

House Bill 2106

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Department of Human Services)

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**.

Renames Children's Advocate to Human Services Ombudsperson. Renames Office of Children's Advocate to Office of the Human Services Ombuds. Expands scope of office duties to include matters relating to elderly person and vulnerable adult abuse. Authorizes Director of Human Services to terminate Human Services Ombudsperson for just cause.

A BILL FOR AN ACT

1
2 Relating to the Office of the Human Services Ombuds; creating new provisions; and amending ORS
3 21.007, 409.185, 417.805, 417.810, 417.815, 417.825 and 419B.035.

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

5 **SECTION 1.** ORS 21.007 is amended to read:

6 21.007. It is the intent of the Legislative Assembly that funding be provided to the following
7 entities by appropriations each biennium to fund programs, services and activities that were funded
8 through court fees before the 2011-2013 biennium:

9 (1) To the counties of this state for the purposes of funding mediation services, conciliation
10 services and other services in domestic relations cases.

11 (2) To the counties of this state for the purposes of funding the operation of law libraries or of
12 providing law library services.

13 (3) To Portland State University and the University of Oregon to fund the programs and ex-
14 penses of the Mark O. Hatfield School of Government and the University of Oregon School of Law
15 under ORS 36.100 to 36.238 and 183.502.

16 (4) To the Higher Education Coordinating Commission to fund clinical legal education programs
17 at accredited institutions of higher education that provide civil legal services to victims of domestic
18 violence, stalking or sexual assault.

19 (5) To the State Department of Agriculture for the purpose of funding mediation programs es-
20 tablished by the department, other than individual farm credit mediations.

21 (6) To the Judicial Department for the purposes of funding the appellate settlement program
22 established under ORS 2.560.

23 (7) To the Department of Human Services for the funding of the Office of [*Children's Advocate*]
24 **the Human Services Ombuds.**

25 **SECTION 2.** ORS 409.185 is amended to read:

26 409.185. (1) The Director of Human Services shall oversee the development of standards and
27 procedures for assessment, investigation and enforcement of child protective services.

28 (2)(a) The Department of Human Services shall take action to implement the provision of child
29 protective services as outlined in ORS 417.705 to 417.800 and based on the recommendations in the
30 1992 "Oregon Child Protective Services Performance Study" published by the University of Southern

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 Maine.

2 (b) In all substantiated cases of child abuse and neglect, the role of the department is to com-
 3 plete a comprehensive family assessment of risk of abuse or neglect, or both, assess service needs
 4 and provide immediate protective services as necessary.

5 (c) The department shall provide remedial services needed to ensure the safety of the child.

6 (d) In all cases of child abuse and neglect for which a criminal investigation is conducted, the
 7 role of law enforcement agencies is to provide a legally sound, child sensitive investigation of
 8 whether abuse or neglect or both have occurred and to gather other evidence and perform other
 9 responsibilities in accordance with interagency agreements.

10 (e) The department and law enforcement agencies shall conduct the investigation and assess-
 11 ment concurrently, based upon the protocols and procedures of the county child abuse multidisci-
 12 plinary team in each jurisdiction.

13 (f) When the department and law enforcement agencies conduct a joint investigation and as-
 14 sessment, the activities of the department and agencies are to be clearly differentiated by the pro-
 15 tocols of the county child abuse multidisciplinary team.

16 (g) Nothing in this subsection is intended to be inconsistent with ORS 418.702, 418.747 and
 17 418.748 and ORS chapter 419B.

18 (h) In all cases of child abuse for which an investigation is conducted, the department shall
 19 provide a child's parent, guardian or caregiver with a clear written explanation of the investigation
 20 process, the court hearing process and the rights of the parent, guardian or caregiver in the abuse
 21 investigation and in the court proceedings related to the abuse investigation.

22 (3) Upon receipt of a recommendation of the [*Children's Advocate*] **Human Services**
 23 **Ombudsperson** under ORS 417.815 (2)(e), the department shall implement the recommendation or
 24 give the [*Children's Advocate*] **Human Services Ombudsperson** written notice of an intent not to
 25 implement the recommendation.

