

House Bill 3071

Sponsored by Representative LEWIS

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 "public or private official" with mandatory duty to report suspected abuse to include all state and local elected officials.

A BILL FOR AN ACT

1 Relating to mandatory abuse reporters; amending ORS 124.050, 419B.005, 430.735 and 441.630.

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

3 **SECTION 1.** ORS 124.050 is amended to read:

4 124.050. As used in ORS 124.050 to 124.095:

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

6 (a) Any physical injury to an elderly person caused by other than accidental means, or which
7 appears to be at variance with the explanation given of the injury.

8 (b) Neglect.

9 (c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal
10 or neglect of duties and obligations owed an elderly person by a caretaker or other person.

11 (d) Willful infliction of physical pain or injury upon an elderly person.

12 (e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427,
13 163.465, 163.467 or 163.525.

14 (f) Verbal abuse.

15 (g) Financial exploitation.

16 (h) Sexual abuse.

17 (i) Involuntary seclusion of an elderly person for the convenience of a caregiver or to discipline
18 the person.

19 (j) A wrongful use of a physical or chemical restraint of an elderly person, excluding an act of
20 restraint prescribed by a physician licensed under ORS chapter 677 and any treatment activities
21 that are consistent with an approved treatment plan or in connection with a court order.

22 (2) "Elderly person" means any person 65 years of age or older who is not subject to the pro-
23 visions of ORS 441.640 to 441.665.

24 (3) "Facility" means:

25 (a) A long term care facility as that term is defined in ORS 442.015.

26 (b) A residential facility as that term is defined in ORS 443.400, including but not limited to an
27 assisted living facility.

28 (c) An adult foster home as that term is defined in ORS 443.705.

29 (4) "Financial exploitation" means:

30 (a) Wrongfully taking the assets, funds or property belonging to or intended for the use of an
31

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 elderly person or a person with a disability.

2 (b) Alarming an elderly person or a person with a disability by conveying a threat to wrongfully
3 take or appropriate money or property of the person if the person would reasonably believe that the
4 threat conveyed would be carried out.

5 (c) Misappropriating, misusing or transferring without authorization any money from any ac-
6 count held jointly or singly by an elderly person or a person with a disability.

7 (d) Failing to use the income or assets of an elderly person or a person with a disability effec-
8 tively for the support and maintenance of the person.

9 (5) "Intimidation" means compelling or deterring conduct by threat.

10 (6) "Law enforcement agency" means:

11 (a) Any city or municipal police department.

12 (b) Any county sheriff's office.

13 (c) The Oregon State Police.

14 (d) Any district attorney.

15 (e) A police department established by a university under ORS 352.121 or 353.125.

16 (7) "Neglect" means failure to provide basic care or services that are necessary to maintain the
17 health or safety of an elderly person.

18 (8) "Person with a disability" means a person described in:

19 (a) ORS 410.040 (7); or

20 (b) ORS 410.715.

21 (9) "Public or private official" means:

22 (a) Physician or physician assistant licensed under ORS chapter 677, naturopathic physician or
23 chiropractor, including any intern or resident.

24 (b) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide
25 or employee of an in-home health service.

26 (c) Employee of the Department of Human Services or community developmental disabilities
27 program.

28 (d) Employee of the Oregon Health Authority, local health department or community mental
29 health program.

30 (e) Peace officer.

31 (f) Member of the clergy.

32 (g) Regulated social worker.

33 (h) Physical, speech or occupational therapist.

34 (i) Senior center employee.

35 (j) Information and referral or outreach worker.

36 (k) Licensed professional counselor or licensed marriage and family therapist.

37 (L) *[Member of the Legislative Assembly.] Elected official of a branch of government of this*
38 **state or a state agency, board, commission or department of a branch of government of this**
39 **state or of a city, county or other political subdivision in this state.**

40 (m) Firefighter or emergency medical services provider.

41 (n) Psychologist.

42 (o) Provider of adult foster care or an employee of the provider.

43 (p) Audiologist.

44 (q) Speech-language pathologist.

45 (r) Attorney.

