

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 **or requires**  
4 **a corrective plan** under ORS 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) As a condition for issuance or renewal of a license, certificate or  
18 authorization to a child-caring agency, certified foster home or develop-  
19 mental disabilities residential facility, the department shall require and ver-  
20 ify that the child-caring agency, certified foster home or developmental  
21 disabilities residential facility has procedures and protocols that:

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

28 “(B) Mandate that the child-caring agency, certified foster home or de-  
29 velopmental disabilities residential facility provide an annual training and  
30 written materials that include information about the child abuse reporting

1 hotline, and that the agency, home or facility advise and educate employees  
2 of the child-caring agency and any proctor foster home certified by the  
3 child-caring agency, of the certified foster home or of the developmental  
4 disabilities residential facility of the duty under this section and ORS  
5 419B.005 to 419B.050 to report abuse of a child in care; and

6 “(C) Inform employees of child-caring agencies, proctor foster homes,  
7 certified foster homes and developmental disabilities residential facilities  
8 that the duty to report abuse of a child in care is personal to the employee  
9 and that the duty is not fulfilled by reporting the abuse to the owner, oper-  
10 ator or any other employee of the child-caring agency, proctor foster home,  
11 certified foster home or developmental disabilities residential facility even  
12 if the owner, operator or other employee reports the abuse of a child in care  
13 to the director, the director’s designee or the department.

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

19 “(3) Interference or hindering an investigation of abuse of a child in care,  
20 including but not limited to the intimidation of witnesses, falsification of  
21 records or denial or limitation of interviews with the child in care who is  
22 the subject of the investigation or with witnesses, may constitute grounds  
23 for the revocation, suspension or placing of conditions on the license, cer-  
24 tificate or other authorization of a child-caring agency, proctor foster home,  
25 certified foster home or developmental disabilities residential facility.

26 “(4)(a) Anyone, including but not limited to an employee of a child-caring  
27 agency, proctor foster home, certified foster home or developmental disabili-  
28 ties residential facility, who makes a report of suspected abuse of a child in  
29 care to the Governor, the Department of Justice, the Director of Human  
30 Services, the director’s designee or the department under this section in good

1 faith and who has reasonable grounds for the making of the report shall have  
2 immunity:

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

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

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

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

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

14 “418.259. (1) The investigation conducted by the Department of Human  
15 Services under ORS 418.258 must result in one of the following findings:

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

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

20 **“(c) That the report requires a corrective action plan. A report re-  
21 quires a corrective action plan when:**

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

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

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

29 **“[(c)] (d) That the report is inconclusive. A report is inconclusive when,  
30 except as provided in paragraph (c) of this subsection, there is some**

1 indication that the abuse occurred but there is insufficient evidence to con-  
2 clude that there is reasonable cause to believe that the abuse occurred.

3 **“(2) The department may find that a child-caring agency or devel-**  
4 **opmental disabilities residential facility is responsible for a substanti-**  
5 **ated report of abuse under subsection (1)(a) of this section, and not**  
6 **the employee whose actions resulted in the substantiated report of**  
7 **abuse, if the department determines that the abuse was caused in**  
8 **substantial part by inadequate policies, procedures or training pro-**  
9 **vided by the child-caring agency or developmental disabilities residen-**  
10 **tial facility.**

11 “[2] (3) When a report is received under ORS 418.258 alleging that a  
12 child in care may have been subjected to abuse, the department shall notify  
13 the case managers for the child, the attorney for the child, the child’s court  
14 appointed special advocate, the parents or guardians of the child, any attor-  
15 ney representing a parent or guardian of the child and any governmental  
16 agency that has a contract with the child-caring agency or developmental  
17 disabilities residential facility to provide care or services to the child that  
18 a report has been received.

19 “[3(a)] (4)(a) The department may interview the child in care who is the  
20 subject of suspected abuse and any witnesses, including other children,  
21 without the presence of employees of the child-caring agency, proctor foster  
22 home or developmental disabilities residential facility, the provider of ser-  
23 vices at a certified foster home or department personnel. The department  
24 shall inform the child in care that the child may have the child’s parent or  
25 guardian, if the child has not been committed to the custody of the depart-  
26 ment or the Oregon Youth Authority, or attorney present when participating  
27 in an interview conducted in the course of an abuse investigation.

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

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

1 “(B) Review all relevant incident reports related to the child in care and  
2 other reports related to the restraint or involuntary seclusion of the child  
3 in care;

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

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

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

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

17 “[~~(4)~~] (5) The department shall notify the following when a report of abuse  
18 is substantiated:

19 “(a) The Director of Human Services.

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

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

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

30 “(e) The parents or guardians of the child in care who is the subject of

1 the abuse report and investigation if the child in care has not been commit-  
2 ted to the custody of the department or the youth authority. Notification  
3 under this paragraph may not include any details or information other than  
4 that a report of abuse has been substantiated.

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

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

9 “[5] (6) The department shall report on a quarterly basis to the interim  
10 legislative committees on child welfare for the purposes of public review and  
11 oversight of the quality and safety of child-caring agencies, certified foster  
12 homes and developmental disabilities residential facilities that are licensed,  
13 certified or authorized by the department in this state and of proctor foster  
14 homes that are certified by the child-caring agencies. Information provided  
15 in reports under this subsection may not contain the name or any identifying  
16 information of a child in care but must contain all of the following:

17 “(a) The name of any child-caring agency, including an out-of-state  
18 child-caring agency, proctor foster home or developmental disabilities resi-  
19 dential facility, or, provided there are five or more certified foster homes in  
20 the county, the name of the county where a certified foster home is located,  
21 where the department conducted an investigation pursuant to ORS 418.258  
22 that resulted in a finding that the report of abuse was substantiated during  
23 that quarter;

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

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

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

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

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

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

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

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

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

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

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

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

19 “[7] (8) In compiling records, reports and other information during an  
20 investigation under ORS 418.258 (1) and in issuing findings, letters of con-  
21 cern or reprimands, the Director of Human Services or the director’s  
22 designee and the department may not refer to the employee, person or entity  
23 that is the subject of the investigation as an ‘alleged perpetrator’ but must  
24 refer to the employee, person or entity as the ‘respondent.’

25 “[8] (9) As used in this section, ‘program,’ ‘reportable injury’ and ‘re-  
26 straint’ have the meanings given those terms in ORS 418.519.”.

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