

Enrolled Senate Bill 1540

Sponsored by Senator GELSER (Presession filed.)

CHAPTER

AN ACT

Relating to abuse of vulnerable individuals; amending ORS 419B.045 and 430.735; and declaring an emergency.

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

SECTION 1. ORS 419B.045 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2. ORS 430.735 is amended to read:

430.735. As used in ORS 430.735 to 430.765:

(1) “Abuse” means one or more of the following:

(a) Abandonment, including desertion or willful forsaking of [*a person with a developmental disability*] **an adult** or the withdrawal or neglect of duties and obligations owed [*a person with a developmental disability*] **an adult** by a caregiver or other person.

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

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

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

(e) Neglect.

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

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

(h) Involuntary seclusion of [*a person with a developmental disability*] **an adult** for the convenience of the caregiver or to discipline the [*person*] **adult**.

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

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

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

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

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

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

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

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

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

(5) “Community program” [*means*] **includes**:

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

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

(6) “Facility” means a residential treatment home or facility, residential care facility, adult foster home, residential training home or facility or crisis respite facility.

(7) "Financial exploitation" means:

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

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

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

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

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

(9) "Law enforcement agency" means:

(a) Any city or municipal police department;

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

(c) Any county sheriff's office;

(d) The Oregon State Police; or

(e) Any district attorney.

(10) "Neglect" means:

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

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

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

[(11) "Person with a developmental disability" means a person described in subsection (2)(a) of this section.]

[(12)] (11) "Public or private official" means:

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

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

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

(d) Peace officer;

(e) Member of the clergy;

(f) Regulated social worker;

(g) Physical, speech or occupational therapist;

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

(i) Attorney;

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

(k) Any public official;

(L) Firefighter or emergency medical services provider;

(m) Member of the Legislative Assembly;

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

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

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

[(14)(a)] (13)(a) "Sexual abuse" means:

- (A) Sexual contact with a nonconsenting adult or with an adult considered incapable of consenting to a sexual act under ORS 163.315;
- (B) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit material or language;
- (C) Any sexual contact between an employee of a facility or paid caregiver and an adult served by the facility or caregiver;
- (D) Any sexual contact between [*a person with a developmental disability*] **an adult** and a relative of the [*person with a developmental disability*] **adult** other than a spouse; [or]
- (E) Any sexual contact that is achieved through force, trickery, threat or coercion[.]; or
- (F) Any sexual contact between an individual receiving mental health or substance abuse treatment and the individual providing the mental health or substance abuse treatment.**
- (b) "Sexual abuse" does not mean consensual sexual contact between an adult and a paid caregiver who is the spouse of the adult.
- [**(15)**] (**14**) "Sexual contact" has the meaning given that term in ORS 163.305.
- [**(16)**] (**15**) "Verbal abuse" means to threaten significant physical or emotional harm to [*a person with a developmental disability*] **an adult** through the use of:
- (a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or
- (b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate sexual comments.

SECTION 3. This 2018 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect on its passage.

Passed by Senate February 12, 2018

Received by Governor:

.....M.,....., 2018

Repassed by Senate March 3, 2018

Approved:

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Peter Courtney, President of Senate

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Kate Brown, Governor

Passed by House March 2, 2018

Filed in Office of Secretary of State:

.....M.,....., 2018

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Tina Kotek, Speaker of House

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Dennis Richardson, Secretary of State