

SENATE AMENDMENTS TO SENATE BILL 790

By COMMITTEE ON HUMAN SERVICES

April 11

1 On page 1 of the printed bill, line 2, after the first semicolon insert “creating new provisions;”
2 and after “419B.005” insert “and 419B.019”.

3 After line 4, insert:

4 **“SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS 339.285 to**
5 **339.303.**

6 **“SECTION 2. (1) As used in this section:**

7 **“(a) ‘Behavior intervention plan’ has the meaning given that term in ORS 343.154.**

8 **“(b) ‘504 Plan’ means an education plan developed for a student in accordance with sec-**
9 **tion 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.**

10 **“(c) ‘Individualized education program’ has the meaning given that term in ORS 343.035.**

11 **“(2) When the Department of Human Services conducts an investigation under ORS**
12 **419B.019 of a report of suspected abuse of a student in a public education program and the**
13 **department finds that the report of abuse is founded, the department shall determine that**
14 **the public education program is responsible for the abuse if:**

15 **“(a) The abuse involved the use of restraint or seclusion and the public education pro-**
16 **gram failed to ensure that a sufficient number of personnel, appropriately trained in the use**
17 **of restraint and seclusion, were available to comply with the individualized education pro-**
18 **grams, 504 Plans and behavior intervention plans of the students who were present in the**
19 **setting where the abuse occurred at the time the abuse occurred;**

20 **“(b)(A) The abuse involved the use of restraint, seclusion or neglect and the public edu-**
21 **cation program failed to provide the personnel involved with the restraint, seclusion or neg-**
22 **lect with access to the student’s individualized education program, 504 Plan or behavior**
23 **intervention program or failed to provide the personnel with adequate training to appropri-**
24 **ately perform health-related or personal care tasks; and**

25 **“(B) The personnel were not aware of, and failed to provide the services and supports in**
26 **the manner required by, the student’s individualized education program, 504 Plan or behavior**
27 **plan;**

28 **“(c) The abuse involved the use of restraint or seclusion, a superior ordered personnel**
29 **to impose the restraint or seclusion, and the personnel who imposed the restraint or seclu-**
30 **sion reasonably believed that failure to comply with the order would result in termination**
31 **or discipline; or**

32 **“(d)(A) The abuse involved the use of restraint or seclusion and the public education**
33 **program failed to ensure that the personnel who imposed the restraint or seclusion were**
34 **appropriately trained in the use of restraint and seclusion;**

35 **“(B) The personnel who imposed the restraint or seclusion reasonably believed that fail-**

1 **ure to impose the restraint or seclusion would lead to serious bodily injury of the student**
2 **or others; and**

3 **“(C) If the personnel imposed a restraint, it was not a type of restraint prohibited under**
4 **ORS 339.288.”.**

5 In line 5, delete “1” and insert “3”.

6 On page 2, line 10, delete “student” and insert “child” and delete “ORS 339.285 to 339.303
7 and” and insert “ORS 339.285, 339.288, 339.291, 339.303 or”.

8 In line 12, delete “student” and insert “child”.

9 On page 4, line 4, delete “2” and insert “4”.

10 In line 39, delete “student” and insert “child” and delete “ORS 339.285 to 339.303 and” and in-
11 sert “ORS 339.285, 339.288, 339.291, 339.303 or”.

12 In line 41, delete “student” and insert “child”.

13 On page 6, after line 32, insert:

14 **“SECTION 5.** ORS 419B.005, as amended by section 8, chapter 90, Oregon Laws 2022, and sec-
15 tion 3 of this 2023 Act, is amended to read:

16 “419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

17 “(1)(a) ‘Abuse’ means:

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

21 “(B) Any mental injury to a child, which shall include only observable and substantial impair-
22 ment of the child’s mental or psychological ability to function caused by cruelty to the child, with
23 due regard to the culture of the child.

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

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

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

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

35 “(ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described
36 in ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor
37 as described in ORS 163.413 or to engage in commercial sexual solicitation as described in ORS
38 167.008.

