



Bipartisan Policy Center

# Statutory Analysis Pursuant to Oregon HB 4086 Regarding ODHS Jurisdiction

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# I. Introduction

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The Oregon Department of Human Services (ODHS) asked the Bipartisan Policy Center's Child Welfare Initiative for help with background research after the passage of Oregon HB 4086. The bill required ODHS to contract with a facilitator and appoint an advisory committee to study and make recommendations regarding jurisdiction of child abuse investigations conducted by ODHS, recommend amendments to child abuse definitions, and identify national best practices for investigations of child abuse.

This report is intended to support the work of the facilitator and the advisory group by analyzing relevant Oregon statutes governing ODHS jurisdiction and comparing them with statutes and policies of other states, including, but not limited to, the comparison states of Connecticut, Iowa, and Oklahoma. These states were selected for comparison based on similarity to Oregon in terms of child population and rates of child poverty. The report does not make recommendations or identify best practices. These will be developed by the facilitators, the advisory group, and other technical assistance providers.

Oregon's effort takes place in the context of nationwide state legislative interest in limiting unnecessary child welfare involvement in families that do not pose risks to child safety by:

- Narrowing definitions of neglect.
- Strengthening due process protections and procedural fairness for families subject to child protective services (CPS) investigations.
- Creating alternative pathways for families to receive services.
- Reducing the effect of racial and socioeconomic bias in reporting and investigating reports of child maltreatment.
- Improving administrative and legislative oversight of child welfare systems.

Such state policymaker interest is clear in the volume of legislation introduced and enacted over the past few years, summarized and categorized in a recent BPC report, "Bipartisanship Across the Nation: A Review of State Child Welfare Legislation."<sup>1</sup>

## II. Summary of Key Findings

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Based on comparison of Oregon's statutes and data to other state and federal sources, this report finds:

- Maltreatment Definitions
  - Oregon is like other states in its definitions of “negligent treatment” and “threatened harm.” However, these definitions use a lower standard for risk of harm than the Child Abuse Prevention and Treatment Act’s definition of “child abuse and neglect.”
  - Oregon’s definition of “negligent treatment” focuses on material neglect but does not have a statutory exception that seeks to differentiate neglect from conditions of poverty, unlike many other states.
  - Oregon’s definition of “mental injury” differs from other states by not requiring that such injury be observable.
  - Unlike other states that have a single definition of “institutional abuse,” Oregon has a complete set of abuse definitions that apply only to children in care.
- Perpetrator Jurisdiction
  - Oregon law does not limit ODHS jurisdiction to alleged perpetrators with responsibility for care of a child, unlike every other state
- Due Process
  - Oregon’s due process protections at first contact with an alleged perpetrator are not as comprehensive as some other states and Oregon uses a low standard of evidence for founded dispositions of abuse.

# III. Current Scope of mandatory child abuse investigations that must be conducted by the department of human services

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## A. HOW DOES OREGON DEFINE CHILD ABUSE COMPARED TO OTHER STATES AND CAPTA?

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Oregon's definitions of child abuse are in the following sections of the Oregon Revised Statutes (ORS):

- ORS 419B.005: definition of "abuse."
- ORS 418.257: definition of "abuse" of children in care
- ORS 163.505 to 163.580: definitions of certain types of child maltreatment in the criminal code under Offenses Against Family.

The Oregon Administrative Rules and the ODHS Child Welfare Procedure Manual contain more detailed descriptions of the types of behaviors that constitute child maltreatment. The analysis here focuses primarily on statutory definitions, both in Oregon and comparison states.

We also compare the relevant Oregon statutes with the definition of child abuse and neglect in the CAPTA: "any recent act or failure to act on the part of a parent or caregiver that results in death, serious physical or emotional harm, sexual abuse, or exploitation, or an act or failure to act that presents an imminent risk of serious harm."<sup>2</sup>

### 1. "Abuse" in ORS 419B.005

"Abuse" in the Oregon child welfare statutes is an umbrella term that includes a range of child maltreatment types. This analysis focuses primarily on "negligent treatment" and "threatened harm" because these types of maltreatment are the most challenging to define and because together, they constitute over 80% of maltreatment incidents in Oregon, according to the ODHS 2022 Child Welfare Data Book. We also examine "mental injury" and

“sexual abuse” to the extent that other state definitions may inform treatment of child-on-child sexual abuse, which is also the subject of inquiry pursuant to HB 4086.

**a) “Negligent Treatment”**

In FY 2022, neglect cases constituted 35.4% of abuse incidents in Oregon, compared to 74.3% nationally. In Oregon law, negligent treatment of a child is defined as “including but not limited to the failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child.”<sup>3</sup> Comparing this definition to CAPTA, two points are worth noting. First, Oregon is unique in that there is no mention of a parent, caretaker, or other person responsible for a child’s welfare—see discussion in the following section on perpetrator jurisdiction. Second, the phrase “likely to endanger” appears to be a lower standard than CAPTA’s “imminent risk of serious harm.” Oregon is not unusual in this regard.<sup>4</sup>

Turning to neglect definitions in other states, failure to provide material necessities is the type of neglect most found in state statutes, with 48 states and the District of Columbia including it in their child welfare laws. The following table shows the types of neglect that most often appear in state child welfare statutes.

