

Minority Report
B-Engrossed
Senate Bill 1540

Ordered by the House February 23
Including Senate Amendments dated February 8 and House Minority
Report Amendments dated February 23

Sponsored by nonconcurring members of the House Committee on Human Services and Housing: Representatives
NOBLE, OLSON

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.

Modifies definition of child abuse for purpose of mandatory reporting. Adds provisions regarding child abuse investigations conducted on school premises.

Expands scope of investigation of abuse of persons with mental illness or substance use disorders that may be conducted by Department of Human Services or Oregon Health Authority.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to abuse of vulnerable individuals; amending ORS 419B.005, 419B.045 and 430.735; and de-
3 claring an emergency.

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

5 **SECTION 1.** ORS 419B.005 is amended to read:

6 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

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

8 (A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child
9 which has been caused by other than accidental means, including any injury which appears to be
10 at variance with the explanation given of the injury.

11 (B) Any mental injury to a child, which shall include only observable and substantial impairment
12 of the child's mental or psychological ability to function caused by cruelty to the child, with due
13 regard to the culture of the child.

14 (C) **Except as provided in paragraph (b)(B) of this subsection**, rape of a child, which includes
15 but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are de-
16 scribed in ORS chapter 163.

17 (D) **Except as provided in paragraph (b)(B) of this subsection**, sexual abuse, as described in
18 ORS chapter 163.

19 (E) **Except as provided in paragraph (b)(B) of this subsection**, sexual exploitation, including
20 but not limited to:

21 (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any
22 other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage
23 in the performing for people to observe or the photographing, filming, tape recording or other ex-
24 hibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or

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 described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-
2 cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or
3 which is designed to serve educational or other legitimate purposes; and

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

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

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

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

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

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

18 (b) "Abuse" does not include:

19 (A) Reasonable discipline unless the discipline results in one of the conditions described in
20 paragraph (a) of this subsection.

21 **(B) Sexual contact or sexual intercourse, as those terms are defined in ORS 163.305, be-**
22 **tween a child over 14 years of age and a person under 21 years of age if any lack of consent**
23 **for the sexual contact or sexual intercourse was due solely to the child's incapacity to con-**
24 **sent by reason of being less than a specified age, unless:**

25 **(i) The person was three or more years older than the child; or**

26 **(ii) There is reasonable cause to believe that the sexual contact or sexual intercourse**
27 **was the result of force, intimidation or coercion.**

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

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

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

32 (3) "Higher education institution" means:

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

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

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

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

37 (4) "Law enforcement agency" means:

38 (a) A city or municipal police department.

39 (b) A county sheriff's office.

40 (c) The Oregon State Police.

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

42 (e) A county juvenile department.

43 (5) "Public or private official" means:

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

- 1 (b) Dentist.
- 2 (c) School employee, including an employee of a higher education institution.
- 3 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide
4 or employee of an in-home health service.
- 5 (e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning
6 Division, Youth Development Division, Office of Child Care, the Oregon Youth Authority, a local
7 health department, a community mental health program, a community developmental disabilities
8 program, a county juvenile department, a child-caring agency as that term is defined in ORS 418.205
9 or an alcohol and drug treatment program.
- 10 (f) Peace officer.
- 11 (g) Psychologist.
- 12 (h) Member of the clergy.
- 13 (i) Regulated social worker.
- 14 (j) Optometrist.
- 15 (k) Chiropractor.
- 16 (L) Certified provider of foster care, or an employee thereof.
- 17 (m) Attorney.
- 18 (n) Licensed professional counselor.
- 19 (o) Licensed marriage and family therapist.
- 20 (p) Firefighter or emergency medical services provider.
- 21 (q) A court appointed special advocate, as defined in ORS 419A.004.
- 22 (r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.
- 23 (s) Member of the Legislative Assembly.
- 24 (t) Physical, speech or occupational therapist.
- 25 (u) Audiologist.
- 26 (v) Speech-language pathologist.
- 27 (w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
28 gations or discipline by the commission.
- 29 (x) Pharmacist.
- 30 (y) An operator of a preschool recorded program under ORS 329A.255.
- 31 (z) An operator of a school-age recorded program under ORS 329A.257.
- 32 (aa) Employee of a private agency or organization facilitating the provision of respite services,
33 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS
34 109.056.
- 35 (bb) Employee of a public or private organization providing child-related services or activities:
36 (A) Including but not limited to youth groups or centers, scout groups or camps, summer or day
37 camps, survival camps or groups, centers or camps that are operated under the guidance, super-
38 vision or auspices of religious, public or private educational systems or community service organ-
39 izations; and
40 (B) Excluding community-based, nonprofit organizations whose primary purpose is to provide
41 confidential, direct services to victims of domestic violence, sexual assault, stalking or human traf-
42 ficking.
- 43 (cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete,
44 if compensated and if the athlete is a child.
- 45 (dd) Personal support worker, as defined by rule adopted by the Home Care Commission.

