

**PROPOSED AMENDMENTS TO
HOUSE BILL 4151**

1 On page 1 of the printed bill, line 2, delete “441.373 and 441.677” and in-
2 sert “124.050, 441.373, 441.677, 441.715 and 443.455”.

3 On page 7, after line 25, insert:

4 **“SECTION 11.** ORS 124.050, as operative until January 1, 2015, is
5 amended to read:

6 “124.050. As used in ORS 124.050 to 124.095:

7 “(1) ‘Abuse’ means one or more of the following:

8 “(a) Any physical injury to an elderly person caused by other than acci-
9 dental means, or which appears to be at variance with the explanation given
10 of the injury.

11 “(b) Neglect.

12 “(c) Abandonment, including desertion or willful forsaking of an elderly
13 person or the withdrawal or neglect of duties and obligations owed an el-
14 derly person by a caretaker or other person.

15 “(d) Willful infliction of physical pain or injury upon an elderly person.

16 “(e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411,
17 163.415, 163.425, 163.427, 163.465, [or] 163.467 **or 163.525.**

18 “(f) Verbal abuse.

19 “(g) Financial exploitation.

20 “(h) Sexual abuse.

21 “(i) Involuntary seclusion of an elderly person for the convenience of a
22 caregiver or to discipline the person.

1 “(j) A wrongful use of a physical or chemical restraint of an elderly per-
2 son, excluding an act of restraint prescribed by a physician licensed under
3 ORS chapter 677 and any treatment activities that are consistent with an
4 approved treatment plan or in connection with a court order.

5 “(2) ‘Elderly person’ means any person 65 years of age or older who is not
6 subject to the provisions of ORS 441.640 to 441.665.

7 “(3) ‘Facility’ means:

8 “(a) A long term care facility as that term is defined in ORS 442.015.

9 “(b) A residential facility as that term is defined in ORS 443.400, includ-
10 ing but not limited to an assisted living facility.

11 “(c) An adult foster home as that term is defined in ORS 443.705.

12 “(4) ‘Financial exploitation’ means:

13 “(a) Wrongfully taking the assets, funds or property belonging to or in-
14 tended for the use of an elderly person or a person with a disability.

15 “(b) Alarming an elderly person or a person with a disability by convey-
16 ing a threat to wrongfully take or appropriate money or property of the
17 person if the person would reasonably believe that the threat conveyed would
18 be carried out.

19 “(c) Misappropriating, misusing or transferring without authorization any
20 money from any account held jointly or singly by an elderly person or a
21 person with a disability.

22 “(d) Failing to use the income or assets of an elderly person or a person
23 with a disability effectively for the support and maintenance of the person.

24 “(5) ‘Intimidation’ means compelling or deterring conduct by threat.

25 “(6) ‘Law enforcement agency’ means:

26 “(a) Any city or municipal police department.

27 “(b) Any county sheriff’s office.

28 “(c) The Oregon State Police.

29 “(d) Any district attorney.

30 “(e) A police department established by a university under ORS 352.383

1 or 353.125.

2 “(7) ‘Neglect’ means[:]

3 “[*(a) Failure to provide the care, supervision or services necessary to*
4 *maintain the physical and mental health of an elderly person that may result*
5 *in physical harm or significant emotional harm to the elderly person; or]*

6 “[*(b) The failure of a caregiver to make a reasonable effort to protect an*
7 *elderly person from abuse]* **failure to provide basic care or services that**
8 **are necessary to maintain the health or safety of an elderly person.**

9 “(8) ‘Person with a disability’ means a person described in:

10 “(a) ORS 410.040 (7); or

11 “(b) ORS 410.715.

12 “(9) ‘Public or private official’ means:

13 “(a) Physician or physician assistant licensed under ORS chapter 677,
14 naturopathic physician, or chiropractor, including any intern or resident.

15 “(b) Licensed practical nurse, registered nurse, nurse practitioner, nurse’s
16 aide, home health aide or employee of an in-home health service.

17 “(c) Employee of the Department of Human Services or community de-
18 velopmental disabilities program.

