

House Bill 3073

Sponsored by Representative DALTO

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**.

Specifies that reasonable self-defense is not abuse for purposes of laws requiring reporting of abuse of individuals who are elderly, mentally ill, developmentally disabled or in long term care facility.

Requires Director of Human Services to establish advisory committee to advise director regarding development of behavior management plans and appropriate responses to use of or threats of force. Directs committee to review certain allegations of abuse.

A BILL FOR AN ACT

1
2 Relating to abuse of certain individuals; creating new provisions; and amending ORS 124.050, 430.735
3 and 441.630.

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

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

6 430.735. As used in ORS 430.735 to 430.765:

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

8 [(a)] (A) Any death caused by other than accidental or natural means.

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

11 [(c)] (C) Willful infliction of physical pain or injury.

12 [(d)] (D) Sexual harassment or exploitation, including but not limited to any sexual contact be-
13 tween an employee of a facility or community program and an adult.

14 [(e)] (E) Neglect that leads to physical harm through withholding of services necessary to
15 maintain health and well-being. For purposes of this paragraph, "neglect" does not include a failure
16 of the state or a community program to provide services due to a lack of funding available to pro-
17 vide the services.

18 (b) "Abuse" does not include the use of force authorized under ORS 161.205 (1) or any
19 physical injury caused by an employee of a facility if:

20 (A) The injury is caused in self-defense or in the defense of another person in response
21 to the use or imminent use of physical force; and

22 (B) The employee used the least restrictive procedures necessary under the circum-
23 stances in accordance with an approved behavior management plan or other method of re-
24 sponse approved by the Department of Human Services by rule.

25 (2) "Adult" means a person who is mentally ill or developmentally disabled, who is 18 years of
26 age or older and receives services from a community program or facility.

27 (3) "Adult protective services" means the necessary actions taken to prevent abuse or exploi-
28 tation of an adult, to prevent self-destructive acts and to safeguard an adult's person, property and
29 funds. Any actions taken to protect an adult shall be undertaken in a manner that is least intrusive

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 to the adult and provides for the greatest degree of independence.

2 (4) "Care provider" means an individual or facility that has assumed responsibility for all or a
3 portion of the care of an adult as a result of a contract or agreement.

4 (5) "Community program" means a community mental health and developmental disabilities
5 program as established in ORS 430.610 to 430.695.

6 (6) "Department" means the Department of Human Services.

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

9 (8) "Law enforcement agency" means:

10 (a) Any city or municipal police department;

11 (b) Any county sheriff's office;

12 (c) The Oregon State Police; or

13 (d) Any district attorney.

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

15 (a) Physician, naturopathic physician, osteopathic physician, psychologist, chiropractor or
16 podiatric physician and surgeon, including any intern or resident;

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

19 (c) Employee of the Department of Human Services, county health department, community
20 mental health and developmental disabilities program or private agency contracting with a public
21 body to provide any community mental health service;

22 (d) Peace officer;

23 (e) Member of the clergy;

24 (f) Licensed clinical social worker;

25 (g) Physical, speech or occupational therapist;

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

27 (i) Attorney;

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

29 (k) Any public official who comes in contact with adults in the performance of the official's du-
30 ties.

31 **SECTION 2.** ORS 441.630 is amended to read:

32 441.630. As used in ORS 441.630 to 441.680 and 441.995:

33 (1)(a) "Abuse" means:

34 [(a)] (A) Any physical injury to a resident of a long term care facility which has been caused
35 by other than accidental means.

36 [(b)] (B) Failure to provide basic care or services, which failure results in physical harm or
37 unreasonable discomfort or serious loss of human dignity.

38 [(c)] (C) Sexual contact with a resident caused by an employee, agent or other resident of a long
39 term care facility by force, threat, duress or coercion.

40 [(d)] (D) Illegal or improper use of a resident's resources for the personal profit or gain of an-
41 other person.

42 [(e)] (E) Verbal or mental abuse as prohibited by federal law.

43 [(f)] (F) Corporal punishment.

44 [(g)] (G) Involuntary seclusion for convenience or discipline.

