

CHAPTER 430

(Abuse reporting for persons who are mentally ill or have developmental disabilities)

430.735 Definitions for ORS 430.735 to 430.765. 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 or the withdrawal or neglect of duties and obligations owed a person with a developmental disability 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.

(g) Financial exploitation of a person with a developmental disability.

(h) Involuntary seclusion of a person with a developmental disability for the convenience of the caregiver or to discipline the person.

(i) A wrongful use of a physical or chemical restraint upon a person with a developmental disability, excluding an act of restraint prescribed by a licensed physician 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) A developmental disability who is currently receiving services from a community program or facility or was previously determined eligible for services as an adult by a community program or facility; or

(b) A mental illness who is receiving services from a community program or facility.

(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 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 a community mental health program or a community developmental disabilities program as established in ORS 430.610 to 430.695.

(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.

(b) Alarming a person with a developmental disability by conveying a threat to wrongfully take or appropriate money or property of the person if the person 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.

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

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

(9) "Law enforcement agency" means:

(a) Any city or municipal police department;

(b) Any county sheriff's office;

(c) The Oregon State Police; or

(d) 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 that may result in physical harm or significant emotional harm to the person;

(b) The failure of a caregiver to make a reasonable effort to protect a person with a developmental disability from abuse; or

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

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

(12) "Public or private official" means:

(a) Physician, naturopathic physician, osteopathic physician, psychologist, chiropractor or podiatric physician and surgeon, 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, county 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 who comes in contact with adults in the performance of the official's duties; or

(L) Firefighter or emergency medical technician.

(13) "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) "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 and a relative of the person with a developmental disability other than a spouse; or

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

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

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

(16) "Verbal abuse" means to threaten significant physical or emotional harm to a person with a developmental disability 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. [1991 c.744 §2; 1999 c.463 §7; 2003 c.443 §4; 2007 c.21 §2; 2007 c.70 §236; 2007 c.492 §2; 2009 c.442 §39; 2009 c.595 §524; 2009 c.837 §15]

Note: 430.735 to 430.765 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 430 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

430.737 Mandatory reports and investigations. The Legislative Assembly finds that for the purpose of preventing abuse and safeguarding and enhancing the welfare of adults with mental illness or developmental disabilities, it is necessary and in the public interest to require mandatory reports and thorough and unbiased investigations of adults with mental illness or developmental disabilities who are allegedly abused. [1991 c.744 §1; 2003 c.443 §1; 2007 c.70 §237]

Note: See note under 430.735.

430.740 [1963 c.581 §4; repealed by 1969 c.321 §9]

430.743 Abuse report; content; action on report; notice to law enforcement agency and Department of Human Services. (1) When a report is required under ORS 430.765 (1) and (2), an oral report shall be made immediately by telephone or otherwise to the Department of Human Services, the designee of the department or a law enforcement agency

within the county where the person making the report is at the time of contact. If known, the report shall include:

(a) The name, age and present location of the allegedly abused adult;

(b) The names and addresses of persons responsible for the adult's care;

(c) The nature and extent of the alleged abuse, including any evidence of previous abuse;

(d) Any information that led the person making the report to suspect that abuse has occurred plus any other information that the person believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator; and

(e) The date of the incident.

(2) When a report is received by the department's designee under this section, the designee shall immediately determine whether abuse occurred and if the reported victim has sustained any serious injury. If so, the designee shall immediately notify the department. If there is reason to believe a crime has been committed, the designee shall immediately notify the law enforcement agency having jurisdiction within the county where the report was made. If the designee is unable to gain access to the allegedly abused adult, the designee may contact the law enforcement agency for assistance and the agency shall provide assistance. When a report is received by a law enforcement agency, the agency shall immediately notify the law enforcement agency having jurisdiction if the receiving agency does not. The receiving agency shall also immediately notify the department in cases of serious injury or death.

