

D R A F T

SUMMARY

Authorizes prosecution of first-degree sex crimes any time after commission of crime if prosecuting attorney obtains corroborating evidence of crime. Requires prosecuting attorney to present evidence reasonably tending to negate guilt to grand jury.

Creates new manner of committing crime of assault in the third degree when person with criminal negligence causes serious physical injury by means of motor vehicle. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both. Directs Oregon Criminal Justice Commission to classify crime as crime category 4 on sentencing guidelines grid.

A BILL FOR AN ACT

Relating to crime; creating new provisions; and amending ORS 131.125, 137.225, 163.165 and 163.168.

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

SECTION 1. ORS 131.125 is amended to read:

131.125. (1) A prosecution for aggravated murder, murder, attempted murder or aggravated murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of manslaughter may be commenced at any time after the commission of the attempt, conspiracy or solicitation to commit aggravated murder or murder, or the death of the person killed.

(2) A prosecution for any of the following felonies may be commenced within 12 years after the commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime before the victim attains 30 years of age:

(a) Rape in the first degree under ORS 163.375.

(b) Sodomy in the first degree under ORS 163.405.

(c) Unlawful sexual penetration in the first degree under ORS 163.411.

(d) Sexual abuse in the first degree under ORS 163.427.

(3) A prosecution for any of the following felonies may be commenced within six years after the commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime before the victim attains 30 years of age or within 12 years after the offense is reported to a law enforcement agency or the Department of Human Services, whichever occurs first:

(a) Strangulation under ORS 163.187 (4).

(b) Criminal mistreatment in the first degree under ORS 163.205.

(c) Rape in the third degree under ORS 163.355.

(d) Rape in the second degree under ORS 163.365.

(e) Sodomy in the third degree under ORS 163.385.

(f) Sodomy in the second degree under ORS 163.395.

(g) Unlawful sexual penetration in the second degree under ORS 163.408.

(h) Sexual abuse in the second degree under ORS 163.425.

(i) Using a child in a display of sexual conduct under ORS 163.670.

(j) Encouraging child sexual abuse in the first degree under ORS 163.684.

(k) Incest under ORS 163.525.

(L) Promoting prostitution under ORS 167.012.

(m) Compelling prostitution under ORS 167.017.

(n) Luring a minor under ORS 167.057.

(4) A prosecution for any of the following misdemeanors may be commenced within four years after the commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime before the victim attains 22 years of age or within four years after the offense is reported to a law enforcement agency or the Department of Human Services, whichever occurs first:

(a) Strangulation under ORS 163.187 (3).

(b) Sexual abuse in the third degree under ORS 163.415.

(c) Exhibiting an obscene performance to a minor under ORS 167.075.

(d) Displaying obscene materials to minors under ORS 167.080.

(5) In the case of crimes described in subsection (3)(i) of this section, the victim is the child engaged in sexual conduct. In the case of the crime described in subsection (3)(k) of this section, the victim is the party to the incest other than the party being prosecuted. In the case of crimes described in subsection (3)(L) and (m) of this section, the victim is the child whose acts of prostitution are promoted or compelled.

(6) A prosecution for arson in any degree may be commenced within six years after the commission of the crime.

(7) A prosecution for any of the following felonies may be commenced within six years after the commission of the crime if the victim at the time of the crime was 65 years of age or older:

(a) Theft in the first degree under ORS 164.055.

(b) Aggravated theft in the first degree under ORS 164.057.

(c) Theft by extortion under ORS 164.075.

(d) Robbery in the third degree under ORS 164.395.

(e) Robbery in the second degree under ORS 164.405.

(f) Robbery in the first degree under ORS 164.415.

(g) Forgery in the first degree under ORS 165.013.

(h) Fraudulent use of a credit card under ORS 165.055 (4)(b).

(i) Identity theft under ORS 165.800.

(8) Except as provided in subsection (9) of this section or as otherwise expressly provided by law, prosecutions for other offenses must be commenced within the following periods of limitations after their commission:

(a) For any other felony, three years.

(b) For any misdemeanor, two years.

(c) For a violation, six months.