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

2 **SECTION 2.** ORS 419B.045 is amended to read:

3 419B.045. (1) **The Department of Human Services or a law enforcement agency has the**
4 **authority to conduct an investigation, on school premises, of a report of child abuse.**

5 [(1)] (2) [If] **When** an investigation of a report of child abuse is conducted on school premises,
6 the school administrator shall first be notified that the investigation is to take place, unless the
7 school administrator is a subject of the investigation.

8 (3) **The department or the law enforcement agency conducting the investigation shall**
9 **present adequate identification to school staff members.**

10 (4) **After the department or law enforcement agency presents adequate identification,**
11 **school staff members shall cooperate with the investigation by, at a minimum:**

12 (a) **Allowing the department or law enforcement agency access to the child who is the**
13 **suspected victim in the report of child abuse; and**

14 (b) **Providing a private space in which to conduct an interview of the child.**

15 (5) The [Department of Human Services] **department** or the law enforcement agency conducting
16 the investigation is not required to reveal information about the investigation to the school as a
17 condition of conducting the investigation.

18 (6) The school administrator or a school staff member designated by the administrator may, at
19 the investigator's discretion, be present to facilitate the investigation.

20 (7) The investigator shall be advised by a school administrator or a school staff member of [a]
21 **the child's disabling conditions, if any, prior to any interview with the child.**

22 (8)(a) A school administrator or school staff member may not notify any person, including [a]
23 **the child's parents or guardian, other than the department or law enforcement agency and any**
24 **school employee necessary to enable the investigation,** of an investigation described in this
25 section and may not disclose any information obtained during an investigation[, *nor shall the infor-*
26 *mation become part of the child's school records*].

27 (b) **Information obtained during an investigation is not part of the child's school records.**

28 (9) [The] **A** school administrator or school staff member may testify at any subsequent court
29 proceeding relating to the investigation and may be interviewed by the respective litigants prior to
30 any court proceeding.

31 [(2)] (10) A school district, school administrator or school staff member may not be held liable
32 for civil damages as a result of compliance with [*the notification and disclosure prohibitions in sub-*
33 *section (1) of*] this section.

34 [(3)] (11) [*Subsections (1) and (2) of*] This section [*apply*] **applies** solely to an investigation that
35 involves an interview of the suspected victim in the report of child abuse or witnesses and [*do*] **does**
36 not apply to an investigation or interview of a person who is suspected of having committed the
37 abuse that is the subject of the report.

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

39 430.735. As used in ORS 430.735 to 430.765:

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

41 (a) Abandonment, including desertion or willful forsaking of [*a person with a developmental dis-*
42 *ability*] **an adult** or the withdrawal or neglect of duties and obligations owed [*a person with a de-*
43 *velopmental disability*] **an adult** by a caregiver or other person.

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

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

2 (d) Sexual abuse [*of an adult*].

3 (e) Neglect.

4 (f) Verbal abuse of [*a person with a developmental disability*] **an adult**.

5 (g) Financial exploitation of [*a person with a developmental disability*] **an adult**.

6 (h) Involuntary seclusion of [*a person with a developmental disability*] **an adult** for the conven-
7 ience of the caregiver or to discipline the [*person*] **adult**.

8 (i) A wrongful use of a physical or chemical restraint upon [*a person with a developmental dis-*
9 *ability*] **an adult**, excluding an act of restraint prescribed by a physician licensed under ORS chapter
10 677, physician assistant licensed under ORS 677.505 to 677.525, naturopathic physician licensed un-
11 der ORS chapter 685 or nurse practitioner licensed under ORS 678.375 to 678.390 and any treatment
12 activities that are consistent with an approved treatment plan or in connection with a court order.