19 “(d) Employee of the Oregon Health Authority, county health department
20 or community mental health program.

21 “(e) Peace officer.

22 “(f) Member of the clergy.

23 “(g) Regulated social worker.

24 “(h) Physical, speech or occupational therapist.

25 “(i) Senior center employee.

26 “(j) Information and referral or outreach worker.

27 “(k) Licensed professional counselor or licensed marriage and family
28 therapist.

29 “(L) Any public official who comes in contact with elderly persons in the
30 performance of the official’s official duties.

1 “(m) Firefighter or emergency medical services provider.

2 “(n) Psychologist.

3 “(o) Provider of adult foster care or an employee of the provider.

4 “(p) Audiologist.

5 “(q) Speech-language pathologist.

6 “(10) ‘Services’ includes but is not limited to the provision of food,
7 clothing, medicine, housing, medical services, assistance with bathing or
8 personal hygiene or any other service essential to the well-being of an el-
9 derly person.

10 “(11)(a) ‘Sexual abuse’ means:

11 “(A) Sexual contact with an elderly person who does not consent or is
12 considered incapable of consenting to a sexual act under ORS 163.315;

13 “[*B*] *Sexual harassment, sexual exploitation or inappropriate exposure to*
14 *sexually explicit material or language;*]

15 “**(B) Verbal or physical harassment of a sexual nature, including**
16 **but not limited to severe or pervasive exposure to sexually explicit**
17 **material or language;**

18 “**(C) Sexual exploitation;**

19 “[*C*] **(D) Any sexual contact between an employee of a facility or paid**
20 **caregiver and an elderly person served by the facility or caregiver; or**

21 “[*D*] *Any sexual contact between an elderly person and a relative of the*
22 *elderly person other than a spouse; or]*

23 “**(E) Any sexual contact that is achieved through force, trickery, threat**
24 **or coercion.**

25 “(b) ‘Sexual abuse’ does not mean consensual sexual contact between an
26 elderly person and a paid caregiver [*who is the spouse of the elderly person*].

27 “(12) ‘Sexual contact’ has the meaning given that term in ORS 163.305.

28 “(13) ‘Verbal abuse’ means to threaten significant physical or emotional
29 harm to an elderly person or a person with a disability through the use of:

30 “(a) Derogatory or inappropriate names, insults, verbal assaults, profanity

1 or ridicule; or

2 “(b) Harassment, coercion, threats, intimidation, humiliation, mental cru-
3 elty or inappropriate sexual comments.

4 **“SECTION 12.** ORS 124.050, as amended by section 5, chapter 352, Oregon
5 Laws 2013, is amended to read:

6 “124.050. As used in ORS 124.050 to 124.095:

7 “(1) ‘Abuse’ means one or more of the following:

8 “(a) Any physical injury to an elderly person caused by other than acci-
9 dental means, or which appears to be at variance with the explanation given
10 of the injury.

11 “(b) Neglect.

12 “(c) Abandonment, including desertion or willful forsaking of an elderly
13 person or the withdrawal or neglect of duties and obligations owed an el-
14 derly person by a caretaker or other person.

15 “(d) Willful infliction of physical pain or injury upon an elderly person.

16 “(e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411,
17 163.415, 163.425, 163.427, 163.465, [or] 163.467 **or 163.525.**

18 “(f) Verbal abuse.

19 “(g) Financial exploitation.

20 “(h) Sexual abuse.

21 “(i) Involuntary seclusion of an elderly person for the convenience of a
22 caregiver or to discipline the person.

23 “(j) A wrongful use of a physical or chemical restraint of an elderly per-
24 son, excluding an act of restraint prescribed by a physician licensed under
25 ORS chapter 677 and any treatment activities that are consistent with an
26 approved treatment plan or in connection with a court order.

27 “(2) ‘Elderly person’ means any person 65 years of age or older who is not
28 subject to the provisions of ORS 441.640 to 441.665.

29 “(3) ‘Facility’ means:

30 “(a) A long term care facility as that term is defined in ORS 442.015.