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

42 “(G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm
43 to the child’s health or welfare.

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

45 “(I) Permitting a person under 18 years of age to enter or remain in or upon premises where

1 methamphetamines are being manufactured.

2 “(J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, or to the unlawful
3 manufacturing of a cannabinoid extract, as defined in ORS 475C.009, that subjects a child to a sub-
4 stantial risk of harm to the child’s health or safety.

5 “[~~(K)~~ *The restraint or seclusion of a child in violation of ORS 339.285, 339.288, 339.291, 339.303*
6 *or 339.308.*]

7 “[~~(L)~~] **(K)** The infliction of corporal punishment on a child in violation of ORS 339.250 (9).

8 “(b) ‘Abuse’ does not include reasonable discipline unless the discipline results in one of the
9 conditions described in paragraph (a) of this subsection.

10 “(2) ‘Child’ means an unmarried person who:

11 “(a) Is under 18 years of age; or

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

14 “(3) ‘Higher education institution’ means:

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

16 “(b) A public university listed in ORS 352.002;

17 “(c) The Oregon Health and Science University; and

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

19 “(4)(a) ‘Investigation’ means a detailed inquiry into or assessment of the safety of a child alleged
20 to have experienced abuse.

21 “(b) ‘Investigation’ does not include screening activities conducted upon the receipt of a report.

22 “(5) ‘Law enforcement agency’ means:

23 “(a) A city or municipal police department.

24 “(b) A county sheriff’s office.

25 “(c) The Oregon State Police.

26 “(d) A police department established by a university under ORS 352.121 or 353.125.

27 “(e) A county juvenile department.

28 “(6) ‘Public or private official’ means:

29 “(a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician,
30 including any intern or resident.

31 “(b) Dentist.

32 “(c) School employee, including an employee of a higher education institution.

33 “(d) Licensed practical nurse, registered nurse, nurse practitioner, nurse’s aide, home health
34 aide or employee of an in-home health service.

35 “(e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning
36 Division, Department of Education, Youth Development Division, Office of Child Care, the Oregon
37 Youth Authority, a local health department, a community mental health program, a community de-
38 velopmental disabilities program, a county juvenile department, a child-caring agency as that term
39 is defined in ORS 418.205 or an alcohol and drug treatment program.

40 “(f) Peace officer.

41 “(g) Psychologist.

42 “(h) Member of the clergy.

43 “(i) Regulated social worker.

44 “(j) Optometrist.

45 “(k) Chiropractor.

1 “(L) Certified provider of foster care, or an employee thereof.
2 “(m) Attorney.
3 “(n) Licensed professional counselor.
4 “(o) Licensed marriage and family therapist.
5 “(p) Firefighter or emergency medical services provider.
6 “(q) A court appointed special advocate, as defined in ORS 419A.004.
7 “(r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.
8 “(s) An elected official of a branch of government of this state or a state agency, board, com-
9 mission or department of a branch of government of this state or of a city, county or other political
10 subdivision in this state.
11 “(t) Physical, speech or occupational therapist.
12 “(u) Audiologist.
13 “(v) Speech-language pathologist.
14 “(w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
15 gations or discipline by the commission.
16 “(x) Pharmacist.
17 “(y) An operator of a preschool recorded program under ORS 329A.255.
18 “(z) An operator of a school-age recorded program under ORS 329A.255.
19 “(aa) Employee of a private agency or organization facilitating the provision of respite services,
20 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS
21 109.056.
22 “(bb) An employee of a public or private organization providing child-related services or activ-
23 ities:
24 “(A) Including but not limited to an employee of a:
25 “(i) Youth group or center;
26 “(ii) Scout group or camp;
27 “(iii) Summer or day camp;
28 “(iv) Survival camp; or
29 “(v) Group, center or camp that is operated under the guidance, supervision or auspices of a
30 religious, public or private educational system or a community service organization; and
31 “(B) Excluding an employee of a qualified victim services program as defined in ORS 147.600
32 that provides confidential, direct services to victims of domestic violence, sexual assault, stalking
33 or human trafficking.
34 “(cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete,
35 if compensated and if the athlete is a child.
36 “(dd) Personal support worker, as defined in ORS 410.600.
37 “(ee) Home care worker, as defined in ORS 410.600.
38 “(ff) Animal control officer, as defined in ORS 609.500.
39 “(gg) Member of a school district board, an education service district board or a public charter
40 school governing body.
41 “(hh) An individual who is paid by a public body, in accordance with ORS 430.215, to provide
42 a service identified in an individualized written service plan of a child with a developmental disa-
43 bility.
44 “(ii) Referral agent, as defined in ORS 418.351.
45 “**SECTION 6.** ORS 419B.005, as amended by section 58, chapter 631, Oregon Laws 2021, section

