

A-Engrossed
Senate Bill 105

Ordered by the Senate April 11
Including Senate Amendments dated April 11

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Human Services, Mental Health and Recovery)

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.

[Requires Department of Human Services to study delivery of developmental disability services statewide. Directs department to submit report to interim committees of Legislative Assembly related to human services not later than September 15, 2024.]

Expands definition of "abuse" to include restraint or seclusion of or infliction of corporal punishment on adult with developmental disability by public education program, for purposes of complaints of abuse to and investigation of complaints by Department of Human Services.

A BILL FOR AN ACT

1
2 Relating to developmental disability services; amending ORS 430.735.

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

4 **SECTION 1.** ORS 430.735 is amended to read:

5 430.735. As used in ORS 430.735 to 430.765:

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

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

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

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

12 (d) Sexual abuse.

13 (e) Neglect.

14 (f) Verbal abuse of an adult.

15 (g) Financial exploitation of an adult.

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

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

23 (j) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427,
24 163.465 or 163.467.

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

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 **(L) The restraint or seclusion of an adult with a developmental disability in violation of**
2 **ORS 339.288, 339.291 or 339.308.**

3 **(m) The infliction of corporal punishment on an adult with a developmental disability in**
4 **violation of ORS 339.250 (9).**

5 (2) “Adult” means a person 18 years of age or older:

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

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

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

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

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

20 (5) “Community program” includes:

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

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

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

27 (7) “Financial exploitation” means:

28 (a) Wrongfully taking the assets, funds or property belonging to or intended for the use of an
29 adult.

30 (b) Alarming an adult by conveying a threat to wrongfully take or appropriate money or prop-
31 erty of the adult if the adult would reasonably believe that the threat conveyed would be carried
32 out.

33 (c) Misappropriating, misusing or transferring without authorization any money from any ac-
34 count held jointly or singly by an adult.

35 (d) Failing to use the income or assets of an adult effectively for the support and maintenance
36 of the adult.

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

38 (9) “Law enforcement agency” means:

39 (a) Any city or municipal police department;

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

41 (c) Any county sheriff’s office;

42 (d) The Oregon State Police; or

43 (e) Any district attorney.

44 (10) “Neglect” means:

45 (a) Failure to provide the care, supervision or services necessary to maintain the physical and

1 mental health of an adult that may result in physical harm or significant emotional harm to the
2 adult;

3 (b) Failure of a caregiver to make a reasonable effort to protect an adult from abuse; or

4 (c) Withholding of services necessary to maintain the health and well-being of an adult that
5 leads to physical harm of the adult.

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

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

9 (b) Licensed practical nurse, registered nurse, nurse's aide, home health aide or employee of an
10 in-home health service;

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

14 (d) Peace officer;

15 (e) Member of the clergy;

16 (f) Regulated social worker;

17 (g) Physical, speech or occupational therapist;

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

19 (i) Attorney;

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

21 (k) Any public official;

22 (L) Firefighter or emergency medical services provider;

23 (m) Elected official of a branch of government of this state or a state agency, board, commission
24 or department of a branch of government of this state or of a city, county or other political subdivi-
25 sion in this state;

26 (n) Personal support worker, as defined in ORS 410.600;

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

28 (p) Individual paid by the Department of Human Services to provide a service identified in an
29 individualized service plan of an adult with a developmental disability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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