1 “(b) A residential facility as that term is defined in ORS 443.400, includ-
2 ing but not limited to an assisted living facility.

3 “(c) An adult foster home as that term is defined in ORS 443.705.

4 “(4) ‘Financial exploitation’ means:

5 “(a) Wrongfully taking the assets, funds or property belonging to or in-
6 tended for the use of an elderly person or a person with a disability.

7 “(b) Alarming an elderly person or a person with a disability by convey-
8 ing a threat to wrongfully take or appropriate money or property of the
9 person if the person would reasonably believe that the threat conveyed would
10 be carried out.

11 “(c) Misappropriating, misusing or transferring without authorization any
12 money from any account held jointly or singly by an elderly person or a
13 person with a disability.

14 “(d) Failing to use the income or assets of an elderly person or a person
15 with a disability effectively for the support and maintenance of the person.

16 “(5) ‘Intimidation’ means compelling or deterring conduct by threat.

17 “(6) ‘Law enforcement agency’ means:

18 “(a) Any city or municipal police department.

19 “(b) Any county sheriff’s office.

20 “(c) The Oregon State Police.

21 “(d) Any district attorney.

22 “(e) A police department established by a university under ORS 352.383
23 or 353.125.

24 “(7) ‘Neglect’ means[:]

25 “[*(a) Failure to provide the care, supervision or services necessary to*
26 *maintain the physical and mental health of an elderly person that may result*
27 *in physical harm or significant emotional harm to the elderly person; or]*

28 “[*(b) The failure of a caregiver to make a reasonable effort to protect an*
29 *elderly person from abuse] **failure to provide basic care or services that**
30 **are necessary to maintain the health or safety of an elderly person.***

- 1 “(8) ‘Person with a disability’ means a person described in:
- 2 “(a) ORS 410.040 (7); or
- 3 “(b) ORS 410.715.
- 4 “(9) ‘Public or private official’ means:
- 5 “(a) Physician or physician assistant licensed under ORS chapter 677,
- 6 naturopathic physician or chiropractor, including any intern or resident.
- 7 “(b) Licensed practical nurse, registered nurse, nurse practitioner, nurse’s
- 8 aide, home health aide or employee of an in-home health service.
- 9 “(c) Employee of the Department of Human Services or community de-
- 10 velopmental disabilities program.
- 11 “(d) Employee of the Oregon Health Authority, county health department
- 12 or community mental health program.
- 13 “(e) Peace officer.
- 14 “(f) Member of the clergy.
- 15 “(g) Regulated social worker.
- 16 “(h) Physical, speech or occupational therapist.
- 17 “(i) Senior center employee.
- 18 “(j) Information and referral or outreach worker.
- 19 “(k) Licensed professional counselor or licensed marriage and family
- 20 therapist.
- 21 “(L) Member of the Legislative Assembly.
- 22 “(m) Firefighter or emergency medical services provider.
- 23 “(n) Psychologist.
- 24 “(o) Provider of adult foster care or an employee of the provider.
- 25 “(p) Audiologist.
- 26 “(q) Speech-language pathologist.
- 27 “(r) Attorney.
- 28 “(s) Dentist.
- 29 “(t) Optometrist.
- 30 “(u) Chiropractor.

1 “(10) ‘Services’ includes but is not limited to the provision of food,
2 clothing, medicine, housing, medical services, assistance with bathing or
3 personal hygiene or any other service essential to the well-being of an el-
4 derly person.

5 “(11)(a) ‘Sexual abuse’ means:

6 “(A) Sexual contact with an elderly person who does not consent or is
7 considered incapable of consenting to a sexual act under ORS 163.315;

8 “[*(B) Sexual harassment, sexual exploitation or inappropriate exposure to*
9 *sexually explicit material or language;*]

10 “**(B) Verbal or physical harassment of a sexual nature, including**
11 **but not limited to severe or pervasive exposure to sexually explicit**
12 **material or language;**

13 “**(C) Sexual exploitation;**

14 “[*(C)*] **(D)** Any sexual contact between an employee of a facility or paid
15 caregiver and an elderly person served by the facility or caregiver; **or**

16 “[*(D)*] *Any sexual contact between an elderly person and a relative of the*
17 *elderly person other than a spouse; or]*

18 “(E) Any sexual contact that is achieved through force, trickery, threat
19 or coercion.