- 1 (s) Dentist.
- 2 (t) Optometrist.
- 3 (u) Chiropractor.
- 4 (v) Personal support worker, as defined in ORS 410.600.
- 5 (w) Home care worker, as defined in ORS 410.600.
- 6 (x) Referral agent, as defined in ORS 443.370.
- 7 (10) "Services" includes but is not limited to the provision of food, clothing, medicine, housing,
- 8 medical services, assistance with bathing or personal hygiene or any other service essential to the
- 9 well-being of an elderly person.
- 10 (11)(a) "Sexual abuse" means:
- 11 (A) Sexual contact with an elderly person who does not consent or is considered incapable of
- 12 consenting to a sexual act under ORS 163.315;
- 13 (B) Verbal or physical harassment of a sexual nature, including but not limited to severe or
- 14 pervasive exposure to sexually explicit material or language;
- 15 (C) Sexual exploitation;
- 16 (D) Any sexual contact between an employee of a facility or paid caregiver and an elderly per-
- 17 son served by the facility or caregiver; or
- 18 (E) Any sexual contact that is achieved through force, trickery, threat or coercion.
- 19 (b) "Sexual abuse" does not mean consensual sexual contact between an elderly person and:
- 20 (A) An employee of a facility who is also the spouse of the elderly person; or
- 21 (B) A paid caregiver.
- 22 (12) "Sexual contact" has the meaning given that term in ORS 163.305.
- 23 (13) "Verbal abuse" means to threaten significant physical or emotional harm to an elderly
- 24 person or a person with a disability through the use of:
- 25 (a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or
- 26 (b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate
- 27 sexual comments.
- 28 **SECTION 2.** ORS 419B.005 is amended to read:
- 29 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:
- 30 (1)(a) "Abuse" means:
- 31 (A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child
- 32 which has been caused by other than accidental means, including any injury which appears to be
- 33 at variance with the explanation given of the injury.
- 34 (B) Any mental injury to a child, which shall include only observable and substantial impairment
- 35 of the child's mental or psychological ability to function caused by cruelty to the child, with due
- 36 regard to the culture of the child.
- 37 (C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual pene-
- 38 tration and incest, as those acts are described in ORS chapter 163.
- 39 (D) Sexual abuse, as described in ORS chapter 163.
- 40 (E) Sexual exploitation, including but not limited to:
- 41 (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any
- 42 other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage
- 43 in the performing for people to observe or the photographing, filming, tape recording or other ex-
- 44 hibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or
- 45 described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-

1 cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or
 2 which is designed to serve educational or other legitimate purposes; and

3 (ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in
 4 ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as
 5 described in ORS 163.413 or to engage in commercial sexual solicitation as described in ORS 167.008.

6 (F) Negligent treatment or maltreatment of a child, including but not limited to the failure to
 7 provide adequate food, clothing, shelter or medical care that is likely to endanger the health or
 8 welfare of the child.

9 (G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm
 10 to the child's health or welfare.

11 (H) Buying or selling a person under 18 years of age as described in ORS 163.537.

12 (I) Permitting a person under 18 years of age to enter or remain in or upon premises where
 13 methamphetamines are being manufactured.

14 (J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, or to the unlawful
 15 manufacturing of a cannabinoid extract, as defined in ORS 475B.015, that subjects a child to a sub-
 16 stantial risk of harm to the child's health or safety.

17 (b) "Abuse" does not include reasonable discipline unless the discipline results in one of the
 18 conditions described in paragraph (a) of this subsection.

19 (2) "Child" means an unmarried person who:

20 (a) Is under 18 years of age; or

21 (b) Is under 21 years of age and residing in or receiving care or services at a child-caring
 22 agency as that term is defined in ORS 418.205.

23 (3) "Higher education institution" means:

24 (a) A community college as defined in ORS 341.005;

25 (b) A public university listed in ORS 352.002;

26 (c) The Oregon Health and Science University; and

27 (d) A private institution of higher education located in Oregon.

28 (4)(a) "Investigation" means a detailed inquiry into or assessment of the safety of a child alleged
 29 to have experienced abuse.

30 (b) "Investigation" does not include screening activities conducted upon the receipt of a report.

31 (5) "Law enforcement agency" means:

32 (a) A city or municipal police department.

33 (b) A county sheriff's office.

34 (c) The Oregon State Police.

35 (d) A police department established by a university under ORS 352.121 or 353.125.

36 (e) A county juvenile department.

37 (6) "Public or private official" means:

38 (a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician,
 39 including any intern or resident.

40 (b) Dentist.

41 (c) School employee, including an employee of a higher education institution.

42 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide
 43 or employee of an in-home health service.

44 (e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning
 45 Division, Department of Education, Youth Development Division, Office of Child Care, the Oregon

1 Youth Authority, a local health department, a community mental health program, a community de-
 2 velopmental disabilities program, a county juvenile department, a child-caring agency as that term
 3 is defined in ORS 418.205 or an alcohol and drug treatment program.

4 (f) Peace officer.

5 (g) Psychologist.

6 (h) Member of the clergy.

7 (i) Regulated social worker.

8 (j) Optometrist.

9 (k) Chiropractor.

10 (L) Certified provider of foster care, or an employee thereof.

11 (m) Attorney.

12 (n) Licensed professional counselor.

13 (o) Licensed marriage and family therapist.

14 (p) Firefighter or emergency medical services provider.

