

A-Engrossed
Senate Bill 622

Ordered by the Senate April 9
Including Senate Amendments dated April 9

Sponsored by Senator GELSER, Representative BARTON; Representative KENY-GUYER

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.

Adds [*legislative staff and*] personal support workers **and home care workers** to list of mandatory reporters of abuse of children, elderly persons and other vulnerable persons. **Adds members of Legislative Assembly to list of mandatory reporters of abuse of adults with mental illness or developmental disabilities and of residents in long term care facilities.**

A BILL FOR AN ACT

1
2 Relating to mandatory reporting of abuse; amending ORS 124.050, 124.075, 419B.005, 430.735, 430.753
3 and 441.630.

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

5 **SECTION 1.** ORS 419B.005 is amended to read:

6 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

7 (1)(a) "Abuse" means:

8 (A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child
9 which has been caused by other than accidental means, including any injury which appears to be
10 at variance with the explanation given of the injury.

11 (B) Any mental injury to a child, which shall include only observable and substantial impairment
12 of the child's mental or psychological ability to function caused by cruelty to the child, with due
13 regard to the culture of the child.

14 (C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual pene-
15 tration and incest, as those acts are described in ORS chapter 163.

16 (D) Sexual abuse, as described in ORS chapter 163.

17 (E) Sexual exploitation, including but not limited to:

18 (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any
19 other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage
20 in the performing for people to observe or the photographing, filming, tape recording or other ex-
21 hibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or
22 described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-
23 cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or
24 which is designed to serve educational or other legitimate purposes; and

25 (ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in
26 ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as
27 described in ORS 163.413 or to patronize a prostitute as described in ORS 167.008.

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 (F) Negligent treatment or maltreatment of a child, including but not limited to the failure to
2 provide adequate food, clothing, shelter or medical care that is likely to endanger the health or
3 welfare of the child.

4 (G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm
5 to the child's health or welfare.

6 (H) Buying or selling a person under 18 years of age as described in ORS 163.537.

7 (I) Permitting a person under 18 years of age to enter or remain in or upon premises where
8 methamphetamines are being manufactured.

9 (J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, that subjects a child
10 to a substantial risk of harm to the child's health or safety.

11 (b) "Abuse" does not include reasonable discipline unless the discipline results in one of the
12 conditions described in paragraph (a) of this subsection.

13 (2) "Child" means an unmarried person who is under 18 years of age.

14 (3) "Higher education institution" means:

15 (a) A community college as defined in ORS 341.005;

16 (b) A public university listed in ORS 352.002;

17 (c) The Oregon Health and Science University; and

18 (d) A private institution of higher education located in Oregon.

19 (4) "Law enforcement agency" means:

20 (a) A city or municipal police department.

21 (b) A county sheriff's office.

22 (c) The Oregon State Police.

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

24 (e) A county juvenile department.

25 (5) "Public or private official" means:

26 (a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician,
27 including any intern or resident.

28 (b) Dentist.

29 (c) School employee, including an employee of a higher education institution.

30 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide
31 or employee of an in-home health service.

32 (e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning
33 Division, Youth Development Division, Office of Child Care, the Oregon Youth Authority, a county
34 health department, a community mental health program, a community developmental disabilities
35 program, a county juvenile department, a licensed child-caring agency or an alcohol and drug
36 treatment program.

37 (f) Peace officer.

38 (g) Psychologist.

39 (h) Member of the clergy.

40 (i) Regulated social worker.

41 (j) Optometrist.

42 (k) Chiropractor.

43 (L) Certified provider of foster care, or an employee thereof.

44 (m) Attorney.

45 (n) Licensed professional counselor.

