

House Bill 4151

Sponsored by Representative GILLIAM (Pre-session 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**.

Requires investigations of abuse of persons 65 years of age or older to be completed within 120 days from date of report of abuse and preparation of written report upon completion of investigation.

Requires investigation of report of resident abuse to be completed within 120 days of date investigation was commenced.

Directs Department of Human Services to create database, registry or other electronic record of reports and investigations of resident abuse, to standardize procedures and protocols for reports and investigations of resident abuse and to promote and coordinate communication and information sharing with law enforcement agencies.

Directs department to establish registry of persons working or seeking to work in certain facilities providing care to vulnerable persons. Becomes operative January 1, 2015.

Requires certain facilities providing care to vulnerable persons to contact Oregon State Board of Nursing to inquire whether person seeking employment with facility has disciplinary action or finding of abuse against person, and to complete criminal records check on person.

Requires department to notify adult foster home if person applying for admission is on probation, parole or post-prison supervision after being convicted of sex crime. Allows adult foster home to refuse admission to person, or to transfer or discharge resident, who is on probation, parole or post-prison supervision after being convicted of sex crime.

Renames Oregon Elder Abuse Work Group and expands scope of work group's responsibilities. Requires work group to report to interim committees of Legislative Assembly no later than December 31, 2014.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to vulnerable persons; creating new provisions; amending ORS 441.373 and 441.677 and
3 section 23, chapter 70, Oregon Laws 2012; repealing ORS 441.679; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2014 Act is added to and made a part of ORS 124.050 to**
6 **124.095.**

7 **SECTION 2. (1) Investigations commenced pursuant to ORS 124.070 must be completed**
8 **by the Department of Human Services or a law enforcement agency on or before 120 days**
9 **after receipt of the report of abuse made under ORS 124.060.**

10 **(2) Upon completion of an investigation in accordance with subsection (1) of this section,**
11 **a written report shall be prepared that includes information as required by rule adopted by**
12 **the department, including but not limited to the following:**

13 **(a) The date and location of the report of abuse and of the incident of abuse that was**
14 **reported;**

15 **(b) The dates that the investigation was commenced and completed and by what entity;**

16 **(c) A description of documents and records reviewed during the investigation;**

17 **(d) An identification of any witness statements that were obtained during the investi-**
18 **gation; and**

19 **(e) A statement of the factual basis for any findings and a summary of the findings made**
20 **as a result of the investigation.**

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.

SECTION 3. ORS 441.677 is amended to read:

441.677. (1) Within 60 days of receipt of the investigation documents and the written report described in ORS 441.650 (6)(d) and 441.676 (2)(d), **but in no case longer than 120 days after an investigation has been commenced pursuant to ORS 441.650 or 441.676, the investigation shall be completed and** the Department of Human Services shall prepare a written letter of determination that states the department’s determinations concerning each incident or problem alleged in the complaint. The department shall determine whether the alleged incident or problem was substantiated or unsubstantiated or whether the department was unable to substantiate the alleged incident or problem. The department shall adopt by rule definitions for the terms “substantiated,” “unsubstantiated” and “unable to substantiate.” If the department determines that an incident or problem alleged in the complaint is substantiated, the letter of determination shall state whether the substantiated incident was abuse or violation of another rule. If abuse is substantiated, the letter of determination shall state whether the facility or an individual, or both, was responsible. The department shall adopt by rule criteria for determining responsibility for substantiated abuse.

(2) A copy of the letter of determination shall be placed in the facility’s complaint file. Copies shall be sent to the facility, the complainant and the local office of the department. The facility and the complainant receiving the letter of determination shall be given 10 days to respond with additional information and shall be informed of the appeals process.