(9) If the period prescribed in subsection (8) of this section has expired, a prosecution nevertheless may be commenced as follows:

(a) If the offense has as a material element either fraud or the breach of a fiduciary obligation, prosecution may be commenced within one year after

1 discovery of the offense by an aggrieved party or by a person who has a legal
2 duty to represent an aggrieved party and who is not a party to the offense,
3 but in no case shall the period of limitation otherwise applicable be extended
4 by more than three years;

5 (b) If the offense is based upon misconduct in office by a public officer
6 or employee, prosecution may be commenced at any time while the defendant
7 is in public office or employment or within two years thereafter, but in no
8 case shall the period of limitation otherwise applicable be extended by more
9 than three years; or

10 (c) If the offense is an invasion of personal privacy under ORS 163.700
11 or 163.701, prosecution may be commenced within one year after discovery
12 of the offense by the person aggrieved by the offense, by a person who has
13 a legal duty to represent the person aggrieved by the offense or by a law
14 enforcement agency, but in no case shall the period of limitation otherwise
15 applicable be extended by more than three years.

16 (10) Notwithstanding subsections (2) and (3) of this section, if the de-
17 fendant is identified after the period described in subsection (2) or (3) of this
18 section on the basis of DNA (deoxyribonucleic acid) sample comparisons, a
19 prosecution for:

20 (a) Rape in the first degree, sodomy in the first degree, unlawful sexual
21 penetration in the first degree or sexual abuse in the first degree may be
22 commenced at any time after the commission of the crime.

23 (b) Rape in the second degree, sodomy in the second degree or unlawful
24 sexual penetration in the second degree may be commenced within 25 years
25 after the commission of the crime.

26 (11) Notwithstanding subsection (10) of this section, if a prosecution for
27 a felony listed in subsection (10) of this section would otherwise be barred
28 by subsection (2) or (3) of this section, the prosecution must be commenced
29 within two years of the DNA-based identification of the defendant.

30 **(12)(a) Notwithstanding subsection (2) of this section, if a prose-**
31 **cuting attorney obtains corroborating evidence of the crimes of rape**

1 in the first degree, sodomy in the first degree, unlawful sexual pene-
2 tration in the first degree or sexual abuse in the first degree, after the
3 period described in subsection (2) of this section, the prosecution may
4 be commenced at any time after the commission of the crime.

5 (b) The corroborating evidence described in paragraph (a) of this
6 subsection must consist of one of the following:

7 (A) Physical evidence other than a DNA sample, including but not
8 limited to audio, video or other electronic recordings, text messages,
9 guest book logs, telephone recordings and photographs.

10 (B) A confession to the crime made by the defendant.

11 (C) An oral or written statement provided by the victim to another
12 person, made or given to the other person contemporaneously to the
13 commission of the crime, corroborating the victim's report of the
14 crime to a law enforcement agency.

15 (D) A report made by a different victim to a law enforcement
16 agency alleging that the defendant committed the crime.

17 (13)(a) A prosecuting attorney commencing a prosecution pursuant
18 to subsection (12) of this section shall present any evidence reasonably
19 tending to negate the guilt of the defendant to the grand jury consid-
20 ering the indictment for the offense.

21 (b) The failure to present evidence reasonably tending to negate
22 guilt as required by paragraph (a) of this subsection does not affect
23 the validity of an indictment or prosecution.

24 **SECTION 2.** ORS 163.165 is amended to read:

25 163.165. (1) A person commits the crime of assault in the third degree if
26 the person:

27 (a) Recklessly causes serious physical injury to another by means of a
28 deadly or dangerous weapon;

29 (b) Recklessly causes serious physical injury to another under circum-
30 stances manifesting extreme indifference to the value of human life;

31 (c) Recklessly causes physical injury to another by means of a deadly or

dangerous weapon under circumstances manifesting extreme indifference to the value of human life;

(d) With criminal negligence causes serious physical injury to another by means of a motor vehicle;

[(d)] **(e)** Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a public transit vehicle while the operator is in control of or operating the vehicle. As used in this paragraph, “public transit vehicle” has the meaning given that term in ORS 166.116;

[(e)] **(f)** While being aided by another person actually present, intentionally or knowingly causes physical injury to another;

[(f)] **(g)** While committed to a youth correction facility, intentionally or knowingly causes physical injury to another knowing the other person is a staff member while the other person is acting in the course of official duty;

[(g)] **(h)** Intentionally, knowingly or recklessly causes physical injury to an emergency medical services provider, as defined in ORS 682.025, while the emergency medical services provider is performing official duties;

[(h)] **(i)** Being at least 18 years of age, intentionally or knowingly causes physical injury to a child 10 years of age or younger; or

[(i)] **(j)** Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a taxi while the operator is in control of the taxi.