26 **SECTION 3.** ORS 417.805 is amended to read:

27 417.805. The Office of [*Children's Advocate*] **the Human Services Ombuds** shall maintain a
 28 state toll-free telephone line to allow the public to:

29 (1) [*Access*] **Request** information and be referred to the appropriate services in matters [*of child*]
 30 **abuse**] **relating to Department of Human Services programs or services, or abuse investi-**
 31 **gations involving children, elderly persons or vulnerable adults, the foster care system or**
 32 **eligibility for public assistance programs administered by the department.**

33 (2) Voice concerns regarding the actions and conduct of the Department of Human Services re-
 34 lating to [*child abuse*] **department programs or services, or abuse investigations involving**
 35 **children, elderly persons or vulnerable adults, the foster care system or eligibility for public**
 36 **assistance programs administered by the department.**

37 (3) Have a single place to file complaints concerning the actions and conduct of the Department
 38 of Human Services [*relating to child abuse*].

39 **SECTION 4.** ORS 417.810 is amended to read:

40 417.810. (1) The Office of [*Children's Advocate*] **the Human Services Ombuds** is established in
 41 the Department of Human Services. The office is under the supervision and control of the [*Children's*]
 42 **Advocate**] **Human Services Ombudsperson**, who is responsible for the performance of the duties,
 43 functions and powers of the office. With the concurrence of the Governor, the Director of Human
 44 Services shall appoint the [*Children's Advocate*] **Human Services Ombudsperson** and may termi-
 45 nate the [*Children's Advocate*] **Human Services Ombudsperson for just cause.**

1 (2) Subject to available funds and the applicable provisions of ORS chapter 240, the [*Children's*
 2 *Advocate*] **Human Services Ombudsperson** may hire staff to carry out the duties, functions and
 3 powers of the office and shall prescribe their duties and fix their compensation.

4 (3) The [*Children's Advocate*] **Human Services Ombudsperson** shall be a person who has
 5 background and experience in:

6 (a) Law enforcement with particular emphasis on crimes involving child victims; [*or*]

7 (b) Social work with particular emphasis on child abuse;

8 (c) **Working with community partners;**

9 (d) **Human services, including regulatory and policy knowledge;**

10 (e) **Mediation and conflict resolution practices; or**

11 (f) **Administration and management.**

12 **SECTION 5.** ORS 417.815 is amended to read:

13 417.815. (1) The Office of [*Children's Advocate*] **the Human Services Ombuds** shall be accessi-
 14 ble to the public through the state toll-free telephone line maintained pursuant to ORS 417.805 and
 15 through other electronic and written forms of communication. The office shall:

16 (a) [*Disseminate information and educate the public about the detection and prevention of child*
 17 *abuse and about the prosecution of persons accused of child abuse*] **Adopt rules and operate in ac-**
 18 **cordance with recognized national best practices for ombudsmen;**

19 (b) Cooperate with other units within the Department of Human Services and **with** law
 20 enforcement officials [*in performing duties under ORS 418.747 and 418.748 and 419B.005 to 419B.050*
 21 *when the investigation involves alleged child abuse*] **when an investigation involves the alleged**
 22 **abuse of a child, elderly person or vulnerable adult;**

23 [*Provide technical assistance in the development and implementation of state and local programs*
 24 *that relate to child abuse;*]

25 [(d)] (c) In cooperation with the department, objectively review the department's systems for
 26 handling [*child abuse cases*] **abuse investigations;** and

27 [(e)] (d) Analyze data collected by the office to discern general patterns and trends, chronic
 28 problems and other systemic difficulties in the detection, reporting, investigation[, *prosecution*] and
 29 resolution of cases of [*child*] abuse **of children, elderly persons or vulnerable adults.**

30 (2) In addition to the duties required under subsection (1) of this section, the office shall:

31 (a) Review any complaint regarding the department's involvement in a specific child abuse case,
 32 unless the office determines there is an adequate remedy for the complaint;

33 (b) Make any appropriate referrals of the complaint or complainant at the time the office re-
 34 ceives the complaint or during the office's review process;

35 (c) Inform the complainant of the referral of the complaint or any other action taken by the
 36 office on the complaint;

37 (d) Inform the department of the office's intention to review the department's action, unless the
 38 office determines that advance notice will unduly hinder the review; and

39 (e) Conduct a review of the department's action when appropriate, and inform the department
 40 of the results of the review, including any recommendation the [*Children's Advocate*] **Human Ser-**
 41 **VICES Ombudsperson** believes would resolve any case or any systemic issues identified in the re-
 42 view.

