

# Senate Bill 769

Sponsored by Senator GELSER BLOUIN (at the request of Oulu Noonan)

## 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**.

Directs Department of Human Services to use information acquired during abuse investigations arising from actions of child in care to make certain assessments regarding placement. Prohibits department from finding that allegation of abuse is substantiated or founded. Creates exceptions.

Prohibits department from determining that individual is unfit solely based on substantiated or founded allegation of abuse arising from acts of individual when under 18 years of age. Creates exceptions.

Creates exception to requirement to enroll in Central Background Registry if individual was under 18 years of age at time of incident resulting in substantiated or founded allegation of abuse. Creates exceptions.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to abuse investigations involving alleged perpetrators who are under 18 years of age; cre-  
3 ating new provisions; amending ORS 329A.030; and declaring an emergency.

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

5 **SECTION 1. (1) As used in this section, "abuse," "child in care" and "sexual abuse" have**  
6 **the meanings given those terms in ORS 418.257.**

7 **(2) If an investigation conducted by the Department of Human Services under ORS**  
8 **418.258 or 419B.020 involves a report of abuse committed by a child in care, the department**  
9 **must use any information arising from the investigation to assess the safety of the child in**  
10 **care and any other individuals receiving services from the same child-caring agency, the**  
11 **appropriateness of the child in care's placement, the quality of supervision and support pro-**  
12 **vided to the child in care, the need for any additional services or supports for individuals**  
13 **involved in the incident and the consideration of the behaviors and needs identified for**  
14 **making safe and appropriate placements in the future.**

15 **(3) Notwithstanding ORS 418.259 (1) and 419B.026 (1), if an investigation conducted by the**  
16 **Department of Human Services under ORS 418.258 or 419B.020 involves a report of abuse**  
17 **committed by a child in care, the department's investigation may not result in a finding that**  
18 **the report is substantiated or founded unless:**

19 **(a) The incident resulting in the abuse report occurred in a situation where the child in**  
20 **care is not the victim's parent but was in a position of responsibility or authority in relation**  
21 **to the victim, including when the child in care is the victim's nanny, child care provider, peer**  
22 **tutor or mentor;**

23 **(b) The incident resulting in the abuse report constitutes sexual abuse; or**

24 **(c) The child in care is the victim's parent and the incident resulting in the abuse report**  
25 **involved a willful infliction of physical pain or injury.**

26 **(4)(a) If the department's investigation of a child in care's actions results in a finding**  
27 **that the reported abuse is substantiated or founded, the department must notify in writing**

**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 the child in care and the child in care's attorney, if any, of the department's findings and the  
 2 child in care's right to appeal those findings.

3 (b) The department must obtain acknowledgments of receipt of the notifications under  
 4 this section.

5 (c) No person other than the child in care may acknowledge the child in care's receipt  
 6 of the notification.

7 (5) Nothing in this section relieves the department of its duty to investigate reports of  
 8 abuse made against a child in care.

9 **SECTION 2.** (1) If the Department of Human Services is required to complete a criminal  
 10 records check under ORS 181A.195 and make a determination of the fitness of an individual  
 11 to serve as a volunteer, intern, employee or licensee of any entity, the department may not  
 12 find that the individual is disqualified solely on the basis of a substantiated or founded  
 13 allegation of abuse, as defined in ORS 418.257 or 419B.005, if the incident that resulted in the  
 14 substantiated or founded allegation occurred before the individual attained 18 years of age.

15 (2) Subsection (1) of this section does not apply if:

16 (a) The incident occurred in a situation where the individual is not the victim's parent  
 17 but was in a position of responsibility or authority in relation to the victim, including when  
 18 the individual was the victim's nanny, child care provider, peer tutor or mentor;

19 (b) The incident constituted sexual abuse, as defined in ORS 418.257 or, if the child abuse  
 20 determination was made under ORS 419B.005 to 419B.050, as defined in ORS 419B.005; or

21 (c) The individual is the victim's parent and the incident resulting in the abuse report  
 22 involved a willful infliction of physical pain or injury.

23 **SECTION 3.** ORS 329A.030, as amended by section 1, chapter 90, Oregon Laws 2022, is amended  
 24 to read:

25 329A.030. (1) The Office of Child Care shall establish a Central Background Registry and may  
 26 maintain information in the registry through electronic records systems.

