

Enrolled
House Bill 3233

Sponsored by Representative MACPHERSON; Representatives BARKER, BERGER, WHISNANT (at the request of Oregon Sex Offender Supervision Network and Attorney General's Sexual Assault Task Force)

CHAPTER

AN ACT

Relating to sex offender treatment; creating new provisions; amending ORS 676.606, 676.610, 676.612, 676.613 and 676.992; appropriating money; limiting expenditures; and declaring an emergency.

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

SECTION 1. (1) The Legislative Assembly hereby declares that the comprehensive treatment of sex offenders who are subject to the supervision of the criminal justice and juvenile justice systems and the Department of Human Services is necessary in order to work toward the elimination of sex offenses. The Legislative Assembly hereby recognizes that sex offender therapists who examine and treat sex offenders therefore occupy a vital role in protecting the public from sex offenders who remain in the community prior to or following disposition or who will reenter the community following a period of incarceration.

(2) The Legislative Assembly further finds that the qualifications, practices, techniques and levels of effectiveness of sex offender therapists vary widely and that the court's ability to effectively determine appropriate sentencing and monitoring for sex offenders, thus curtailing the incidence of recidivism in such offenders and enhancing the protection of victims and potential victims, is undermined by a lack of regulated standards of practice and professional responsibility.

(3) The Legislative Assembly recognizes the right of sex offender therapists to practice, consistent with the paramount requirement of public safety. Public safety is best served by regulating sex offender therapists whose clients are being treated under alternative sentencing or disposition, parole, post-prison supervision, supervision by a county juvenile department or custody of the Department of Human Services or the Oregon Youth Authority.

(4) Section 4 of this 2007 Act establishes the titles certified clinical sex offender therapist and certified associate sex offender therapist. Sections 1 to 12 of this 2007 Act do not prohibit others from providing services to treat sex offenders. However, only those certified under sections 1 to 12 of this 2007 Act shall represent the designated titles to the public. Adult and juvenile parole and probation authorities and the Department of Human Services may restrict their referrals to those providers who are certified under sections 1 to 12 of this 2007 Act.

SECTION 2. As used in sections 1 to 12 of this 2007 Act:

(1) "Certified associate sex offender therapist" means a person who is certified under section 4 or 5 of this 2007 Act to provide services for the treatment and rehabilitation of sex offenders while under the direct supervision of a certified clinical sex offender therapist.

(2) "Certified clinical sex offender therapist" means a person who is certified under section 4 or 5 of this 2007 Act to provide services for the treatment and rehabilitation of sex offenders and who may supervise certified associate sex offender therapists.

(3) "Certified sex offender therapist" means a certified clinical sex offender therapist or a certified associate sex offender therapist.

(4) "Direct supervision" means a minimum of two hours of supervision by a certified clinical sex offender therapist for each 45 hours of direct clinical contact with a sex offender.

(5) "Sex offender" means a person convicted or adjudicated of a sex crime, as defined in ORS 181.594, or a sexual offense, as provided in ORS 163.305 to 163.467, and mandated by a court, a releasing authority, including the Oregon Youth Authority, or the Department of Human Services to successfully complete a sex offender treatment program.

(6) "Sex offender treatment" means the process of evaluation, assessment and reformation of sex offenders.

SECTION 3. (1) Unless a person has applied for and received certification under section 4 or 5 of this 2007 Act, a person may not claim certification as or represent that person to be a:

(a) Certified clinical sex offender therapist; or

(b) Certified associate sex offender therapist.

(2) Sections 1 to 12 of this 2007 Act apply only to certified sex offender therapists who treat sex offenders.

SECTION 4. (1) To obtain certification as a clinical sex offender therapist or associate sex offender therapist, an applicant shall complete an application developed and prescribed by the Sex Offender Treatment Board and file a professional disclosure statement with the Oregon Health Licensing Agency. The documents must be accompanied by a fee established by the agency.

(2) Subject to ORS 676.612, the agency may issue two types of certification to qualified applicants under this section:

(a) Clinical sex offender therapist; and

(b) Associate sex offender therapist.

