

Senate Bill 1060

Sponsored by Senator PROZANSKI (at the request of Disability Rights Oregon)

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**.

Modifies definition of "physical injury," for purposes of Oregon Criminal Code, to include physical trauma. Defines "physical trauma." Specifies how physical injury may be proved.

Expands crime of criminal mistreatment in the first degree to include subjecting dependent person or elderly person to offensive physical contact. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both.

A BILL FOR AN ACT

1
2 Relating to criminal offenses; creating new provisions; and amending ORS 133.545, 161.005, 161.015
3 and 163.205.

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

5 **SECTION 1.** ORS 161.015 is amended to read:

6 161.015. As used in chapter 743, Oregon Laws 1971, and ORS 166.635, unless the context requires
7 otherwise:

8 (1) "Dangerous weapon" means any weapon, device, instrument, material or substance which
9 under the circumstances in which it is used, attempted to be used or threatened to be used, is
10 readily capable of causing death or serious physical injury.

11 (2) "Deadly weapon" means any instrument, article or substance specifically designed for and
12 presently capable of causing death or serious physical injury.

13 (3) "Deadly physical force" means physical force that under the circumstances in which it is
14 used is readily capable of causing death or serious physical injury.

15 (4) "Peace officer" means:

16 (a) A member of the Oregon State Police;

17 (b) A sheriff, constable, marshal, municipal police officer or reserve officer as defined in ORS
18 133.005, or a police officer commissioned by a university under ORS 352.121 or 353.125;

19 (c) An investigator of the Criminal Justice Division of the Department of Justice or investigator
20 of a district attorney's office;

21 (d) A humane special agent as defined in ORS 181A.345;

22 (e) A regulatory specialist exercising authority described in ORS 471.775 (2);

23 (f) An authorized tribal police officer as defined in ORS 181A.940; and

24 (g) Any other person designated by law as a peace officer.

25 (5) "Person" means a human being and, where appropriate, a public or private corporation, an
26 unincorporated association, a partnership, a government or a governmental instrumentality.

27 (6) "Physical force" includes, but is not limited to, the use of an electrical stun gun, tear gas
28 or mace.

29 (7) "Physical injury" means:

30 (a) Impairment of physical condition or substantial pain.

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 **(b) If the injured person is incapable of expressing pain, impairment of physical condition,**
 2 **substantial pain or physical trauma.**

3 **(8) “Physical trauma” includes but is not limited to fractures, cuts, punctures, bruises,**
 4 **burns or other wounds.**

5 *[(8) “Serious physical injury” means physical injury which creates a substantial risk of death or*
 6 *which causes serious and protracted disfigurement, protracted impairment of health or protracted loss*
 7 *or impairment of the function of any bodily organ.]*

8 (9) “Possess” means to have physical possession or otherwise to exercise dominion or control
 9 over property.

10 (10) “Public place” means a place to which the general public has access and includes, but is
 11 not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting
 12 rooms or apartments designed for actual residence, and highways, streets, schools, places of
 13 amusement, parks, playgrounds and premises used in connection with public passenger transporta-
 14 tion.

15 **(11) “Serious physical injury” means physical injury that creates a substantial risk of**
 16 **death or that causes serious and protracted disfigurement, protracted impairment of health**
 17 **or protracted loss or impairment of the function of any bodily organ.**

18 **SECTION 2. In a prosecution for an offense that includes, as an element, causing phys-**
 19 **ical injury to another person, proof of physical injury may consist of:**

20 **(1) Testimony by the person alleged to have been injured;**

21 **(2) Evidence of physical trauma;**

22 **(3) Testimony from witnesses indicating that the person alleged to have been injured**
 23 **experienced substantial pain or impairment of physical condition;**

24 **(4) Expert testimony addressing the effect of the type and amount of force used by the**
 25 **defendant; or**

26 **(5) Reasonable inferences based on the type and amount of force used by the defendant.**

27 **SECTION 3.** ORS 161.005 is amended to read:

28 161.005. ORS 161.005 to 161.055, 161.085 to 161.125, 161.150 to 161.175, 161.190 to 161.275, 161.290
 29 to 161.373, 161.405 to 161.485, 161.505 to 161.585, 161.605, 161.615 to 161.685, 161.705 to 161.737,
 30 162.005, 162.015 to 162.035, 162.055 to 162.115, 162.135 to 162.205, 162.225 to 162.375, 162.405 to
 31 162.425, 162.465, 163.005, 163.095, 163.107, 163.115, 163.125 to 163.145, 163.149, 163.160 to 163.208,
 32 163.191, 163.196, 163.215 to 163.257, 163.261, 163.263, 163.264, 163.266, 163.275, 163.285, 163.305 to
 33 163.467, 163.432, 163.433, 163.472, 163.505 to 163.575, 163.665 to 163.693, 163.700, 163.701, 163.715,
 34 164.005, 164.015 to 164.135, 164.138, 164.140, 164.205 to 164.270, 164.305 to 164.377, 164.395 to 164.415,
 35 164.805, 164.857, 164.886, 165.002 to 165.102, 165.109, 165.118, 165.805, 165.815, 166.005 to 166.095,
 36 166.350, 166.382, 166.384, 166.660, 167.002 to 167.027, 167.057, 167.060 to 167.100, 167.117, 167.122 to
 37 167.162, 167.203 to 167.252, 167.310 to 167.340, 167.350, 167.810 and 167.820 **and section 2 of this**
 38 **2023 Act** shall be known and may be cited as Oregon Criminal Code of 1971.

39 **SECTION 4.** ORS 163.205 is amended to read:

40 163.205. (1) A person commits the crime of criminal mistreatment in the first degree if:

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

45 (b) The person, in violation of a legal duty to provide care for a dependent person or elderly

1 person, or having assumed the permanent or temporary care, custody or responsibility for the
 2 supervision of a dependent person or elderly person, intentionally or knowingly:

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

4 **(B) Subjects the dependent person or elderly person to offensive physical contact;**

5 [(B)] (C) Deserts the dependent person or elderly person in a place with the intent to abandon
 6 that person;

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

9 [(D)] (E) Hides the dependent person's or elderly person's money or property or takes the money
 10 or property for, or appropriates the money or property to, any use or purpose not in the due and
 11 lawful execution of the person's responsibility;

12 [(E)] (F) Takes charge of a dependent or elderly person for the purpose of fraud;

13 [(F)] (G) Leaves the dependent person or elderly person, or causes the dependent person or el-
 14 derly person to enter or remain, in or upon premises:

15 (i) Where a cannabinoid extract as defined in ORS 475C.009 is being processed; and

16 (ii) That have not been licensed under ORS 475C.085; or

17 [(G)] (H) Leaves the dependent person or elderly person, or causes the dependent person or el-
 18 derly person to enter or remain, in or upon premises where a chemical reaction involving one or
 19 more precursor substances:

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

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

26 (2) As used in this section:

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

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

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

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

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

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

35 **SECTION 5.** ORS 133.545 is amended to read:

36 133.545. (1) A search warrant may be issued only by a judge. A search warrant issued by a
 37 judge of the Supreme Court or the Court of Appeals may be executed anywhere in the state. Except
 38 as otherwise provided in subsections (2), (3) and (4) of this section, a search warrant issued by a
 39 judge of a circuit court may be executed only within the judicial district in which the court is lo-
 40 cated. A search warrant issued by a justice of the peace may be executed only within the county
 41 in which the justice court is located. A search warrant issued by a municipal judge authorized to
 42 exercise the powers and perform the duties of a justice of the peace may be executed only in the
 43 municipality in which the court is located.

44 (2) Notwithstanding subsection (1) of this section, a circuit court judge may authorize execution
 45 of a search warrant outside the judicial district in which the court is located, if the judge finds from

1 the application that one or more of the objects of the search relate to an offense committed or
2 triable within the judicial district in which the court is located. If the warrant authorizes the in-
3 stallation or tracking of a mobile tracking device, the officer may track the device in any county
4 to which it is transported.

