

B-Engrossed Senate Bill 227

Ordered by the House May 18
Including Senate Amendments dated March 1 and House Amendments
dated May 18

Sponsored by Senators COURTNEY, MINNIS

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.

Creates crime of sexual assault of animal. Provides for maximum penalty of [*five years*] **one year's** imprisonment, fine of [*\$100,000*] **\$5,000**, or both. Provides for court to order psychological evaluation for youth or adult who engages in prohibited behavior.

Creates crime of cockfighting. Establishes maximum penalty for violation of five years' imprisonment, \$100,000 fine, or both.

Creates crime of participation in cockfighting. Establishes maximum penalty of one year's imprisonment, \$5,000 fine, or both.

Provides for court to order seizure and impoundment of alleged fighting birds.

Provides for peace officer to take constructive possession of bird based upon probable cause to believe bird is fighting bird.

Creates crime of forcible recovery of fighting bird. Establishes maximum penalty for violation of five years' imprisonment, \$100,000 fine, or both.

Provides for forfeiture of fighting birds and other seized property upon conviction of person for cockfighting or participation in cockfighting.

Includes cockfighting, participation in cockfighting and forcible recovery of fighting bird in list of predicate offenses for establishing racketeering activity.

A BILL FOR AN ACT

1
2 Relating to crime; creating new provisions; and amending ORS 166.715 and 167.355.

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

4 **SECTION 1. Section 2 of this 2001 Act is added to and made a part of ORS 167.315 to**
5 **167.330.**

6 **SECTION 2. (1) A person commits the crime of sexual assault of an animal if the person**
7 **touches or contacts, or causes an object or another person to touch or contact, the mouth,**
8 **anus or sex organs of an animal for the purpose of arousing or gratifying the sexual desire**
9 **of a person.**

10 **(2) Sexual assault of an animal is a Class A misdemeanor.**

11 **SECTION 3. When a youth is found to be within the jurisdiction of the court under ORS**
12 **419C.005 for having committed an act that, if committed by an adult, would be a violation**
13 **of section 2 of this 2001 Act, the court may order that the youth undergo psychiatric or**
14 **psychological evaluation. If warranted by the mental condition of the youth, the court shall**
15 **order that the youth undergo appropriate care or treatment.**

16 **SECTION 4. If a youth enters into a formal accountability agreement under ORS**
17 **419C.230, and a juvenile department counselor has probable cause to believe that the youth**
18 **may be found to be within the jurisdiction of the juvenile court for having committed an act**
19 **that, if committed by an adult, would be a violation of section 2 of this 2001 Act, the agree-**

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 ment may require that the youth undergo psychiatric or psychological evaluation and, if
2 warranted by the mental condition of the youth, undergo appropriate care or treatment.

3 **SECTION 5.** Upon the conviction of a defendant for violation of section 2 of this 2001 Act,
4 the court may order a psychiatric or psychological evaluation of the defendant for inclusion
5 in the presentence report as described in ORS 137.077.

6 **SECTION 6.** As used in sections 6 to 12 of this 2001 Act:

7 (1) "Cockfight" means a fight between two or more birds that is arranged by a person
8 and that has the purpose or probable result of one bird inflicting injury to another bird.

9 (2) "Fighting bird" means a bird that is intentionally reared or trained for use in, or that
10 actually is used in, a cockfight.

11 (3) "Gaff" means an artificial steel spur designed for attachment to the leg of a fighting
12 bird in replacement of the bird's natural spurs.

13 (4) "Slasher" means a steel weapon resembling a curved knife blade designed for attach-
14 ment to the foot of a fighting bird.

15 **SECTION 7.** (1) A person commits the crime of cockfighting if the person knowingly:

16 (a) Owns, possesses, keeps, rears, trains, buys, sells or advertises or otherwise offers to
17 sell a fighting bird.

18 (b) Promotes or participates in, or performs services in furtherance of, the conducting
19 of a cockfight. As used in this paragraph, "services in furtherance" includes, but is not lim-
20 ited to, transporting spectators to a cockfight, handling fighting birds, organizing, advertis-
21 ing or refereeing a cockfight and providing, or acting as stakeholder for, money wagered on
22 a cockfight.

23 (c) Keeps, uses or manages, or accepts payment of admission to, a place for the con-
24 ducting of a cockfight.

25 (d) Suffers or permits a place in the possession or control of the person to be occupied,
26 kept or used for the conducting of a cockfight.

27 (e) Manufactures, buys, sells, barter, exchanges, possesses, advertises or otherwise of-
28 fers to sell a gaff, slasher or other sharp implement designed for attachment to a fighting
29 bird with the intent that the gaff, slasher or other sharp implement be used in cockfighting.

