

Senate Bill 1058

Sponsored by Senators GELSER, ROBLAN, KNOPP; Senator FREDERICK, 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 **as introduced**.

Expands scope of investigations of abuse of persons with mental illness that may be conducted by Department of Human Services.

A BILL FOR AN ACT

Relating to abuse of persons with disabilities; amending ORS 430.735.

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

SECTION 1. ORS 430.735 is amended to read:

430.735. As used in ORS 430.735 to 430.765:

(1) "Abuse" means one or more of the following:

(a) Abandonment, including desertion or willful forsaking of [*a person with a developmental disability*] **an adult** or the withdrawal or neglect of duties and obligations owed [*a person with a developmental disability*] **an adult** by a caregiver or other person.

(b) Any physical injury to an adult caused by other than accidental means, or that appears to be at variance with the explanation given of the injury.

(c) Willful infliction of physical pain or injury upon an adult.

(d) Sexual abuse of an adult.

(e) Neglect.

(f) Verbal abuse of [*a person with a developmental disability*] **an adult**.

(g) Financial exploitation of [*a person with a developmental disability*] **an adult**.

(h) Involuntary seclusion of [*a person with a developmental disability*] **an adult** for the convenience of the caregiver or to discipline the person.

(i) A wrongful use of a physical or chemical restraint upon [*a person with a developmental disability*] **an adult**, excluding an act of restraint prescribed by a physician licensed under ORS chapter 677, physician assistant licensed under ORS 677.505 to 677.525 or nurse practitioner licensed under ORS 678.373 to 678.390 and any treatment activities that are consistent with an approved treatment plan or in connection with a court order.

(j) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465 or 163.467.

(k) Any death of an adult caused by other than accidental or natural means.

(2) "Adult" means a person 18 years of age or older with:

(a) A developmental disability who is currently receiving services from a community program or facility or was previously determined eligible for services as an adult by a community program or facility; [*or*]

(b) A mental illness who is receiving services from **a state hospital**, a community program 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 facility[.]; **or**

2 **(C) A substance use disorder who is receiving services from a facility.**

3 (3) “Adult protective services” means the necessary actions taken to prevent abuse or exploi-
4 tation of an adult, to prevent self-destructive acts and to safeguard an adult’s person, property and
5 funds, including petitioning for a protective order as defined in ORS 125.005. Any actions taken to
6 protect an adult shall be undertaken in a manner that is least intrusive to the adult and provides
7 for the greatest degree of independence.

8 (4) “Caregiver” means an individual, whether paid or unpaid, or a facility that has assumed re-
9 sponsibility for all or a portion of the care of an adult as a result of a contract or agreement.

10 (5) “Community program” means a community mental health program or a community develop-
11 mental disabilities program as established in ORS 430.610 to 430.695.

12 (6) “Facility” means a residential treatment home or facility, residential care facility, adult fos-
13 ter home, residential training home or facility or crisis respite facility.

14 (7) “Financial exploitation” means:

15 (a) Wrongfully taking the assets, funds or property belonging to or intended for the use of [*a*
16 *person with a developmental disability*] **an adult**.

17 (b) Alarming [*a person with a developmental disability*] **an adult** by conveying a threat to
18 wrongfully take or appropriate money or property of the person if the person would reasonably be-
19 lieve that the threat conveyed would be carried out.

20 (c) Misappropriating, misusing or transferring without authorization any money from any ac-
21 count held jointly or singly by [*a person with a developmental disability*] **an adult**.

22 (d) Failing to use the income or assets of [*a person with a developmental disability*] **an adult**
23 effectively for the support and maintenance of the person.

24 (8) “Intimidation” means compelling or deterring conduct by threat.

25 (9) “Law enforcement agency” means:

26 (a) Any city or municipal police department;

27 (b) A police department established by a university under ORS 352.121 or 353.125;

28 (c) Any county sheriff’s office;

29 (d) The Oregon State Police; or

30 (e) Any district attorney.

31 (10) “Neglect” means:

32 (a) Failure to provide the care, supervision or services necessary to maintain the physical and
33 mental health of [*a person with a developmental disability*] **an adult** that may result in physical harm
34 or significant emotional harm to the person;

35 (b) The failure of a caregiver to make a reasonable effort to protect [*a person with a develop-*
36 *mental disability*] **an adult** from abuse; or

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

39 [(11) “*Person with a developmental disability*” means a person described in subsection (2)(a) of this
40 section.]

41 [(12)] (11) “Public or private official” means:

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

44 (b) Licensed practical nurse, registered nurse, nurse’s aide, home health aide or employee of an
45 in-home health service;

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

4 (d) Peace officer;

5 (e) Member of the clergy;

6 (f) Regulated social worker;

7 (g) Physical, speech or occupational therapist;

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

9 (i) Attorney;

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

11 (k) Any public official;

12 (L) Firefighter or emergency medical services provider;

13 (m) Member of the Legislative Assembly;

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

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

16 [(13)] (12) "Services" includes but is not limited to the provision of food, clothing, medicine,
17 housing, medical services, assistance with bathing or personal hygiene or any other service essential
18 to the well-being of an adult.

19 [(14)(a)] (13)(a) "Sexual abuse" means:

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

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

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

26 (D) Any sexual contact between [*a person with a developmental disability*] **an adult** and a rela-
27 tive of the [*person with a developmental disability*] **adult** other than a spouse; or

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

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

31 [(15)] (14) "Sexual contact" has the meaning given that term in ORS 163.305.

32 [(16)] (15) "Verbal abuse" means to threaten significant physical or emotional harm to [*a person*
33 *with a developmental disability*] **an adult** through the use of:

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

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

37