43 (3) If the office has knowledge of confidential information relating to a child involved or
 44 allegedly involved in child abuse, the office shall keep the information confidential from public dis-
 45 closure. However, the office is subject to legal mandates in ORS 418.747 and 418.748 and 419B.005

1 to 419B.050.

2 (4) A person who files a complaint under this section or ORS 417.805 or participates in any in-
3 vestigation under this section may not be, because of that action:

4 (a) Subject to any penalties, sanctions or restrictions imposed by the department;

5 (b) Subject to any penalties, sanctions or restrictions connected with the person's employment;

6 or

7 (c) Denied any right, privilege or benefit.

8 **(5) Unless otherwise permitted by state or federal law, records obtained by the office**
9 **from entities outside of the office that are confidential, privileged or otherwise protected**
10 **from disclosure may not be further disclosed.**

11 [(5)] **(6)** If deemed necessary by the [*Children's Advocate*] **Human Services Ombudsperson** for
12 the purposes of carrying out the duties of the office, the office may conduct criminal records checks
13 pursuant to ORS 181A.200 on a person through the Law Enforcement Data System maintained by
14 the Department of State Police.

15 **SECTION 6.** ORS 417.825 is amended to read:

16 417.825. (1) In addition to any other fees provided by law, the appropriate agency:

17 (a) When records of live birth are registered with the state, shall pay a \$1 fee on each record
18 of live birth registered with the agency.

19 (b) That issues certified copies of records of live birth for the state or a county, shall collect a
20 \$1 fee on each certified copy of a record of live birth issued by the agency.

21 (2) The agencies paying or collecting the fees described in subsection (1) of this section shall
22 transfer moneys from the fees imposed by this section to the State Treasurer for deposit in the De-
23 partment of Human Services Account established under ORS 409.060. The moneys deposited under
24 this section are appropriated continuously to the Department of Human Services for use by the Of-
25 fice of [*Children's Advocate*] **the Human Services Ombuds** for the administration of ORS 417.805,
26 417.810 and 417.815.

27 **SECTION 7.** ORS 419B.035 is amended to read:

28 419B.035. (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.478 and
29 192.610 to 192.810 relating to confidentiality and accessibility for public inspection of public records
30 and public documents, reports and records compiled under the provisions of ORS 419B.010 to
31 419B.050 are confidential and may not be disclosed except as provided in this section. The Depart-
32 ment of Human Services shall make the records available to:

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

35 (b) Any physician, physician assistant licensed under ORS 677.505 to 677.525 or nurse practi-
36 tioner licensed under ORS 678.375 to 678.390, at the request of the physician, physician assistant
37 or nurse practitioner, regarding any child brought to the physician, physician assistant or nurse
38 practitioner or coming before the physician, physician assistant or nurse practitioner for examina-
39 tion, care or treatment;

40 (c) Attorneys of record for the child or child's parent or guardian in any juvenile court pro-
41 ceeding;

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

1 (e) A court appointed special advocate in any juvenile court proceeding in which it is alleged
2 that a child has been subjected to child abuse or neglect;

3 (f) The Office of Child Care for certifying, registering or otherwise regulating child care facili-
4 ties;

5 (g) The Office of [*Children's Advocate*] **the Human Services Ombuds**;

6 (h) The Teacher Standards and Practices Commission for investigations conducted under ORS
7 339.390 or 342.176 involving any child or any student;

8 (i) Any person, upon request to the Department of Human Services, if the reports or records
9 requested regard an incident in which a child, as the result of abuse, died or suffered serious phys-
10 ical injury as defined in ORS 161.015. Reports or records disclosed under this paragraph must be
11 disclosed in accordance with ORS 192.311 to 192.478;

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

13 (k) With respect to a report of abuse occurring at a school or in an educational setting that
14 involves a child with a disability, Disability Rights Oregon;

15 (L) The Department of Education for purposes of investigations conducted under ORS 339.391;
16 and

17 (m) An education provider for the purpose of making determinations under ORS 339.388.

18 (2)(a) When disclosing reports and records pursuant to subsection (1)(i) of this section, the De-
19 partment of Human Services may exempt from disclosure the names, addresses and other identifying
20 information about other children, witnesses, victims or other persons named in the report or record
21 if the department determines, in written findings, that the safety or well-being of a person named in
22 the report or record may be jeopardized by disclosure of the names, addresses or other identifying
23 information, and if that concern outweighs the public's interest in the disclosure of that information.