Type of Neglect	Number of States
Material neglect (food, clothing, shelter, etc.)	49*
Abandonment	48
Medical neglect	48*
Failure to supervise	45
Failure to protect against harm by third party	39
Exposure to drugs or chemicals (in utero or during manufacturing)	36*
Educational neglect	35
Neglect due to parental incapacity	21
Harmful environment	17
Neglect due to parental substance abuse	15

\*Including Oregon  
 Source: Author

Although most of these types of neglect are not expressly included in Oregon’s definition of “negligent treatment,” section 419B.005 includes exposure to methamphetamine manufacturing and exposure to a controlled substance in its definition of “abuse.” The Oregon Administrative Rules also include definitions of chronic neglect, lack of supervision, desertion, and psychological

neglect, among others.<sup>5</sup> Child abandonment is a crime under ORS 163.535. Educational neglect is included in the crime of failing to supervise a child under ORS 163.577 and failure to supervise appears to fall within the definition child neglect in the second degree, under which it is a crime to leave a child unattended in or at any place for a period of time as may be likely to endanger the health or welfare of such child.<sup>6</sup> Finally, failure to protect is included in the definition of neglect that applies to children in care.<sup>7</sup>

The comparison states reflect a range of approaches to defining neglect:

- Connecticut: “A child may be found “neglected” who, for reasons other than being impoverished, (A) has been abandoned, (B) is being denied proper care and attention physically, educationally, emotionally or morally, or (C) is being permitted to live under conditions, circumstances or associations injurious to the well-being of the child.”<sup>8</sup>
- Iowa: The following definitions appear in statute:
  - “Neglect’ means the failure on the part of a person responsible for the care of a child to provide for adequate food, shelter, clothing, medical or mental health treatment, supervision, or other care necessary for the child’s health and welfare when financially able to do so or when offered financial or other reasonable means to do so.”<sup>9</sup>
  - “Child abuse” or “abuse” means:
    - (4) (a) The failure on the part of a person responsible for the care of a child to provide for the adequate food, shelter, clothing, medical or mental health treatment, supervision, or other care necessary for the child’s health and welfare when financially able to do so or when offered financial or other reasonable means to do so and the failure occurred within five years of a report.
    - (b) For the purposes of subparagraph division (a), failure to provide for the adequate supervision of a child means the person failed to provide proper supervision of a child that a reasonable and prudent person would exercise under similar facts and circumstances and the failure resulted in direct harm or created a risk of harm to the child.<sup>10</sup>
- Iowa also defines “child in need of assistance” to include a range of neglectful situations, including abandonment and failure to provide adequate care due to a parent’s or guardian’s mental condition, imprisonment, or drug and alcohol abuse.<sup>11</sup>
- Oklahoma distinguishes between ordinary neglect, including the failure to provide adequate nurturance, affection, food, clothing, shelter, sanitation, hygiene, appropriate education, medical/dental/behavioral health care, supervision, and special care made necessary to address the child’s physical or mental condition, and “heinous and shocking neglect,” which includes chronic neglect, defined as a “persistent pattern of family functioning in

which the caregiver has not met or sustained the basic needs of the a child which results in harm,” neglect that has resulted in a diagnosis of failure to thrive, and an act or failure to act that results in the death or near death of a child or sibling or other serious harm.<sup>12</sup>

A recent scan of introduced and enacted state child welfare legislation revealed a high level of interest on the part of legislators in changing the definition of neglect.<sup>13</sup> Although a few bills would have expanded the definition, the majority intended to narrow it. Legislators proposed several strategies to accomplish this, such as clarifying the level of risk to a child posed by neglect, limiting the use of subjective terminology, and creating exceptions to neglect that seek to differentiate it from poverty, allowing children to engage in independent activities, and parental use of marijuana. Texas, for example, enacted a suite of legislation in 2021 and 2023 that reportedly contributed to a significant reduction in out-of-home placements, including a change to the definition of “neglect” to add that a parent’s behavior must show “blatant disregard” for the consequences to the child and to require that a parent’s acts or failure to act result in harm or place the child in “immediate danger,” rather than “substantial risk” of harm. The law also excludes from criteria for neglect allowing the child to engage in age-appropriate independent activities.<sup>14</sup>

Whether to adopt a basic definition of neglect, leaving it to the child welfare agency to elaborate in administrative rules or agency policy, or to adopt a more expansive definition, is a policy choice with arguments on both sides. On one hand, more specific statutes reflect community values as expressed by elected representatives accountable to voters. On the other hand, child welfare agencies, as experts in child maltreatment, might be afforded much discretion to define abuse and neglect to reflect the latest research and address changing societal conditions and needs.

Another policy choice is allocation of neglect definitions between child welfare statutes and the criminal code. As noted above, the Oregon criminal statutes penalize forms of child neglect, such as failure to supervise and educational neglect, that are not reflected in the child welfare statutes, which could pose jurisdictional issues. A thorough review and comparison of Oregon’s criminal child neglect statutes with those of other states is outside the scope of this review.

Finally, most states have defined exceptions to neglect, the most common being failure to provide necessities due to poverty, spiritual treatment exceptions to medical neglect, and infant safe haven exceptions to child abandonment. Like Texas, a few states have also adopted “free range parenting” exceptions to supervisory neglect, which excepts from the definition of neglect allowing a child to engage in age-appropriate independent activities. Oregon has only one exception in its child welfare statutes, which excludes reasonable discipline from the definition of abuse.<sup>15</sup> The criminal code contains affirmative defenses to charges of abandonment (ORS 163.535) and failure to supervise (ORS 163.577).

**b) “Threatened Harm”**

The definition of “abuse” in ORS 419.005 includes “threatened harm to a child, which means subjecting the child to a substantial risk of harm to the child’s health or welfare.”<sup>16</sup> Compared to the CAPTA definition, “substantial risk” may be a lower threshold than “imminent risk” and there is no indication that the harm that is threatened must be “serious.”

“Threatened harm” accounts for the largest share (46.9%) of Oregon’s abuse dispositions, making Oregon somewhat of an outlier in terms of categories of maltreatment. States that use “threatened harm” as a disposition generally map this type of maltreatment to the “other” category in NCANDS. Three states report unusually high percentages of “other” as a maltreatment type: Florida (38.2%), Hawaii (90.2%), and Oregon (56.7%). The national percentage is 3.4%.<sup>17</sup>

Turning to other states, terms such as “threatened harm” and “threatened injury” are commonly found in state child welfare laws, but only a few states have defined them in statute.

