reported abuse poses a danger to the health,
10 safety or wellness of a child in care placed by the department in an out-of-
11 state child-caring agency.

12 “(e) Report to a law enforcement agency any crime that the department
13 has reason to believe has occurred with respect to a child in care or at a
14 child-caring agency, proctor foster home, certified foster home or develop-
15 mental disabilities residential facility even if the suspected crime is not re-
16 lated to a report of abuse made under this section.

17 **“(2)(a) If after screening or during the course of investigating a**
18 **report of suspected child abuse of a child in care the department de-**
19 **termines that the incident meets the criteria described in ORS 418.259**
20 **(1)(c), the department may require the child-caring agency, proctor**
21 **foster home, certified foster home or developmental disabilities resi-**
22 **dential facility to submit a corrective action plan.**

23 **“(b) If the department approves a corrective action plan submitted**
24 **under paragraph (a) of this subsection, the department is not required**
25 **to commence or to continue an investigation regarding the suspected**
26 **abuse.**

27 “[~~(2)(a)~~] **(3)(a)** As a condition for issuance or renewal of a license, cer-
28 tificate or authorization to a child-caring agency, certified foster home or
29 developmental disabilities residential facility, the department shall require
30 and verify that the child-caring agency, certified foster home or develop-

1 mental disabilities residential facility has procedures and protocols that:

2 “(A) Require employees of the child-caring agency, a proctor foster home
3 certified by the child-caring agency, the certified foster home or the devel-
4 opmental disabilities residential facility to immediately report suspected
5 abuse of a child in care to the director, the director’s designee or personnel
6 within the department who have been specifically designated to receive re-
7 ports of abuse of children in care;

8 “(B) Mandate that the child-caring agency, certified foster home or de-
9 velopmental disabilities residential facility provide an annual training and
10 written materials that include information about the child abuse reporting
11 hotline, and that the agency, home or facility advise and educate employees
12 of the child-caring agency and any proctor foster home certified by the
13 child-caring agency, of the certified foster home or of the developmental
14 disabilities residential facility of the duty under this section and ORS
15 419B.005 to 419B.050 to report abuse of a child in care; and

16 “(C) Inform employees of child-caring agencies, proctor foster homes,
17 certified foster homes and developmental disabilities residential facilities
18 that the duty to report abuse of a child in care is personal to the employee
19 and that the duty is not fulfilled by reporting the abuse to the owner, oper-
20 ator or any other employee of the child-caring agency, proctor foster home,
21 certified foster home or developmental disabilities residential facility even
22 if the owner, operator or other employee reports the abuse of a child in care
23 to the director, the director’s designee or the department.

24 “(b) A child-caring agency, certified foster home or developmental disa-
25 bilities residential facility need not develop and maintain procedures and
26 protocols or provide an annual training and written materials under para-
27 graph (a) of this subsection if the agency, home or facility does not have any
28 employees, staff or volunteers.

29 “[3] (4) Interference or hindering an investigation of abuse of a child in
30 care, including but not limited to the intimidation of witnesses, falsification

1 of records or denial or limitation of interviews with the child in care who
2 is the subject of the investigation or with witnesses, may constitute grounds
3 for the revocation, suspension or placing of conditions on the license, cer-
4 tificate or other authorization of a child-caring agency, proctor foster home,
5 certified foster home or developmental disabilities residential facility.

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

13 “(A) From any liability, civil or criminal, that might otherwise be in-
14 curred or imposed with respect to the making or content of such report;

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

16 “(C) With respect to participating in any judicial proceeding resulting
17 from or involving the report.

18 “(b) A person making a report under this section may include references
19 to otherwise confidential information for the sole purpose of making the re-
20 port, and any such disclosure must be protected from further disclosure to
21 other persons or entities for any other purpose not related to the making of
22 the report.

23 **“SECTION 2.** ORS 418.259 is amended to read:

24 “418.259. (1) The investigation conducted by the Department of Human
25 Services under ORS 418.258 must result in one of the following findings:

26 “(a) That the report is substantiated. A report is substantiated when there
27 is reasonable cause to believe that the abuse of a child in care occurred.

28 “(b) That the report is unsubstantiated. A report is unsubstantiated when
29 there is no evidence that the abuse of a child in care occurred.

30 **“(c) That the report requires a corrective action plan. A report re-**

1 **quires a corrective action plan when:**

2 **“(A) There is evidence that the abuse of a child in care occurred**
3 **but the child in care was unharmed;**

4 **“(B) There is no evidence of intent to cause harm to the child in**
5 **care; and**

6 **“(C) The behavior that resulted in the report of abuse was reason-**
7 **ably necessary to protect the child in care or others from greater harm**
8 **or was due to human error or a documentation error or omission.**

9 **“[(c)] (d) That the report is inconclusive. A report is inconclusive when,**
10 **except as provided in paragraph (c) of this subsection, there is some**
11 **indication that the abuse occurred but there is insufficient evidence to con-**
12 **clude that there is reasonable cause to believe that the abuse occurred.**

