

Oregon Secretary of State
Certificate and Order for Filing Temporary Administrative Rules and
Statement of Need and Justification

I certify that the attached copies are true, full and correct copies of the TEMPORARY Rule(s) adopted on

February 7, 2017 by the

Department of Human Services, Office of Child Welfare Programs

413

Agency and Division

Chapter Number

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to become effective February 7, 2017 through August 4, 2017.*

**Temporary rules are effective for a maximum of 180 days including the effective date.*

Rule Caption: *Adopting rules to establish procedure for Critical Incident Response Team required by ORS 419B.024*

In the Matter of: *The temporary adoption of OAR 413-017-0000 through 413-017-0040.*

ADOPT: 413-017-0000, 413-017-0010, 413-017-0020, 413-017-0030, and 413-017-0040.

AMEND:

REPEAL:

ORS 418.005, 419B.024

Stat. Auth.

None.

Other Auth.

ORS 418.005, 419B.024

Stats. Implemented

Rule Summary

The Department of Human Services, Office of Child Welfare Programs, is adopting temporary rules to describe the requirements and procedure when a Critical Incident Response Team (CIRT) is mandated under [ORS 419B.024](#) or when the Director of the Department may convene a Discretionary Critical Incident Response Team (DCIRT). Some of the primary provisions for both a CIRT and DCIRT include: defining the scope and purpose of the teams, membership requirements, responsibilities of the CIRT coordinator, and timelines.

Need for the Rules

OAR 413-017 needs to be amended because [ORS 419B.024](#) requires the Department to adopt rules necessary to carry out the provisions of the CIRT statute. Currently, the Department does not have administrative rules on the requirements, processes, and procedures relating to CIRTs.

Documents Relied Upon

None.

Justification of Temporary Rules

The Department finds that failure to act promptly by adopting these rules will result in serious prejudice to the public interest, the Department, and the welfare of children in Oregon. The Department has followed the CIRT statute since its enactment in 2007, but immediately adopting rules will increase the accountability of the Department and consistency in process, to ensure that the statute is fully implemented and that the purpose of the statute, i.e. to learn and improve after a child fatality, is fulfilled. The Department needs to proceed by temporary rule because the public, the Department, and the welfare of children in Oregon will immediately benefit when the Department's processes and procedures on CIRTs are clear in the Department's administrative rules.

DEPARTMENT OF HUMAN SERVICES
OFFICE OF CHILD WELFARE PROGRAMS

CHAPTER 413
DIVISION 017

CRITICAL INCIDENT RESPONSE TEAMS (CIRT) AND
DISCRETIONARY CRITICAL INCIDENT RESPONSE TEAMS
(DCIRT)

Temporary Effective 02/07/17 - 08/05/17

THIS IS A NEW DIVISION

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CRITICAL INCIDENT RESPONSE TEAMS (CIRT) AND DISCRETIONARY CRITICAL INCIDENT RESPONSE TEAMS (DCIRT)

413-017-0000

Definitions

(Temporary effective 02/07/17)

Unless the context indicates otherwise, the following definitions apply to OAR chapter 413, division 017.

- (1) "Child" means a person who:
 - (a) Is under 18 years of age; or
 - (b) Is under 21 years of age and residing in or receiving care or services at a child-caring agency or proctor foster home.
- (2) "Child abuse or neglect" means any form of child abuse, including abuse through neglect and abuse or neglect by a third party, as defined in ORS 419B.005 or, when applicable, Oregon Laws 2016, chapter 106, section 36.
- (3) "Child protective services assessment (CPS assessment)" means an investigation into a *report of child abuse or neglect* pursuant to ORS 419B.020 that includes activities and interventions to identify and analyze threats to child safety, determine if there is reasonable cause to believe *child abuse or neglect* occurred, and assure child safety through protective action plans, initial safety plans, or ongoing safety planning.
- (4) "Critical Incident" means a child fatality which was likely the result of *child abuse or neglect* when:
 - (a) The *child* was in the *custody* of the Department at the time of death; or
 - (b) The *child* was the subject of a *child protective services assessment* by the Department within 12 months preceding the fatality.
- (5) "Critical Incident Response Team (CIRT)" means a committee, appointed by the DHS Director, to conduct an executive review of a *critical incident*.
- (6) "Custody" means legal custody described in ORS 419B.373.
- (7) "Department" means the Department of Human Services, Child Welfare.
- (8) "DHS" means the Oregon Department of Human Services.

- (9) Discretionary Critical Incident Response Team (DCIRT)" means a committee, appointed by the DHS Director to conduct an executive review of a serious physical injury as defined in ORS 161.015 that was likely the result of *child abuse or neglect* when:
- (a) The *child* was in the *custody* of the Department at the time of the serious physical injury; or
 - (b) The *child* was the subject of a *child protective services assessment* by the Department within 12 months preceding the serious physical injury.

