

Senate Bill 178

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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**.

Provides that property owner consent is defense to theft or criminal mistreatment in the first degree if defendant did not know, or have reason to know, that consent was gained through improper influence, harassment, duress, force, compulsion, coercion or enticement or that owner lacked capacity to consent.

A BILL FOR AN ACT

1
2 Relating to criminal charge defenses; creating new provisions; and amending ORS 163.205 and
3 164.035.

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

5 **SECTION 1.** ORS 163.205 is amended to read:

6 163.205. (1) A person commits the crime of criminal mistreatment in the first degree if:

7 (a) The person, in violation of a legal duty to provide care for another person, or having as-
8 sumed the permanent or temporary care, custody or responsibility for the supervision of another
9 person, intentionally or knowingly withholds necessary and adequate food, physical care or medical
10 attention from that other person; or

11 (b) The person, in violation of a legal duty to provide care for a dependent person or elderly
12 person, or having assumed the permanent or temporary care, custody or responsibility for the
13 supervision of a dependent person or elderly person, intentionally or knowingly:

14 (A) Causes physical injury or injuries to the dependent person or elderly person;

15 (B) Deserts the dependent person or elderly person in a place with the intent to abandon that
16 person;

17 (C) Leaves the dependent person or elderly person unattended at a place for such a period of
18 time as may be likely to endanger the health or welfare of that person;

19 (D) Hides the dependent person's or elderly person's money or property or takes the money or
20 property for, or appropriates the money or property to, any use or purpose not in the due and lawful
21 execution of the person's responsibility;

22 (E) Takes charge of a dependent or elderly person for the purpose of fraud;

23 (F) Leaves the dependent person or elderly person, or causes the dependent person or elderly
24 person to enter or remain, in or upon premises:

25 (i) Where a cannabinoid extract as defined in ORS 475B.015 is being processed; and

26 (ii) That have not been licensed under ORS 475B.090; or

27 (G) Leaves the dependent person or elderly person, or causes the dependent person or elderly
28 person to enter or remain, in or upon premises where a chemical reaction involving one or more
29 precursor substances:

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 (i) Is occurring as part of unlawfully manufacturing a controlled substance or grinding, soaking
 2 or otherwise breaking down a precursor substance for the unlawful manufacture of a controlled
 3 substance; or

4 (ii) Has occurred as part of unlawfully manufacturing a controlled substance or grinding, soak-
 5 ing or otherwise breaking down a precursor substance for the unlawful manufacture of a controlled
 6 substance and the premises have not been certified as fit for use under ORS 453.885.

7 (2) As used in this section:

8 (a) "Controlled substance" has the meaning given that term in ORS 475.005.

9 (b) "Dependent person" means a person who because of either age or a physical or mental dis-
 10 ability is dependent upon another to provide for the person's physical needs.

11 (c) "Elderly person" means a person 65 years of age or older.

12 (d) "Legal duty" includes but is not limited to a duty created by familial relationship, court or-
 13 der, contractual agreement or statutory or case law.

14 (e) "Precursor substance" has the meaning given that term in ORS 475.940.

15 (3) Criminal mistreatment in the first degree is a Class C felony.

16 **(4) In a prosecution under subsection (1)(b)(D) of this section, it is an affirmative defense**
 17 **that:**

18 **(a) The dependent person or elderly person consented to the hiding, taking or appropri-**
 19 **ating of money or property; and**

20 **(b) The person did not know, or have reason to know, that:**

21 **(A) The dependent person or elderly person lacked capacity to consent to the hiding,**
 22 **taking or appropriating of money or property; and**

23 **(B) The consent of the dependent person or elderly person was gained through improper**
 24 **influence, harassment, duress, force, compulsion, coercion or enticement.**

25 **SECTION 2.** ORS 164.035 is amended to read:

26 164.035. (1) In a prosecution for theft it is a defense that the defendant acted under an honest
 27 claim of right, in that:

28 (a) The defendant was unaware that the property was that of another; or

29 (b) The defendant reasonably believed that the defendant was entitled to the property involved
 30 or had a right to acquire or dispose of it as the defendant did.

31 (2) In a prosecution for extortion committed by instilling in the victim a fear that the victim or
 32 another person would be charged with a crime, it is a defense that the defendant reasonably believed
 33 the threatened charge to be true and that the sole purpose of the defendant was to compel or induce
 34 the victim to take reasonable action to make good the wrong which was the subject of the threat-
 35 ened charge.

36 (3) In a prosecution for theft by receiving, it is a defense that the defendant received, retained,
 37 concealed or disposed of the property with the intent of restoring it to the owner.

38 (4) It is a defense that the property involved was that of the defendant's spouse, unless the
 39 parties were not living together as spouses in a marriage and were living in separate abodes at the
 40 time of the alleged theft.

41 **(5) In a prosecution for theft, it is an affirmative defense that:**

42 **(a) The property owner consented to the taking, appropriating, obtaining or withholding**
 43 **of property; and**

44 **(b) The defendant did not know, or have reason to know, that:**

45 **(A) The property owner lacked capacity to consent to the taking, appropriating, obtaining**

1 or withholding of property; and

2 (B) The consent of the property owner was gained through improper influence,
3 harassment, duress, force, compulsion, coercion or enticement.

4 SECTION 3. The amendments to ORS 163.205 and 164.035 by sections 1 and 2 of this 2021
5 Act apply to conduct occurring on or after the effective date of this 2021 Act.

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