45 (b) "Abuse" does not include the use of force authorized under ORS 161.205 (1) or any

1 **physical injury caused by an employee of a long term care facility if:**

2 **(A) The injury is caused in self-defense or in the defense of another person in response**
3 **to the use or imminent use of physical force; and**

4 **(B) The employee used the least restrictive procedures necessary under the circum-**
5 **stances in accordance with an approved behavior management plan or other method of re-**
6 **sponse approved by the Department of Human Services by rule.**

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

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

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

11 (5) "Law enforcement agency" means:

12 (a) Any city or municipal police department.

13 (b) Any county sheriff's office.

14 (c) The Oregon State Police.

15 (d) Any district attorney.

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

17 (a) Physician, including any intern or resident.

18 (b) Licensed practical nurse or registered nurse.

19 (c) Employee of the Department of Human Services, county health department, community
20 mental health and developmental disabilities programs or a long term care facility or person who
21 contracts to provide services to a long term care facility.

22 (d) Peace officer.

23 (e) Member of the clergy.

24 (f) Licensed clinical social worker.

25 (g) Physical, speech and occupational therapists.

26 (h) Legal counsel for a resident or guardian or family member of the resident.

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

28 124.050. As used in ORS 124.050 to 124.095:

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

30 [(a)] **(A) Any physical injury caused by other than accidental means, or which appears to be at**
31 **variance with the explanation given of the injury.**

32 [(b)] **(B) Neglect which leads to physical harm through withholding of services necessary to**
33 **maintain health and well-being.**

34 [(c)] **(C) Abandonment, including desertion or willful forsaking of an elderly person or the**
35 **withdrawal or neglect of duties and obligations owed an elderly person by a caretaker or other**
36 **person.**

37 [(d)] **(D) Willful infliction of physical pain or injury.**

38 **(b) "Abuse" does not include the use of force authorized under ORS 161.205 (1) or any**
39 **physical injury caused by a person responsible in any respect for the care of an elderly per-**
40 **son if:**

41 **(A) The injury is caused in self-defense or in the defense of another person in response**
42 **to the use or imminent use of physical force; and**

43 **(B) The person used the least restrictive procedures necessary under the circumstances**
44 **in accordance with an approved behavior management plan or other method of response ap-**
45 **proved by the Department of Human Services by rule.**

1 [(2) "Department" means the Department of Human Services.]

2 [(3)] (2) "Elderly person" means any person 65 years of age or older who is not subject to the
3 provisions of ORS 441.640 to 441.665.

4 [(4)] (3) "Law enforcement agency" means:

5 (a) Any city or municipal police department.

6 (b) Any county sheriff's office.

7 (c) The Oregon State Police.

8 (d) Any district attorney.

9 [(5)] (4) "Public or private official" means:

10 (a) Physician, naturopathic physician, osteopathic physician, chiropractor or podiatric physician
11 and surgeon, including any intern or resident.

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

14 (c) Employee of the Department of Human Services, county health department or community
15 mental health and developmental disabilities program.

16 (d) Peace officer.

17 (e) Member of the clergy.

18 (f) Licensed clinical social worker.

19 (g) Physical, speech or occupational therapists.

20 (h) Senior center employee.

21 (i) Information and referral or outreach worker.

22 (j) Licensed professional counselor or licensed marriage and family therapist.

23 (k) Any public official who comes in contact with elderly persons in the performance of the of-
24 ficial's official duties.

25 **SECTION 4. (1) The Director of Human Services shall establish an advisory committee**
26 **for the purposes of developing and recommending to the director guidelines for the develop-**
27 **ment of behavior management plans and for appropriate methods of response to the use or**
28 **imminent use of physical force as described in ORS 124.050 (1), 430.735 (1) and 441.630 (1). The**
29 **advisory committee shall also consider all allegations of abuse made under ORS 124.050,**
30 **430.735 and 441.630 and make recommendations to the director.**

31 **(2) The director shall appoint members of the committee. An equal number of members**
32 **shall represent employers and personnel eligible for collective bargaining. The members ap-**
33 **pointed by the director shall appoint an additional member. All members of the committee**
34 **shall appoint a chair of the committee.**

35 **SECTION 5. Section 4 of this 2005 Act and the amendments to ORS 124.050, 430.735 and**
36 **441.630 by sections 1 to 3 of this 2005 Act apply to alleged abuse that occurs on or after the**
37 **effective date of this 2005 Act.**

38