- Minnesota
  - (a) “Threatened injury” means a statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse or mental injury.
  - (b) Threatened injury includes, but is not limited to, exposing a child to a person responsible for the child’s care, as defined in subdivision 17, who has:
    - (1) subjected a child to, or failed to protect a child from, an overt act or condition that constitutes egregious harm under subdivision 5 or a similar law of another jurisdiction;
    - (2) been found to be palpably unfit under section [260C.301, subdivision 1](#), paragraph (b), clause (4), or a similar law of another jurisdiction;
    - (3) committed an act that resulted in an involuntary termination of parental rights under section [260C.301](#), or a similar law of another jurisdiction; or
    - (4) committed an act that resulted in the involuntary transfer of permanent legal and physical custody of a child to a relative under section [260C.515, subdivision 4](#), or a similar law of another jurisdiction.
  - (c) A child is the subject of a report of threatened injury when the local welfare agency receives birth match data under section [260E.14, subdivision 4](#), from the Department of Human Services.<sup>18</sup>

- Oklahoma

“Harm or threatened harm to the health or safety of a child’ means any real or threatened physical, mental or emotional injury or damage to the body or mind that is not accidental including but not limited to sexual abuse, sexual exploitation, neglect, or dependency.”<sup>19</sup>

- Utah

“Threatened harm’ means actions, inactions, or credible verbal threats, indicating that the child is at an unreasonable risk of harm or neglect.”<sup>20</sup>

- Vermont

“Risk of harm” means a significant danger that a child will suffer serious harm by other than accidental means, which harm would be likely to cause physical injury, or sexual abuse, including as the result of:

- (A) a single, egregious act that has caused the child to be at significant risk of serious physical injury;
- (B) the production or preproduction of methamphetamines when a child is actually present;
- (C) failing to provide supervision or care appropriate for the child’s age or development and, as a result, the child is at significant risk of serious physical injury;
- (D) failing to provide supervision or care appropriate for the child’s age or development due to use of illegal substances, or misuse of prescription drugs or alcohol;
- (E) failing to supervise appropriately a child in a situation in which drugs, alcohol, or drug paraphernalia are accessible to the child; and,
- (F) a registered sex offender or person substantiated for sexually abusing a child residing with or spending unsupervised time with a child.<sup>21</sup>

- Wyoming

“Imminent danger’ includes threatened harm and means a statement, overt act, condition or status which represents an immediate and substantial risk of sexual abuse or physical or mental injury.”<sup>22</sup>

### c) “Mental injury”

In 2022, mental injury accounted for 1.2 percent of child maltreatment incidents in Oregon.<sup>23</sup> As defined in ORS 419B.005, abuse includes “any mental injury to a child, which shall include only cruel or unconscionable acts or statements made, or threatened to be made, to a child if the acts, statements or threats result in severe harm to the child’s psychological, cognitive, emotional

or social well-being and functioning.”<sup>24</sup> Use of the term “severe harm” is in line with CAPTA’s “serious harm.”

This definition was recently amended to delete references to “observable impairment” and “due regard to the culture of the child” and to replace “substantial impairment” with “severe harm.”<sup>25</sup>

In contrast to these recent amendments, most states’ definitions of “mental injury” retain a requirement that such injury be “observable,” “discernable” or otherwise evidenced by a change in behavior.<sup>26</sup> Several states require that mental injury be diagnosed by a qualified healthcare provider.<sup>27</sup>

**d) “sexual abuse”**

As stated above, Oregon is interested in definitions of sexual abuse that refer to child-on-child sexual abuse. Definitions in other states vary.

- Connecticut defines “family with service needs” as a family that includes a child who “is thirteen years of age or older and has engaged in sexual intercourse with another person and such other person is thirteen years of age or older and not more than two years older or younger than such child.” However, this provision only applies to children named in petitions filed on or before June 30, 2020.<sup>28</sup>
- Iowa includes in its definition of sexual abuse “the commission of a sexual offense with or to a child ... as a result of the acts or omissions of the person responsible for the care of the child or of a person who is fourteen years of age or older and resides in a home with the child.”<sup>29</sup>
- Pennsylvania provides that the definition of sexual abuse or exploitation “does not include consensual activities between a child who is 14 years of age or older and another person who is 14 years of age or older and whose age is within four years of the child’s age.”<sup>30</sup>
- Utah: “Sexual abuse” means:
  - (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an adult directed towards a child;
  - (b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation committed by a child towards another child if:
    - (i) there is an indication of force or coercion;
    - (ii) the children are related, as described in Subsection (34), including siblings by marriage while the marriage exists or by adoption;
    - (iii) there have been repeated incidents of sexual contact between the two children, unless the children are 14 years old or older; or
    - (iv) there is a disparity in chronological age of four or more years between the two children.

## 2. Abuse of a child in care

Oregon is the only state of which we are aware that has enacted in statute a complete set of child abuse and neglect definitions that apply only to a child in care. Abuse in care made up 0.4% of child maltreatment incidents in Oregon in 2022.<sup>31</sup> A child in care is defined as a person under 21 years of age who is residing in or receiving services from a child-caring agency or proctor foster home, a certified foster home, or a developmental disabilities residential facility.<sup>32</sup> The definition of “neglect” in that statute differs from the definition in ORS 419B.005 and the CAPTA definition in that it makes no reference to harm or risk of harm to a child. Neglect of a child in care is defined as “(a) failure to provide the care, supervision or services necessary to maintain the physical and mental health of a child in care, or (b) the failure of a child-caring agency, proctor foster home, certified foster home, developmental disabilities residential facility, caretaker or other person to make a reasonable effort to protect a child in care from abuse.”<sup>33</sup>

In place of a separate set of definitions applicable to children in care, at least 11 states have adopted definitions of “institutional abuse and neglect.” In general, these definitions incorporate by reference the definitions of abuse and neglect applicable to children generally but specify that the abuse or neglect must occur in a specified facility and/or be perpetrated by an employee or other person responsible for the child’s welfare within such facility.<sup>34</sup>

### **B. WHICH ALLEGED PERPETRATORS COME WITHIN ODHS JURISDICTION COMPARED TO OTHER STATES?**

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Except Oregon, every state specifies in statute the alleged perpetrators who come within the jurisdiction of the child welfare agency, typically persons who have care, custody or control of a child. In some states, statutes give the child welfare agency jurisdiction over anyone who commits sexual abuse or exploitation of a child, but limits jurisdiction in other cases, such as neglect, to persons responsible for a child’s welfare.<sup>35</sup> By contrast, Oregon statute requires ODHS or a law enforcement agency to immediately investigate a report of child abuse and “abuse” is defined without reference to a specified perpetrator.<sup>36</sup> The two exceptions to this lack of specificity are the statutes governing reports of abuse involving school personnel (ORS 419B.019) and abuse of children in care, which applies to a child-caring agency or proctor foster home, a certified foster home, and a developmental disabilities residential facility.<sup>37</sup>

Although the Oregon statute requires reports of abuse be investigated by ODHS “or a law enforcement agency,” ODHS interprets the statute as requiring it to investigate all screened in reports of abuse because “investigation” is defined in statute as “a detailed inquiry into or assessment of the safety of a

child alleged to have experienced abuse,”<sup>38</sup> a function that is outside of law enforcement expertise.