20 “(b) ‘Sexual abuse’ does not mean consensual sexual contact between an
21 elderly person and a paid caregiver [*who is the spouse of the elderly person*].

22 “(12) ‘Sexual contact’ has the meaning given that term in ORS 163.305.

23 “(13) ‘Verbal abuse’ means to threaten significant physical or emotional
24 harm to an elderly person or a person with a disability through the use of:

25 “(a) Derogatory or inappropriate names, insults, verbal assaults, profanity
26 or ridicule; or

27 “(b) Harassment, coercion, threats, intimidation, humiliation, mental cru-
28 elty or inappropriate sexual comments.

29 “**SECTION 13.** ORS 441.715 is amended to read:

30 “441.715. (1)(a) After public hearing, the Director of Human Services by

1 rule shall adopt objective criteria for establishing the civil penalty that may
2 be imposed under ORS 441.710 (1) and the Director of the Oregon Health
3 Authority by rule shall adopt objective criteria for establishing the civil
4 penalty that may be imposed under ORS 441.710 (2). However, the civil pen-
5 alty may not exceed \$500 for each violation, except as otherwise provided in
6 this subsection and ORS 441.995 or as otherwise required by federal law.

7 “(b) Notwithstanding the limitations on the civil penalty in paragraph (a)
8 of this subsection, for any violation involving direct resident care or feeding,
9 an adequate staff to resident ratio, sanitation involving direct resident care
10 or a violation of ORS 441.605 or rules required to be adopted under ORS
11 441.610, a penalty may be imposed for each day the violation occurs in an
12 amount not to exceed \$500 per day or as otherwise required by federal law.

13 “(c) If the Department of Human Services investigates and makes a find-
14 ing of abuse arising from deliberate or other than accidental action or in-
15 action that is likely to cause a negative outcome by a person with a duty
16 of care toward a resident of a long term care facility and if the abuse re-
17 sulted in the death, serious injury, rape or sexual abuse of a resident, the
18 department shall impose a civil penalty of not less than \$2,500 for each oc-
19 currence of substantiated abuse, not to exceed \$15,000 in any 90-day period.
20 As used in this paragraph:

21 “(A) ‘Negative outcome’ includes serious injury, rape, sexual abuse or
22 death.

23 “(B) ‘Rape’ means rape in the first, second or third degree as described
24 in ORS 163.355, 163.365 and 163.375.

25 “(C) ‘Serious injury’ means physical injury that creates a substantial risk
26 of death or that causes serious and protracted disfigurement, protracted
27 impairment of health or protracted loss or impairment of the function of any
28 bodily organ.

29 “(D) ‘Sexual abuse’ means any form of [*nonconsensual sexual contact, in-*
30 *cluding but not limited to unwanted or inappropriate touching,*] **sexual con-**

1 **tact between an employee of a long term care facility or a person**
2 **providing services in the long term care facility and a resident of that**
3 **facility, including but not limited to** sodomy, sexual coercion, sexually
4 explicit photographing and sexual harassment.

5 “(2) The penalties assessed under subsection (1)(a) or (b) of this section
6 may not exceed \$7,500 in the aggregate or as otherwise required by federal
7 law with respect to a single long term care facility within any 90-day period.

8 **“SECTION 14.** ORS 443.455, as operative until July 1, 2014, is amended
9 to read:

10 “443.455. (1) For purposes of imposing civil penalties, residential facilities
11 approved under ORS 443.400 to 443.455 are subject to ORS 441.705 to 441.745.

12 “(2) The Director of Human Services shall by rule prescribe a schedule
13 of penalties for residential care facilities, residential training facilities and
14 residential training homes that are not in compliance with ORS 443.400 to
15 443.455.