15 (q) A court appointed special advocate, as defined in ORS 419A.004.

16 (r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.

17 (s) [*Member of the Legislative Assembly.*] **An elected official of a branch of government of**
 18 **this state or a state agency, board, commission or department of a branch of government**
 19 **of this state or of a city, county or other political subdivision in this state.**

20 (t) Physical, speech or occupational therapist.

21 (u) Audiologist.

22 (v) Speech-language pathologist.

23 (w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
 24 gations or discipline by the commission.

25 (x) Pharmacist.

26 (y) An operator of a preschool recorded program under ORS 329A.255.

27 (z) An operator of a school-age recorded program under ORS 329A.257.

28 (aa) Employee of a private agency or organization facilitating the provision of respite services,
 29 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS
 30 109.056.

31 (bb) Employee of a public or private organization providing child-related services or activities:

32 (A) Including but not limited to youth groups or centers, scout groups or camps, summer or day
 33 camps, survival camps or groups, centers or camps that are operated under the guidance, super-
 34 vision or auspices of religious, public or private educational systems or community service organ-
 35 izations; and

36 (B) Excluding community-based, nonprofit organizations whose primary purpose is to provide
 37 confidential, direct services to victims of domestic violence, sexual assault, stalking or human traf-
 38 ficking.

39 (cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete,
 40 if compensated and if the athlete is a child.

41 (dd) Personal support worker, as defined in ORS 410.600.

42 (ee) Home care worker, as defined in ORS 410.600.

43 (ff) Animal control officer, as defined in ORS 609.500.

44 (gg) Member of a school district board or public charter school governing body.

45 (hh) An individual who is paid by a public body, in accordance with ORS 430.215, to provide a

1 service identified in an individualized written service plan of a child with a developmental disability.

2 **SECTION 3.** ORS 430.735 is amended to read:

3 430.735. As used in ORS 430.735 to 430.765:

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

5 (a) Abandonment, including desertion or willful forsaking of an adult or the withdrawal or neg-
6 lect of duties and obligations owed an adult by a caregiver or other person.

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

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

10 (d) Sexual abuse.

11 (e) Neglect.

12 (f) Verbal abuse of an adult.

13 (g) Financial exploitation of an adult.

14 (h) Involuntary seclusion of an adult for the convenience of the caregiver or to discipline the
15 adult.

16 (i) A wrongful use of a physical or chemical restraint upon an adult, excluding an act of re-
17 straint prescribed by a physician licensed under ORS chapter 677, physician assistant licensed under
18 ORS 677.505 to 677.525, naturopathic physician licensed under ORS chapter 685 or nurse practi-
19 tioner licensed under ORS 678.375 to 678.390 and any treatment activities that are consistent with
20 an approved treatment plan or in connection with a court order.

21 (j) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427,
22 163.465 or 163.467.

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

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

25 (a) With a developmental disability who is currently receiving services from a community pro-
26 gram or facility or who was previously determined eligible for services as an adult by a community
27 program or facility;

28 (b) With a severe and persistent mental illness who is receiving mental health treatment from
29 a community program; or

30 (c) Who is receiving services for a substance use disorder or a mental illness in a facility or a
31 state hospital.

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

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

39 (5) "Community program" includes:

40 (a) A community mental health program or a community developmental disabilities program as
41 established in ORS 430.610 to 430.695; or

42 (b) A provider that is paid directly or indirectly by the Oregon Health Authority to provide
43 mental health treatment in the community.

44 (6) "Facility" means a residential treatment home or facility, residential care facility, adult fos-
45 ter home, residential training home or facility or crisis respite facility.