States typically define a “person responsible for a child’s welfare” as including a parent, guardian, foster parent, other individual living in the home, childcare provider, staff of a residential facility, teacher, coach, counselor, or other person entrusted with the care of a child. Although Oregon statutes contain no such definition, internal ODHS guidance delineates types of abuse reports by identity of alleged perpetrator for purposes of assigning reports to either Child Welfare or the Office of Training, Investigations and Safety (OTIS). The table below compares this guidance to the statutory jurisdictional definitions in the three comparison states.

<b>Alleged Perpetrator</b>	<b>CT (statute)<sup>39</sup></b>	<b>IA (statute)<sup>40</sup></b>	<b>OK (statute)<sup>41</sup></b>	<b>OR (ODHS Policy)</b>
Parent or guardian	x	x	x	x
Foster parent	x	x	x	x
Employee of residential home, institution or agency	x	x	x	x
Childcare provider	x	x	x	x
Person entrusted with care of child (teacher, counselor, coach, etc.)	x			x
Person given access to child by responsible person	x			x
Relative residing with child who assumes care or supervision		x		x
Person providing care for a child who does not reside with child		x		x
Adult residing in the home of the child			x	x
Any individual residing in the home				x
Sex trafficker				x
Minor who is not a caregiver or who resides in the home				x
3 <sup>rd</sup> party contractor providing services to CW resource home or respite home				x
Someone whose access to alleged victim is unclear				x
Other third party (e.g., neighbor, stranger, etc.)				x

Oregon differs from the three comparison states primarily by virtue of inclusion of “other third party” in the types of reports it will accept for investigation. Oregon administrative rules define “third party abuse” as “abuse by a person who is not the alleged victim’s parent, caregiver, guardian, or other member of the alleged victim’s household, and who is not responsible for the alleged victims’ care, custody, and control.”<sup>42</sup> According to DHS data, third parties are responsible for a small percentage of founded child maltreatment in Oregon. While family members perpetrated over 90% of child abuse and neglect incidents in fiscal year 2022, only 5.4% of cases (N=775) were classified as “other” or “friends or neighbors.”<sup>43</sup> Another 2.9 %of cases were classified as “unknown or missing.”

We are aware of only one state, Colorado, that distinguishes between “intrafamilial abuse” and “third party abuse” in statute.<sup>44</sup> Law enforcement is responsible for investigating all reports of third party abuse or neglect by persons ten years of age or older, and county child welfare agencies are responsible for cases in which the alleged perpetrator is under age 10.<sup>45</sup> Colorado regulations provide that “a youth under the age of 13 at the time of the alleged incident shall not be listed as a person responsible for abuse and/or neglect for the purpose of the assessment” while youth between ages 13 and 18 are not identified as perpetrators unless the youth is a parent of the alleged victim or the abuse is founded and determined to meet a specified level of severity.<sup>46</sup> Regulations further provide that an assessment of alleged abuse perpetrated by a child under age 10 shall focus on whether or not the incident occurred, the entire situation including the actions or omissions of any responsible adults, and any interventions that may be needed to address treatment needs.<sup>47</sup>

In the comparison states, reports of third-party abuse are referred to law enforcement for response:

- Connecticut: If the report alleges abuse or neglect by someone other than 1) a person responsible for a child’s health, safety, or welfare, 2) a person given access to such child by a responsible person, or 3) a person entrusted with the care of a child, then the agency is required to refer the report to local law enforcement.<sup>48</sup>
- Iowa: “When a report does not meet criteria to be accepted, such as the person alleged responsible is not a caretaker, but a child’s safety appears to be in jeopardy, there is injury, or immediate threat, the Department must act immediately to address the child’s safety (for example, call law enforcement).”<sup>49</sup>
- Oklahoma: If a report alleges abuse or neglect by someone other than a person responsible for the child’s health, safety, or welfare and the abuse or neglect does not appear to be attributable to a failure of a responsible

person to protect the child, the agency must immediately refer the report to local law enforcement. Upon making such referral, the agency shall have no further responsibility for investigating the report unless the alleged perpetrator is a parent of another child or law enforcement requests the agency's assistance.<sup>50</sup>

## **C. HOW DOES OREGON COMPARE TO OTHER STATES IN TERMS OF ALTERNATIVE PATHWAYS TO CHILD WELFARE ASSESSMENT AND SERVICES?**

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Child welfare agencies typically provide services to families in the context of a child maltreatment investigation. Other pathways to services exist, including alternative response, provision of services to “children in need of assistance,” provision of voluntary family support services, and special treatment of children who exhibit problematic sexual behavior, as discussed below.

ODHS delivers child welfare services to families in Oregon in one of two ways. Families may request and receive voluntary family support services governed by ODHS rules.<sup>51</sup> ODHS also provides services after a report of abuse has been received and a child protective service investigation has been assigned. ODHS provided postinvestigation services to 30% of child maltreatment victims in FY22, compared to 55% nationally.<sup>52</sup>

### **1. Alternative Response**

NCANDS defines alternative response as “the provision of a response other than an investigation that determines if a child or family needs services. A determination of maltreatment is not made and a perpetrator is not determined.”<sup>53</sup> According to the State Child Abuse and Neglect Database (SCAN), as of 2021, 31 states employed alternative response, either in specific regions or statewide, and 20 states, including Oregon, do not.<sup>54</sup> The three comparison states all employ alternative response.

