

House Bill 4088

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

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**.

Modifies crime of criminal mistreatment in first degree to include sexual contact with dependent person by person paid to provide care for dependent person. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both. Modifies definition of "dependent person."

Exempts nonprofit association acting as cotrustee of pooled trust for persons with disabilities from licensing requirements in certain circumstances.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to vulnerable persons; creating new provisions; amending ORS 163.205 and 709.030; and
3 declaring an emergency.

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

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

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

4 (c) **The person, in violation of a legal duty to provide care for a dependent person to**
5 **whom the person is not married, or having assumed the permanent or temporary care, cus-**
6 **tody or responsibility for the supervision or transportation of a dependent person to whom**
7 **the person is not married, and being paid in whole or in part by a health care payor or health**
8 **care provider for the care, custody or responsibility for the supervision or transportation of**
9 **the dependent person, intentionally or knowingly engages in sexual contact, sexual inter-**
10 **course or deviate sexual intercourse with the dependent person.**

11 (2) As used in this section:

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

13 (b) “Dependent person” means a person who because of either age or a physical or mental dis-
14 ability is dependent upon another to provide for the person’s:

15 (A) Physical needs;

16 (B) **Activities of community inclusion as defined in ORS 410.600; or**

17 (C) **Activities of daily living as defined in ORS 410.600.**

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

19 (d) **“Health care payor” has the meaning given that term in ORS 165.690 and includes any**
20 **legal entity providing health care services under a state or federal medical assistance pro-**
21 **gram.**

22 (e) **“Health care provider” means an individual, corporation, partnership or association**
23 **that provides health care services to assist a dependent person’s physical needs, activities**
24 **of community inclusion or activities of daily living.**

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

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

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

29 **SECTION 2.** ORS 709.030 is amended to read:

30 709.030. (1) Except as provided in subsection (4) of this section, no person other than a trust
31 company shall transact a trust business in this state. Except as provided in subsection (4) of this
32 section, before a person transacts any trust business in this state, the person shall obtain the ap-
33 proval of the Director of the Department of Consumer and Business Services if required under ORS
34 709.005 and shall deposit with the director, as security and as a pledge for the faithful conduct of
35 its trust business:

36 (a) Cash or interest-bearing securities that have a ready market value;

37 (b) A surety bond issued by a surety company authorized to transact business in this state and
38 in a form approved by the director, under which the principal and surety indemnify the several
39 owners of the fund held in trust against loss due to the failure of the trust company;

40 (c) An irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008;
41 or

42 (d) Any combination of cash, letters of credit, interest-bearing securities and surety bond.

43 (2) If the cash and securities held in trust amount to less than \$1 million, the deposit, bond,
44 letters of credit or combination thereof shall be \$50,000. If the cash and securities held in trust
45 amount to at least \$1 million but do not exceed \$1.5 million, the deposit, bond, letters of credit or

1 combination thereof shall be \$100,000. For each \$500,000 or fraction thereof in excess of \$1.5 million
2 held in trust, the deposit, bond, or letters of credit or combination thereof shall be increased an
3 additional \$25,000, except a trust company shall not be required to increase the deposit, bond, letters
4 of credit or combination thereof to an amount in excess of \$1 million.

5 (3) The securities shall be deposited with the director and held by the director as trustee for the
6 beneficiaries of the trust funds held by the trust company.

7 (4) A person shall not be required to be a trust company if the person:

8 (a) Does not and will not regularly transact trust business in the ordinary course of the person's
9 business;

10 (b) Acts in a manner authorized by law and in the scope of authority as an agent of a trust
11 company;

12 (c) Is an attorney rendering a service customarily performed by an attorney;

13 (d) Is acting as trustee under a deed of trust;

14 (e) Is a licensed real estate broker or principal real estate broker rendering a service custom-
15 arily performed by a broker;

16 (f) Is a licensed escrow agent rendering a service customarily performed by an escrow agent;
17 [or]

18 (g) **Is a nonprofit association acting as a cotrustee of a pooled trust for persons with**
19 **disabilities under 42 U.S.C. 1396p(d)(4)(C), as in effect on January 1, 2014, if a trust company**
20 **as cotrustee of the pooled trust is custodian of all assets of the pooled trust and makes all**
21 **investment decisions for the pooled trust; or**

22 [(g)] (h) Is exempt from the provisions of subsection (1) of this section by rule of the director.

23 **SECTION 3. The amendments to ORS 163.205 by section 1 of this 2014 Act apply to pros-**
24 **ecutions for conduct occurring on or after the effective date of this 2014 Act.**

25 **SECTION 4. This 2014 Act being necessary for the immediate preservation of the public**
26 **peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect**
27 **on its passage.**

28