30 (2) Subsection (1)(a) of this section does not apply to the owning, possessing, keeping,
31 rearing, buying, selling, advertising or otherwise offering for sale of a bird for purposes other
32 than training the bird as a fighting bird, using or intending to use the bird in cockfighting
33 or supplying the bird knowing that the bird is intended to be used in cockfighting.

34 (3) Cockfighting is a Class C felony.

35 **SECTION 8.** (1) A person commits the crime of participation in cockfighting if the person
36 knowingly:

37 (a) Attends a cockfight or pays admission at any location to view or bet on a cockfight;
38 or

39 (b) Manufactures, buys, sells, barter, exchanges, possesses, advertises or otherwise of-
40 fers to sell equipment intended for use in training or handling a fighting bird or intended for
41 use in enhancing the fighting ability of a fighting bird. This paragraph does not apply to a
42 gaff, slasher or other sharp implement designed for attachment to a fighting bird.

43 (2) Participation in cockfighting is a Class A misdemeanor.

44 **SECTION 9.** (1) Pursuant to ORS 133.525 to 133.703, a judge may order the seizure of an
45 alleged fighting bird owned, possessed or kept by any person.

1 **(2) A judge ordering the seizure of an alleged fighting bird under subsection (1) of this**
2 **section may order that the bird be impounded on the property of the owner, possessor or**
3 **keeper of the bird. If a judge orders an alleged fighting bird impounded on the property of**
4 **the owner, possessor or keeper of the bird, the court shall order the owner, possessor or**
5 **keeper to provide all necessary care for the bird and to allow regular and continuing in-**
6 **spection of the bird by a person designated by the court, or the agent of a person designated**
7 **by the court. The owner, possessor or keeper shall pay the costs of conducting the in-**
8 **spections. The court shall further order the owner, possessor or keeper not to sell or oth-**
9 **erwise dispose of the bird unless the court authorizes the sale or disposition, or until the**
10 **seized bird is forfeited pursuant to an order under section 10 of this 2001 Act or restored to**
11 **the person pursuant to an order under ORS 133.643.**

12 **SECTION 10.** **(1) In addition to and not in lieu of any other penalty the court may impose**
13 **upon a person convicted of cockfighting under section 7 of this 2001 Act or participation in**
14 **cockfighting under section 8 of this 2001 Act, the court shall include in the judgment an or-**
15 **der for forfeiture to the city or county where the crime occurred of the person's rights in**
16 **any property proved to have been used by the person as an instrumentality in the commis-**
17 **sion of the crime, including any fighting bird. This subsection does not limit the ability of the**
18 **court to dispose of a fighting bird as provided under subsection (2) of this section.**

19 **(2) A fighting bird is a public nuisance, regardless of whether a person has been convicted**
20 **of cockfighting or participation in cockfighting. If a bird is ordered forfeited under subsection**
21 **(1) of this section or is proved by a preponderance of the evidence in a forfeiture proceeding**
22 **to be a fighting bird, the court shall order that the bird be destroyed or be otherwise disposed**
23 **of. Upon the conviction of the person charged, all of the seized property of the person shall**
24 **be adjudged by the court to be forfeited and shall be destroyed or otherwise disposed of as**
25 **the court may order.**

26 **SECTION 11.** **(1) As used in this section and section 12 of this 2001 Act, "constructive**
27 **possession" means an exercise of dominion and control over the location and treatment of**
28 **property without taking physical possession of the property.**

29 **(2) A peace officer having jurisdiction may, upon probable cause to believe that a bird is**
30 **a fighting bird as defined in section 6 of this 2001 Act, take constructive possession of the**
31 **bird on behalf of the law enforcement agency employing the officer.**

32 **(3) A peace officer who takes constructive possession of an alleged fighting bird pursuant**
33 **to this section must do the following:**

34 **(a) Place a tag or other device approved by the law enforcement agency on the cage or**
35 **other enclosure where the fighting bird is located. The tag or other device must clearly state**
36 **that it is unlawful to conceal, remove or release the bird for purposes of interfering with law**
37 **enforcement agency control over the bird.**

38 **(b) Notify the owner, possessor or keeper of the bird that the bird has been seized by the**
39 **law enforcement agency and may not be removed until authorized by a court or as provided**
40 **in this section.**

41 **(c) Promptly apply to an appropriate court for an order described in section 9 of this 2001**
42 **Act.**

43 **(4) If a law enforcement agency takes constructive possession of a fighting bird under**
44 **this section, the owner, possessor or keeper of the bird shall provide all necessary care for**
45 **the bird.**

1 **(5) Constructive possession of an alleged fighting bird pursuant to this section terminates**
2 **when a court order described in section 9 of this 2001 Act is served on the owner, possessor**
3 **or keeper of the bird, or after 24 hours, whichever occurs first.**

4 **SECTION 12. A person commits the crime of forcible recovery of a fighting bird if the**
5 **person knowingly dispossesses, or knowingly attempts to dispossess, a law enforcement**
6 **agency of constructive possession of a fighting bird, as defined in section 6 of this 2001 Act.**
7 **Forcible recovery of a fighting bird is a Class C felony.**

8 **SECTION 13.** ORS 166.715 is amended to read:

9 166.715. As used in ORS 166.715 to 166.735, unless the context requires otherwise:

10 (1) "Documentary material" means any book, paper, document, writing, drawing, graph, chart,
11 photograph, phonograph record, magnetic tape, computer printout, other data compilation from
12 which information can be obtained or from which information can be translated into usable form,
13 or other tangible item.

