

PRELIMINARY STAFF MEASURE SUMMARY**CARRIER:**

Senate Committee on Judiciary

REVENUE: May have revenue impact, statement not yet issued**FISCAL: May have fiscal impact, statement not yet issued****SUBSEQUENT REFERRAL TO:****Action:****Vote:****Yeas:****Nays:****Exc.:****Prepared By:** Whitney Perez, Counsel**Meeting Dates:** 2/5, 2/9

WHAT THE MEASURE DOES: Modifies definition of physical injury to include physical trauma when vulnerable victim. Defines physical trauma to include fractures, cuts, punctures, bruises, burns or other wounds. Defines vulnerable victim as dependent or elderly person as defined by ORS 163.205.

ISSUES DISCUSSED:

- Need for bill in light of recent Oregon Court of Appeals opinion
- Changes in the (-1) amendment
- Represents policy change

EFFECT OF COMMITTEE AMENDMENT:

(-1) Amendment is modified to have physical trauma only apply to dependent persons. It then amends Assault in the Fourth Degree, Assault in the Third Degree and Intimidation to include crimes of intentionally or knowingly causing physical injury physical injury to a vulnerable victim.

(-2) Amendment contains the same changes as in the (-1) amendment and makes a technical fix.

BACKGROUND: ORS 161.015 sets forth several definitions, including the definition of physical injury.

This definition is used in criminal mistreatment and assault charges. It currently provides that physical injury occurs when a person suffers an "impairment of physical condition" or has "substantial pain."

"Impairment of physical condition" has been defined by the Court of Appeals to mean harm to the body that results in a reduction in one's ability to use the body or bodily organ for less than a protracted period of time. *State v. Higgins*, 165 Or. App. 442, 446-447 (2000). The Court of Appeals further held that "substantial pain" refers to the degree and duration of the pain suffered by the victim. *State v. Poole*, 175 Or. App. 258, 261 (2001).

Currently, there is a gap in Oregon law as it relates to victims who cannot clearly express themselves. There are instances where a victim can be injured, but the state is unable to prove physical injury because the victim is unable to articulate substantial pain and the injury does not meet the definition of impairment of physical condition.

Senate Bill 1556 creates a third category of physical injury for when the victim is vulnerable. This addition includes "physical trauma" as a physical injury when the victim is vulnerable. "Physical trauma" is defined as including but not limited to fractures, cuts, punctures, bruises, burns or other wounds. SB 1556 defines vulnerable victim as a dependent or an elderly person.

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This summary has not been adopted or officially endorsed by action of the committee.

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