- 1 (o) Licensed marriage and family therapist.
- 2 (p) Firefighter or emergency medical services provider.
- 3 (q) A court appointed special advocate, as defined in ORS 419A.004.
- 4 (r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.
- 5 (s) Member of the Legislative Assembly.
- 6 (t) Physical, speech or occupational therapist.
- 7 (u) Audiologist.
- 8 (v) Speech-language pathologist.
- 9 (w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
- 10 gations or discipline by the commission.
- 11 (x) Pharmacist.
- 12 (y) An operator of a preschool recorded program under ORS 329A.255.
- 13 (z) An operator of a school-age recorded program under ORS 329A.257.
- 14 (aa) Employee of a private agency or organization facilitating the provision of respite services,
- 15 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS
- 16 109.056.
- 17 (bb) Employee of a public or private organization providing child-related services or activities:
- 18 (A) Including but not limited to youth groups or centers, scout groups or camps, summer or day
- 19 camps, survival camps or groups, centers or camps that are operated under the guidance, super-
- 20 vision or auspices of religious, public or private educational systems or community service organ-
- 21 izations; and
- 22 (B) Excluding community-based, nonprofit organizations whose primary purpose is to provide
- 23 confidential, direct services to victims of domestic violence, sexual assault, stalking or human traf-
- 24 ficking.
- 25 (cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete,
- 26 if compensated and if the athlete is a child.
- 27 **(dd) Personal support worker, as defined by rule adopted by the Home Care Commission.**
- 28 **(ee) Home care worker, as defined in ORS 410.600.**
- 29 **SECTION 2.** ORS 124.050, as amended by section 5, chapter 352, Oregon Laws 2013, and section
- 30 9, chapter 104, Oregon Laws 2014, is amended to read:
- 31 124.050. As used in ORS 124.050 to 124.095:
- 32 (1) "Abuse" means one or more of the following:
- 33 (a) Any physical injury to an elderly person caused by other than accidental means, or which
- 34 appears to be at variance with the explanation given of the injury.
- 35 (b) Neglect.
- 36 (c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal
- 37 or neglect of duties and obligations owed an elderly person by a caretaker or other person.
- 38 (d) Willful infliction of physical pain or injury upon an elderly person.
- 39 (e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427,
- 40 163.465, 163.467 or 163.525.
- 41 (f) Verbal abuse.
- 42 (g) Financial exploitation.
- 43 (h) Sexual abuse.
- 44 (i) Involuntary seclusion of an elderly person for the convenience of a caregiver or to discipline
- 45 the person.

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

4 (2) "Elderly person" means any person 65 years of age or older who is not subject to the pro-
5 visions of ORS 441.640 to 441.665.

6 (3) "Facility" means:

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

8 (b) A residential facility as that term is defined in ORS 443.400, including but not limited to an
9 assisted living facility.

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

11 (4) "Financial exploitation" means:

12 (a) Wrongfully taking the assets, funds or property belonging to or intended for the use of an
13 elderly person or a person with a disability.

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

17 (c) Misappropriating, misusing or transferring without authorization any money from any ac-
18 count held jointly or singly by an elderly person or a person with a disability.

19 (d) Failing to use the income or assets of an elderly person or a person with a disability effec-
20 tively for the support and maintenance of the person.

21 (5) "Intimidation" means compelling or deterring conduct by threat.

22 (6) "Law enforcement agency" means:

23 (a) Any city or municipal police department.

24 (b) Any county sheriff's office.

25 (c) The Oregon State Police.

26 (d) Any district attorney.

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

28 (7) "Neglect" means failure to provide basic care or services that are necessary to maintain the
29 health or safety of an elderly person.

30 (8) "Person with a disability" means a person described in:

31 (a) ORS 410.040 (7); or

32 (b) ORS 410.715.

33 (9) "Public or private official" means:

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

36 (b) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide
37 or employee of an in-home health service.

38 (c) Employee of the Department of Human Services or community developmental disabilities
39 program.

40 (d) Employee of the Oregon Health Authority, county health department or community mental
41 health program.

42 (e) Peace officer.

43 (f) Member of the clergy.

44 (g) Regulated social worker.

45 (h) Physical, speech or occupational therapist.