(3) Upon receipt of a report of abuse under this section, the department or its designee shall notify:

(a) The agency providing primary case management services to the adult; and

(b) The guardian or case manager of the adult unless the notification would undermine the integrity of the investigation because the guardian or case manager is suspected of committing abuse. [1991 c.744 §4; 2001 c.900 §141; 2009 c.837 §16]

Note: See note under 430.735.

430.745 Investigation of abuse; notice to medical examiners; findings; recommendations. (1) Upon receipt of any report of alleged abuse of an adult, or upon receipt of a report of a death of an adult that may have been caused by other than accidental or natural means, the Department of Human Services or its designee shall investigate promptly to determine if abuse occurred or whether a death was caused by abuse. If the department or its designee determines that a law enforcement agency is conducting an investigation of the same incident, the department or its designee need not conduct its own investigation.

(2) The department or its designee may enter a facility and inspect and copy records of a facility or community program if necessary for the completion of the investigation.

(3) In cases in which the department, its designee or the law enforcement agency conducting the investigation finds reasonable cause to believe that an adult has died as a result of abuse, it shall report that information to the appropriate medical examiner. The medical examiner shall complete an investigation as required under ORS chapter 146 and report the findings to the department, its designee or the law enforcement agency.

(4) Upon completion of an investigation conducted by a law enforcement agency, that agency shall provide the department or its designee with a report of its findings and supporting evidence.

(5) If the department or its designee determines that there is reasonable cause to believe that abuse occurred at a facility or

that abuse was caused or aided by a person licensed by a licensing agency to provide care or services, the department or its designee shall immediately notify each appropriate licensing agency and provide each licensing agency with a copy of its investigative findings.

(6) Upon completion of the investigation, the department or its designee shall prepare written findings that include recommended actions and a determination of whether protective services are needed. The department or its designee shall provide appropriate protective services as necessary to prevent further abuse of the adult. Any protective services provided shall be undertaken in a manner that is least intrusive to the adult and provides for the greatest degree of independence that is available within existing resources.

(7) If the department or its designee determines that there is reason to believe a crime has occurred, the department or its designee shall report the findings to the appropriate law enforcement agency. The law enforcement agency must confirm its receipt of the report to the department or its designee within two business days. Within three business days of receipt of the findings, the agency shall notify the department or its designee:

(a) That there will be no criminal investigation, including an explanation of why there will be no criminal investigation;

(b) That the findings have been given to the district attorney for review; or

(c) That there will be a criminal investigation.

(8) If a law enforcement agency gives the findings of the department or its designee to the district attorney for review, within five business days the district attorney shall notify the department or its designee that the district attorney has received the findings and shall inform the department or its designee whether the

findings have been received for review or for filing charges. A district attorney shall make the determination of whether to file charges within six months of receiving the findings of the department or its designee.

(9) If a district attorney files charges stemming from a report from the department or its designee and the district attorney makes a determination not to proceed to trial, the district attorney shall notify the department or its designee of the determination within five business days and shall include information explaining the basis for the determination. [1991 c.744 §5; 2009 c.837 §17]

430.746 Training requirements for persons investigating reports of alleged abuse. Any designee of the Department of Human Services who makes a determination or conducts an investigation under ORS 430.743 or 430.745 shall receive training and consultation that is necessary to allow the designee to make the determination or conduct a thorough and unbiased investigation. The training required under this section shall address the cultural and social diversity of the people of this state. [2003 c.443 §3]

Note: See note under 430.735.

430.747 Photographs of victim during investigation; exception; photographs as records. (1) In carrying out its duties under ORS 430.735 to 430.765, a law enforcement agency or the Department of Human Services' designee may photograph or cause to have photographed any victim who is the subject of the investigation for purposes of preserving evidence of the condition of the victim at the time of investigation unless the victim knowingly refuses to be photographed.

(2) For purposes of ORS 430.763, photographs taken under authority of subsection (1) of this section shall be considered case records. [1991 c.744 §6]

Note: See note under 430.735.