5 (3) Notwithstanding subsection (1) of this section, a circuit court judge duly assigned pursuant
6 to ORS 1.615 to serve as a judge pro tempore in a circuit court may authorize execution of a search
7 warrant in any judicial district in which the judge serves as judge pro tempore if the application
8 requesting the warrant includes an affidavit showing that a regularly elected or appointed circuit
9 court judge for the judicial district is not available, whether by reason of conflict of interest or
10 other reason, to issue the warrant within a reasonable time.

11 (4) Notwithstanding subsection (1) of this section, a circuit court judge may authorize execution
12 of a search warrant outside the judicial district in which the court is located if the judge finds that:

13 (a) The search relates to one of the following offenses involving a victim who was 65 years of
14 age or older at the time of the offense:

15 (A) Criminal mistreatment in the first degree as described in ORS 163.205 [(1)(b)(D)] **(1)(b)(E)**
16 or [(E)] **(F)**;

17 (B) Identity theft;

18 (C) Aggravated identity theft;

19 (D) Computer crime;

20 (E) Fraudulent use of a credit card;

21 (F) Forgery in any degree;

22 (G) Criminal possession of a forged instrument in any degree;

23 (H) Theft in any degree; or

24 (I) Aggravated theft in the first degree;

25 (b) The objects of the search consist of financial records; and

26 (c) The person making application for the search warrant is not able to ascertain at the time
27 of the application the proper place of trial for the offense described in paragraph (a) of this sub-
28 section.

29 (5) Application for a search warrant may be made only by a district attorney, a police officer
30 or a special agent employed under ORS 131.805.

31 (6) The application shall consist of a proposed warrant in conformance with ORS 133.565, and
32 shall be supported by one or more affidavits particularly setting forth the facts and circumstances
33 tending to show that the objects of the search are in the places, or in the possession of the indi-
34 viduals, to be searched. If an affidavit is based in whole or in part on hearsay, the affiant shall set
35 forth facts bearing on any unnamed informant's reliability and shall disclose, as far as possible, the
36 means by which the information was obtained.

37 (7) Instead of the written affidavit described in subsection (6) of this section, the judge may take
38 an oral statement under oath. The oral statement shall be recorded and a copy of the recording
39 submitted to the judge who took the oral statement. In such cases, the judge shall certify that the
40 recording of the sworn oral statement is a true recording of the oral statement under oath and shall
41 retain the recording as part of the record of proceedings for the issuance of the warrant. The re-
42 cording shall constitute an affidavit for the purposes of this section. The applicant shall retain a
43 copy of the recording and shall provide a copy of the recording to the district attorney if the district
44 attorney is not the applicant.

45 (8)(a) In addition to the procedure set out in subsection (7) of this section, the proposed warrant

1 and the affidavit may be sent to the court by facsimile transmission or any similar electronic
2 transmission that delivers a complete printable image of the signed affidavit and proposed warrant.
3 The affidavit may have a notarized acknowledgment, or the affiant may swear to the affidavit by
4 telephone. If the affiant swears to the affidavit by telephone, the affidavit may be signed electron-
5 ically. A judge administering an oath telephonically under this subsection must execute a declara-
6 tion that recites the manner and time of the oath's administration. The declaration must be filed
7 with the return.

8 (b) When a court issues a warrant upon an application made under paragraph (a) of this sub-
9 section:

10 (A) The court may transmit the signed warrant to the person making application under sub-
11 section (5) of this section by means of facsimile transmission or similar electronic transmission, as
12 described in paragraph (a) of this subsection. The court shall file the original signed warrant and
13 a printed image of the application with the return.

14 (B) The person making application shall deliver the original signed affidavit to the court with
15 the return. If the affiant swore to the affidavit by telephone, the affiant must so note next to the
16 affiant's signature on the affidavit.

17 **SECTION 6. Section 2 of this 2023 Act and the amendments to ORS 133.545, 161.005,**
18 **161.015 and 163.205 by sections 1 and 3 to 5 of this 2023 Act apply to conduct occurring on**
19 **or after the effective date of this 2023 Act.**

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