- 1 (i) Senior center employee.
- 2 (j) Information and referral or outreach worker.
- 3 (k) Licensed professional counselor or licensed marriage and family therapist.
- 4 (L) Member of the Legislative Assembly.
- 5 (m) Firefighter or emergency medical services provider.
- 6 (n) Psychologist.
- 7 (o) Provider of adult foster care or an employee of the provider.
- 8 (p) Audiologist.
- 9 (q) Speech-language pathologist.
- 10 (r) Attorney.
- 11 (s) Dentist.
- 12 (t) Optometrist.
- 13 (u) Chiropractor.
- 14 **(v) Personal support worker, as defined by rule adopted by the Home Care Commission.**
- 15 **(w) Home care worker, as defined in ORS 410.600.**
- 16 (10) "Services" includes but is not limited to the provision of food, clothing, medicine, housing,
- 17 medical services, assistance with bathing or personal hygiene or any other service essential to the
- 18 well-being of an elderly person.
- 19 (11)(a) "Sexual abuse" means:
- 20 (A) Sexual contact with an elderly person who does not consent or is considered incapable of
- 21 consenting to a sexual act under ORS 163.315;
- 22 (B) Verbal or physical harassment of a sexual nature, including but not limited to severe or
- 23 pervasive exposure to sexually explicit material or language;
- 24 (C) Sexual exploitation;
- 25 (D) Any sexual contact between an employee of a facility or paid caregiver and an elderly per-
- 26 son served by the facility or caregiver; or
- 27 (E) Any sexual contact that is achieved through force, trickery, threat or coercion.
- 28 (b) "Sexual abuse" does not mean consensual sexual contact between an elderly person and a
- 29 paid caregiver.
- 30 (12) "Sexual contact" has the meaning given that term in ORS 163.305.
- 31 (13) "Verbal abuse" means to threaten significant physical or emotional harm to an elderly
- 32 person or a person with a disability through the use of:
- 33 (a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or
- 34 (b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate
- 35 sexual comments.
- 36 **SECTION 3.** ORS 430.735, as amended by section 48, chapter 45, Oregon Laws 2014, is amended
- 37 to read:
- 38 430.735. As used in ORS 430.735 to 430.765:
- 39 (1) "Abuse" means one or more of the following:
- 40 (a) Abandonment, including desertion or willful forsaking of a person with a developmental dis-
- 41 ability or the withdrawal or neglect of duties and obligations owed a person with a developmental
- 42 disability by a caregiver or other person.
- 43 (b) Any physical injury to an adult caused by other than accidental means, or that appears to
- 44 be at variance with the explanation given of the injury.
- 45 (c) Willful infliction of physical pain or injury upon an adult.