Stat. Auth.: ORS 418.005, 419B.024
Stats. Implemented: ORS 418.005, 419B.024

413-017-0010

Purpose of the Critical Incident Response Team (CIRT)

(Temporary effective 02/07/17)

- (1) The purpose of convening the CIRT is to increase child safety by:
- (a) Rapidly drawing lessons from a specific incident to improve child welfare practice administered by the Department;
 - (b) Increasing transparency regarding the Department's processes and practice;
 - (c) Identifying and evaluating internal or external systemic issues from a child fatality that impact current practice; and
 - (d) Ensuring timely responses by the Department with respect to a *critical incident*.
- (2) Reviews conducted as provided in these rules are in addition to and separate from reviews conducted by a local Multi-Disciplinary Team pursuant to ORS 418.747, a State Fatality Review team pursuant to ORS 418.748 or the Department protocols "Notification and Review of Child Fatalities" and "Notification and Review of Sensitive Issues."
- (3) A CIRT has a limited purpose. It is not a final or comprehensive review of all the circumstances surrounding the death of a *child*. The CIRT review is generally limited to documents in the possession of or obtained by the Department. The CIRT is not an information gathering inquiry and does not include interviews of witnesses to an incident or parties to a juvenile case. A CIRT is not a fact-finding or forensic inquiry nor should it replace or supersede courts, law enforcement agencies, or other entities with legal responsibility to investigate and review some or all of the circumstances of the *child* fatality.

Stat. Auth.: ORS 418.005, 419B.024

Stats. Implemented: ORS 418.005, 419B.024

413-017-0020

CIRT Membership and Functioning

(Temporary effective 02/07/17)

- (1) The DHS Director or designee appoints members of the CIRT.
 - (a) Unless a conflict of interest exists, CIRT members must include:
 - (A) The Child Welfare Director or designee;
 - (B) An attorney from the Department of Justice assigned to provide legal advice and representation to the Department on the matter of the CIRT;
 - (C) A Department Human Resources representative;
 - (D) The District Manager for the county or region in which the *critical incident* occurred;
 - (E) The Program Manager for the county or region in which the *critical incident* occurred;
 - (F) The Department's Child Protective Services Manager;
 - (G) The CIRT Coordinator;
 - (H) Casework supervisors assigned to supervise the workers involved in the identified case;
 - (I) Casework supervisors assigned to supervise the certification workers involved with the caregiver if the *child* was in foster care; and
 - (J) The Department's Public Affairs Director or designee.
 - (b) The DHS Director has discretion to invite additional persons to an individual CIRT meeting or appoint additional members to the team for the duration of a particular CIRT.
- (2) CIRT members who are appointed under subsection (1)(b) of this rule must:
 - (a) Be provided a meeting invitation and an agenda prior to each CIRT meeting;
 - (b) Attend the CIRT meetings in person;

- (c) Return any copies of documents or materials reviewed at the meeting at the conclusion of each CIRT meeting; and
 - (d) Surrender any notes taken at the CIRT meeting to the CIRT Coordinator at the conclusion of the CIRT meeting.
- (3) CIRT members appointed under subsection (1)(b) of this rule may review materials prior to a CIRT meeting at the designated location of the CIRT meeting.
- (4) The CIRT Coordinator has the following responsibilities:
- (a) Convenes the CIRT meetings;
 - (b) Ensures any members who are not Department staff have signed a confidentiality agreement;
 - (c) Ensures a thorough review of all records related to the circumstances that led to the *critical incident*;
 - (d) Ensures the team identifies the internal or external systemic issues; and
 - (e) Prepares the CIRT reports based on input from the CIRT pursuant to the timelines in section (4) of this rule.
- (5) The CIRT:
- (a) Reviews records related to the circumstances that led to the *critical incident*;
 - (b) During the course of its review, may include or consult with the District Attorney from the county in which the *critical incident* occurred pursuant to ORS 419B.024(2);
 - (c) Identifies internal or external systemic or practice issues; and
 - (d) Provides input for the following reports prepared by the CIRT coordinator:
 - (A) An initial report for the DHS Director within 60 days of the CIRT being declared; and
 - (B) A final report within 180 days of the CIRT being declared, except as provided in section (5) of this rule.
- (6) The DHS Director or the Director's designee has the discretion to grant additional time to complete the reports described in (3) of this rule depending upon the complexity of the case under review.

- (5) The DHS Director or the Director's designee may determine at any time that the CIRT's work is complete and conclude the CIRT review process.
- (6) The DHS Director, or the Director's designee, shall comply with the Oregon public records law ORS 192.410 through 192.505, and may where appropriate claim an exemption that prevents the release of a CIRT report, either temporarily or permanently.
- (7) The DHS Director or the Director's designee shall:
 - (a) Review the recommendations of the CIRT; and
 - (b) Reconvene the CIRT team within six months of receipt of the final report to review the actions taken to improve practice.