16 “(3) The Director of the Oregon Health Authority shall by rule prescribe
17 a schedule of penalties for residential treatment facilities and residential
18 treatment homes that are not in compliance with ORS 443.400 to 443.455.

19 “(4) If the department or authority investigates and makes a finding of
20 abuse arising from deliberate or other than accidental action or inaction that
21 is likely to cause a negative outcome by a person with a duty of care toward
22 a resident of a residential facility and if the abuse resulted in the death,
23 serious injury, rape or sexual abuse of a resident, the department or au-
24 thority shall impose a civil penalty of not less than \$2,500 for each occur-
25 rence of substantiated abuse, not to exceed \$15,000 in any 90-day period. As
26 used in this subsection:

27 “(a) ‘Negative outcome’ includes serious injury, rape, sexual abuse or
28 death.

29 “(b) ‘Rape’ means rape in the first, second or third degree as described in
30 ORS 163.355, 163.365 and 163.375.

1 “(c) ‘Serious injury’ means physical injury that creates a substantial risk
2 of death or that causes serious and protracted disfigurement, protracted
3 impairment of health or protracted loss or impairment of the function of any
4 bodily organ.

5 “(d) ‘Sexual abuse’ means any form of [*nonconsensual sexual contact, in-*
6 *cluding but not limited to unwanted or inappropriate touching,*] **sexual con-**
7 **tact between an employee of a residential facility or a person providing**
8 **services in the residential facility and a resident of that facility, in-**
9 **cluding but not limited to** sodomy, sexual coercion, sexually explicit pho-
10 tographing and sexual harassment.

11 **“SECTION 15.** ORS 443.455 is amended to read:

12 “443.455. (1) Except as provided in subsection (5) of this section, for pur-
13 poses of imposing civil penalties, residential facilities approved under ORS
14 443.400 to 443.455 are subject to ORS 441.705 to 441.745.

15 “(2) The Director of Human Services shall by rule prescribe a schedule
16 of penalties for residential care facilities, residential training facilities and
17 residential training homes that are not in compliance with ORS 443.400 to
18 443.455.

19 “(3) The Director of the Oregon Health Authority shall by rule prescribe
20 a schedule of penalties for residential treatment facilities and residential
21 treatment homes that are not in compliance with ORS 443.400 to 443.455.

22 “(4) If the department or authority investigates and makes a finding of
23 abuse arising from deliberate or other than accidental action or inaction that
24 is likely to cause a negative outcome by a person with a duty of care toward
25 a resident of a residential facility and if the abuse resulted in the death,
26 serious injury, rape or sexual abuse of a resident, the department or au-
27 thority shall impose a civil penalty of not less than \$2,500 for each occur-
28 rence of substantiated abuse, not to exceed \$15,000 in any 90-day period. As
29 used in this subsection:

30 “(a) ‘Negative outcome’ includes serious injury, rape, sexual abuse or

1 death.

2 “(b) ‘Rape’ means rape in the first, second or third degree as described in
3 ORS 163.355, 163.365 and 163.375.

4 “(c) ‘Serious injury’ means physical injury that creates a substantial risk
5 of death or that causes serious and protracted disfigurement, protracted
6 impairment of health or protracted loss or impairment of the function of any
7 bodily organ.

8 “(d) ‘Sexual abuse’ means any form of [*nonconsensual sexual contact, in-*
9 *cluding but not limited to unwanted or inappropriate touching,*] **sexual con-**
10 **tact between an employee of a residential facility or a person providing**
11 **services in the residential facility and a resident of that facility, in-**
12 **cluding but not limited to** sodomy, sexual coercion, sexually explicit pho-
13 tographing and sexual harassment.

14 “(5) Civil penalties recovered from a residential training facility, resi-
15 dential training home, residential treatment facility or residential treatment
16 home shall be deposited in the Long Term Care Ombudsman Account estab-
17 lished in ORS 441.153.”.

18 In line 26, delete “11” and insert “16”.

19 In line 31, delete “12” and insert “17”.

20