13 **“(2) The department may find that a child-caring agency, proctor**
14 **foster home, certified foster home or developmental disabilities resi-**
15 **dential facility is responsible for a substantiated report of abuse under**
16 **subsection (1)(a) of this section, and not the employee whose actions**
17 **resulted in the substantiated report of abuse, if the department de-**
18 **termines that the abuse was caused in substantial part by inadequate**
19 **policies, procedures or training provided by the child-caring agency,**
20 **proctor foster home, certified foster home or developmental disabili-**
21 **ties residential facility.**

22 **“[(2)] (3) When a report is received under ORS 418.258 alleging that a**
23 **child in care may have been subjected to abuse, the department shall notify**
24 **the case managers for the child, the attorney for the child, the child’s court**
25 **appointed special advocate, the parents or guardians of the child, any attor-**
26 **ney representing a parent or guardian of the child and any governmental**
27 **agency that has a contract with the child-caring agency or developmental**
28 **disabilities residential facility to provide care or services to the child that**
29 **a report has been received.**

30 **“[(3)(a)] (4)(a) The department may interview the child in care who is the**

1 subject of suspected abuse and any witnesses, including other children,
2 without the presence of employees of the child-caring agency, proctor foster
3 home or developmental disabilities residential facility, the provider of ser-
4 vices at a certified foster home or department personnel. The department
5 shall inform the child in care that the child may have the child's parent or
6 guardian, if the child has not been committed to the custody of the depart-
7 ment or the Oregon Youth Authority, or attorney present when participating
8 in an interview conducted in the course of an abuse investigation.

9 “(b) When investigating an allegation of inappropriate use of restraint
10 or involuntary seclusion, the department shall:

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

12 “(B) Review all relevant incident reports related to the child in care and
13 other reports related to the restraint or involuntary seclusion of the child
14 in care;

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

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

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

23 “(F) Make all reasonable efforts to conduct trauma-informed interviews
24 of each child witness, including the child in care who is the subject of sus-
25 pected abuse unless the investigator makes a specific determination that the
26 interview may significantly traumatize the child and is not in the best in-
27 terests of the child.

28 “[4] (5) The department shall notify the following when a report of abuse
29 is substantiated:

30 “(a) The Director of Human Services.

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

3 “(c) The department’s lead personnel in that part of the department that
4 is responsible for child welfare generally.

5 “(d) With respect to the child in care who is the subject of the abuse re-
6 port and investigation, the case managers for the child, the attorney for the
7 child, the child’s court appointed special advocate, the parents or guardians
8 of the child, any attorney representing a parent or guardian of the child and
9 any governmental agency that has a contract with the child-caring agency
10 to provide care or services to the child.

11 “(e) The parents or guardians of the child in care who is the subject of
12 the abuse report and investigation if the child in care has not been commit-
13 ted to the custody of the department or the youth authority. Notification
14 under this paragraph may not include any details or information other than
15 that a report of abuse has been substantiated.

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

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

20 “~~[(5)]~~ **(6)** The department shall report on a quarterly basis to the interim
21 legislative committees on child welfare for the purposes of public review and
22 oversight of the quality and safety of child-caring agencies, certified foster
23 homes and developmental disabilities residential facilities that are licensed,
24 certified or authorized by the department in this state and of proctor foster
25 homes that are certified by the child-caring agencies. Information provided
26 in reports under this subsection may not contain the name or any identifying
27 information of a child in care but must contain all of the following:

28 “(a) The name of any child-caring agency, including an out-of-state
29 child-caring agency, proctor foster home or developmental disabilities resi-
30 dential facility, or, provided there are five or more certified foster homes in

1 the county, the name of the county where a certified foster home is located,
2 where the department conducted an investigation pursuant to ORS 418.258
3 that resulted in a finding that the report of abuse was substantiated during
4 that quarter;

5 “(b) The approximate date that the abuse occurred;

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

8 “(d) Whether physical injury, sexual abuse or death resulted from the
9 abuse;

10 “(e) Corrective actions taken or ordered by the department and the out-
11 come of the corrective actions; and

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

16 “[~~(6)~~] (7) The department’s quarterly report under subsection [~~(5)~~] (6) of
17 this section must also contain all of the following:

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

19 “(b) The total number of programs that reported the use of restraints of
20 children in care that quarter;

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

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

25 “(e) The number of incidents in which an individual who was not appro-
26 priately trained in the use of the restraint used on a child in care in a pro-
27 gram; and

28 “(f) The number of incidents that were reported for potential inappropri-
29 ate use of restraint.

30 “[~~(7)~~] (8) In compiling records, reports and other information during an

1 investigation under ORS 418.258 (1) and in issuing findings, letters of con-
2 cern or reprimands, the Director of Human Services or the director's
3 designee and the department may not refer to the employee, person or entity
4 that is the subject of the investigation as an 'alleged perpetrator' but must
5 refer to the employee, person or entity as the 'respondent.'

6 "[8] (9) As used in this section, 'program,' 'reportable injury' and 're-
7 straint' have the meanings given those terms in ORS 418.519."

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