14 (2) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business
15 trust or other profit or nonprofit legal entity, and includes any union, association or group of indi-
16 viduals associated in fact although not a legal entity, and both illicit and licit enterprises and gov-
17 ernmental and nongovernmental entities.

18 (3) "Investigative agency" means the Department of Justice or any district attorney.

19 (4) "Pattern of racketeering activity" means engaging in at least two incidents of racketeering
20 activity that have the same or similar intents, results, accomplices, victims or methods of commis-
21 sion or otherwise are interrelated by distinguishing characteristics, including a nexus to the same
22 enterprise, and are not isolated incidents, provided at least one of such incidents occurred after
23 November 1, 1981, and that the last of such incidents occurred within five years after a prior inci-
24 dent of racketeering activity. Notwithstanding ORS 131.505 to 131.525 or 419A.190 or any other
25 provision of law providing that a previous prosecution is a bar to a subsequent prosecution, conduct
26 that constitutes an incident of racketeering activity may be used to establish a pattern of
27 racketeering activity without regard to whether the conduct previously has been the subject of a
28 criminal prosecution or conviction or a juvenile court adjudication, unless the prosecution resulted
29 in an acquittal or the adjudication resulted in entry of an order finding the youth not to be within
30 the jurisdiction of the juvenile court.

31 (5) "Person" means any individual or entity capable of holding a legal or beneficial interest in
32 real or personal property.

33 (6) "Racketeering activity" includes conduct of a person committed both before and after the
34 person attains the age of 18 years, and means to commit, to attempt to commit, to conspire to
35 commit, or to solicit, coerce or intimidate another person to commit:

36 (a) Any conduct that constitutes a crime, as defined in ORS 161.515, under any of the following
37 provisions of the Oregon Revised Statutes:

38 (A) ORS 59.005 to 59.451, 59.660 to 59.830, 59.991 and 59.995, relating to securities;

39 (B) ORS 162.015, 162.025 and 162.065 to 162.085, relating to bribery and perjury;

40 (C) ORS 162.235, 162.265 to 162.305, 162.325, 162.335, 162.355 and 162.365, relating to obstructing
41 governmental administration;

42 (D) ORS 162.405 to 162.425, relating to abuse of public office;

43 (E) ORS 162.465, relating to interference with legislative operation;

44 (F) ORS 163.095 to 163.115, 163.118, 163.125 and 163.145, relating to criminal homicide;

45 (G) ORS 163.160 to 163.205, relating to assault and related offenses;