(3) To qualify as a certified clinical sex offender therapist, the applicant must:

(a) Be in compliance with applicable provisions and rules adopted by the agency;

(b) Have at least a master's degree in the behavioral sciences;

(c) Have an active Oregon mental health professional license or equivalent license as determined by the agency;

(d) Within not less than three years nor more than six years prior to application, have had a minimum of 2,000 hours of direct clinical contact with sex offenders, including:

(A) 1,000 hours of direct treatment services; and

(B) 500 hours of evaluations; and

(e) Have a minimum of 60 hours of formal training applicable to sex offender treatment and evaluation, achieved within the three years prior to application.

(4) To qualify as a certified associate sex offender therapist, the applicant must:

(a) Be in compliance with applicable provisions and rules adopted by the agency;

(b) Have at least a bachelor's degree in the behavioral sciences;

(c) Have had a minimum of 1,000 hours of direct clinical contact with sex offenders;

(d) Have a minimum of 30 hours of formal training applicable to sex offender treatment and evaluation, achieved within the three years prior to application; and

(e) Be under the direct supervision of a certified clinical sex offender therapist.

(5) The agency may renew the certification of a clinical sex offender therapist or an associate sex offender therapist annually. The application for renewal shall be considered by the agency to be an application to continue as a certified clinical sex offender therapist or a certified associate sex offender therapist. To renew a certification, the applicant must:

(a) Be in compliance with the provisions of sections 1 to 12 of this 2007 Act and rules adopted by the agency;

(b) Have a minimum of 100 hours of clinical experience during the preceding year, 50 of which shall be direct clinical contact with sex offenders;

(c) Have completed a minimum of 15 hours continuing education in the field of sex offender treatment during the preceding year; and

(d) Satisfy any additional requirements adopted by the board.

SECTION 5. Upon receipt of an application and the appropriate fees under section 4 of this 2007 Act, the Oregon Health Licensing Agency shall certify a clinical sex offender therapist or associate sex offender therapist if the applicant provides evidence to the satisfaction of the agency that the applicant is recognized as a clinical sex offender therapist or associate sex offender therapist in another state in which the requirements for such recognition are, in the judgment of the agency, in consultation with the Sex Offender Treatment Board, at least equivalent to the requirements of sections 1 to 12 of this 2007 Act and rules of the agency.

SECTION 6. (1) In the manner prescribed in ORS chapter 183 for contested cases, and at the direction of the Sex Offender Treatment Board, the Oregon Health Licensing Agency may impose a form of discipline listed in ORS 676.612 against any certified sex offender therapist for any of the grounds listed in ORS 676.612 and for any violation of the provisions of sections 1 to 12 of this 2007 Act, or the rules adopted thereunder.

(2) The agency may impose disciplinary sanctions against a certified sex offender therapist for any of the following reasons:

(a) The person was convicted of violating section 9 of this 2007 Act, or of a felony or misdemeanor that brings into question the person's competence or integrity as a certified sex offender therapist.

(b) The person's mental health professional license, or equivalent license, has been revoked, suspended or restricted by the issuing authority.

(c) The person has violated section 11 of this 2007 Act, or any rules adopted by the agency pertaining to certification.

(d) The person has failed to file or has filed a false, misleading or incomplete professional disclosure statement with the agency.

(e) The person has practiced beyond the scope of the person's agency-issued certification.

SECTION 7. (1) The Sex Offender Treatment Board is established within the Oregon Health Licensing Agency. The board shall consist of seven members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board shall be residents of this state.

(2) Of the members appointed to the board:

(a) Two shall be recommended by the Oregon Association for the Treatment of Sexual Abusers;

(b) Two shall be recommended by the Oregon Adolescent Sex Offender Treatment Network;

(c) One shall be recommended by the Oregon Association of Community Corrections Directors;

(d) One shall be recommended by the Oregon Juvenile Department Directors Association; and

(e) One shall be recommended by a victims' advocacy organization.