1 16, chapter 27, Oregon Laws 2022, section 7, chapter 90, Oregon Laws 2022, and section 4 of this
2 2023 Act, is amended to read:

3 “419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

4 “(1)(a) ‘Abuse’ means:

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

8 “(B) Any mental injury to a child, which shall include only observable and substantial impair-
9 ment of the child’s mental or psychological ability to function caused by cruelty to the child, with
10 due regard to the culture of the child.

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

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

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

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

22 “(ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described
23 in ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor
24 as described in ORS 163.413 or to engage in commercial sexual solicitation as described in ORS
25 167.008.

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

29 “(G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm
30 to the child’s health or welfare.

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

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

34 “(J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, or to the unlawful
35 manufacturing of a cannabinoid extract, as defined in ORS 475C.009, that subjects a child to a sub-
36 stantial risk of harm to the child’s health or safety.

37 “[*(K) The restraint or seclusion of a child in violation of ORS 339.285, 339.288, 339.291, 339.303*
38 *or 339.308.*]

39 “[*(L)*] **(K)** The infliction of corporal punishment on a child in violation of ORS 339.250 (9).

40 “(b) ‘Abuse’ does not include reasonable discipline unless the discipline results in one of the
41 conditions described in paragraph (a) of this subsection.

42 “(2) ‘Child’ means an unmarried person who:

43 “(a) Is under 18 years of age; or

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

1 “(3) ‘Higher education institution’ means:
2 “(a) A community college as defined in ORS 341.005;
3 “(b) A public university listed in ORS 352.002;
4 “(c) The Oregon Health and Science University; and
5 “(d) A private institution of higher education located in Oregon.
6 “(4)(a) ‘Investigation’ means a detailed inquiry into or assessment of the safety of a child alleged
7 to have experienced abuse.
8 “(b) ‘Investigation’ does not include screening activities conducted upon the receipt of a report.
9 “(5) ‘Law enforcement agency’ means:
10 “(a) A city or municipal police department.
11 “(b) A county sheriff’s office.
12 “(c) The Oregon State Police.
13 “(d) A police department established by a university under ORS 352.121 or 353.125.
14 “(e) A county juvenile department.
15 “(6) ‘Public or private official’ means:
16 “(a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician,
17 including any intern or resident.
18 “(b) Dentist.
19 “(c) School employee, including an employee of a higher education institution.
20 “(d) Licensed practical nurse, registered nurse, nurse practitioner, nurse’s aide, home health
21 aide or employee of an in-home health service.
22 “(e) Employee of the Department of Human Services, Oregon Health Authority, Department of
23 Early Learning and Care, Department of Education, Youth Development Division, Office of Child
24 Care, the Oregon Youth Authority, a local health department, a community mental health program,
25 a community developmental disabilities program, a county juvenile department, a child-caring
26 agency as that term is defined in ORS 418.205 or an alcohol and drug treatment program.
27 “(f) Peace officer.
28 “(g) Psychologist.
29 “(h) Member of the clergy.
30 “(i) Regulated social worker.
31 “(j) Optometrist.
32 “(k) Chiropractor.
33 “(L) Certified provider of foster care, or an employee thereof.
34 “(m) Attorney.
35 “(n) Licensed professional counselor.
36 “(o) Licensed marriage and family therapist.
37 “(p) Firefighter or emergency medical services provider.
38 “(q) A court appointed special advocate, as defined in ORS 419A.004.
39 “(r) A child care provider registered or certified under ORS 329A.250 to 329A.450.
40 “(s) An elected official of a branch of government of this state or a state agency, board, com-
41 mission or department of a branch of government of this state or of a city, county or other political
42 subdivision in this state.
43 “(t) Physical, speech or occupational therapist.
44 “(u) Audiologist.
45 “(v) Speech-language pathologist.