- Connecticut statute provides for a “family assessment response” to reports of child maltreatment deemed to be low risk after an initial safety assessment.<sup>55</sup> Families are provided with community-based services that are individualized and strengths-based. Cases that involve sexual abuse, abuse in out-of-home care, serious physical or mental injury, or threats to child safety are not eligible for a family assessment response. Connecticut provided post-response services to 97.4% of victims in FY 2022.
- Iowa has a two-track system for responding to reports of child maltreatment: a “child abuse assessment” response to reports that allege child abuse other than neglect and a “family assessment” response to reports of neglect that do not involve imminent danger, death, or injury to a child.<sup>56</sup> Unlike a

child abuse assessment, a family assessment does not result in a finding of maltreatment or placement of a finding on the central registry. Iowa provided post-response services to 100% of victims in FY 2022.

- Oklahoma statute requires the Department of Human Services to respond to reports of child maltreatment with either an investigation of child abuse or neglect or an assessment of the family.<sup>57</sup> “Assessment” is defined as a “comprehensive review of child safety and evaluation of family functioning and protective capacities that is conducted in response to a child abuse or neglect referral that does not allege a serious and immediate safety threat to a child.”<sup>58</sup> Oklahoma provided post-response services to 86.2% of victims in FY22.

## 2. Child in Need of Assistance

Some states define a “child in need of assistance,” “child in need of care,” “family in need of assistance,” “dependent child,” or other similar term in their juvenile court statutes. These statutes typically include children who have been abused or neglected but describe other circumstances that may require the intervention of the child welfare agency or the court to ensure a child’s health and well-being or the safety of others. Virginia, for example, defines “child in need of services” as “(i) a child whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of the child or (ii) a child under the age of 14 whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of another person.”<sup>59</sup>

In Oregon, juvenile court dependency jurisdiction extends to children who, among other things, are beyond the control of parents, who engage in dangerous behavior, and who are not attending school, in addition to children who are victims of abuse.<sup>60</sup> ODHS may provide voluntary family support services to these children upon request by a parent or caregiver.

Iowa has an extensive “child in need of assistance” (CINA) statute.<sup>61</sup> In addition to a child who has been abused or neglected, the definition includes, among other circumstances, a child in need of medical or mental health treatment whose parent is unable or unwilling to provide for such care. Any person with concerns about a child’s health or welfare may file a complaint with the Department of Health and Human Services alleging that the child is in need of assistance.<sup>62</sup> In addition, Iowa DHHS policy provides that reports of child abuse rejected at intake are evaluated for a CINA assessment.<sup>63</sup> A CINA intake is to be accepted if the concerns do not rise to the level of child abuse but may meet the definition of CINA. Policy also provides that a parent must apply for CINA services and that such services are voluntary, although the child welfare agency may file a petition for court intervention if there is an imminent risk to child safety

### 3. Children with Problematic Sexual Behavior

We identified a few examples of states that provide for alternative service pathways for families with children who have sexually abused another child. We understand that Oregon does not have the authority to treat such children differently than other perpetrators of sexual abuse.

- Florida provides in statute for response by the Department of Children and Families to reports of “child-on-child sexual abuse,” including assessment of risk and treatment needs, designation of a case manager, and development of a case plan. Report outcomes are classified as closed (services were either not offered or not accepted), services accepted by alleged abuser, services accepted by victim, or notification to law enforcement.<sup>64</sup>
- Missouri law governs child welfare responses to reports of “juvenile with problem sexual behavior,” meaning sexual abuse of a child committed by any person under age 14 and requires a “family assessment and services” approach.<sup>65</sup> Regulations further define procedures for the handling of these reports and provision of community-based services to perpetrators and their families.<sup>66</sup>
- The Kansas Prevention and Protection Services Policy and Procedure Manual defines problematic sexual behavior and outlines procedures for responding to reports, identifying problematic sexual behavior, and referral to services.<sup>67</sup>
- A bill pending in the New Jersey legislature would require the Department of Children and Families, upon receipt of a report involving a child who engages in problematic sexual behavior, to refer the child and the child’s parent to a regional diagnostic and treatment center, child advocacy center, or other behavioral health care provider for services, supports and other assistance to reduce the risk of the child engaging in problematic sexual behaviors.<sup>68</sup> The New Jersey DCF recently issued a report of the Problematic Sexual Behavior (PSB) Workgroup outlining a statewide strategy for responding to PSB.<sup>69</sup>
- Iowa’s definition of sexual abuse excludes a perpetrator under the age of 14 who resides in the victim’s home.<sup>70</sup> Presumably, such perpetrators would be eligible for services as a “child in need of assistance.”

Differential treatment of perpetrators based on age is also reflected in state criminal codes. In Oregon, it is a defense to charges of sexual abuse of a minor that the alleged perpetrator was less than three years older than the victim at the time of the offense.<sup>71</sup> In Vermont, the crime of sexual exploitation of a minor only applies to perpetrators who are at least 48 months older than the minor and who are in a position of power, authority, or supervision over the minor.<sup>72</sup> A recent report by the Vermont Parent Representation Center criticized the state Department of Children and Families for promulgating a rule at variance with this provision:

DCF's Rule 2000 is an example of how the Department has attempted to include non-caregivers and children as individuals who can be charged with Sexual Exploitation of a Minor while the statute defining Sexual Exploitation of a Minor (13 V.S.A. 3258) specifically states an age requirement and that the person must be fulfilling a professional or voluntary role as a caregiver in order to be culpable.<sup>73</sup>

# IV. How do Oregon's Due Process Protections for Alleged Perpetrators at the Investigative Stage Compare to Other States?

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The following discussion concerns due process at first contact with an alleged perpetrator of abuse standard of evidence for substantiation, due process upon disposition of an abuse investigation and placement on the central registry, and expungement of records from central registries.

