



DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

SB 176: Privilege and Abuse of Elders and Other Vulnerable Adults

Problem:

Oregon's abuse reporting laws related to elder abuse (ORS 124.060 et seq.), abuse of adults with developmental disabilities and mental illness in treatment programs and facilities (ORS 430.735 et seq.), and abuse of adults residing in long term care facilities (ORS 441.630 et seq.) do not expressly provide that the privilege created in ORS 40.230 to 40.255 (including the psychotherapist-patient privilege, the physician-patient privilege, the privileges extended to nurses, to staff members of schools and to regulated social workers and the spousal privilege) is not a bar to the admission of evidence regarding reported abuse in a judicial proceeding resulting from the abuse report.

Because the elder abuse reporting law mirrors the child abuse reporting law in many ways, and the child abuse reporting law does expressly provide that privilege is not a bar to the admission of evidence in a proceeding that results from a child abuse report, defendants in elder abuse cases have successfully argued that the failure to include such a provision in the elder abuse law bars testimony of elder abuse reporters on the basis of privilege. For example, in *State v. Judd*, 301 Or App 549 (2019), the defendant's confession that she killed her grandmother—her admission to her therapist—was excluded on these grounds.

Solution:

This bill proposes adding new provisions to the mandatory reporting laws for elder abuse, abuse of adults with developmental disabilities and mental illness in treatment programs and facilities, and abuse of adults residing in long term care facilities, to expressly provide—just as the child abuse reporting law does—that privilege is not a ground for excluding evidence regarding reported abuse in a judicial proceeding resulting from the abuse report.

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