1 “(w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
2 gations or discipline by the commission.

3 “(x) Pharmacist.

4 “(y) An operator of a preschool recorded program under ORS 329A.255.

5 “(z) An operator of a school-age recorded program under ORS 329A.255.

6 “(aa) Employee of a private agency or organization facilitating the provision of respite services,
7 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS
8 109.056.

9 “(bb) An employee of a public or private organization providing child-related services or activ-
10 ities:

11 “(A) Including but not limited to an employee of a:

12 “(i) Youth group or center;

13 “(ii) Scout group or camp;

14 “(iii) Summer or day camp;

15 “(iv) Survival camp; or

16 “(v) Group, center or camp that is operated under the guidance, supervision or auspices of a
17 religious, public or private educational system or a community service organization; and

18 “(B) Excluding an employee of a qualified victim services program as defined in ORS 147.600
19 that provides confidential, direct services to victims of domestic violence, sexual assault, stalking
20 or human trafficking.

21 “(cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete,
22 if compensated and if the athlete is a child.

23 “(dd) Personal support worker, as defined in ORS 410.600.

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

25 “(ff) Animal control officer, as defined in ORS 609.500.

26 “(gg) Member of a school district board, an education service district board or a public charter
27 school governing body.

28 “(hh) An individual who is paid by a public body, in accordance with ORS 430.215, to provide
29 a service identified in an individualized written service plan of a child with a developmental disa-
30 bility.

31 “(ii) Referral agent, as defined in ORS 418.351.

32 “**SECTION 7.** ORS 419B.019 is amended to read:

33 “419B.019. (1) As used in this section:

34 “(a) ‘Agent’ means a person who:

35 “(A) Acts as an agent for an education provider in a manner that requires the person to have
36 direct, unsupervised contact with children; and

37 “(B) Interacts with a child because of the person’s status as an agent for an education provider.

38 “(b) ‘Contractor’ means a person who:

39 “(A) Provides services to an education provider under a contract in a manner that requires the
40 person to have direct, unsupervised contact with children; and

41 “(B) Interacts with a child because of the person’s status as a contractor for an education pro-
42 vider.

43 “(c) ‘Education provider’ has the meaning given that term in ORS 339.370.

44 “(d) ‘School employee’ means a person who:

45 “(A) Is an employee of an education provider; and

1 “(B) Interacts with a child because of the person’s status as an employee of an education pro-
2 vider.

3 “(e) ‘Volunteer’ means a person who:

4 “(A) Acts as a volunteer for an education provider in a manner that requires the person to have
5 direct, unsupervised contact with children; and

6 “(B) Interacts with a child because of the person’s status as a volunteer of an education pro-
7 vider.

8 “(2) A law enforcement agency or the Department of Human Services must conduct an investi-
9 gation as provided by ORS 419B.020 if the law enforcement agency or department receives a report
10 of abuse that involves a child and a person who is a school employee, contractor, agent or volunteer.

11 “(3) A law enforcement agency shall notify the department as provided by ORS 419B.015 if the
12 law enforcement agency receives a report described in subsection (2) of this section. The department
13 shall notify a law enforcement agency as provided by ORS 419B.015 if the department receives a
14 report described in subsection (2) of this section. The department shall ensure that an investigation
15 related to the report is conducted if the report is not investigated by a law enforcement agency.