## A. DUE PROCESS AT FIRST CONTACT

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CAPTA requires states to have “provisions and procedures to require that a representative of the child protective services agency shall, at the initial time of contact with the individual subject to a child abuse or neglect investigation, advise the individual of the complaints or allegations made against the individual, in a manner that is consistent with laws protecting the rights of the informant.”<sup>74</sup>

ODHS rules require that the CPS worker provide each parent or caregiver with a “What you need to know about a Child Protective Services assessment” pamphlet at first contact.<sup>75</sup> The pamphlet referred to describes the following rights during an investigation:

- To be treated with dignity and respect, free from discrimination.
- To have your language or other special needs accommodated.
- Be notified if you are alleged to be responsible for abuse, to be told general information about the report and why a CPS assessment is being conducted.
- Speak to a manager if you have concerns regarding DHS's actions.<sup>76</sup>

The pamphlet describes other rights that accrue at later stages of the process, including the right to participate in court hearings and be represented by an attorney. The pamphlet also provides general information on what a CPS investigation entails.

BPC's review of recent state legislation revealed bipartisan interest in strengthening due process protections for caregivers at first contact with a child welfare agency.<sup>77</sup> Although not required by CAPTA, these efforts focus

on ensuring that caregivers are informed at first contact of their legal rights in addition to the allegations made against them. The following are examples of relevant state legislation:

- Connecticut: A representative of the Department of Children and Families (DCF) is required to provide the parent or guardian with written notice in plain language that:
  - The parent or guardian is not required to permit the representative to enter the residence.
  - The parent or guardian is not required to speak with the representative.
  - The parent or guardian is entitled to seek the representation of an attorney and to have an attorney present when the parent or guardian is questioned by a representative of the department.
  - Any statement made by the parent, guardian or other family member may be used against the parent or guardian in a proceeding.
  - The representative is not an attorney and cannot provide legal advice.
  - The parent or guardian is not required to sign any document.
  - Failure of the parent or guardian to communicate with a representative may have serious consequences, which may include the filing of a petition for removal of the child from the home.

The statute also requires DCF to provide a list of free and low-cost legal services and to request the parent or guardian to sign and date the notice.<sup>78</sup>

- Texas enacted legislation in 2023 requiring, in addition to provision of a written summary of rights, that a caseworker verbally notify an alleged perpetrator of the right not to speak with any agent of the department without legal counsel present, to receive assistance from an attorney, to record any interaction or interview, to refuse to allow entry into the home without a court order, to have legal counsel present before allowing entry into the home or before an interview with the child, to refuse to submit to a drug test, and to consult with an attorney before agreeing to any proposed voluntary safety plan. The law also requires a caseworker to document the verbal notification and provides that if the verbal notification and written summary of rights is not provided, any information obtained from the alleged perpetrator is not admissible for use in any civil proceeding.<sup>79</sup>
- Similar legislation was enacted in Montana<sup>80</sup> and was introduced but not enacted in Missouri<sup>81</sup> and New York.<sup>82</sup>

## **B. STANDARD FOR SUBSTANTIATION**

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Oregon uses the standard “reasonable cause to believe” to substantiate reports of child maltreatment.<sup>83</sup> According to the Child Welfare Information Gateway, Oregon is one of only six states to use this standard, the others being

Arizona, Connecticut, Hawaii, Massachusetts, and Vermont.<sup>84</sup> Twenty-seven states require a “preponderance of the evidence” to confirm reports, which is considered to be a higher standard of evidence. Eight states and the District of Columbia use a “credible” or “substantial” evidence standard.

Our three comparison states use the following standards:

- Connecticut: “reasonable cause.”<sup>85</sup>
- Iowa: “preponderance of credible evidence.”<sup>86</sup>
- Oklahoma: “some credible evidence.”<sup>87</sup>

### **C. DUE PROCESS UPON DISPOSITION OF INVESTIGATION AND ENTRY ON THE CENTRAL REGISTRY**

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ORS 419B.030 provides for the establishment of a central registry and for local ODHS offices to report to it when an investigation has shown reasonable cause to believe that a child was abused. The information in the registry is confidential but may be made available to individuals and agencies specified in ORS 419B.035, including the Department of Early Learning and Care for purposes of certification, registration or regulation of childcare facilities and child care providers. ODHS rules set forth the process for administrative review of founded dispositions.<sup>88</sup> A perpetrator has 30 days from the date he or she receives notice of a disposition to request a review. Dispositions are first reviewed at the local office level. If upheld, the perpetrator may seek review at the central office level. If the central office upholds the disposition, the perpetrator may seek judicial review.

Procedures in comparison states for entry and review of findings on the central registry are as follows:

- Connecticut:
  - Placement of findings on registry: Substantiated dispositions are not entered on the central registry until the Department of Children and Families has determined, in accordance with criteria established by rule, that the individual responsible for the child abuse or neglect poses a risk to the health, safety or well-being of children. The person’s name does not appear on the registry until the exhaustion or waiver of all available administrative appeals, except in certain cases, including child death or serious injury.
  - Review of findings: A person who has been substantiated as responsible for abuse or neglect may request an internal agency review. If such review upholds the substantiation or if the department fails to conduct the internal review, the person may request an administrative review before an agency hearing officer. The department bears the burden of proving the

allegations by a “fair preponderance of the evidence.” If the substantiation is upheld, the perpetrator may request reconsideration or may appeal the final decision to the superior court pursuant to statute.<sup>89</sup>

- Iowa:
  - Placement of findings on registry: A finding of physical abuse or neglect that the department determines to be minor, isolated, and unlikely to reoccur is not placed on the registry, subject to specified exceptions. A finding of sexual abuse by a perpetrator age 13 or younger is placed on the registry but the name of the perpetrator is withheld. A finding of sexual abuse by a perpetrator age 14 through 17 is placed on the registry but the name of the perpetrator is removed if a court finds good cause for removal.<sup>90</sup>
  - Review of findings: Iowa law prescribes the process for review of substantiated cases of child maltreatment.<sup>91</sup> The subject of a report has the right to examine report and disposition data, to provide additional information, and to request the department to revise such data. The subject also has the right to a contested case hearing if the department does not correct the data or findings as requested. The statute requires the department to provide a subject of a child abuse report, other than the alleged perpetrator, with an opportunity to intervene in the contested case hearing. Any party to the proceeding may file an appeal of the presiding officer’s proposed decision to the director of the department. A perpetrator also has the right to appeal the final decision to a district court.
- Oklahoma:
  - Placement of findings on registry: Statute requires the maintenance of “all reports of child abuse, sexual abuse, sexual exploitation, and neglect.”<sup>92</sup>
  - Review of findings: Agency policy provides for notice of substantiated findings, procedures for requesting an appeal and review of substantiated findings, and final determinations.<sup>93</sup>