(3) If the department determines that an individual who holds a license or certificate for a health occupation is directly responsible for the abuse, the department shall send a copy of its letter of determination and investigation report to the state agency responsible for licensing or certifying the individual in the health occupation. In instances involving conduct of a nursing assistant, the department shall give the nursing assistant 10 days to respond with additional information. The department also shall notify by mail the nursing assistant implicated in the investigation of:

- (a) The nature of the allegations;
 - (b) The date and time of occurrence;
 - (c) The right to a contested case hearing conducted in accordance with ORS chapter 183;
 - (d) The department’s obligation to report the substantiated findings in the registry maintained under ORS 441.678 after the nursing assistant has had an opportunity for a contested case hearing;
- and
- (e) The fact that the nursing assistant’s failure to request a contested case hearing within 30 days from the date of the notice will result in the department’s reporting the substantiated findings in the registry maintained under ORS 441.678.

(4) Notice sent to the nursing assistant’s last-known address is sufficient to meet the requirements of subsection (3) of this section.

SECTION 4. The Department of Human Services shall adopt policies and guidelines to plan for, develop and standardize resources and technologies to:

(1) **Create a database, registry or other electronic record of reports of abuse made under ORS 124.060 and 441.640 and investigations of abuse conducted pursuant to ORS 124.070 and 441.650 with information including, but not limited to:**

- (a) **The date and location of the report of abuse and the incident of abuse that was reported;**
- (b) **If applicable, the date that the initial status report required under ORS 441.650 was completed and a summary of the information required to be contained in the initial status report as set forth in ORS 441.650;**

1 (c) The date that the investigation was commenced and by what entity;

2 (d) Any actions taken during the course of the investigation, including but not limited
3 to the actions required under ORS 441.650 (6);

4 (e) The date that a written report, including but not limited to the written report re-
5 quired under ORS 441.650 (6) and section 2 of this 2014 Act, was completed and a summary
6 of the information contained in the written report; and

7 (f) The disposition of the report of abuse or the investigation of the report, including but
8 not limited to the date and time that the investigation, if applicable, was completed and the
9 date that a letter of determination under ORS 441.677 was prepared;

10 (2) Standardize procedures and protocols for making and responding to reports of abuse
11 made under ORS 124.060 and 441.640;

12 (3) Standardize procedures and protocols for investigations of reports of abuse conducted
13 pursuant to ORS 124.070 and 441.650; and

14 (4) Promote and coordinate communication and information sharing with law enforce-
15 ment agencies regarding reports and investigations of abuse under ORS 124.060, 124.070,
16 441.640 and 441.650.

17 **SECTION 5.** The Department of Human Services shall report to the committees of the
18 Legislative Assembly with subject matter jurisdiction over abuse of vulnerable persons re-
19 garding implementation of policies and guidelines planned for, developed and standardized
20 pursuant to section 4 of this 2014 Act on or before January 1, 2015.

21 **SECTION 6.** (1) As used in this section, "facility" means:

22 (a) A long term care facility as defined in ORS 442.015;

23 (b) A residential care facility as defined in ORS 443.400, including but not limited to an
24 assisted living facility;

25 (c) An adult foster home as defined in ORS 443.705, but does not include adult foster
26 homes licensed to provide care to persons with developmental disabilities or mental illness;
27 and

28 (d) A home health agency as defined in ORS 443.005.

29 (2) The Department of Human Services shall create and regularly update a registry of
30 all persons who work or are seeking to work in a facility.

31 (3) A facility shall report information required pursuant to rules adopted by the depart-
32 ment regarding persons who work or are seeking to work at the facility for maintenance of
33 the registry established under subsection (2) of this section.

34 (4) The department shall adopt rules establishing:

35 (a) The information that must be reported by facilities;

36 (b) The form and frequency of reporting by facilities;

37 (c) Procedures and standards for the administration of the registry; and

38 (d) Guidelines and procedures for requests for and release of information from the reg-
39 istry.

40 **SECTION 7.** ORS 441.679 is repealed.