(3) The term of office of each member is three years, but a member serves at the pleasure of the Governor. Vacancies shall be filled by the Governor by appointment for the unexpired term. A member shall hold the member's office until the appointment and qualification of a successor. A member is eligible for reappointment.

(4) The agency shall provide the board with such administrative services and employees as the board requires to carry out its duties for the administration of sections 1 to 12 of this 2007 Act.

(5) Members of the board are eligible for compensation and expenses as provided in ORS 292.495 from funds available under section 10 of this 2007 Act.

(6) The board shall select one of its members to serve as chair and another to serve as vice chair, for those terms and with such duties and powers necessary for the performance of the functions of those offices as the board determines.

(7) A majority of the board constitutes a quorum for the transaction of business.

(8) The board shall meet at times and places specified by the call of the chair or of a majority of the members of the board. The board shall meet at least once each calendar year.

(9) A board member appointed under this section who is also a clinical sex offender therapist or associate sex offender therapist must satisfy all requirements for certification provided in section 4 of this 2007 Act and shall obtain certification within 12 months of the member's appointment.

SECTION 8. The Sex Offender Treatment Board shall:

(1) Determine the qualifications and fitness of applicants for certification as clinical sex offender therapists or associate sex offender therapists under sections 1 to 5 of this 2007 Act.

(2) Establish standards of practice and professional responsibility for persons certified by the Oregon Health Licensing Agency.

(3) Adopt standards for training and continuing education required under sections 1 to 5 of this 2007 Act, including but not limited to training related to the treatment of distinct sex offender populations, including adults, juveniles, persons with developmental disabilities and others.

(4) Advise the agency on all matters related to administering sections 1 to 12 of this 2007 Act and recommend rules, standards and guidelines necessary for the administration of sections 1 to 5 of this 2007 Act.

SECTION 9. A certified sex offender therapist, or any employee of a certified sex offender therapist, may not disclose any communication made by a client during the course of noninvestigatory professional treatment or rehabilitation, except:

(1) When the client or a person authorized to act on behalf of the client gives consent to the disclosure;

(2) When the client initiates legal action or makes a complaint against a sex offender therapist to the Sex Offender Treatment Board;

(3) When the communication reveals the intent to commit a crime harmful to the client or others;

(4) When the communication reveals that a minor may have been a victim of a crime or physical, sexual or emotional abuse or neglect; or

(5) To juvenile and adult parole and probation officers supervising the client under a mandated sex offender treatment condition imposed by a court or releasing authority.

SECTION 10. (1) The Oregon Health Licensing Agency, in consultation with the Sex Offender Treatment Board, shall establish by rule and shall collect fees and charges to carry out its responsibilities under sections 1 to 12 of this 2007 Act.

(2) All moneys received by the agency under subsection (1) of this section shall be paid into the General Fund of the State Treasury and credited to the Oregon Health Licensing Agency Account and are appropriated continuously to, and shall be used by, the agency only for the administration and enforcement of sections 1 to 12 of this 2007 Act.

(3) The fees and charges established by the agency under this section are subject to the prior approval of the Oregon Department of Administrative Services. The fees and charges may not exceed the cost of administering sections 1 to 12 of this 2007 Act pertaining to the

purpose for which the fee or charge is established, as authorized by the Legislative Assembly within the budget of the agency, as that budget may be modified by the Emergency Board.

(4) In addition to the fees and charges established under subsection (1) of this section, the agency may assess fees and charges for providing copies of official documents or records and for recovering administrative costs associated with compiling, photocopying or preparing and delivering documents or records.

SECTION 11. (1) A person may not:

(a) Attempt to obtain a certificate or renewal of a certificate under sections 1 to 5 of this 2007 Act by bribery or fraudulent representation; or

(b) Purport to the public to be engaged in the practice of sex offender treatment under the title "clinical sex offender therapist" or "associate sex offender therapist" unless the person possesses a valid certification under sections 1 to 5 of this 2007 Act.

