

House Bill 4132

Sponsored by Representative NEARMAN (Presession filed.)

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**.

Prohibits dependency jurisdiction on basis of medical child abuse allegation under certain circumstances.

A BILL FOR AN ACT

1 Relating to medical child abuse; creating new provisions; and amending ORS 419B.005.

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

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

4 (a) **“Health care professional” means a physician, psychologist, physician assistant or**
5 **nurse practitioner licensed or certified under the laws of this state.**

6 (b) **“Medical child abuse” means unnecessary medical treatment provided to a child in**
7 **response to symptoms that the child’s parent or guardian fabricated or induced.**

8 (2) **The juvenile court may not assert jurisdiction under ORS 419B.100 based on an**
9 **allegation that a child has suffered medical child abuse if:**

10 (a) **The child’s parent or guardian sought medical treatment for the child from a health**
11 **care professional;**

12 (b) **The child’s parent or guardian reported the child’s symptoms to the health care pro-**
13 **fessional in good faith;**

14 (c) **The health care professional diagnosed the child’s condition;**

15 (d) **The health care professional prescribed lawful medical treatment for the child; and**

16 (e) **The child’s parent or guardian consented to the prescribed medical treatment for the**
17 **child.**

18 (3) **For purposes of subsection (2) of this section, a parent or guardian may consent to**
19 **medical treatment for a child, even when a second health care professional recommends**
20 **different medical treatment, if:**

21 (a) **The child does not have a life-threatening health condition; or**

22 (b) **The parent or guardian demonstrates by clear and convincing evidence that the**
23 **medical treatment to which the parent or guardian consents will not endanger the life of the**
24 **child.**

25 **SECTION 2. ORS 419B.005 is amended to read:**

26 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

27 (1)(a) **“Abuse” means:**

28 (A) **Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child**
29 **which has been caused by other than accidental means, including any injury which appears to be**
30 **at variance with the explanation given of the injury.**
31

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

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

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

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

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

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

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

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

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

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

26 (J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, or to the unlawful
 27 manufacturing of a cannabinoid extract, as defined in ORS 475B.015, that subjects a child to a sub-
 28 stantial risk of harm to the child's health or safety.

29 (b) "Abuse" does not include:

30 (A) Reasonable discipline unless the discipline results in one of the conditions described in
 31 paragraph (a) of this subsection.

32 **(B) Seeking or consenting to medical treatment for a child under the circumstances de-**
 33 **scribed in section 1 of this 2018 Act.**

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

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

36 (b) Is under 21 years of age and residing in or receiving care or services at a child-caring
 37 agency as that term is defined in ORS 418.205.

38 (3) "Higher education institution" means:

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

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

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

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

43 (4) "Law enforcement agency" means:

44 (a) A city or municipal police department.

45 (b) A county sheriff's office.

- 1 (c) The Oregon State Police.
- 2 (d) A police department established by a university under ORS 352.121 or 353.125.
- 3 (e) A county juvenile department.
- 4 (5) "Public or private official" means:
- 5 (a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician,
- 6 including any intern or resident.
- 7 (b) Dentist.
- 8 (c) School employee, including an employee of a higher education institution.
- 9 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide
- 10 or employee of an in-home health service.
- 11 (e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning
- 12 Division, Youth Development Division, Office of Child Care, the Oregon Youth Authority, a local
- 13 health department, a community mental health program, a community developmental disabilities
- 14 program, a county juvenile department, a child-caring agency as that term is defined in ORS 418.205
- 15 or an alcohol and drug treatment program.
- 16 (f) Peace officer.
- 17 (g) Psychologist.
- 18 (h) Member of the clergy.
- 19 (i) Regulated social worker.
- 20 (j) Optometrist.
- 21 (k) Chiropractor.
- 22 (L) Certified provider of foster care, or an employee thereof.
- 23 (m) Attorney.
- 24 (n) Licensed professional counselor.
- 25 (o) Licensed marriage and family therapist.
- 26 (p) Firefighter or emergency medical services provider.
- 27 (q) A court appointed special advocate, as defined in ORS 419A.004.
- 28 (r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.
- 29 (s) Member of the Legislative Assembly.
- 30 (t) Physical, speech or occupational therapist.
- 31 (u) Audiologist.
- 32 (v) Speech-language pathologist.
- 33 (w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
- 34 gations or discipline by the commission.
- 35 (x) Pharmacist.
- 36 (y) An operator of a preschool recorded program under ORS 329A.255.
- 37 (z) An operator of a school-age recorded program under ORS 329A.257.
- 38 (aa) Employee of a private agency or organization facilitating the provision of respite services,
- 39 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS
- 40 109.056.
- 41 (bb) Employee of a public or private organization providing child-related services or activities:
- 42 (A) Including but not limited to youth groups or centers, scout groups or camps, summer or day
- 43 camps, survival camps or groups, centers or camps that are operated under the guidance, super-
- 44 vision or auspices of religious, public or private educational systems or community service organ-
- 45 izations; and

1 (B) Excluding community-based, nonprofit organizations whose primary purpose is to provide
2 confidential, direct services to victims of domestic violence, sexual assault, stalking or human traf-
3 ficking.

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 by rule adopted by the Home Care Commission.

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