27 (2)(a) A subject individual shall apply to and must be enrolled in the Central Background Reg-  
 28 istry as part of the individual's application to operate a program or serve in a position described in  
 29 subsection (10) of this section.

30 (b) An individual who has been the subject of a founded or substantiated report of child abuse  
 31 shall apply to and must be enrolled in the Central Background Registry prior to providing any of  
 32 the types of care identified in ORS 329A.250 (4)(b)(A), (G) or (H) if:

33 (A) The child abuse occurred on or after January 1, 2017, and involved a child who died or  
 34 suffered serious physical injury, as defined in ORS 161.015; or

35 (B) The child abuse occurred on or after September 1, 2019, and involved any child for whom  
 36 the individual was providing child care, as defined in ORS 329A.250 (4), or care identified in ORS  
 37 329A.250 (4)(b)(A), (C), (F), (G), (H) or (I).

38 (c) Notwithstanding paragraph (a) of this subsection, an individual described in paragraph (b)(B)  
 39 of this subsection is not required to enroll in the Central Background Registry if:

40 (A) More than seven years has elapsed since the date of the child abuse determination[.]; or

41 (B) The individual was under 18 years of age at the time of the incident that resulted in  
 42 the child abuse determination, unless:

43 (i) The incident occurred in a situation where the individual was not the victim's parent  
 44 but was in a position of responsibility or authority in relation to the victim, including when  
 45 the individual was the victim's nanny, child care provider, peer tutor or mentor;

1       (ii) **The incident constituted sexual abuse, as defined in ORS 418.257 or, if the child abuse**  
2 **determination was made under ORS 419B.005 to 419B.050, as described in ORS chapter 163;**  
3 **or**

4       (iii) **The individual was the victim's parent and the incident involved a willful infliction**  
5 **of physical pain or injury.**

6       (3)(a) Upon receiving an application for enrollment in the Central Background Registry, the of-  
7 fice shall complete:

8       (A) A criminal records check under ORS 181A.195;

9       (B) A criminal records check of other registries or databases in accordance with rules adopted  
10 by the Early Learning Council;

11       (C) A child abuse and neglect records check in accordance with rules adopted by the council;  
12 and

13       (D) A foster care certification check and an adult protective services check in accordance with  
14 rules adopted by the council.

15       (b) In addition to the information that the office is required to check under paragraph (a) of this  
16 subsection, the office may consider any other information obtained by the office that the office, by  
17 rule, determines is relevant to enrollment in the Central Background Registry.

18       (4)(a) The office shall enroll the individual in the Central Background Registry if the individual:

19       (A) Is determined to have no criminal, child abuse and neglect, negative adult protective ser-  
20 vices or negative foster home certification history, or to have dealt with the issues and provided  
21 adequate evidence of suitability for the registry;

22       (B) Has paid the applicable fee established pursuant to ORS 329A.275; and

23       (C) Has complied with the rules of the Early Learning Council adopted pursuant to this section.

24       (b) Notwithstanding subsection (3) of this section and paragraph (a) of this subsection, the office  
25 may enroll an individual in the registry if the Department of Human Services has completed a  
26 background check on the individual and the individual has received approval from the department  
27 for purposes of providing child care.

28       (5)(a) Notwithstanding subsections (3) and (4) of this section, the office may not enroll an indi-  
29 vidual in the Central Background Registry if:

30       (A) The individual has a disqualifying condition as defined in rules adopted by the council; or

31       (B) The individual is an exempt prohibited individual, as provided by ORS 329A.252.

32       (b) If an individual prohibited from enrolling in the registry as provided by this subsection is  
33 enrolled in the registry, the office shall remove the individual from the registry.

34       (6)(a) The office may conditionally enroll an individual in the Central Background Registry  
35 pending the results of a nationwide criminal records check through the Federal Bureau of Investi-  
36 gation if the individual has successfully completed the criminal records check and the child abuse  
37 and neglect records check in this state and in the state of the individual's residence, if other than  
38 Oregon.

39       (b) The office may enroll an individual in the registry subject to limitations identified in rules  
40 adopted by the council.