Stat. Auth.: ORS 409.050, 418.005, 419B.024
Stat. Implemented: 409.050, 418.005, 419B.024

413-017-0030

Purpose of the Discretionary Critical Incident Response Team (DCIRT)

(Temporary effective 02/07/17)

- (1) The purpose of convening the DCIRT is to increase child safety by:
 - (a) Rapidly drawing lessons from a specific incident to improve child welfare practice administered by the Department;
 - (b) Increasing transparency regarding the Department's processes and practice;
 - (c) Evaluating and identifying internal or external systemic issues from a serious physical injury as defined in ORS 161.015 that impact current practice; and
 - (d) Ensuring timely responses by the Department with respect to an incident of serious physical injury to a *child*.
- (2) The determination of whether a serious physical injury has occurred is solely within the discretion of the DHS Director or the Director's designee.
- (3) Reviews conducted as provided in these rules are in addition to and separate from reviews conducted by a local Multi-Disciplinary Team pursuant to ORS 418.747, a State Fatality Review team pursuant to ORS 418.748 or the Department protocols "Notification and Review of Child Fatalities" and "Notification and Review of Sensitive Issues."
- (4) A DCIRT has a limited purpose. It is not a final or comprehensive review of all the circumstances surrounding the serious physical injury of a *child*. The DCIRT review is generally limited to documents in the possession of or obtained by the Department. The

DCIRT is not an information gathering inquiry and does not include interviews of witnesses to an incident or parties to a juvenile case. A DCIRT is not a fact-finding or forensic inquiry nor should it replace or supersede courts, law enforcement agencies or other entities with legal responsibility to investigate and review some or all of the circumstances of the serious physical injury.

Stat. Auth.: ORS 409.050, 418.005, 419B.024

Stat. Implemented: 409.050, 418.005, 419B.024

413-017-0040

DCIRT Membership and Functioning

(Temporary effective 02/07/17)

- (1) The DHS Director or designee appoints members of the DCIRT.
 - (a) Unless a conflict of interest exists, DCIRT members must include:
 - (A) The Child Welfare Director or designee;
 - (B) An attorney from the Department of Justice assigned to provide legal advice and representation to the Department on the matter of the DCIRT;
 - (C) A Department Human Resources representative;
 - (D) The District Manager for the county or region in which the serious physical injury occurred;
 - (E) The Program Manager for the county or region in which the serious physical injury occurred;
 - (F) The Department's Child Protective Services Manager;
 - (G) The CIRT Coordinator;
 - (H) Casework supervisors assigned to supervise the workers involved in the identified case;
 - (I) Casework supervisors assigned to supervise the certification workers involved with the caregiver if the *child* is in foster care; and
 - (J) The Department Public Affairs Director or designee.
 - (b) The DHS Director has discretion to invite additional persons to an individual DCIRT meeting or appoint additional members to the team for the duration of a particular DCIRT.

- (2) DCIRT members who are appointed under subsection (1)(b) of this rule must:
 - (a) Be provided a meeting invitation and an agenda prior to each DCIRT meeting;
 - (b) Attend the DCIRT meetings in person;
 - (c) Return any copies of documents or materials reviewed at the meeting at the conclusion of each DCIRT meeting; and
 - (d) Surrender any notes taken at the DCIRT meeting to the CIRT Coordinator at the conclusion of the DCIRT meeting.
- (3) DCIRT members appointed under subsection (1)(b) of this rule may review materials prior to a CIRT meeting at the designated location of the DCIRT meeting.
- (4) The CIRT Coordinator has the following responsibilities:
 - (a) Convenes the DCIRT meetings;
 - (b) Ensures any members who are not Department staff have signed a confidentiality agreement;
 - (c) Ensures a thorough review of all records related to the circumstances that led to the serious physical injury;
 - (d) Ensures the team identifies the internal or external systemic issues; and
 - (e) Prepares the DCIRT reports based on input from the DCIRT pursuant to the timelines in section (4) of this rule.
- (5) The DCIRT:
 - (a) Reviews records related to the circumstances that led to the serious physical injury;
 - (b) During the course of its review, may include or consult with the District Attorney from the county in which the serious physical injury occurred pursuant to ORS 419B.024(2); and
 - (c) Identifies internal or external systemic or practice issues.
 - (d) Provides input for the following reports prepared by the CIRT coordinator:
 - (A) An initial report for the DHS Director within 60 days of the DCIRT being declared; and

- (B) A final report within 180 days of the DCIRT being declared, except as provided in section (5) of this rule.
- (6) The DHS Director or the Director's designee has the discretion to grant additional time to complete the reports described in section (4) of this rule depending upon the complexity of the case under review.
- (7) The DHS Director or the Director's designee may determine at any time that the DCIRT's work is complete and conclude the DCIRT review process.
- (8) The DHS Director, or the Director's designee, shall comply with the Oregon public records law ORS 192.410 through 192.505, and may where appropriate claim an exemption that prevents the release of a DCIRT report, either temporarily or permanently.
- (9) The DHS Director or the Director's designee shall:
 - (a) Review the recommendations of the DCIRT; and
 - (b) Reconvene the DCIRT team within six months of receipt of the final report to review the actions taken to improve practice.

Stat. Auth.: ORS 409.050, 418.005
Stat. Implemented: 409.050, 418.005