(2) Nothing in sections 1 to 12 of this 2007 Act is intended to limit or prevent the practice of an individual's profession or to restrict a person from providing counseling or therapy if the person or individual does not represent to the public by title that the person or individual is a certified sex offender therapist.

(3) Each violation of this section is a separate violation.

SECTION 12. (1) The Oregon Health Licensing Agency shall:

(a) Issue certifications to persons determined by the agency to be qualified.

(b) Make all disbursements necessary to carry out the provisions of sections 1 to 12 of this 2007 Act.

(c) Maintain a registry of all current certified sex offender therapists. The registry shall be made available to the public online.

(d) Keep a record of its proceedings related to the issuance, refusal, suspension and revocation of certifications issued under sections 1 to 5 of this 2007 Act.

(e) Approve or sanction programs for impaired professionals to assist any certified sex offender therapist to regain or retain certification and shall impose the requirement of participation in the program as a condition to reissuance or retention of certification.

(f) In consultation with the Sex Offender Treatment Board, create a multidisciplinary advisory committee within the board. Persons who are not board members may be appointed as nonvoting members to serve on the multidisciplinary advisory committee with the approval of the board.

(2) The agency may:

(a) Deny, suspend, revoke or refuse to issue or renew any certification issued under sections 1 to 5 of this 2007 Act.

(b) Provide for waivers of examinations, grandfathering requirements and temporary certifications as considered appropriate.

(c) In consultation with the Sex Offender Treatment Board, create any committees within the board as deemed necessary. Persons who are not board members may be appointed as nonvoting members to serve on the committees with the approval of the board.

SECTION 12a. Notwithstanding the term of office specified in section 7 of this 2007 Act, of the members first appointed to the Sex Offender Treatment Board:

(1) Two shall serve for terms ending on January 1, 2009;

(2) Two shall serve for terms ending on January 1, 2010; and

(3) Three shall serve for terms ending on January 1, 2011.

SECTION 13. ORS 676.606 is amended to read:

676.606. Pursuant to ORS 676.607, the Oregon Health Licensing Agency shall provide administrative and regulatory oversight and centralized service for the following boards, advisory councils and program:

(1) Board of Athletic Trainers, as provided in ORS 688.701 to 688.734;

(2) Board of Cosmetology, as provided in ORS 690.005 to 690.235;

(3) State Board of Denture Technology, as provided in ORS 680.500 to 680.570;

- (4) State Board of Direct Entry Midwifery, as provided in ORS 687.405 to 687.495;
- (5) Respiratory Therapist Licensing Board, as provided in ORS 688.800 to 688.840;
- (6) Environmental Health Registration Board, as provided in ORS chapter 700;
- (7) Advisory Council for Electrologists and Permanent Color Technicians and Tattoo Artists, as provided in ORS 690.350 to 690.430;
- (8) Advisory Council on Hearing Aids, as provided in ORS 694.015 to 694.185; *[and]*
- (9) Body piercing licensing program, as provided in ORS 690.500 to 690.570[.]; **and**
- (10) Sex Offender Treatment Board, as provided in sections 1 to 12 of this 2007 Act.**

SECTION 14. ORS 676.610 is amended to read:

676.610. (1)(a) The Oregon Health Licensing Agency is under the supervision and control of a director, who is responsible for the performance of the duties, functions and powers and for the organization of the agency.

(b) The Director of the Oregon Department of Administrative Services shall establish the qualifications for and appoint the Director of the Oregon Health Licensing Agency, who holds office at the pleasure of the Director of the Oregon Department of Administrative Services.

(c) The Director of the Oregon Health Licensing Agency shall receive a salary as provided by law or, if not so provided, as prescribed by the Director of the Oregon Department of Administrative Services.

(d) The Director of the Oregon Health Licensing Agency shall be in the unclassified service.

(2) The Director of the Oregon Health Licensing Agency shall be responsible for the performance of duties and functions of the boards, councils and programs administered by the agency. The Director of the Oregon Health Licensing Agency shall provide the boards, councils and programs with such services and employees as the agency requires to carry out its duties. Subject to any applicable provisions of the State Personnel Relations Law, the Director of the Oregon Health Licensing Agency shall appoint all subordinate officers and employees of the agency, prescribe their duties and fix their compensation.

