

A-Engrossed
Senate Bill 912

Ordered by the Senate April 22
Including Senate Amendments dated April 22

Sponsored by Senator PROZANSKI (at the request of Taylor Proden and Deborah & Shannon Hart)

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.

Revises definition of terms "sexual conduct" and "substantiated report" for purposes of certain laws related to abuse and sexual conduct by school employees.

Requires report of suspected sexual conduct be made to law enforcement agency or Department of Human Services. Expands reporting and investigation requirements to sexual conduct by students.

[Requires public or private official to report sexual conduct by regulated public or private official and to report student sexual conduct. Directs Department of Human Services and law enforcement to conduct investigation related to report.]

[Requires department and law enforcement agency to notify regulatory board of regulated public or private official of findings related to sexual conduct. Directs regulatory board to initiate disciplinary proceedings if department or law enforcement finds reasonable cause to believe that sexual conduct occurred.]

[Requires department and law enforcement agency to notify school district of findings related to student sexual conduct.]

Creates civil action for damages for failure by certain school employees to make report of suspected sexual conduct.

Directs Department of Education to evaluate criminal records checks to determine percentage of total number of criminal records checks requested by private schools that indicated person being checked engaged in sexual conduct toward child. Requires department to report results of evaluation to interim committee of Legislative Assembly related to education.

Declares emergency, effective July 1, 2019.

A BILL FOR AN ACT

Relating to sexual conduct toward children; creating new provisions; and amending ORS 339.370, 339.372, 339.388 and 339.396; and declaring an emergency.

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

SECTION 1. ORS 339.370 is amended to read:

339.370. As used in ORS 339.370 to 339.400:

(1) "Abuse" has the meaning given that term in ORS 419B.005.

(2) "Disciplinary records" means the records related to a personnel discipline action or materials or documents supporting that action.

(3) "Education provider" means:

(a) A school district, as defined in ORS 332.002.

(b) The Oregon School for the Deaf.

(c) An educational program under the Youth Corrections Education Program.

(d) A public charter school, as defined in ORS 338.005.

(e) An education service district, as defined in ORS 334.003.

(f) Any state-operated program that provides educational services to kindergarten through grade 12 students.

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 (g) A private school.

2 (4) "Investigation" means a detailed inquiry into the factual allegations of a report of suspected
3 abuse or sexual conduct that:

4 (a) Is based on interviews with the complainant, witnesses and the school employee or student
5 who is the subject of the report; and

6 (b) If the subject of the report is a school employee, meets any negotiated standards of an em-
7 ployment contract or agreement.

8 (5) "Law enforcement agency" has the meaning given that term in ORS 419B.005.

9 (6) "Private school" means a school that provides to kindergarten through grade 12 students
10 instructional programs that are not limited solely to dancing, drama, music, religious or athletic
11 instruction.

12 (7) "School board" means the governing board or governing body of an education provider.

13 (8) "School employee" means an employee of an education provider.

14 (9)(a) "Sexual conduct" means any verbal or physical conduct by a school employee **or a stu-**
15 **dent** that:

16 (A) Is sexual in nature;

17 (B) Is directed toward a kindergarten through grade 12 student;

18 (C) Has the effect of [*unreasonably*] interfering with a student's educational performance; and

19 (D) Creates an intimidating, hostile or offensive educational environment.

20 (b) "Sexual conduct" does not include abuse.

21 (10) "Substantiated report" means a report of abuse or sexual conduct that[:]

22 [(a)] an education provider has reasonable cause to believe is founded based on the available
23 evidence after conducting an investigation. [; and]

24 [(b) *Involves conduct that the education provider determines is sufficiently serious to be documented*
25 *in the school employee's personnel file or the student's education record.*]

26 **SECTION 2. The amendments to ORS 339.370 by section 1 of this 2019 Act apply to con-**
27 **duct that occurs before, on or after the effective date of this 2019 Act for purposes of:**

28 (1) **Making reports of suspected abuse or sexual conduct;**

29 (2) **Investigations of suspected abuse or sexual conduct that are pending or initiated on**
30 **or after the effective date of this 2019 Act; and**

31 (3) **A collective bargaining agreement, an employment contract, an agreement for resig-**
32 **nation or termination, a severance agreement or any similar contract or agreement entered**
33 **into on or after the effective date of this 2019 Act.**

34 **SECTION 3.** ORS 339.372 is amended to read:

35 339.372. Each school board shall adopt policies on the reporting of abuse and sexual conduct
36 by school employees and [*the reporting of abuse by*] students. The policies shall:

37 (1) Specify that abuse and sexual conduct by school employees and [*abuse by*] students are not
38 tolerated;

39 (2) Specify that all school employees and students are subject to the policies;

40 (3) Require all school employees who have reasonable cause to believe that another school em-
41 ployee has engaged in abuse or sexual conduct or that a student has engaged in abuse **or sexual**
42 **conduct** to:

43 (a) Report suspected abuse **or sexual conduct** to a law enforcement agency, the Department
44 of Human Services or a designee of the department as required by ORS 419B.010 and 419B.015; and