41       (7) An enrollment in the Central Background Registry may be renewed upon application to the  
42 office, payment of the fee established pursuant to ORS 329A.275 and compliance with rules adopted  
43 by the Early Learning Council pursuant to this section. However, an individual who is determined  
44 to be ineligible for enrollment in the registry after the date of initial enrollment shall be removed  
45 or suspended from the registry by the office.

1 (8)(a) A child care facility, preschool recorded program or school-age recorded program may not  
2 hire or employ an individual if the individual is not enrolled in the Central Background Registry.

3 (b) Notwithstanding paragraph (a) of this subsection, a child care facility, preschool recorded  
4 program or school-age recorded program may employ on a probationary basis an individual who is  
5 conditionally enrolled in the Central Background Registry.

6 (9) The Early Learning Council may adopt any rules necessary to carry out the purposes of this  
7 section, including but not limited to rules regarding expiration and renewal periods and limitations  
8 related to the subject individual's enrollment in the Central Background Registry.

9 (10) As used in this section, "subject individual" means a subject individual as defined by the  
10 Early Learning Council by rule, an individual subject to subsection (2)(b) of this section or a person  
11 who applies to be:

12 (a) The operator or an employee of a child care or treatment program;

13 (b) The operator or an employee of an Oregon prekindergarten program under ORS 329.170 to  
14 329.200;

15 (c) The operator or an employee of a federal Head Start program regulated by the United States  
16 Department of Health and Human Services;

17 (d) An individual in a child care facility, preschool recorded program or school-age recorded  
18 program who may have unsupervised contact with children as identified by the office;

19 (e) A contractor or an employee of the contractor who provides early childhood special educa-  
20 tion or early intervention services pursuant to ORS 343.455 to 343.534;

21 (f) A child care provider who is required to be enrolled in the Central Background Registry by  
22 any state agency;

23 (g) A contractor, employee or volunteer of a metropolitan service district organized under ORS  
24 chapter 268 who may have unsupervised contact with children and who is required to be enrolled  
25 in the Central Background Registry by the metropolitan service district;

26 (h) A provider of respite services, as defined in ORS 418.205, for parents pursuant to a properly  
27 executed power of attorney under ORS 109.056 who is providing respite services as a volunteer with  
28 a private agency or organization that facilitates the provision of such respite services;

29 (i) The operator or an employee of an early learning program as defined in rules adopted by the  
30 council; or

31 (j) The operator or an employee of a preschool recorded program or a school-age recorded pro-  
32 gram.

33 (11)(a) Information provided to a metropolitan service district organized under ORS chapter 268  
34 about the enrollment status of the persons described in subsection (10)(g) of this section shall be  
35 subject to a reciprocal agreement with the metropolitan service district. The agreement must pro-  
36 vide for the recovery of administrative, including direct and indirect, costs incurred by the office  
37 from participation in the agreement. Any moneys collected under this paragraph shall be deposited  
38 in the Child Care Fund established under ORS 329A.010.

39 (b) Information provided to a private agency or organization facilitating the provision of respite  
40 services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney  
41 under ORS 109.056 about the enrollment status of the persons described in subsection (10)(h) of this  
42 section shall be subject to an agreement with the private agency or organization. The agreement  
43 must provide for the recovery of administrative, including direct and indirect, costs incurred by the  
44 office from participation in the agreement. Any moneys collected under this paragraph shall be de-  
45 posited in the Child Care Fund established under ORS 329A.010.

1 (c) Information provided to a private agency or organization about the enrollment status of the  
 2 persons described in subsection (10)(i) of this section shall be subject to an agreement with the pri-  
 3 vate agency or organization. The agreement must provide for the recovery of administrative, in-  
 4 cluding direct and indirect, costs incurred by the office from participation in the agreement. Any  
 5 moneys collected under this paragraph shall be deposited in the Child Care Fund established under  
 6 ORS 329A.010.

7 **SECTION 4.** ORS 329A.030, as amended by section 26, chapter 27, Oregon Laws 2022, and sec-  
 8 tion 1, chapter 90, Oregon Laws 2022, is amended to read:

9 329A.030. (1) The Office of Child Care shall establish a Central Background Registry and may  
 10 maintain information in the registry through electronic records systems.

