

House Bill 2849

Sponsored by Representative HUNT; Representatives DOHERTY, MATTHEWS (at the request of Lorilee Carlson)
(Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Increases penalty for crime of criminal mistreatment in first degree if victim is 65 years of age or older. Punishes by maximum of 10 years' imprisonment, \$250,000 fine, or both.

A BILL FOR AN ACT

1
2 Relating to abuse of elderly persons; creating new provisions; and amending ORS 137.225 and
3 163.205.

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

5 **SECTION 1.** ORS 163.205 is amended to read:

6 163.205. (1) A person commits the crime of criminal mistreatment in the first degree if:

7 (a) The person, in violation of a legal duty to provide care for another person, or having as-
8 sumed the permanent or temporary care, custody or responsibility for the supervision of another
9 person, intentionally or knowingly withholds necessary and adequate food, physical care or medical
10 attention from that other person; or

11 (b) The person, in violation of a legal duty to provide care for a dependent person or elderly
12 person, or having assumed the permanent or temporary care, custody or responsibility for the
13 supervision of a dependent person or elderly person, intentionally or knowingly:

14 (A) Causes physical injury or injuries to the dependent person or elderly person;

15 (B) Deserts the dependent person or elderly person in a place with the intent to abandon that
16 person;

17 (C) Leaves the dependent person or elderly person unattended at a place for such a period of
18 time as may be likely to endanger the health or welfare of that person;

19 (D) Hides the dependent person's or elderly person's money or property or takes the money or
20 property for, or appropriates the money or property to, any use or purpose not in the due and lawful
21 execution of the person's responsibility;

22 (E) Takes charge of a dependent or elderly person for the purpose of fraud; or

23 (F) Leaves the dependent person or elderly person, or causes the dependent person or elderly
24 person to enter or remain, in or upon premises where a chemical reaction involving one or more
25 precursor substances:

26 (i) Is occurring as part of unlawfully manufacturing a controlled substance or grinding, soaking
27 or otherwise breaking down a precursor substance for the unlawful manufacture of a controlled
28 substance; or

29 (ii) Has occurred as part of unlawfully manufacturing a controlled substance or grinding, soak-
30 ing or otherwise breaking down a precursor substance for the unlawful manufacture of a controlled
31 substance and the premises have not been certified as fit for use under ORS 453.885.

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

(2) As used in this section:

(a) “Controlled substance” has the meaning given that term in ORS 475.005.

(b) “Dependent person” means a person who because of either age or a physical or mental disability is dependent upon another to provide for the person’s physical needs.

(c) “Elderly person” means a person 65 years of age or older.

(d) “Legal duty” includes but is not limited to a duty created by familial relationship, court order, contractual agreement or statutory or case law.

(e) “Precursor substance” has the meaning given that term in ORS 475.940.

[(3)] (3)(a) Criminal mistreatment in the first degree is a Class C felony.

(b) Notwithstanding paragraph (a) of this subsection, criminal mistreatment in the first degree is a Class B felony if the victim is an elderly person.

SECTION 2. ORS 137.225 is amended to read:

137.225. (1)(a) At any time after the lapse of three years from the date of pronouncement of judgment, any defendant who has fully complied with and performed the sentence of the court and whose conviction is described in subsection (5) of this section by motion may apply to the court where the conviction was entered for entry of an order setting aside the conviction; or

(b) At any time after the lapse of one year from the date of any arrest, if no accusatory instrument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested person may apply to the court that would have jurisdiction over the crime for which the person was arrested, for entry of an order setting aside the record of the arrest. For the purpose of computing the one-year period, time during which the arrested person has secreted himself or herself within or without the state is not included.

(2)(a) A copy of the motion and a full set of the defendant’s fingerprints shall be served upon the office of the prosecuting attorney who prosecuted the crime or violation, or who had authority to prosecute the charge if there was no accusatory instrument filed, and opportunity shall be given to contest the motion. The fingerprint card with the notation “motion for setting aside conviction,” or “motion for setting aside arrest record” as the case may be, shall be forwarded to the Department of State Police bureau of criminal identification. Information resulting from the fingerprint search along with the fingerprint card shall be returned to the prosecuting attorney.

(b) When a prosecuting attorney is served with a copy of a motion to set aside a conviction under this section, the prosecuting attorney shall provide a copy of the motion and notice of the hearing date to the victim, if any, of the crime by mailing a copy of the motion and notice to the victim’s last-known address.

(c) When a person makes a motion under subsection (1)(a) of this section, the person must pay a fee of \$80. The person shall attach a certified check payable to the Department of State Police in the amount of \$80 to the fingerprint card that is served upon the prosecuting attorney. The office of the prosecuting attorney shall forward the check with the fingerprint card to the Department of State Police bureau of criminal identification.

(3) Upon hearing the motion, the court may require the filing of such affidavits and may require the taking of such proofs as it deems proper. The court shall allow the victim to make a statement at the hearing. Except as otherwise provided in subsection (12) of this section, if the court determines that the circumstances and behavior of the applicant from the date of conviction, or from the date of arrest as the case may be, to the date of the hearing on the motion warrant setting aside the conviction, or the arrest record as the case may be, it shall enter an appropriate order that shall state the original arrest charge and the conviction charge, if any and if different from the original,

1 date of charge, submitting agency and disposition. The order shall further state that positive identification has been established by the bureau and further identified as to state bureau number or
 2 submitting agency number. Upon the entry of the order, the applicant for purposes of the law shall
 3 be deemed not to have been previously convicted, or arrested as the case may be, and the court
 4 shall issue an order sealing the record of conviction and other official records in the case, including
 5 the records of arrest whether or not the arrest resulted in a further criminal proceeding.
 6

7 (4) The clerk of the court shall forward a certified copy of the order to such agencies as directed
 8 by the court. A certified copy must be sent to the Department of Corrections when the person has
 9 been in the custody of the Department of Corrections. Upon entry of the order, the conviction, arrest
 10 or other proceeding shall be deemed not to have occurred, and the applicant may answer accordingly
 11 any questions relating to its occurrence.