(2)(a) Assault in the third degree is a Class C felony.

(b) Notwithstanding paragraph (a) of this subsection, assault in the third degree under subsection (1)(a) or (b) of this section is a Class B felony if:

(A) The assault resulted from the operation of a motor vehicle; and

(B) The defendant was the driver of the motor vehicle and was driving while under the influence of intoxicants.

(3) As used in this section:

(a) “Staff member” means:

(A) A corrections officer as defined in ORS 181A.355, a youth correction

officer, a youth correction facility staff member, a Department of Corrections or Oregon Youth Authority staff member or a person employed pursuant to a contract with the department or youth authority to work with, or in the vicinity of, inmates, youth or youth offenders; and

(B) A volunteer authorized by the department, youth authority or other entity in charge of a corrections facility to work with, or in the vicinity of, inmates, youth or youth offenders.

(b) "Youth correction facility" has the meaning given that term in ORS 162.135.

SECTION 3. ORS 163.168 is amended to read:

163.168. The Oregon Criminal Justice Commission shall classify assault in the third degree that is committed under the circumstances described in:

(1) ORS 163.165 (2)(b) as crime category 8 of the sentencing guidelines grid of the commission.

(2) ORS 163.165 (1)(d) as crime category 4 of the sentencing guidelines grid of the commission.

SECTION 4. ORS 137.225 is amended to read:

137.225. (1)(a) Except as provided in paragraph (c) of this subsection, at any time after the lapse of three years from the date of pronouncement of judgment, any defendant who has fully complied with and performed the sentence of the court and whose conviction is described in subsection (5) of this section by motion may apply to the court where the conviction was entered for entry of an order setting aside the conviction. A person who is still under supervision, or who is still incarcerated, as part of the sentence for the offense that is the subject of the motion has not fully complied with or performed the sentence of the court.

(b) At any time after the lapse of one year from the date of any arrest, if no accusatory instrument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested person may apply to the court that would have jurisdiction over the crime for which the person was arrested, for entry of an order setting aside the record of the arrest. For the purpose

1 of computing the one-year period, time during which the arrested person has
2 secreted himself or herself within or without this state is not included.

3 (c) A person whose sentence of probation was revoked may not apply to
4 the court for entry of an order setting aside the conviction for which the
5 person was sentenced to probation for a period of 10 years from the date of
6 revocation.

7 (2)(a) A copy of the motion and a full set of the defendant's fingerprints
8 shall be served upon the office of the prosecuting attorney who prosecuted
9 the crime or violation, or who had authority to prosecute the charge if there
10 was no accusatory instrument filed, and opportunity shall be given to contest
11 the motion. The fingerprint card with the notation "motion for setting aside
12 conviction," or "motion for setting aside arrest record" as the case may be,
13 shall be forwarded to the Department of State Police. Information resulting
14 from the fingerprint search along with the fingerprint card shall be returned
15 to the prosecuting attorney.

16 (b) When a prosecuting attorney is served with a copy of a motion to set
17 aside a conviction under this section, the prosecuting attorney shall provide
18 a copy of the motion and notice of the hearing date to the victim, if any, of
19 the crime by mailing a copy of the motion and notice to the victim's last-
20 known address.

21 (c) When a person makes a motion under subsection (1)(a) of this section,
22 the person must pay a fee of \$80 to the Department of State Police. The
23 person shall attach a certified check payable to the Department of State
24 Police in the amount of \$80 to the fingerprint card that is served upon the
25 prosecuting attorney. The office of the prosecuting attorney shall forward
26 the check with the fingerprint card to the Department of State Police.

27 (d) In addition to the fee established under paragraph (c) of this sub-
28 section, when a person makes a motion under subsection (1)(a) of this section
29 the person must pay the filing fee established under ORS 21.135.