11 (2)(a) A subject individual described in subsection (10)(a), (c) or (d) of this section shall apply  
 12 to and must be enrolled in the Central Background Registry prior to the provision of care.

13 (b) An individual who has been the subject of a founded or substantiated report of child abuse  
 14 shall apply to and must be enrolled in the Central Background Registry prior to providing any of  
 15 the types of care identified in ORS 329A.250 (4)(b)(A), (G) or (H) if:

16 (A) The child abuse occurred on or after January 1, 2017, and involved a child who died or  
 17 suffered serious physical injury, as defined in ORS 161.015; or

18 (B) The child abuse occurred on or after September 1, 2019, and involved any child for whom  
 19 the individual was providing child care, as defined in ORS 329A.250 (4), or care identified in ORS  
 20 329A.250 (4)(b)(A), (C), (F), (G), (H) or (I).

21 (c) Notwithstanding paragraph (a) of this subsection, an individual described in paragraph (b)(B)  
 22 of this subsection is not required to enroll in the Central Background Registry if:

23 (A) More than seven years has elapsed since the date of the child abuse determination[.]; or

24 (B) **The individual was under 18 years of age at the time of the incident that resulted in**  
 25 **the child abuse determination, unless:**

26 (i) **The incident occurred in a situation where the individual was in a position of respon-**  
 27 **sibility or authority in relation to the victim, including when the individual was the victim's**  
 28 **parent, nanny, child care provider, peer tutor or mentor;**

29 (ii) **The incident constituted sexual abuse, as defined in ORS 418.257 or, if the child abuse**  
 30 **determination was made under ORS 419B.005 to 419B.050, as described in ORS chapter 163;**  
 31 **or**

32 (iii) **The incident resulted in criminal charges against the individual.**

33 (3)(a) Upon receiving an application for enrollment in the Central Background Registry, the of-  
 34 fice shall complete:

35 (A) A criminal records check under ORS 181A.195;

36 (B) A criminal records check of other registries or databases in accordance with rules adopted  
 37 by the Early Learning Council;

38 (C) A child abuse and neglect records check in accordance with rules adopted by the council;  
 39 and

40 (D) A foster care certification check and an adult protective services check in accordance with  
 41 rules adopted by the council.

42 (b) In addition to the information that the office is required to check under paragraph (a) of this  
 43 subsection, the office may consider any other information obtained by the office that the office, by  
 44 rule, determines is relevant to enrollment in the Central Background Registry.

45 (4) The office shall enroll the individual in the Central Background Registry if the individual:

1 (a) Is determined to have no criminal, child abuse and neglect, negative adult protective services  
2 or negative foster home certification history, or to have dealt with the issues and provided adequate  
3 evidence of suitability for the registry;

4 (b) Has paid the applicable fee established pursuant to ORS 329A.275; and

5 (c) Has complied with the rules of the Early Learning Council adopted pursuant to this section.

6 (5)(a) Notwithstanding subsections (3) and (4) of this section, the office may not enroll an indi-  
7 vidual in the Central Background Registry if:

8 (A) The individual has a disqualifying condition as defined in rules adopted by the council; or

9 (B) The individual is an exempt prohibited individual, as provided by ORS 329A.252.

10 (b) If an individual prohibited from enrolling in the registry as provided by this subsection is  
11 enrolled in the registry, the office shall remove the individual from the registry.

12 (6)(a) The office may conditionally enroll an individual in the Central Background Registry  
13 pending the results of a nationwide criminal records check through the Federal Bureau of Investi-  
14 gation if the individual has successfully completed the criminal records check and the child abuse  
15 and neglect records check in this state and in the state of the individual's residence, if other than  
16 Oregon.

17 (b) The office may enroll an individual in the registry subject to limitations identified in rules  
18 adopted by the council.

19 (7) An enrollment in the Central Background Registry may be renewed upon application to the  
20 office, payment of the fee established pursuant to ORS 329A.275 and compliance with rules adopted  
21 by the Early Learning Council pursuant to this section. However, an individual who is determined  
22 to be ineligible for enrollment in the registry after the date of initial enrollment shall be removed  
23 or suspended from the registry by the office.

24 (8)(a) A child care facility, preschool recorded program or school-age recorded program may not  
25 hire or employ an individual if the individual is not enrolled in the Central Background Registry.