- 1 (7) “Financial exploitation” means:
- 2 (a) Wrongfully taking the assets, funds or property belonging to or intended for the use of an
- 3 adult.
- 4 (b) Alarming an adult by conveying a threat to wrongfully take or appropriate money or prop-
- 5 erty of the adult if the adult would reasonably believe that the threat conveyed would be carried
- 6 out.
- 7 (c) Misappropriating, misusing or transferring without authorization any money from any ac-
- 8 count held jointly or singly by an adult.
- 9 (d) Failing to use the income or assets of an adult effectively for the support and maintenance
- 10 of the adult.
- 11 (8) “Intimidation” means compelling or deterring conduct by threat.
- 12 (9) “Law enforcement agency” means:
- 13 (a) Any city or municipal police department;
- 14 (b) A police department established by a university under ORS 352.121 or 353.125;
- 15 (c) Any county sheriff’s office;
- 16 (d) The Oregon State Police; or
- 17 (e) Any district attorney.
- 18 (10) “Neglect” means:
- 19 (a) Failure to provide the care, supervision or services necessary to maintain the physical and
- 20 mental health of an adult that may result in physical harm or significant emotional harm to the
- 21 adult;
- 22 (b) Failure of a caregiver to make a reasonable effort to protect an adult from abuse; or
- 23 (c) Withholding of services necessary to maintain the health and well-being of an adult that
- 24 leads to physical harm of the adult.
- 25 (11) “Public or private official” means:
- 26 (a) Physician licensed under ORS chapter 677, physician assistant licensed under ORS 677.505
- 27 to 677.525, naturopathic physician, psychologist or chiropractor, including any intern or resident;
- 28 (b) Licensed practical nurse, registered nurse, nurse’s aide, home health aide or employee of an
- 29 in-home health service;
- 30 (c) Employee of the Department of Human Services or Oregon Health Authority, local health
- 31 department, community mental health program or community developmental disabilities program or
- 32 private agency contracting with a public body to provide any community mental health service;
- 33 (d) Peace officer;
- 34 (e) Member of the clergy;
- 35 (f) Regulated social worker;
- 36 (g) Physical, speech or occupational therapist;
- 37 (h) Information and referral, outreach or crisis worker;
- 38 (i) Attorney;
- 39 (j) Licensed professional counselor or licensed marriage and family therapist;
- 40 (k) Any public official;
- 41 (L) Firefighter or emergency medical services provider;
- 42 (m) *[Member of the Legislative Assembly;]* **Elected official of a branch of government of this**
- 43 **state or a state agency, board, commission or department of a branch of government of this**
- 44 **state or of a city, county or other political subdivision in this state;**
- 45 (n) Personal support worker, as defined in ORS 410.600;

1 (o) Home care worker, as defined in ORS 410.600; or

2 (p) An individual paid by the Department of Human Services to provide a service identified in
3 an individualized written service plan of an adult with a developmental disability.

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

7 (13)(a) "Sexual abuse" means:

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

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

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

14 (D) Any sexual contact between an adult and a relative of the adult other than a spouse;

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

16 (F) Any sexual contact between an individual receiving mental health or substance abuse
17 treatment and the individual providing the mental health or substance abuse treatment.

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

20 (14) "Sexual contact" has the meaning given that term in ORS 163.305.

21 (15) "Verbal abuse" means to threaten significant physical or emotional harm to an adult
22 through the use of:

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

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

26 **SECTION 4.** ORS 441.630 is amended to read:

27 441.630. As used in ORS 441.630 to 441.680:

28 (1) "Abuse" means:

29 (a) Any physical injury to a resident of a long term care facility which has been caused by other
30 than accidental means.

31 (b) Failure to provide basic care or services, which failure results in physical harm or unrea-
32 sonable discomfort or serious loss of human dignity.

33 (c) Sexual contact with a resident caused by an employee, agent or other resident of a long term
34 care facility by force, threat, duress or coercion.

35 (d) Illegal or improper use of a resident's resources for the personal profit or gain of another
36 person.

37 (e) Verbal or mental abuse as prohibited by federal law.

38 (f) Corporal punishment.

39 (g) Involuntary seclusion for convenience or discipline.

40 (2) "Abuse complaint" means any oral or written communication to the department, one of its
41 agents or a law enforcement agency alleging abuse.

42 (3) "Department" means the Department of Human Services or a designee of the department.

43 (4) "Facility" means a long term care facility, as defined in ORS 442.015.

44 (5) "Law enforcement agency" means:

45 (a) Any city or municipal police department.

- 1 (b) A police department established by a university under ORS 352.121 or 353.125.
 - 2 (c) Any county sheriff's office.
 - 3 (d) The Oregon State Police.
 - 4 (e) Any district attorney.
 - 5 (6) "Public or private official" means:
 - 6 (a) Physician, including any intern or resident.
 - 7 (b) Licensed practical nurse or registered nurse.
 - 8 (c) Employee of the Department of Human Services, a community developmental disabilities
 - 9 program or a long term care facility or person who contracts to provide services to a long term care
 - 10 facility.
 - 11 (d) Employee of the Oregon Health Authority, local health department or community mental
 - 12 health program.
 - 13 (e) Peace officer.
 - 14 (f) Member of the clergy.
 - 15 (g) Regulated social worker.
 - 16 (h) Physical, speech and occupational therapists.
 - 17 (i) Legal counsel for a resident or guardian or family member of the resident.
 - 18 (j) *[Member of the Legislative Assembly.]* **Elected official of a branch of government of this**
 - 19 **state or a state agency, board, commission or department of a branch of government of this**
 - 20 **state or of a city, county or other political subdivision in this state.**
 - 21 (k) Personal support worker, as defined in ORS 410.600.
 - 22 (L) Home care worker, as defined in ORS 410.600.
 - 23
-