45 (b) Report suspected abuse or sexual conduct to the person designated as provided by subsection

1 (4) of this section;

2 (4) Designate a person, and an alternate in the event the designated person is the suspected
3 abuser, to receive reports of suspected abuse or sexual conduct by school employees or [*suspected*
4 *abuse by*] students and specify the procedures to be followed by that person upon receipt of a report;

5 (5) Require the posting in each school building of the name and contact information for the
6 person designated for the school building to receive reports of suspected abuse or sexual conduct
7 by school employees or [*suspected abuse by*] students and the procedures the person will follow upon
8 receipt of a report;

9 (6) Specify that the initiation of a report in good faith about suspected abuse or sexual conduct
10 may not adversely affect any terms or conditions of employment or the work environment of the
11 complainant;

12 (7) Specify that the school board or any school employee will not discipline a student for the
13 initiation of a report in good faith about suspected abuse or sexual conduct by a school employee
14 or [*suspected abuse by a*] student;

15 (8) Require notification by the education provider to the person who initiated the report about
16 actions taken by the education provider based on the report; and

17 (9) Require the education provider to furnish to a school employee at the time of hire the fol-
18 lowing:

19 (a) A description of conduct that may constitute abuse or sexual conduct; and

20 (b) A description of the information and records that will be disclosed as provided by ORS
21 339.378 or 339.388 (8) if a report of suspected abuse or sexual conduct is substantiated.

22 **SECTION 4. The amendments to ORS 339.372 by section 3 of this 2019 Act apply to re-**
23 **ports made on or after the effective date of this 2019 Act.**

24 **SECTION 5.** ORS 339.388 is amended to read:

25 339.388. (1)(a) A school employee having reasonable cause to believe that a child with whom the
26 employee comes in contact has suffered abuse by another school employee or by a student, or that
27 another school employee or a student with whom the employee comes in contact has abused a child,
28 shall immediately report the information to:

29 (A) The person designated in the policy adopted under ORS 339.372; and

30 (B) A law enforcement agency, the Department of Human Services or a designee of the depart-
31 ment as required by ORS 419B.010 and 419B.015.

32 (b) A school employee having reasonable cause to believe that a student with whom the em-
33 ployee comes in contact has been subjected to sexual conduct by another school employee **or a**
34 **student**, or that another school employee **or a student** with whom the employee comes in contact
35 has engaged in sexual conduct, shall immediately report the information to the person designated
36 in the policy adopted under ORS 339.372.

37 (2) A person who receives a report under subsection (1) of this section shall:

38 (a) **Make a record of all reports received under subsection (1) of this section and make**
39 **the record available if a claim is brought under ORS 339.396; and**

40 (b) Follow the procedures required by the policy adopted by the school board under ORS
41 339.372.

42 (3)(a) Except as provided in subsection (4) of this section, when an education provider receives
43 a report of suspected abuse or sexual conduct by one of its employees, and the education provider's
44 designee determines that there is reasonable cause to support the report, the education provider:

45 (A) In the case of suspected abuse, shall place the school employee on paid administrative leave;

1 or

2 (B) In the case of suspected sexual conduct, may place the school employee on paid adminis-
3 trative leave or in a position that does not involve direct, unsupervised contact with children.

4 (b) A school employee who is placed on paid administrative leave under paragraph (a)(A) of this
5 subsection shall remain on administrative leave until:

6 (A) The Department of Human Services or a law enforcement agency determines that the report
7 cannot be substantiated or that the report will not be pursued; or

8 (B) The Department of Human Services or a law enforcement agency determines that the report
9 is substantiated and the education provider takes the appropriate disciplinary action against the
10 school employee.

11 (4) An education provider may reinstate a school employee placed on paid administrative leave
12 for suspected abuse as provided under subsection (3) of this section or may take the appropriate
13 disciplinary action against the employee if the Department of Human Services or a law enforcement
14 agency is unable to determine, based on a report of suspected abuse, whether abuse occurred.

15 (5) If, following an investigation, an education provider determines that a report of suspected
16 abuse or sexual conduct by a school employee is a substantiated report, the education provider shall:

17 (a) Inform the school employee that the education provider has determined that the report has
18 been substantiated.

19 (b) Provide the school employee with information about the appropriate appeal process for the
20 determination made by the education provider. The appeal process may be the process provided by
21 a collective bargaining agreement or a process administered by a neutral third party and paid for
22 by the school district.

23 (c) Following notice of a school employee's decision not to appeal the determination or following
24 the determination of an appeal that sustained the substantiated report, create a record of the sub-
25 stantiated report and place the record in the personnel file of the school employee. Records created
26 pursuant to this paragraph are confidential and are not public records as defined in ORS 192.311.
27 An education provider may use the record as a basis for providing the information required to be
28 disclosed under ORS 339.378.

29 (d) Inform the school employee that information about substantiated reports may be disclosed
30 to a potential employer as provided by subsection (8) of this section and ORS 339.378.