26 (b) Notwithstanding paragraph (a) of this subsection, a child care facility, preschool recorded  
27 program or school-age recorded program may employ on a probationary basis an individual who is  
28 conditionally enrolled in the Central Background Registry.

29 (9) The Early Learning Council may adopt any rules necessary to carry out the purposes of this  
30 section, including but not limited to rules regarding expiration and renewal periods and limitations  
31 related to the subject individual's enrollment in the Central Background Registry.

32 (10) As used in this section, "subject individual" means:

33 (a) A subject individual as defined by the Early Learning Council by rule;

34 (b) An individual subject to subsection (2)(b) of this section;

35 (c) A person who applies to be:

36 (A) The operator or an employee of a child care or treatment program;

37 (B) The operator or an employee of an Oregon prekindergarten program under ORS 329.170 to  
38 329.200;

39 (C) The operator or an employee of a federal Head Start program regulated by the United States  
40 Department of Health and Human Services;

41 (D) An individual in a child care facility, preschool recorded program or school-age recorded  
42 program who may have unsupervised contact with children, as determined by the council by rule;

43 (E) A contractor or an employee of the contractor who provides early childhood special educa-  
44 tion or early intervention services pursuant to ORS 343.455 to 343.534;

45 (F) A child care provider who is required to be enrolled in the Central Background Registry by

1 any state agency;

2 (G) A contractor, employee or volunteer of a metropolitan service district organized under ORS  
 3 chapter 268 who may have unsupervised contact with children and who is required to be enrolled  
 4 in the Central Background Registry by the metropolitan service district;

5 (H) A provider of respite services, as defined in ORS 418.205, for parents pursuant to a properly  
 6 executed power of attorney under ORS 109.056 who is providing respite services as a volunteer with  
 7 a private agency or organization that facilitates the provision of such respite services;

8 (I) The operator or an employee of an early learning program as defined in rules adopted by the  
 9 council; or

10 (J) The operator or an employee of a preschool recorded program or a school-age recorded  
 11 program; or

12 (d)(A) An individual who operates a subsidized care facility;

13 (B) An individual who has attained 18 years of age and resides in a subsidized care facility; or

14 (C) An individual in a subsidized care facility who has attained 18 years of age and who may  
 15 have unsupervised contact with children, as determined by the council by rule.

16 (11)(a) Information provided to a metropolitan service district organized under ORS chapter 268  
 17 about the enrollment status of the persons described in subsection (10)(c)(G) of this section shall be  
 18 subject to a reciprocal agreement with the metropolitan service district. The agreement must pro-  
 19 vide for the recovery of administrative, including direct and indirect, costs incurred by the office  
 20 from participation in the agreement. Any moneys collected under this paragraph shall be deposited  
 21 in the Child Care Fund established under ORS 329A.010.

22 (b) Information provided to a private agency or organization facilitating the provision of respite  
 23 services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney  
 24 under ORS 109.056 about the enrollment status of the persons described in subsection (10)(c)(H) of  
 25 this section shall be subject to an agreement with the private agency or organization. The agree-  
 26 ment must provide for the recovery of administrative, including direct and indirect, costs incurred  
 27 by the office from participation in the agreement. Any moneys collected under this paragraph shall  
 28 be deposited in the Child Care Fund established under ORS 329A.010.

29 (c) Information provided to a private agency or organization about the enrollment status of the  
 30 persons described in subsection (10)(c)(I) of this section shall be subject to an agreement with the  
 31 private agency or organization. The agreement must provide for the recovery of administrative, in-  
 32 cluding direct and indirect, costs incurred by the office from participation in the agreement. Any  
 33 moneys collected under this paragraph shall be deposited in the Child Care Fund established under  
 34 ORS 329A.010.

35 **SECTION 5. (1) Section 1 of this 2023 Act applies to findings in abuse investigations on**  
 36 **or after the effective date of this 2023 Act.**

37 **(2) Section 2 of this 2023 Act and the amendments to ORS 329A.030 by sections 3 and 4**  
 38 **of this 2023 Act apply to background checks completed on or after the effective date of this**  
 39 **2023 Act.**

40 **SECTION 6. This 2023 Act being necessary for the immediate preservation of the public**  
 41 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**  
 42 **on its passage.**