

D R A F T

SUMMARY

Defines “reports and records” for purposes of public records in child abuse investigations.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to public records in child abuse investigations; amending ORS 342.176 and 419B.035; and declaring an emergency.

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

SECTION 1. ORS 419B.035 is amended to read:

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

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

(b) Any physician, physician assistant licensed under ORS 677.505 to 677.525, naturopathic physician licensed under ORS chapter 685 or nurse practitioner licensed under ORS 678.375 to 678.390, at the request of the physician, physician assistant, naturopathic physician or nurse practitioner, regarding any child brought to the physician, physician assistant, naturopathic physician or nurse practitioner or coming before the physician,

1 physician assistant, naturopathic physician or nurse practitioner for exam-
2 ination, care or treatment;

3 (c) Attorneys of record for the child or child's parent or guardian in any
4 juvenile court proceeding;

5 (d) Citizen review boards established by the Judicial Department for the
6 purpose of periodically reviewing the status of children, youths and youth
7 offenders under the jurisdiction of the juvenile court under ORS 419B.100
8 and 419C.005. Citizen review boards may make such **reports and** records
9 available to participants in case reviews;

10 (e) A court appointed special advocate in any juvenile court proceeding
11 in which it is alleged that a child has been subjected to child abuse or neg-
12 lect;

13 (f) The Office of Child Care for certifying, registering or otherwise regu-
14 lating child care facilities;

15 (g) The Office of Children's Advocate;

16 (h) The Teacher Standards and Practices Commission for investigations
17 conducted under ORS 342.176 involving any child or any student in grade 12
18 or below;

19 (i) Any person, upon request to the Department of Human Services, if the
20 reports [*or*] **and** records requested regard an incident in which a child, as
21 the result of abuse, died or suffered serious physical injury as defined in ORS
22 161.015. Reports [*or*] **and** records disclosed under this paragraph must be
23 disclosed in accordance with ORS 192.311 to 192.478;

24 (j) The Office of Child Care for purposes of ORS 329A.030 (10)(g), (h) and
25 (i); and

26 (k) With respect to a report of abuse occurring at a school or in an edu-
27 cational setting that involves a child with a disability, Disability Rights
28 Oregon.

29 (2)(a) When disclosing reports and records pursuant to subsection (1)(i)
30 of this section, the Department of Human Services may exempt from disclo-
31 sure the names, addresses and other identifying information about other

1 children, witnesses, victims or other persons named in the report or record
2 if the department determines, in written findings, that the safety or well-
3 being of a person named in the report or record may be jeopardized by dis-
4 closure of the names, addresses or other identifying information, and if that
5 concern outweighs the public's interest in the disclosure of that information.

6 (b) If the Department of Human Services does not have a report or record
7 of abuse regarding a child who, as the result of abuse, died or suffered seri-
8 ous physical injury as defined in ORS 161.015, the department may disclose
9 that information.

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

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

30 (5) A law enforcement agency, upon completing an investigation and
31 closing the file in a specific case relating to child abuse or neglect, shall

1 make reports and records in the case available upon request to any law
2 enforcement agency or community corrections agency in this state, to the
3 Department of Corrections or to the State Board of Parole and Post-Prison
4 Supervision for the purpose of managing and supervising offenders in custody
5 or on probation, parole, post-prison supervision or other form of conditional
6 or supervised release. A law enforcement agency may make reports and re-
7 cords compiled under the provisions of ORS 419B.010 to 419B.050 available
8 to law enforcement, community corrections, corrections or parole agencies
9 in an open case when the law enforcement agency determines that the dis-
10 closure will not interfere with an ongoing investigation in the case. The
11 name, address and other identifying information about the person who made
12 the report may not be disclosed under this subsection or subsection (6)(b) of
13 this section.

14 (6)(a) Any [*record*] **reports and records** made available to a law
15 enforcement agency or community corrections agency in this state, to the
16 Department of Corrections or the State Board of Parole and Post-Prison
17 Supervision or to a physician, physician assistant, naturopathic physician
18 or nurse practitioner in this state, as authorized by subsections (1) to (5) of
19 this section, shall be kept confidential by the agency, department, board,
20 physician, physician assistant, naturopathic physician or nurse practitioner.
21 Any [*record or report*] **reports and records** disclosed by the Department of
22 Human Services to other persons or entities pursuant to subsections (1) and
23 (3) of this section shall be kept confidential.