30 (e) The prosecuting attorney may not charge the defendant a fee for per-
31 forming the requirements described in this section.

(3) Upon hearing the motion, the court may require the filing of such affidavits and may require the taking of such proofs as the court deems proper. The court shall allow the victim to make a statement at the hearing. Except as otherwise provided in subsection (12) of this section, if the court determines that the circumstances and behavior of the applicant from the date of conviction, or from the date of arrest as the case may be, to the date of the hearing on the motion warrant setting aside the conviction, or the arrest record as the case may be, the court shall enter an appropriate order that shall state the original arrest charge and the conviction charge, if any and if different from the original, date of charge, submitting agency and disposition. The order shall further state that positive identification has been established by the Department of State Police and further identified as to Department of State Police number or submitting agency number. Upon the entry of the order, the applicant for purposes of the law shall be deemed not to have been previously convicted, or arrested as the case may be, and the court shall issue an order sealing the record of conviction and other official records in the case, including the records of arrest whether or not the arrest resulted in a further criminal proceeding.

(4) The clerk of the court shall forward a certified copy of the order to such agencies as directed by the court. A certified copy must be sent to the Department of Corrections when the person has been in the custody of the Department of Corrections. Upon entry of the order, the conviction, arrest or other proceeding shall be deemed not to have occurred, and the applicant may answer accordingly any questions relating to its occurrence.

(5) The provisions of subsection (1)(a) of this section apply to a conviction for:

(a) A Class B felony, except for a violation of ORS 166.429 or any crime classified as a person felony as that term is defined in the rules of the Oregon Criminal Justice Commission, only if:

(A)(i) Twenty years or more have elapsed from the date of the conviction sought to be set aside or of the release of the person from imprisonment for

1 the conviction sought to be set aside, whichever is later; and

2 (ii) The person has not been convicted of or arrested for any other offense,
3 excluding motor vehicle violations, after the date the person was convicted
4 of the offense sought to be set aside. Notwithstanding subsection (1) of this
5 section, a conviction or arrest that has been set aside under this section
6 shall be considered for the purpose of determining whether this subparagraph
7 is applicable; or

8 (B) The Class B felony is described in paragraphs (b) to (e) of this sub-
9 section.

10 (b) Any crime punishable as a misdemeanor, including judgment of con-
11 viction for a misdemeanor pursuant to ORS 161.705.

12 (c) Unlawful possession of a controlled substance classified in Schedule
13 I.

14 (d) An offense constituting a violation under state law or local ordinance.

15 (e) An offense committed before January 1, 1972, that, if committed after
16 that date, would qualify for an order under this section.

17 (6) Notwithstanding subsection (5) of this section, the provisions of sub-
18 section (1)(a) of this section do not apply to a conviction for:

19 (a) Criminal mistreatment in the second degree under ORS 163.200 if the
20 victim at the time of the crime was 65 years of age or older.

21 (b) Criminal mistreatment in the first degree under ORS 163.205 if the
22 victim at the time of the crime was 65 years of age or older, or when the
23 offense constitutes child abuse as defined in ORS 419B.005.

24 (c) Endangering the welfare of a minor under ORS 163.575 (1)(a), when the
25 offense constitutes child abuse as defined in ORS 419B.005.

26 (d) Criminally negligent homicide under ORS 163.145, when that offense
27 was punishable as a Class C felony.

28 (e) Assault in the third degree under ORS 163.165 [(1)(h)] (1)(i).

29 (f) Any sex crime, unless:

30 (A) The sex crime is listed in ORS 163A.140 (1)(a) and:

31 (i) The person has been relieved of the obligation to report as a sex

offender pursuant to a court order entered under ORS 163A.145 or 163A.150;
and

(ii) The person has not been convicted of, found guilty except for insanity of or found to be within the jurisdiction of the juvenile court based on a crime for which the court is prohibited from setting aside the conviction under this section; or

(B) The sex crime constitutes a Class C felony and:

(i) The person was under 16 years of age at the time of the offense;

(ii) The person is:

(I) Less than two years and 180 days older than the victim; or

(II) At least two years and 180 days older, but less than three years and 180 days older, than the victim and the court finds that setting aside the conviction is in the interests of justice and of benefit to the person and the community;

(iii) The victim's lack of consent was due solely to incapacity to consent by reason of being less than a specified age;

(iv) The victim was at least 12 years of age at the time of the offense;

(v) The person has not been convicted of, found guilty except for insanity of or found to be within the jurisdiction of the juvenile court based on a crime for which the court is prohibited from setting aside the conviction under this section; and

(vi) Each conviction or finding described in this subparagraph involved the same victim.