16 “(4)(a) Within three business days of receiving a report or notification of a report described in
17 subsection (2) of this section, the department shall notify:

18 “(A) The appropriate education provider to ensure the safety of the child, if the department
19 believes the report of suspected abuse involves the child and a person who is a school employee,
20 contractor, agent or volunteer;

21 “(B) The Teacher Standards and Practices Commission, if the department believes the school
22 employee, contractor, agent or volunteer is licensed, registered or certified by the commission; or

23 “(C) The Department of Education, if the Department of Human Services believes the report of
24 suspected abuse:

25 “(i) Occurred in a school or was related to a school-sponsored activity; or

26 “(ii) Involves a child and a person who is a school employee, contractor, agent or volunteer.

27 “(b) For the purpose of notification made under this subsection, the Department of Human Ser-
28 vices may not disclose the name and address of, and other identifying information about, the person
29 who made the report, but the department shall make available any information necessary to ensure
30 the safety of the child, including the name of the school and the name of the person who may have
31 conducted the suspected abuse. Except as provided by ORS 339.389, any person or entity to whom
32 notification is made under this subsection may not release any information not authorized by this
33 subsection.

34 “(c) When the Department of Education receives notification under this subsection, the depart-
35 ment shall act under, and is subject to, ORS 339.389.

36 “(5) **The Department of Human Services shall submit a report on the first day of every**
37 **calendar quarter to the committees or interim committees of the Legislative Assembly re-**
38 **lated to child welfare, for the purposes of public review and oversight of the quality and**
39 **safety of education providers. Information provided in reports under this subsection may not**
40 **contain the name of a child or any identifying information about a child. The reports must**
41 **contain all of the following information about each investigation described in subsection (2)**
42 **of this section that resulted in a finding, during the preceding quarter, that the report of**
43 **abuse was substantiated:**

44 “(a) **The name of the education provider where the department conducted the investi-**
45 **gation;**

1 “(b) The approximate date that the abuse occurred;
2 “(c) The nature of the abuse and a brief narrative description of the abuse that occurred;
3 **and**
4 “(d) Whether a reportable injury, sexual abuse or death resulted from the abuse.
5 “[(5)] (6) The department [*of Human Services*] may adopt any rules necessary for the adminis-
6 tration of this section.
7 “**SECTION 8. (1) Notwithstanding ORS 419B.005 (1)(a)(K), at the conclusion of an inves-**
8 **tigation under ORS 419B.020, the Department of Human Services may not substantiate an**
9 **allegation of abuse against personnel of a public education program who have not been**
10 **trained to the standard established in ORS 339.300 but who impose a restraint on a student**
11 **if:**
12 “(a) The restraint is imposed in response to an imminent risk of serious bodily injury of
13 any person;
14 “(b) The person imposing the restraint does not act with reckless disregard for student
15 safety; and
16 “(c) The restraint does not impose a significant risk of impeding the student’s breathing.
17 “(2) Nothing in this section prohibits the department from finding that the public edu-
18 cation program is responsible under section 2 of this 2023 Act for abuse arising from the
19 untrained personnel’s inappropriate use of restraint.
20 “(3) As used in this section, ‘public education program’ and ‘restraint’ have the meanings
21 given those terms in ORS 339.285.
22 “**SECTION 9.** Section 8 of this 2023 Act is repealed on June 30, 2028.
23 “**SECTION 10. (1)** Section 2 of this 2023 Act and the amendments to ORS 419B.005 by
24 sections 3 and 4 of this 2023 Act apply to incidents occurring on or after July 1, 2023.
25 “(2) The amendments to ORS 419B.005 by sections 5 and 6 of this 2023 Act apply to inci-
26 dents occurring on or after July 1, 2028.
27 “(3) The quarterly report described in the amendments to ORS 419B.019 by section 7 of
28 this 2023 Act, is first due on January 1, 2024.
29 “**SECTION 11.** The amendments to ORS 419B.005 by sections 5 and 6 of this 2023 Act be-
30 come operative on July 1, 2028.”.
31 In line 33, delete “3” and insert “12”.
32