(3) Except as provided in section 18, chapter 885, Oregon Laws 1999, the Director of the Oregon Health Licensing Agency shall be responsible for carrying out the duties, functions and powers under ORS 680.500 to 680.570, 680.990 (2), 687.405 to 687.495, 688.800 to 688.840, 688.995, 690.005 to 690.235, 690.350 to 690.430, 690.500 to 690.570, 690.992 and 694.015 to 694.185 and ORS chapter 700 **and sections 1 to 12 of this 2007 Act.**

(4) The enumeration of duties, functions and powers in subsection (3) of this section is not intended to be exclusive nor to limit the duties, functions and powers imposed on or vested in the Oregon Health Licensing Agency by other statutes.

SECTION 15. ORS 676.612 is amended to read:

676.612. (1) In the manner prescribed in ORS chapter 183 for contested cases and as specified in ORS 680.535, 687.445, 688.734, 688.836, 690.167, 690.407, 690.515, 694.147 and 700.111 **and section 6 of this 2007 Act**, the Oregon Health Licensing Agency may refuse to issue or renew, may suspend or revoke or may place on probation or otherwise discipline a holder of a certificate, permit, license or registration to practice issued by the agency for any of the following reasons:

(a) Fraud, misrepresentation, concealment of material facts or deception in applying for or obtaining an authorization to practice in this state, or in any written or oral communication to the agency concerning the issuance or retention of the authorization.

(b) Using, causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, insignia or any other representation, however disseminated or published, that is false, misleading or deceptive.

(c) Making a representation that the certificate, permit, license or registration holder knew or should have known is false or misleading regarding skill or the efficacy or value of treatment or remedy administered by the holder.

(d) Practicing under a false, misleading or deceptive name, or impersonating another certificate, permit, license or registration holder.

(e) Permitting a person other than the certificate, permit, license or registration holder to use the certificate, permit, license or registration.

(f) Practicing with a physical or mental condition that presents an unreasonable risk of harm to the practitioner or to the person or property of others in the course of performing the practitioner's duties.

(g) Practicing while under the influence of alcohol, controlled substances or other skill-impairing substances, or engaging in the illegal use of controlled substances or other skill-impairing substances so as to create a risk of harm to the person or property of others in the course of performing the practitioner's duties.

(h) Failing to properly and reasonably accept responsibility for the actions of employees.

(i) Employing, directly or indirectly, any suspended, uncertified, unlicensed or unregistered person to practice a regulated occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.606.

(j) Unprofessional conduct, negligence, incompetence, repeated violations or any departure from or failure to conform to standards of practice in performing services or practicing in a regulated occupation or profession subject to the authority of the boards, councils and programs listed under ORS 676.606.

(k) Conviction of any criminal offense, subject to ORS 670.280. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence of the conviction. A plea of no contest or an admission of guilt shall be considered a conviction for purposes of this paragraph.

(L) Failing to report any adverse action, as required by statute or rule, taken against the certificate, permit, license, or registration holder by another regulatory jurisdiction or any peer review body, health care institution, professional association, governmental agency, law enforcement agency or court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action as described in this section.

(m) Violation of a statute regulating an occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.606.

(n) Violation of any rule regulating an occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.606.

(o) Failing to cooperate with the agency in any investigation, inspection or request for information.

(2) The agency may refuse to issue or renew, may suspend or revoke or may place on probation or otherwise sanction a holder of a certificate, permit, license or registration to practice issued by the agency for failure to pay an outstanding civil penalty or fee that is due or for failure to meet the terms of any order issued by the agency that has become final.

(3) For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the agency may require the fingerprints of a person who is:

(a) Applying for a certificate, permit, license or registration that is issued by the agency;

(b) Applying for renewal of a certificate, permit, license or registration that is issued by the agency; or

(c) Under investigation by the agency.