## **D. EXPUNGEMENT OF ENTRIES ON THE CENTRAL REGISTRY**

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CAPTA requires states to have “provisions requiring, and procedures in place that facilitate the prompt expungement of any records that are accessible to the general public or are used for purposes of employment or other background checks in cases determined to be unsubstantiated or false, except that nothing in this section shall prevent State child protective services agencies from keeping information on unsubstantiated reports in their casework files to assist in future risk and safety assessment.”<sup>94</sup>

There is no mechanism for expungement of founded dispositions of abuse from ODHS records. Policies governing expungement of substantiated findings in comparison states are as follows:

- Connecticut: Substantiated reports of abuse or neglect are maintained indefinitely, regardless of whether the person has been determined to pose a risk to the health, safety and well-being of children and has been entered on the central registry.
- Iowa: Statute governs sealing and expungement of substantiated findings as follows:
  - Records are sealed 10 years after placement absent a showing of good cause, or 10 years after receipt of a subsequent report
  - A person's name is removed from the registry after 10 years if there is no subsequent report, except as follows:

A person's name is removed after five years if the person committed physical abuse, material neglect or prenatal substance exposure, unless such abuse resulted in a child's death or serious injury.
  - Sealed data are expunged after eight years, except that data relating to sexual abuse or prostitution shall not be expunged for 30 years.<sup>95</sup>
- Oklahoma: Records obtained by the department shall be maintained by the department until otherwise provided by law.<sup>96</sup>

Many states provide for expungement of founded reports after a specified number of years.<sup>97</sup> At least two states provide for automatic expungement of registry records based on a perpetrator's age at the time of the maltreatment report.

- California requires that information about a perpetrator under the age of 18 be deleted from the registry 10 years from the date of the incident if no subsequent report concerning the same person is received during that time.<sup>98</sup>
- Vermont requires expungement of records concerning a perpetrator under age 10 when such person reaches age 18, provided the person has had no additional registry entries.<sup>99</sup>

# V. Limitations of This Report

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This report is subject to the following limitations:

- Review of other states' laws and policies is limited to what is available online. No one in those states was contacted for additional information.
- We did not examine how the laws and policies described herein have been implemented, nor do we draw any conclusions about the effect, if any, of such policies on the number and type of maltreatment cases at intake. Research has yet to establish a strong association between front-end policies and differences among states in rates of reporting, screening, investigation, substantiation, and racial disproportionality.

# Endnotes

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- 1 Stephen Christian and Rob Geen, “Bipartisanship Across the Nation: A Review of State Child Welfare Legislation,” Bipartisan Policy Center, December 19, 2023, <https://bipartisanpolicy.org/report/child-welfare-legislation-national-review/>.
- 2 42 U.S.C. § 5101.
- 3 ORS 419.005.
- 4 “Analysis of State Definitions of Child Neglect - Casey Family Programs.” Casey Family Programs, April 27, 2023. <https://www.casey.org/state-definitions-child-neglect-casey-family-programs/>.
- 5 OAR 413-015-1015.
- 6 ORS 163.545.
- 7 ORS 418.257(9).
- 8 Conn. Gen. Stat. 46b-120.
- 9 Iowa Code 232.2.
- 10 Iowa Code 232.68.
- 11 Iowa Code 232.96A.
- 12 Okla. Stat. 10A-1-1-105.
- 13 Christian and Geen, “Bipartisanship Across the Nation: A Review of State Child Welfare Legislation.”
- 14 Texas HB 567 (2021).
- 15 ORS 419B.005(b).
- 16 ORS 419B.005 (G).
- 17 “Child Maltreatment 2022,” The Administration for Children and Families, n.d., <https://www.acf.hhs.gov/cb/report/child-maltreatment-2022>.
- 18 Minn. Stat. 260E.03.
- 19 Okla. Stat. 10A-1-1-105.
- 20 Utah Code 80-1-102.
- 21 Vt. Stat. Ann. Title 33, sec. 4912.
- 22 Wyo. Stat. 14-3-202.
- 23 Office of Reporting, Research, Analytics, and Implementation and Oregon Department of Human Services, “Child Welfare Data Book,” December 2023, <https://www.oregon.gov/odhs/data/cwdata/cw-data-book-2022.pdf>.
- 24 ORS 419B.005 (B).
- 25 SB 93, Chap. 267 (2023).
- 26 See, e.g., Alaska Stat. 47.17.290 (“observable and substantial impairment”); D.C. Code 16-2301 (“demonstrated by a change in behavior, emotional response, or cognition”), Fla. Stat. 39.01 (48) (“discernible and substantial impairment”), Ga. Code Ann. 15-11-2 (“observable and significant impairment”); Iowa Code 232.2 (“observable and substantial impairment”); Md. Code Ann., Family Law Code 5-701 (“observable, identifiable, and substantial impairment”); Minn. Stat. 260E.03, Subd. 13 (“observable or substantial”); Nev. Rev. Stat. 432B.070 (“observable and substantial impairment”); S.C. Code Ann. 63-7-20 (“discernable and substantial impairment”); S.D. Codified Laws 26-8A-2 (“observable and substantial impairment”); Tenn. Code Ann. 37-1-102 (“discernable and substantial impairment”); Wyo. Stat. Ann. 14-3-202 (“observable or substantial impairment”).
- 27 Alaska Stat. 47.17.290; Ga. Code Ann. 15-11-2; Mont. Code Ann. 41-3-102; Pa. Cons. Stat. Title 23, sec. 6303; S.C. Code Ann. 63-7-20.
- 28 Conn. Gen. Stat. 46b-120.
- 29 Iowa Code 232.68.
- 30 Pa. Cons. Stat. Title 23, sec. 6303.
- 31 Office of Reporting, Research, Analytics, and Implementation and Oregon Department of Human Services, “Child Welfare Data Book.”
- 32 ORS 418.257 (3).
- 33 ORS 418.257(9).