41 **SECTION 8.** (1) For purposes of this section, "facility" means:

42 (a) A long term care facility as defined in ORS 442.015;

43 (b) A residential care facility as defined in ORS 443.400, including but not limited to an
44 assisted living facility;

45 (c) An adult foster home as defined in ORS 443.705, but does not include adult foster

1 **homes licensed to provide care to persons with developmental disabilities or mental illness;**
 2 **and**

3 **(d) A home health agency as defined in ORS 443.005.**

4 **(2) Before employing a registered nurse, licensed practical nurse or certified nursing as-**
 5 **stant, a facility shall contact the Oregon State Board of Nursing and inquire whether:**

6 **(a) The person is currently licensed or certified by the board;**

7 **(b) There has been any disciplinary action against the person; and**

8 **(c) If applicable, there has been a finding of abuse against the person entered into the**
 9 **registry maintained under ORS 441.678.**

10 **(3) An application form for employment at a facility must inquire whether the applicant**
 11 **has been found to have committed abuse, and the facility must complete a criminal records**
 12 **check on the person pursuant to the procedure set forth under ORS 443.004.**

13 **SECTION 9.** ORS 441.373 is amended to read:

14 441.373. (1) As used in this section:

15 **(a) “Adult foster home” has the meaning given that term in ORS 443.705.**

16 [(a)] **(b) “Area agency” has the meaning given that term in ORS 410.040.**

17 [(b)] **(c) “Long term care facility” has the meaning given that term in ORS 442.015.**

18 [(c)] **(d) “Move from a long term care facility” has the meaning given that term in ORS 441.357.**

19 [(d)] **(e) “Residential care facility” has the meaning given that term in ORS 443.400.**

20 **(2) If the Department of Human Services or an area agency knows that a person who is on**
 21 **probation, parole or post-prison supervision after being convicted of a sex crime, as defined in ORS**
 22 **181.805, is applying for admission to an adult foster home, a long term care facility or a residential**
 23 **care facility, the department or area agency shall notify the home or facility of the person’s status**
 24 **as a sex offender.**

25 **(3) When a person who is on probation, parole or post-prison supervision after being convicted**
 26 **of a sex crime, as defined in ORS 181.805, applies for admission to an adult foster home, a long**
 27 **term care facility or a residential care facility, the person shall notify the home or facility of the**
 28 **person’s status as a sex offender.**

29 **(4) An adult foster home, a long term care facility or a residential care facility may refuse**
 30 **admission to a person who is on probation, parole or post-prison supervision after being convicted**
 31 **of a sex crime, as defined in ORS 181.805.**

32 **(5)(a) An adult foster home may transfer or discharge a resident without reasonable ad-**
 33 **vance notice of the transfer or discharge if:**

34 **(A) The home was not notified prior to admission of the resident that the resident is on**
 35 **probation, parole or post-prison supervision after being convicted of a sex crime, as defined**
 36 **in ORS 181.805;**

37 **(B) The home learns that the resident is on probation, parole or post-prison supervision**
 38 **after being convicted of a sex crime, as defined in ORS 181.805; and**

39 **(C) The resident meets the criteria established by the department by rule for transfer**
 40 **or discharge under this subsection.**

41 **(b) The home shall give the resident a copy of a written notice containing information**
 42 **about the resident’s right to a hearing in accordance with ORS chapter 183 and the grounds**
 43 **for contesting the move at the time the home transfers or discharges the resident.**

44 [(5)] **(6) Notwithstanding ORS 441.362 and 441.605 (4), the department may move a resident from**
 45 **a long term care facility without providing 30 days’ written notice to the resident if the department**

1 or area agency learns that the resident is on probation, parole or post-prison supervision after being
 2 convicted of a sex crime, as defined in ORS 181.805. The department shall give the resident a copy
 3 of a written notice containing information about the resident’s right to a hearing in accordance with
 4 ORS chapter 183 and the grounds for contesting the move at the time the department moves the
 5 resident.