12 (5) The provisions of subsection (1)(a) of this section apply to a conviction of:

13 (a) A Class C felony, except for criminal mistreatment in the first degree under ORS 163.205
 14 when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime.

15 (b) The crime of possession of the narcotic drug marijuana when that crime was punishable as
 16 a felony only.

17 (c) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, except
 18 for:

19 (A) Any sex crime; and

20 (B) The following crimes when they would constitute child abuse as defined in ORS 419B.005:

21 (i) Criminal mistreatment in the first degree under ORS 163.205; and

22 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

23 (d) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may
 24 be imposed, except for endangering the welfare of a minor under ORS 163.575 (1)(a) when it would
 25 constitute child abuse, as defined in ORS 419B.005, or any sex crime.

26 (e) A violation, whether under state law or local ordinance.

27 (f) An offense committed before January 1, 1972, that if committed after that date would be:

28 (A) A Class C felony, except for any sex crime or for the following crimes when they would
 29 constitute child abuse as defined in ORS 419B.005:

30 (i) Criminal mistreatment in the first degree under ORS 163.205; and

31 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

32 (B) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, except
 33 for any sex crime or for the following crimes when they would constitute child abuse as defined
 34 in ORS 419B.005:

35 (i) Criminal mistreatment in the first degree under ORS 163.205; and

36 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

37 (C) A misdemeanor, except for endangering the welfare of a minor under ORS 163.575 (1)(a)
 38 when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime.

39 (D) A violation.

40 (6) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section
 41 do not apply to:

42 (a) A conviction for a state or municipal traffic offense.

43 (b) A person convicted, within the 10-year period immediately preceding the filing of the motion
 44 pursuant to subsection (1) of this section, of any other offense, excluding motor vehicle violations,
 45 whether or not the other conviction is for conduct associated with the same criminal episode that

1 caused the arrest or conviction that is sought to be set aside. Notwithstanding subsection (1) of this
 2 section, a conviction that has been set aside under this section shall be considered for the purpose
 3 of determining whether this paragraph is applicable.

4 (c) A person who at the time the motion authorized by subsection (1) of this section is pending
 5 before the court is under charge of commission of any crime.

6 (7) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this sec-
 7 tion do not apply to criminally negligent homicide under ORS 163.145, when that offense was
 8 punishable as a Class C felony.

9 (8) The provisions of subsection (1)(b) of this section do not apply to:

10 (a) A person arrested within the three-year period immediately preceding the filing of the motion
 11 for any offense, excluding motor vehicle violations, and excluding arrests for conduct associated
 12 with the same criminal episode that caused the arrest that is sought to be set aside.

13 (b) An arrest for driving while under the influence of intoxicants if the charge is dismissed as
 14 a result of the person's successful completion of a diversion agreement described in ORS 813.200.

15 (9) The provisions of subsection (1) of this section apply to convictions and arrests that occurred
 16 before, as well as those that occurred after, September 9, 1971. There is no time limit for making
 17 an application.

18 (10) For purposes of any civil action in which truth is an element of a claim for relief or affir-
 19 mative defense, the provisions of subsection (3) of this section providing that the conviction, arrest
 20 or other proceeding be deemed not to have occurred do not apply and a party may apply to the
 21 court for an order requiring disclosure of the official records in the case as may be necessary in the
 22 interest of justice.

23 (11) Upon motion of any prosecutor or defendant in a case involving records sealed under this
 24 section, supported by affidavit showing good cause, the court with jurisdiction may order the reo-
 25 pening and disclosure of any records sealed under this section for the limited purpose of assisting
 26 the investigation of the movant. However, such an order has no other effect on the orders setting
 27 aside the conviction or the arrest record.

28 (12) Unless the court makes written findings by clear and convincing evidence that granting the
 29 motion would not be in the best interests of justice, the court shall grant the motion and enter an
 30 order as provided in subsection (3) of this section if the defendant has been convicted of one of the
 31 following crimes and is otherwise eligible for relief under this section:

32 (a) Abandonment of a child, ORS 163.535.

33 (b) Attempted assault in the second degree, ORS 163.175.

34 (c) Assault in the third degree, ORS 163.165.

35 (d) Coercion, ORS 163.275.

36 (e) Criminal mistreatment in the first degree, ORS 163.205 **(3)(a)**.

37 (f) Attempted escape in the first degree, ORS 162.165.

38 (g) Incest, ORS 163.525, if the victim was at least 18 years of age.

39 (h) Intimidation in the first degree, ORS 166.165.

40 (i) Attempted kidnapping in the second degree, ORS 163.225.

41 (j) Attempted robbery in the second degree, ORS 164.405.

42 (k) Robbery in the third degree, ORS 164.395.

43 (L) Supplying contraband, ORS 162.185.

44 (m) Unlawful use of a weapon, ORS 166.220.

45 (13) As used in this section, "sex crime" has the meaning given that term in ORS 181.594.

1 **SECTION 3.** The amendments to ORS 137.225 and 163.205 by sections 1 and 2 of this 2011
2 Act apply to conduct occurring on or after the effective date of this 2011 Act.
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