(7) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section do not apply to:

(a) A conviction for a state or municipal traffic offense.

(b) A person convicted, within the 10-year period immediately preceding the filing of the motion pursuant to subsection (1) of this section, of any other offense, excluding motor vehicle violations, whether or not the other conviction is for conduct associated with the same criminal episode that caused the arrest or conviction that is sought to be set aside. A single vio-

1 lation, other than a motor vehicle violation, within the last 10 years is not
2 a conviction under this subsection. Notwithstanding subsection (1) of this
3 section, a conviction that has been set aside under this section shall be
4 considered for the purpose of determining whether this paragraph is appli-
5 cable.

6 (c) A person who at the time the motion authorized by subsection (1) of
7 this section is pending before the court is under charge of commission of any
8 crime.

9 (8) The provisions of subsection (1)(b) of this section do not apply to:

10 (a) A person arrested within the three-year period immediately preceding
11 the filing of the motion for any offense, excluding motor vehicle violations,
12 and excluding arrests for conduct associated with the same criminal episode
13 that caused the arrest that is sought to be set aside. An arrest that has been
14 set aside under this section may not be considered for the purpose of deter-
15 mining whether this paragraph is applicable.

16 (b) An arrest for driving while under the influence of intoxicants if the
17 charge is dismissed as a result of the person's successful completion of a
18 diversion agreement described in ORS 813.200.

19 (9) The provisions of subsection (1) of this section apply to convictions
20 and arrests that occurred before, as well as those that occurred after, Sep-
21 tember 9, 1971. There is no time limit for making an application.

22 (10) For purposes of any civil action in which truth is an element of a
23 claim for relief or affirmative defense, the provisions of subsection (3) of this
24 section providing that the conviction, arrest or other proceeding be deemed
25 not to have occurred do not apply and a party may apply to the court for
26 an order requiring disclosure of the official records in the case as may be
27 necessary in the interest of justice.

28 (11) Upon motion of any prosecutor or defendant in a case involving re-
29 cords sealed under this section, supported by affidavit showing good cause,
30 the court with jurisdiction may order the reopening and disclosure of any
31 records sealed under this section for the limited purpose of assisting the in-

vestigation of the movant. However, such an order has no other effect on the orders setting aside the conviction or the arrest record.

(12) Unless the court makes written findings by clear and convincing evidence that granting the motion would not be in the best interests of justice, the court shall grant the motion and enter an order as provided in subsection (3) of this section if the defendant has been convicted of one of the following crimes and is otherwise eligible for relief under this section:

- (a) Abandonment of a child, ORS 163.535.
- (b) Attempted assault in the second degree, ORS 163.175.
- (c) Assault in the third degree, ORS 163.165.
- (d) Coercion, ORS 163.275.
- (e) Criminal mistreatment in the first degree, ORS 163.205.
- (f) Attempted escape in the first degree, ORS 162.165.
- (g) Incest, ORS 163.525, if the victim was at least 18 years of age.
- (h) Intimidation in the first degree, ORS 166.165.
- (i) Attempted kidnapping in the second degree, ORS 163.225.
- (j) Attempted robbery in the second degree, ORS 164.405.
- (k) Robbery in the third degree, ORS 164.395.
- (L) Supplying contraband, ORS 162.185.
- (m) Unlawful use of a weapon, ORS 166.220.

(13) As used in this section, “sex crime” has the meaning given that term in ORS 163A.005.

SECTION 5. The amendments to ORS 131.125 by section 1 of this 2016 Act apply to offenses committed before, on or after the effective date of this 2016 Act but do not operate to revive a prosecution barred by the operation of ORS 131.125 before the effective date of this 2016 Act.