6 [(6)(a)] (7)(a) Notwithstanding ORS 441.605 (4), a long term care facility may transfer or dis-
 7 charge a resident without reasonable advance notice of the transfer or discharge if:

8 (A) The facility was not notified prior to admission of the resident that the resident is on pro-
 9 bation, parole or post-prison supervision after being convicted of a sex crime, as defined in ORS
 10 181.805;

11 (B) The facility learns that the resident is on probation, parole or post-prison supervision after
 12 being convicted of a sex crime, as defined in ORS 181.805; and

13 (C) The resident meets the criteria established by the department by rule for transfer or dis-
 14 charge under this subsection.

15 (b) The facility shall give the resident a copy of a written notice containing information about
 16 the resident’s right to a hearing in accordance with ORS chapter 183 and the grounds for contesting
 17 the move at the time the facility transfers or discharges the resident.

18 [(7)(a)] (8)(a) A residential care facility may transfer or discharge a resident without reasonable
 19 advance notice of the transfer or discharge if:

20 (A) The facility was not notified prior to admission of the resident that the resident is on pro-
 21 bation, parole or post-prison supervision after being convicted of a sex crime, as defined in ORS
 22 181.805;

23 (B) The facility learns that the resident is on probation, parole or post-prison supervision after
 24 being convicted of a sex crime, as defined in ORS 181.805; and

25 (C) The resident meets the criteria established by the department by rule for transfer or dis-
 26 charge under this subsection.

27 (b) The facility shall give the resident a copy of a written notice containing information about
 28 the resident’s right to a hearing in accordance with ORS chapter 183 and the grounds for contesting
 29 the move at the time the facility transfers or discharges the resident.

30 [(8)] (9) If a resident requests a hearing under subsection (5), (6), [or] (7) or (8) of this section,
 31 the hearing must be held within five business days of the move, transfer or discharge of the resident.

32 [(9)] (10) The department shall establish the criteria required by subsections [(6)(a)(C) and
 33 (7)(a)(C)] (5)(a)(C), (7)(a)(C) and (8)(a)(C) of this section so that application of the criteria results
 34 in the identification of only those persons who present a current risk of harm to another person
 35 within the **home or** facility.

36 **SECTION 10.** Section 23, chapter 70, Oregon Laws 2012, as amended by section 8, chapter 352,
 37 Oregon Laws 2013, is amended to read:

38 **Sec. 23.** (1)(a) It is the intent of the Legislative Assembly to recreate the Oregon Elder Abuse
 39 Work Group, first established on June 21, 2011, by section 1, chapter 444, Oregon Laws 2011, and
 40 repealed on February 29, 2012, so that the work group may complete its work as set forth in this
 41 section and section 1, chapter 444, Oregon Laws 2011.

42 **(b) It is the intent of the Legislative Assembly to rename the Oregon Elder Abuse Work**
 43 **Group as the Oregon Elder Abuse Prevention Work Group and to expand the scope of the**
 44 **work group’s responsibilities as set forth in this section.**

45 (2) The Oregon Elder Abuse **Prevention** Work Group shall consist of 22 members appointed as

1 follows:

2 (a) The President of the Senate shall appoint two members from among members of the Senate
 3 who shall cease being members of the work group upon ceasing to be members of the Legislative
 4 Assembly.

5 (b) The Speaker of the House of Representatives shall appoint two members from among mem-
 6 bers of the House of Representatives who shall cease being members of the work group upon ceasing
 7 to be members of the Legislative Assembly.

8 (c) The Governor shall appoint 12 members as follows:

9 (A) The Long Term Care Ombudsman appointed under ORS 441.103;

10 (B) Three members representing long term care providers for elderly persons;

11 (C) Two members representing law enforcement agencies, one of whom shall be a representative
 12 from the Oregon District Attorneys Association and one of whom shall be a representative from a
 13 local law enforcement agency with expertise in investigating elder abuse;

14 (D) Two members representing consumers who are elderly persons;

15 (E) An officer of a bank, as defined in ORS 706.008;

16 (F) An officer of a credit union, as defined in ORS 723.008;

17 (G) A representative of unionized health care workers who is recommended by a local affiliate
 18 of the Service Employees International Union; and

19 (H) A member of the Oregon Patient Safety Commission established under ORS 442.820.