31 (6)(a) Notwithstanding the requirements of subsections (3), (4) and (5) of this section, an educa-
32 tion provider that is a private school:

33 (A) May discipline or terminate a school employee according to:

34 (i) The provisions of subsections (3) and (4) of this section; or

35 (ii) The standards and policies of the private school if the standards and policies provide the
36 same or greater safeguards for the protection of children compared to the safeguards described in
37 subsections (3) and (4) of this section.

38 (B) May follow the procedures described in subsection (5) of this section or may follow any ap-
39 peals process established by the private school related to suspected child abuse or sexual conduct.

40 (b) A private school that chooses to discipline or terminate a school employee according to the
41 standards and policies of the school must provide the information required to be disclosed under
42 ORS 339.378.

43 (7) Upon request from a law enforcement agency, the Department of Human Services or the
44 Teacher Standards and Practices Commission, a school district shall provide the records of investi-
45 gations of suspected abuse by a school employee or former school employee.

1 (8)(a) The disciplinary records of a school employee or former school employee convicted of a
2 crime listed in ORS 342.143 are not exempt from disclosure under ORS 192.345 or 192.355.

3 (b) If a school employee is convicted of a crime listed in ORS 342.143, the education provider
4 that is the employer of the employee shall disclose the disciplinary records of the employee to any
5 person upon request.

6 (c) If a former school employee is convicted of a crime listed in ORS 342.143, the education
7 provider that was the employer of the former employee when the crime was committed shall disclose
8 the disciplinary records of the former employee to any person upon request.

9 (9) Prior to disclosure of a disciplinary record under subsection (8) of this section, an education
10 provider shall remove any personally identifiable information from the record that would disclose
11 the identity of a child, a crime victim or a school employee or former school employee who is not
12 the subject of the disciplinary record.

13 **SECTION 6. The amendments to ORS 339.388 by section 5 of this 2019 Act apply to re-**
14 **ports made on or after the effective date of this 2019 Act.**

15 **SECTION 7.** ORS 339.396 is amended to read:

16 339.396. (1) **Except as provided in subsections (2) and (3) of this section,** nothing in ORS
17 339.370 to 339.400 creates a new public or private cause of action or precludes an existing cause
18 of action.

19 (2)(a) **A student, or the parent or guardian of a student, may bring a civil action and**
20 **recover damages for the greater of \$1,000 or the total amount for special and general dam-**
21 **ages, including damages for emotional distress, if:**

22 (A) **A school employee required to make a report of suspected sexual conduct fails to**
23 **make the report as required by ORS 339.388 (1)(b);**

24 (B) **The student is subjected to sexual conduct by another school employee about whom**
25 **the school employee should have had a reasonable cause to believe has engaged in sexual**
26 **conduct;**

27 (C) **The sexual conduct described in subparagraph (B) of this paragraph occurred after**
28 **the school employee should have had a reasonable cause to believe that the other school**
29 **employee had engaged in sexual conduct; and**

30 (D) **The school employee who failed to make the report cannot be subjected to discipline**
31 **by the Teacher Standards and Practices Commission for failure to make a report.**

32 (b) **A court may award reasonable attorney fees to the prevailing plaintiff in an action**
33 **under this subsection.**

34 (3)(a) **A student, or the parent or guardian of a student, may bring a civil action and**
35 **recover damages for the greater of \$1,000 or the total amount for special and general dam-**
36 **ages, including damages for emotional distress, if:**

37 (A) **A school employee required to make a report of suspected sexual conduct fails to**
38 **make the report as required by ORS 339.388 (1)(b);**

39 (B) **The student is subjected to sexual conduct by another student about whom the school**
40 **employee should have had a reasonable cause to believe has engaged in sexual conduct;**

41 (C) **The sexual conduct described in subparagraph (B) of this paragraph occurred after**
42 **the school employee should have had a reasonable cause to believe that the other student**
43 **had engaged in sexual conduct; and**

44 (D) **The school employee who failed to make the report cannot be subjected to discipline**
45 **by the Teacher Standards and Practices Commission for failure to make a report.**

1 **(b) A court may award reasonable attorney fees to the prevailing plaintiff in an action**
2 **under this subsection.**

3 **SECTION 8. (1) The Department of Education shall evaluate criminal records checks that**
4 **were made under ORS 326.603 by the department from 2009-2019 and that were made at the**
5 **request of private schools. The evaluation shall include a determination of the percentage**
6 **of the total number of criminal records checks requested by private schools that indicated**
7 **a person being checked engaged in sexual conduct toward a child.**

8 **(2) The department shall report the results of the evaluation, and may include recom-**
9 **mendations for legislation, to an interim committee of the Legislative Assembly related to**
10 **education no later than September 15, 2020.**

11 **SECTION 9. Section 8 of this 2019 Act is repealed on December 31, 2020.**

12 **SECTION 10. This 2019 Act being necessary for the immediate preservation of the public**
13 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**
14 **July 1, 2019.**