430.750 [1963 c.581 §5; repealed by 1969 c.321 §9]

430.753 Immunity of persons making reports in good faith; confidentiality. (1) Anyone participating in good faith in making a report of abuse pursuant to ORS 430.743 and 430.765 (1) and (2) and who has reasonable grounds for making the report, shall have immunity from any civil liability that might otherwise be incurred or imposed with respect to the making or content of the report. The participant shall have the same immunity with respect to participating in any judicial proceeding resulting from the report.

(2) The identity of the person making the report shall be treated as confidential information and shall be disclosed only with the consent of that person, by judicial order or as otherwise permitted by ORS 430.763. [1991 c.744 §7]

Note: See note under 430.735.

430.755 Retaliation prohibited; liability for retaliation. (1) A facility, community program or person shall not retaliate against any person who reports in good faith suspected abuse or against the allegedly abused adult with respect to any report.

(2) Any facility, community program or person that retaliates against any person because of a report of suspected abuse shall be liable in a private action to that person for actual damages and, in addition, a penalty up to \$1,000, notwithstanding any other remedy provided by law.

(3)(a) Any adverse action is evidence of retaliation if taken within 90 days of a report.

(b) For purposes of this subsection, "adverse action" means any action taken by a facility, community program or person involved in a report against the person making the report or against the adult with respect to whom the report was made

because of the report, and includes but is not limited to:

(A) Discharge or transfer from the facility, except for clinical reasons;

(B) Discharge from or termination of employment;

(C) Demotion or reduction in remuneration for services; or

(D) Restriction or prohibition of access to the facility or its residents. [1991 c.744 §8; 2003 c.443 §5]

Note: See note under 430.735.

430.756 Immunity of employer reporting abuse by employee. A person who has personal knowledge that an employee or former employee of the person was found by the Department of Human Services or a law enforcement agency to have committed abuse under ORS 430.735 to 430.765, is immune from civil liability for the disclosure to a prospective employer of the employee or former employee of known facts concerning the abuse. [2009 c.837 §19]

Note: 430.756 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 430 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

430.757 Reports of abuse to be maintained by Department of Human Services. A proper record of all reports of abuse made under ORS 430.743 and 430.765 (1) and (2) shall be maintained by the Department of Human Services. [1991 c.744 §9]

Note: See note under 430.735.

430.760 [1969 c.253 §1; repealed by 1985 c.555 §26]

430.763 Confidentiality of records; when record may be made available to agency. Notwithstanding the provisions of ORS 192.410 to 192.505, the names of persons who made reports of abuse, witnesses of alleged abuse and the affected adults and materials under ORS 430.747

maintained under the provisions of ORS 430.757 are confidential and are not accessible for public inspection. However, the Department of Human Services shall make this information and any investigative report available to any law enforcement agency, to any public agency that licenses or certifies facilities or licenses or certifies the persons practicing therein and to any public agency providing protective services for the adult, if appropriate. The department shall also make this information and any investigative report available to any private agency providing protective services for the adult and to the system described in ORS 192.517 (1). When this information and any investigative report is made available to a private agency, the confidentiality requirements of this section apply to the private agency. [1991 c.744 §10; 2003 c.14 §240; 2005 c.498 §9]

Note: See note under 430.735.

430.765 Duty of officials to report abuse; exceptions for privileged communications; exception for religious practice. (1) Any public or private official who has reasonable cause to believe that any adult with whom the official comes in contact while acting in an official capacity, has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity has abused an adult shall report or cause a report to be made in the manner required in ORS 430.743.

(2) Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by subsections (1) and (2) of this section, except that a psychiatrist, psychologist, member of the clergy or attorney shall not be required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295.

(3) An adult who in good faith is voluntarily under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall for this reason alone not be considered subjected to abuse under ORS 430.735 to 430.765. [1991 c.744 §§3,11]

Note: See note under 430.735.