- 34 See, e.g., Colo. Rev. Stat. 19-1-103(86); Del. Code Ann. Tit. 10, sec. 901(13); Fla. Stat. 39.01(37); La. Children’s Code, Art. 603(16); 119 Code of Massachusetts Regulations 2.0 Glossary; N.H. Rev. Stat. Ann. 169-C:3; N.D. Cent. Code 50-25.1-02; R.I. Gen. Laws 40-11-2(9); S.C. Code Ann. 63-7-20(14); Tenn. Code Ann. 37-1-602(6); Wyo. Stat. Ann. 14-3-202(vi).
- 35 For example, Washington state defines “abuse or neglect” as sexual abuse, sexual exploitation or injury of a child by “any person” or negligent treatment or maltreatment of a child by “a person responsible for providing care to the child.” Wash. Rev. Code 26.44.020.
- 36 ORS 419B.005.
- 37 ORS 418.257.
- 38 ORS 419B.005 (4).
- 39 Conn. Gen. Stat 17a-93 and 17a-101g.
- 40 Iowa Code 232.68.
- 41 Okla. Stat. 10A-1-1-105.
- 42 OAR 413-015-0115 (83).
- 43 Office of Reporting, Research, Analytics, and Implementation and Oregon Department of Human Services, “Child Welfare Data Book,” <https://www.oregon.gov/odhs/data/cwdata/cw-data-book-2022.pdf>.
- 44 Colo. Rev. Stat. 19-1-103.
- 45 Colo. Rev. Stat. 19-3-308 (5.3).
- 46 12 CCR 2509-2, sec. 7.104.132.
- 47 12 CCR 2509-2, sec. 7.104.31.
- 48 Conn. Gen. Stat. 17a-101g.
- 49 Iowa Department of Health and Human Services, Employee Policy Manual, Title 18, Family Services, Chapter A (1): CPS Intake.
- 50 Okla. Stat. 10A-1-2-102.
- 51 OAR 413-030.
- 52 “Child Maltreatment 2022,” The Administration for Children and Families, n.d., <https://www.acf.hhs.gov/cb/report/child-maltreatment-2022>.
- 53 “Child Maltreatment 2022” (U.S. Department of Health & Human Services Administration for Children and Families Administration on Children, Youth and Families Children’s Bureau, 2022), <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2022.pdf#page=34>.
- 54 “Home | SCAN Policies Database,” n.d., <https://www.scanpoliciesdatabase.com/>.
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- 56 Iowa Code 232.68, 232.71B.
- 57 Okla. Stat. 10A-1-2-105.
- 58 Okla. Stat. 10A-1-1-105.
- 59 Va. Code 16.1-228.
- 60 ORS 419B.100.
- 61 Iowa Code 232.96A.
- 62 Iowa Code 232.81.
- 63 Iowa Department of Health and Human Services, Employee Policy Manual, Title 18, Chap. 8(2) Child Welfare CINA Assessment
- 64 Fla. Stat. 39.307.
- 65 Mo. Rev. Stat. 210.148.
- 66 Mo. Code Regs. tit. 13, sec. 35-31.027.
- 67 “CFS PPM2,” n.d., [https://content.dcf.ks.gov/pps/robohelp/ppmgenerate/CFS\\_PPM2.htm#t=pps\\_policies%2F2000\\_investigation\\_and\\_assessment%2F2090\\_child\\_with\\_sexual\\_behavior\\_problems.htm](https://content.dcf.ks.gov/pps/robohelp/ppmgenerate/CFS_PPM2.htm#t=pps_policies%2F2000_investigation_and_assessment%2F2090_child_with_sexual_behavior_problems.htm).
- 68 A1034, State of New Jersey, [https://pub.njleg.state.nj.us/Bills/2024/A1500/1034\\_I1.PDF](https://pub.njleg.state.nj.us/Bills/2024/A1500/1034_I1.PDF).
- 69 “Developing a Statewide Strategy to Respond to Cases Involving Problematic Sexual Behavior” (New Jersey Department of Children and Families, n.d.), [https://www.nj.gov/dcf/documents/PSB\\_Framework\\_052323.pdf](https://www.nj.gov/dcf/documents/PSB_Framework_052323.pdf).
- 70 Iowa Code 232.68.
- 71 ORS 163.345.
- 72 Vt. Stat. tit. 13, sec. 3258.

- 73 The Vermont Parent Representation Center, Inc., James Stanton-Abbott, Lawrence Crist, Trine Bech, William Young, Janie Cohen, Beach Conger, et al. “Broken System, Broken Promises: Vermont Child Abuse Determination and the Child Protection Registry - a Multi-Year Analysis & Recommendations for Reform.” Report. Vermont Child Abuse Determination and the Child Protection Registry, September 12, 2022. <https://assets.nationbuilder.com/vprc/pages/32/attachments/original/1675016343/Broken-Systems-Broken-Promises-Oct.-12-2022.pdf>.
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- 75 OAR 413-015-0420.
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- 81 Missouri HB 1266 (2023).
- 82 New York A1980 (2023).
- 83 ORS 419B.030; OAR 413-015-0440.
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- 87 Okla. Stat. 10A-1-1-105
- 88 OAR 413-010-0700
- 89 Conn. Admin. Rules 17a-101k-1 through 17a-101k-16
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- 91 Iowa Code 235A.19
- 92 Okla. Stat. 10A-1-2-108.
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- 95 Iowa Code 235A.18.
- 96 Okla. Stat. 10A-1-2-108
- 97 “Review and Expunction of Central Registries and Reporting Records,” Child Welfare Information Gateway, May 31, 2018, <https://www.childwelfare.gov/resources/review-and-expunction-central-registries-and-reporting-records/>.
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