20 (d) The chairperson of the Governor's Commission on Senior Services created under ORS 410.320
 21 shall appoint one member.

22 (e) The Director of Human Services shall appoint two members as follows:

23 (A) One member with expertise in elder abuse services and investigations; and

24 (B) One member representing the office or department within the Department of Human Services
 25 that performs criminal background checks of individuals providing services to elderly persons or
 26 conducting elder abuse investigations.

27 (f) The Attorney General shall appoint a deputy or assistant attorney general with expertise in
 28 the investigation of criminal offenses that have been committed against vulnerable persons.

29 (g) The Board of Governors of the Oregon State Bar shall appoint two members as follows:

30 (A) A lawyer whose practice is concentrated on elder law; and

31 (B) A criminal defense lawyer.

32 (3) The work group shall meet at times and places specified by the call of the chairperson or
 33 of a majority of the members of the work group.

34 (4) The work group shall study and make recommendations on [*the definition of elder abuse, in-*
 35 *cluding but not limited to*]:

36 (a) Aligning definitions of abuse of vulnerable persons across populations, agencies, service
 37 providers and law enforcement;

38 (b) Defining abuse of vulnerable persons for purposes of investigation and for purposes of mak-
 39 ing determinations that abuse of vulnerable persons has or has not occurred; [*and*]

40 (c) Defining abuse of vulnerable persons for purposes of abuse data reporting systems[.];

41 **(d) The criminal background check system and its role in prevention and investigation**
 42 **of abuse of vulnerable persons;**

43 **(e) The process involved in conducting investigations of abuse of vulnerable persons;**

44 **(f) Vulnerable persons abuse data reporting systems; and**

45 **(g) Information that could be made available to the public regarding abuse of vulnerable**

1 **persons and investigations of abuse of vulnerable persons.**

2 (5) A majority of the members of the work group constitutes a quorum for the transaction of
3 business.

4 (6) Official action by the work group requires the approval of a majority of the members of the
5 work group.

6 (7) The work group shall elect two of its members to serve as cochairpersons.

7 (8) If there is a vacancy for any cause, the appointing authority shall make an appointment to
8 become immediately effective.

9 (9) The work group shall meet at times and places specified by the call of the cochairpersons
10 or of a majority of the members of the work group.

11 (10) The work group may adopt rules necessary for the operation of the work group.

12 (11) The work group shall make a report, and may include recommendations for legislation, to
13 interim committees of the Legislative Assembly related to the provision of services to elderly per-
14 sons and investigation of elder abuse no later than [*February 1, 2014*] **December 31, 2014.**

15 (12) The work group may accept donations of staff support, office space and equipment from
16 advocacy or service provider organizations to assist the work group in the performance of its func-
17 tions.

18 (13) Notwithstanding ORS 171.072, members of the work group who are members of the Legis-
19 lative Assembly are not entitled to mileage expenses or a per diem and serve as volunteers on the
20 work group. Other members of the work group are not entitled to compensation or reimbursement
21 for expenses and serve as volunteers on the work group.

22 (14) All agencies of state government as defined in ORS 174.111 are directed to assist the work
23 group in the performance of its duties and, to the extent permitted by laws relating to
24 confidentiality, to furnish such information and advice as the members of the work group consider
25 necessary to perform their duties.

26 **SECTION 11. (1) Section 6 of this 2014 Act becomes operative on January 1, 2015.**

27 **(2) The Department of Human Services may take any action before the operative date**
28 **specified in subsection (1) of this section that is necessary to enable the department to ex-**
29 **ercise, on and after the operative date specified in subsection (1) of this section, all the du-**
30 **ties, functions and powers conferred on the department by section 6 of this 2014 Act.**

31 **SECTION 12. This 2014 Act being necessary for the immediate preservation of the public**
32 **peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect**
33 **on its passage.**

34