- 1 (d) Sexual abuse of an adult.
2 (e) Neglect.
3 (f) Verbal abuse of a person with a developmental disability.
4 (g) Financial exploitation of a person with a developmental disability.
5 (h) Involuntary seclusion of a person with a developmental disability for the convenience of the
6 caregiver or to discipline the person.
7 (i) A wrongful use of a physical or chemical restraint upon a person with a developmental dis-
8 ability, excluding an act of restraint prescribed by a physician licensed under ORS chapter 677,
9 physician assistant licensed under ORS 677.505 to 677.525 or nurse practitioner licensed under ORS
10 678.373 to 678.390 and any treatment activities that are consistent with an approved treatment plan
11 or in connection with a court order.
12 (j) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427,
13 163.465 or 163.467.
14 (k) Any death of an adult caused by other than accidental or natural means.
15 (2) "Adult" means a person 18 years of age or older with:
16 (a) A developmental disability who is currently receiving services from a community program
17 or facility or was previously determined eligible for services as an adult by a community program
18 or facility; or
19 (b) A mental illness who is receiving services from a community program or facility.
20 (3) "Adult protective services" means the necessary actions taken to prevent abuse or exploi-
21 tation of an adult, to prevent self-destructive acts and to safeguard an adult's person, property and
22 funds, including petitioning for a protective order as defined in ORS 125.005. Any actions taken to
23 protect an adult shall be undertaken in a manner that is least intrusive to the adult and provides
24 for the greatest degree of independence.
25 (4) "Caregiver" means an individual, whether paid or unpaid, or a facility that has assumed re-
26 sponsibility for all or a portion of the care of an adult as a result of a contract or agreement.
27 (5) "Community program" means a community mental health program or a community develop-
28 mental disabilities program as established in ORS 430.610 to 430.695.
29 (6) "Facility" means a residential treatment home or facility, residential care facility, adult fos-
30 ter home, residential training home or facility or crisis respite facility.
31 (7) "Financial exploitation" means:
32 (a) Wrongfully taking the assets, funds or property belonging to or intended for the use of a
33 person with a developmental disability.
34 (b) Alarming a person with a developmental disability by conveying a threat to wrongfully take
35 or appropriate money or property of the person if the person would reasonably believe that the
36 threat conveyed would be carried out.
37 (c) Misappropriating, misusing or transferring without authorization any money from any ac-
38 count held jointly or singly by a person with a developmental disability.
39 (d) Failing to use the income or assets of a person with a developmental disability effectively
40 for the support and maintenance of the person.
41 (8) "Intimidation" means compelling or deterring conduct by threat.
42 (9) "Law enforcement agency" means:
43 (a) Any city or municipal police department;
44 (b) A police department established by a university under ORS 352.383 or 353.125;
45 (c) Any county sheriff's office;

1 (d) The Oregon State Police; or

2 (e) Any district attorney.

3 (10) "Neglect" means:

4 (a) Failure to provide the care, supervision or services necessary to maintain the physical and
5 mental health of a person with a developmental disability that may result in physical harm or sig-
6 nificant emotional harm to the person;

7 (b) The failure of a caregiver to make a reasonable effort to protect a person with a develop-
8 mental disability from abuse; or

9 (c) Withholding of services necessary to maintain the health and well-being of an adult which
10 leads to physical harm of an adult.

11 (11) "Person with a developmental disability" means a person described in subsection (2)(a) of
12 this section.

13 (12) "Public or private official" means:

14 (a) Physician licensed under ORS chapter 677, physician assistant licensed under ORS 677.505
15 to 677.525, naturopathic physician, psychologist or chiropractor, including any intern or resident;

16 (b) Licensed practical nurse, registered nurse, nurse's aide, home health aide or employee of an
17 in-home health service;

18 (c) Employee of the Department of Human Services or Oregon Health Authority, county health
19 department, community mental health program or community developmental disabilities program or
20 private agency contracting with a public body to provide any community mental health service;

21 (d) Peace officer;

22 (e) Member of the clergy;

23 (f) Regulated social worker;

24 (g) Physical, speech or occupational therapist;

25 (h) Information and referral, outreach or crisis worker;

26 (i) Attorney;

27 (j) Licensed professional counselor or licensed marriage and family therapist;

28 (k) Any public official; [*who comes in contact with adults in the performance of the official's du-*
29 *ties; or*]

30 (L) Firefighter or emergency medical services provider[.];

31 **(m) Member of the Legislative Assembly;**

32 **(n) Personal support worker, as defined by rule adopted by the Home Care Commission;**

33 **or**

34 **(o) Home care worker, as defined in ORS 410.600.**

35 (13) "Services" includes but is not limited to the provision of food, clothing, medicine, housing,
36 medical services, assistance with bathing or personal hygiene or any other service essential to the
37 well-being of an adult.

38 (14)(a) "Sexual abuse" means:

39 (A) Sexual contact with a nonconsenting adult or with an adult considered incapable of con-
40 senting to a sexual act under ORS 163.315;

41 (B) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit mate-
42 rial or language;

43 (C) Any sexual contact between an employee of a facility or paid caregiver and an adult served
44 by the facility or caregiver;

45 (D) Any sexual contact between a person with a developmental disability and a relative of the

1 person with a developmental disability other than a spouse; or

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

3 (b) "Sexual abuse" does not mean consensual sexual contact between an adult and a paid
4 caregiver who is the spouse of the adult.