(4) If the agency places a holder of a certificate, permit, license or registration on probation under subsection (1) of this section, the agency, in consultation with the appropriate board, council or program, may determine and at any time modify the conditions of the probation.

(5) If a certificate, permit, license or registration is suspended, the holder may not practice during the term of suspension. Upon the expiration of the term of suspension, the certificate, permit, license or registration may be reinstated by the agency if the conditions of suspension no longer exist and the holder has satisfied all requirements in the relevant statutes or administrative rules for issuance, renewal or reinstatement.

SECTION 16. ORS 676.613 is amended to read:

676.613. (1) In addition to all other remedies, when it appears to the Oregon Health Licensing Agency that a person is engaged in, has engaged in or is about to engage in any act, practice or transaction that violates any provision of ORS 676.617, 680.500 to 680.570, 687.405 to 687.495, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.235, 690.350 to 690.430, 690.500 to 690.570 or 694.015 to 694.185 or ORS chapter 700 **or sections 1 to 12 of this 2007 Act**, the agency may, through the Attorney General or the district attorney of the county in which the act, practice or transaction occurs or will occur, apply to the court for an injunction restraining the person from the act, practice or transaction.

(2) A court may issue an injunction under this section without proof of actual damages. An injunction issued under this section does not relieve a person from any other prosecution or enforcement action taken for violation of statutes listed in subsection (1) of this section.

SECTION 17. ORS 676.992 is amended to read:

676.992. (1) Except as provided in subsection (3) of this section, and in addition to any other penalty or remedy provided by law, the Oregon Health Licensing Agency may impose a civil penalty not to exceed \$5,000 for each violation of the following statutes and any rule adopted thereunder:

- (a) ORS 688.701 to 688.734 (athletic training);
- (b) ORS 690.500 to 690.570 (body piercing);
- (c) ORS 690.005 to 690.235 (cosmetology);
- (d) ORS 680.500 to 680.570 (denture technology);
- (e) ORS 687.405 to 687.495 (direct entry midwifery);
- (f) ORS 690.350 to 690.430 (electrology and permanent coloring or tattooing);
- (g) ORS 694.015 to 694.185 (dealing in hearing aids);
- (h) ORS 688.800 to 688.840 (respiratory therapy);
- (i) ORS chapter 700 (environmental sanitation); *[and]*
- (j) ORS 676.617 (single facility licensure)[.]; **and**

(k) Sections 1 to 12 of this 2007 Act (sex offender treatment).

(2) The agency may take any other disciplinary action that it finds proper, including but not limited to assessment of costs of disciplinary proceedings, not to exceed \$5,000, for violation of any statute or rule adopted under any statute listed in subsection (1) of this section.

(3) Subsection (1) of this section does not limit the amount of the civil penalty resulting from a violation of ORS 694.042.

(4) In imposing a civil penalty pursuant to this section, the agency shall consider the following factors:

- (a) The immediacy and extent to which the violation threatens the public health or safety;
 - (b) Any prior violations of statutes, rules or orders;
 - (c) The history of the person incurring a penalty in taking all feasible steps to correct any violation; and
 - (d) Any other aggravating or mitigating factors.
- (5) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(6) The moneys received by the agency from civil penalties under this section shall be paid into the General Fund of the State Treasury and credited to the Oregon Health Licensing Agency Account established under ORS 676.625. Such moneys are continuously appropriated to the agency for the administration and enforcement of the laws the agency is charged with administering and enforcing that govern the person against whom the penalty was imposed.

SECTION 18. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 1, chapter 260, Oregon Laws 2007 (Enrolled House Bill 5027), for the biennium beginning July 1, 2007, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Oregon Health Licensing Agency, is increased by \$150,000 for the purpose of carrying out the provisions of sections 1 to 12 of this 2007 Act.

SECTION 19. This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage.

Passed by House June 23, 2007

.....
Chief Clerk of House

.....
Speaker of House

Passed by Senate June 25, 2007

.....
President of Senate

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2007

.....
Secretary of State