13 (j) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427,
14 163.465 or 163.467.

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

16 (2) "Adult" means a person 18 years of age or older [*with*]:

17 (a) **With** a developmental disability who is currently receiving services from a community pro-
18 gram or facility or **who** was previously determined eligible for services as an adult by a community
19 program or facility; [*or*]

20 (b) **With a severe and persistent** mental illness who is receiving [*services*] **mental health**
21 **treatment** from a community program [*or facility*.]; **or**

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

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

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

31 (5) "Community program" [*means*] **includes**:

32 (a) A community mental health program or a community developmental disabilities program as
33 established in ORS 430.610 to 430.695[.]; **or**

34 (b) **A provider that is paid directly or indirectly by the Oregon Health Authority to pro-**
35 **vide mental health treatment in the community**.

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

38 (7) "Financial exploitation" means:

39 (a) Wrongfully taking the assets, funds or property belonging to or intended for the use of [*a*
40 *person with a developmental disability*] **an adult**.

41 (b) Alarming [*a person with a developmental disability*] **an adult** by conveying a threat to
42 wrongfully take or appropriate money or property of the [*person*] **adult** if the [*person*] **adult** would
43 reasonably believe that the threat conveyed would be carried out.

44 (c) Misappropriating, misusing or transferring without authorization any money from any ac-
45 count held jointly or singly by [*a person with a developmental disability*] **an adult**.

1 (d) Failing to use the income or assets of [*a person with a developmental disability*] **an adult**
2 effectively for the support and maintenance of the [*person*] **adult**.

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

4 (9) “Law enforcement agency” means:

5 (a) Any city or municipal police department;

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

7 (c) Any county sheriff’s office;

8 (d) The Oregon State Police; or

9 (e) Any district attorney.

10 (10) “Neglect” means:

11 (a) Failure to provide the care, supervision or services necessary to maintain the physical and
12 mental health of [*a person with a developmental disability*] **an adult** that may result in physical harm
13 or significant emotional harm to the [*person*] **adult**;

14 (b) [*The*] Failure of a caregiver to make a reasonable effort to protect [*a person with a develop-*
15 *mental disability*] **an adult** from abuse; or

16 (c) Withholding of services necessary to maintain the health and well-being of an adult that
17 leads to physical harm of [*an*] **the** adult.

18 [(11) “*Person with a developmental disability*” means a person described in subsection (2)(a) of this
19 section.]

20 [(12)] (11) “Public or private official” means:

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

23 (b) Licensed practical nurse, registered nurse, nurse’s aide, home health aide or employee of an
24 in-home health service;

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

28 (d) Peace officer;

29 (e) Member of the clergy;

30 (f) Regulated social worker;

31 (g) Physical, speech or occupational therapist;

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

33 (i) Attorney;

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

35 (k) Any public official;

36 (L) Firefighter or emergency medical services provider;

37 (m) Member of the Legislative Assembly;

38 (n) Personal support worker, as defined by rule adopted by the Home Care Commission; or

39 (o) Home care worker, as defined in ORS 410.600.

40 [(13)] (12) “Services” includes but is not limited to the provision of food, clothing, medicine,
41 housing, medical services, assistance with bathing or personal hygiene or any other service essential
42 to the well-being of an adult.

43 [(14)(a)] (13)(a) “Sexual abuse” means:

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

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

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

5 (D) Any sexual contact between [*a person with a developmental disability*] **an adult** and a rela-
6 tive of the [*person with a developmental disability*] **adult** other than a spouse; [*or*]

7 (E) Any sexual contact that is achieved through force, trickery, threat or coercion[.]; **or**

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

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

12 [(15)] (14) "Sexual contact" has the meaning given that term in ORS 163.305.

13 [(16)] (15) "Verbal abuse" means to threaten significant physical or emotional harm to [*a person*
14 *with a developmental disability*] **an adult** through the use of:

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

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

18 **SECTION 4. This 2018 Act being necessary for the immediate preservation of the public**
19 **peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect**
20 **on its passage.**

21