5 (15) "Sexual contact" has the meaning given that term in ORS 163.305.

6 (16) "Verbal abuse" means to threaten significant physical or emotional harm to a person with
7 a developmental disability through the use of:

8 (a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or

9 (b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate
10 sexual comments.

11 **SECTION 4.** ORS 441.630 is amended to read:

12 441.630. As used in ORS 441.630 to 441.680 and 441.995:

13 (1) "Abuse" means:

14 (a) Any physical injury to a resident of a long term care facility which has been caused by other
15 than accidental means.

16 (b) Failure to provide basic care or services, which failure results in physical harm or unrea-
17 sonable discomfort or serious loss of human dignity.

18 (c) Sexual contact with a resident caused by an employee, agent or other resident of a long term
19 care facility by force, threat, duress or coercion.

20 (d) Illegal or improper use of a resident's resources for the personal profit or gain of another
21 person.

22 (e) Verbal or mental abuse as prohibited by federal law.

23 (f) Corporal punishment.

24 (g) Involuntary seclusion for convenience or discipline.

25 (2) "Abuse complaint" means any oral or written communication to the department, one of its
26 agents or a law enforcement agency alleging abuse.

27 (3) "Department" means the Department of Human Services or a designee of the department.

28 (4) "Facility" means a long term care facility, as defined in ORS 442.015.

29 (5) "Law enforcement agency" means:

30 (a) Any city or municipal police department.

31 (b) A police department established by a university under ORS 352.383 or 353.125.

32 (c) Any county sheriff's office.

33 (d) The Oregon State Police.

34 (e) Any district attorney.

35 (6) "Public or private official" means:

36 (a) Physician, including any intern or resident.

37 (b) Licensed practical nurse or registered nurse.

38 (c) Employee of the Department of Human Services, a community developmental disabilities
39 program or a long term care facility or person who contracts to provide services to a long term care
40 facility.

41 (d) Employee of the Oregon Health Authority, county health department or community mental
42 health program.

43 (e) Peace officer.

44 (f) Member of the clergy.

45 (g) Regulated social worker.

1 (h) Physical, speech and occupational therapists.

2 (i) Legal counsel for a resident or guardian or family member of the resident.

3 **(j) Member of the Legislative Assembly.**

4 **(k) Personal support worker, as defined by rule adopted by the Home Care Commission.**

5 **(L) Home care worker, as defined in ORS 410.600.**

6 **SECTION 5.** ORS 124.075 is amended to read:

7 124.075. (1) Anyone participating in good faith in the making of a report of elder abuse and who
8 has reasonable grounds for making the report shall have immunity from any **criminal or** civil li-
9 ability that might otherwise be incurred or imposed with respect to the making or content of such
10 report. Any such participant shall have the same immunity with respect to participating in any ju-
11 dicial proceeding resulting from such report.

12 (2) The identity of the person making the report shall be treated as confidential information and
13 shall be disclosed only with the consent of that person or by judicial process, or as required to
14 perform the functions under ORS 124.070.

15 **SECTION 6.** ORS 430.753 is amended to read:

16 430.753. (1) Anyone participating in good faith in making a report of abuse pursuant to ORS
17 430.743 and 430.765 (1) and (2) and who has reasonable grounds for making the report, shall have
18 immunity from any **criminal or** civil liability that might otherwise be incurred or imposed with re-
19 spect to the making or content of the report. The participant shall have the same immunity with
20 respect to participating in any judicial proceeding resulting from the report.

21 (2) The identity of the person making the report shall be treated as confidential information and
22 shall be disclosed only with the consent of that person, by judicial order or as otherwise permitted
23 by ORS 430.763.

24