24 (b) If the Department of Human Services does not have a report or record of abuse regarding
25 a child who, as the result of abuse, died or suffered serious physical injury as defined in ORS
26 161.015, the department may disclose that information.

27 (3) The Department of Human Services may make reports and records compiled under the pro-
28 visions of ORS 419B.010 to 419B.050 available to any person, administrative hearings officer, court,
29 agency, organization or other entity when the department determines that such disclosure is neces-
30 sary to administer its child welfare services and is in the best interests of the affected child, or that
31 such disclosure is necessary to investigate, prevent or treat child abuse and neglect, to protect
32 children from abuse and neglect or for research when the Director of Human Services gives prior
33 written approval. The Department of Human Services shall adopt rules setting forth the procedures
34 by which it will make the disclosures authorized under this subsection or subsection (1) or (2) of this
35 section. The name, address and other identifying information about the person who made the report
36 may not be disclosed pursuant to this subsection and subsection (1) of this section.

37 (4) A law enforcement agency may make reports and records compiled under the provisions of
38 ORS 419B.010 to 419B.050 available to other law enforcement agencies, district attorneys, city at-
39 torneys with criminal prosecutorial functions and the Attorney General when the law enforcement
40 agency determines that disclosure is necessary for the investigation or enforcement of laws relating
41 to child abuse and neglect or necessary to determine a claim for crime victim compensation under
42 ORS 147.005 to 147.367.

43 (5) A law enforcement agency, upon completing an investigation and closing the file in a specific
44 case relating to child abuse or neglect, shall make reports and records in the case available upon
45 request to any law enforcement agency or community corrections agency in this state, to the De-

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

9 (6)(a) Any record made available to a law enforcement agency or community corrections agency
 10 in this state, to the Department of Corrections or the State Board of Parole and Post-Prison Super-
 11 vision or to a physician, physician assistant or nurse practitioner in this state, as authorized by
 12 subsections (1) to (5) of this section, shall be kept confidential by the agency, department, board,
 13 physician, physician assistant or nurse practitioner. Any record or report disclosed by the Depart-
 14 ment of Human Services to other persons or entities pursuant to subsections (1) and (3) of this sec-
 15 tion shall be kept confidential.

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

17 (A) A law enforcement agency, a community corrections agency, the Department of Corrections
 18 and the State Board of Parole and Post-Prison Supervision may disclose records made available to
 19 them under subsection (5) of this section to each other, to law enforcement, community corrections,
 20 corrections and parole agencies of other states and to authorized treatment providers for the pur-
 21 pose of managing and supervising offenders in custody or on probation, parole, post-prison super-
 22 vision or other form of conditional or supervised release.

23 (B) A person may disclose records made available to the person under subsection (1)(i) of this
 24 section if the records are disclosed for the purpose of advancing the public interest.

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

28 (8) As used in this section, "law enforcement agency" has the meaning given that term in ORS
 29 181A.010.

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

31 **SECTION 8. (1) The amendments to ORS 21.007, 409.185, 417.805, 417.810, 417.815, 417.825**
 32 **and 419B.035 by sections 1 to 7 of this 2021 Act are intended to change the name of the**
 33 **"Office of Children's Advocate" to the "Office of the Human Services Ombuds" and to change**
 34 **the name of the "Children's Advocate" to the "Human Services Ombudsperson."**

35 **(2) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel**
 36 **may:**

37 **(a) Substitute for words designating the "Office of Children's Advocate," wherever they**
 38 **occur in statutory law, other words designating the "Office of the Human Services**
 39 **Ombuds"; and**

40 **(b) Substitute for words designating the "Children's Advocate," wherever they occur in**
 41 **statutory law, other words designating the "Human Services Ombudsperson."**

42 **(3)(a) References in the rules of the Department of Human Services to the "Office of**
 43 **Children's Advocate" or an officer or employee of the "Office of Children's Advocate" are**
 44 **considered to be references to the "Office of the Human Services Ombuds" or an officer or**
 45 **employee of the "Office of the Human Services Ombuds."**

1 **(b) References in the rules of the Department of Human Services to the “Children’s Ad-**
2 **vocate” are considered to be references to the “Human Services Ombudsperson.”**
3 _____