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

25 (A) A law enforcement agency, a community corrections agency, the De-
26 partment of Corrections and the State Board of Parole and Post-Prison
27 Supervision may disclose **reports and records** made available to them under
28 subsection (5) of this section to each other, to law enforcement, community
29 corrections, corrections and parole agencies of other states and to authorized
30 treatment providers for the purpose of managing and supervising offenders
31 in custody or on probation, parole, post-prison supervision or other form of

1 conditional or supervised release.

2 (B) A person may disclose **reports and** records made available to the
3 person under subsection (1)(i) of this section if the **reports and** records are
4 disclosed for the purpose of advancing the public interest.

5 (7) An officer or employee of the Department of Human Services or of a
6 law enforcement agency or any person or entity to whom disclosure is made
7 pursuant to subsections (1) to (6) of this section may not release any infor-
8 mation not authorized by subsections (1) to (6) of this section.

9 (8) As used in this section[,]:

10 (a) “Law enforcement agency” has the meaning given that term in ORS
11 181A.010.

12 (b) **“Reports and records” includes, but is not limited to, any police**
13 **report, investigative report, photograph, audio or visual recording or**
14 **any other document that was generated as a result of a child abuse**
15 **investigation.**

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

18 **SECTION 2.** ORS 342.176 is amended to read:

19 342.176. (1)(a) A person may file a complaint with the Teacher Standards
20 and Practices Commission regarding a person licensed by the commission.

21 (b) Prior to beginning an investigation based on a complaint filed under
22 paragraph (a) of this subsection, the commission may require verification
23 that attempts were made to resolve the complaint through the complaint
24 process of the school district that employs the person against whom the
25 complaint was filed.

26 (c) After receiving sufficient verification as provided by paragraph (b) of
27 this subsection, the Teacher Standards and Practices Commission shall
28 promptly undertake an investigation upon receipt of a complaint or infor-
29 mation that may constitute grounds for:

30 (A) Refusal to issue a license or registration, as provided under ORS
31 342.143;

1 (B) Suspension or revocation of a license or registration, discipline of a
2 person holding a license or registration, or suspension or revocation of the
3 right to apply for a license or registration, as provided under ORS 342.175;
4 or

5 (C) Discipline for failure to provide appropriate notice prior to resigna-
6 tion, as provided under ORS 342.553.

7 (2) The commission may appoint an investigator and shall furnish the
8 investigator with appropriate professional and other special assistance rea-
9 sonably required to conduct the investigation, and the investigator is em-
10 powered to issue subpoenas to require the attendance of witnesses or the
11 production of documents over the signature of the executive director of the
12 commission, subpoena witnesses over the signature of the executive director,
13 swear witnesses and compel obedience in the same manner as provided under
14 ORS 183.440 (2).

15 (3) Following completion of the investigation, the executive director or
16 the executive director's designee shall report in writing any findings and
17 recommendations to:

18 (a) The commission, meeting in executive session, at its next regular
19 meeting following completion of the investigation; and

20 (b) The person against whom the charge is made, following consideration
21 by the commission.

22 (4)(a) Except as provided in paragraph (b) of this subsection, the docu-
23 ments and materials used in the investigation undertaken as provided by this
24 section and the report related to the investigation are confidential and not
25 subject to public inspection unless the commission makes a final determi-
26 nation to:

27 (A) Refuse to issue a license or registration, as provided under ORS
28 342.143;

29 (B) Suspend or revoke a license or registration, discipline a person hold-
30 ing a license or registration, or suspend or revoke the right to apply for a
31 license or registration, as provided under ORS 342.175; or

1 (C) Discipline a person for failure to provide appropriate notice prior to
2 resignation, as provided under ORS 342.553.

3 (b) **Reports and** records made available to the commission under ORS
4 419B.035 (1)(h) shall be kept confidential.

5 (5) If the commission finds from the report that there is sufficient cause
6 to justify holding a hearing under ORS 342.177, the commission shall notify
7 in writing:

8 (a) The person charged, enclosing a statement of the charges and a notice
9 of opportunity for hearing;

10 (b) The complainant; and

11 (c) The employing district or public charter school, if any.

12 (6) If the commission finds from the report that there is not sufficient
13 cause to justify holding a hearing under ORS 342.177, the commission shall
14 notify in writing:

15 (a) The person charged;

16 (b) The complainant; and

17 (c) The employing district or public charter school, if any.

18 (7) Notwithstanding ORS 192.660 (6), the commission may make its
19 findings under this section in executive session. However, the provisions of
20 ORS 192.660 (4) apply to the sessions.

21 **SECTION 3. This 2019 Act being necessary for the immediate pres-**
22 **ervation of the public peace, health and safety, an emergency is de-**
23 **clared to exist, and this 2019 Act takes effect on its passage.**

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