- 1 (H) ORS 163.225 and 163.235, relating to kidnapping;
- 2 (I) ORS 163.275, relating to coercion;
- 3 (J) ORS 163.670 to 163.695, relating to sexual conduct of children;
- 4 (K) ORS 164.015, 164.043, 164.045, 164.055, 164.057, 164.075 to 164.095, 164.125, 164.135, 164.140,
5 164.215, 164.225 and 164.245 to 164.270, relating to theft, burglary, criminal trespass and related of-
6 fenses;
- 7 (L) ORS 164.315 to 164.335, relating to arson and related offenses;
- 8 (M) ORS 164.345 to 164.365, relating to criminal mischief;
- 9 (N) ORS 164.395 to 164.415, relating to robbery;
- 10 (O) ORS 164.865, 164.875 and 164.868 to 164.872, relating to unlawful recording or labeling of a
11 recording;
- 12 (P) ORS 165.007 to 165.022, 165.032 to 165.042 and 165.055 to 165.070, relating to forgery and
13 related offenses;
- 14 (Q) ORS 165.080 to 165.109, relating to business and commercial offenses;
- 15 (R) ORS 165.485 to 165.515, 165.540 and 165.555, relating to communication crimes;
- 16 (S) ORS 166.180, 166.190, 166.220, 166.250, 166.270, 166.275, 166.410, 166.450 and 166.470, relating
17 to firearms and other weapons;
- 18 (T) ORS 164.377 (2) to (4), as punishable under ORS 164.377 (5)(b), 167.007 to 167.017, 167.062 to
19 167.080, 167.087, 167.090, 167.122 to 167.137, 167.147, 167.164, 167.167, 167.212, 167.355, 167.365 and
20 167.370 **and sections 7, 8 and 12 of this 2001 Act**, relating to prostitution, obscenity, gambling,
21 computer crimes involving the Oregon State Lottery, animal fighting, **forcible recovery of a**
22 **fighting bird** and related offenses;
- 23 (U) ORS 171.990, relating to legislative witnesses;
- 24 (V) ORS 260.575 and 260.665, relating to election offenses;
- 25 (W) ORS 314.075, relating to income tax;
- 26 (X) ORS chapter 323, relating to cigarette taxes;
- 27 (Y) ORS 411.630, 411.675, 411.690 and 411.840, relating to public assistance payments, and ORS
28 411.990 (2) and (3);
- 29 (Z) ORS 462.140, 462.415 and 462.420 to 462.520, relating to racing;
- 30 (AA) ORS 463.995, relating to boxing and wrestling, as defined in ORS 463.015;
- 31 (BB) ORS 471.305, 471.360, 471.392 to 471.400, 471.403, 471.404, 471.405, 471.425, 471.442, 471.445,
32 471.446, 471.485, 471.490 and 471.675, relating to alcoholic liquor, and any of the provisions of ORS
33 chapter 471 relating to licenses issued under the Liquor Control Act;
- 34 (CC) ORS 475.005 to 475.285 and 475.940 to 475.995, relating to controlled substances;
- 35 (DD) ORS 480.070, 480.210, 480.215, 480.235 and 480.265, relating to explosives;
- 36 (EE) ORS 819.010, 819.040, 822.100, 822.135 and 822.150, relating to motor vehicles;
- 37 (FF) ORS 658.452 or 658.991 (2) to (4), relating to farm labor contractors;
- 38 (GG) ORS chapter 706, relating to banking law administration;
- 39 (HH) ORS chapter 714, relating to branch banking;
- 40 (II) ORS chapter 716, relating to mutual savings banks;
- 41 (JJ) ORS chapter 723, relating to credit unions;
- 42 (KK) ORS chapter 726, relating to pawnbrokers;
- 43 (LL) ORS 166.382 and 166.384, relating to destructive devices;
- 44 (MM) ORS 165.074;
- 45 (NN) ORS 59.840 to 59.965, relating to mortgage bankers and mortgage brokers;

- 1 (OO) ORS chapter 496, 497 or 498, relating to wildlife;
- 2 (PP) ORS 163.355 to 163.427, relating to sexual offenses;
- 3 (QQ) ORS 166.015, relating to riot;
- 4 (RR) ORS 166.155 and 166.165, relating to intimidation;
- 5 (SS) ORS chapter 696, relating to real estate and escrow;
- 6 (TT) ORS chapter 704, relating to outfitters and guides;
- 7 (UU) ORS 165.692, relating to making a false claim for health care payment;
- 8 (VV) ORS 162.117, relating to public investment fraud;
- 9 (WW) ORS 164.170 or 164.172; or
- 10 (XX) ORS 647.140, 647.145 or 647.150, relating to trademark counterfeiting.

11 (b) Any conduct defined as “racketeering activity” under 18 U.S.C. 1961 (1)(B), (C), (D) and (E).

12 (7) “Unlawful debt” means any money or other thing of value constituting principal or interest
13 of a debt that is legally unenforceable in the state in whole or in part because the debt was incurred
14 or contracted:

15 (a) In violation of any one of the following:

16 (A) ORS chapter 462, relating to racing;

17 (B) ORS 167.117 to 167.164, relating to gambling; or

18 (C) ORS 82.010 to 82.170, relating to interest and usury.

19 (b) In gambling activity in violation of federal law or in the business of lending money at a rate
20 usurious under federal or state law.

21 (8) Notwithstanding contrary provisions in ORS 174.060, when this section references a statute
22 in the Oregon Revised Statutes that is substantially different in the nature of its essential provisions
23 from what the statute was when this section was enacted, the reference shall extend to and include
24 amendments to the statute.

25 **SECTION 14.** ORS 167.355 is amended to read:

26 167.355. (1) A person commits the crime of involvement in animal fighting if the person:

27 (a) Owns or trains an animal with the intention that the animal engage in an exhibition of
28 fighting; or

29 (b) Promotes, conducts, participates in or is present as a spectator at an exhibition of fighting
30 or preparations thereto; or

31 (c) Keeps or uses, or in any way is connected with or interested in the management of, or re-
32 ceives money for the admission of any person to any place kept or used for the purpose of an exhi-
33 bition of fighting; or

34 (d) Knowingly suffers or permits any place over which the person has possession or control to
35 be occupied, kept or used for the purpose of an exhibition of fighting.

36 (2) For purposes of this section:

37 (a) “Animal” means any [*bird*,] reptile, amphibian, fish or nonhuman mammal, other than a dog.

38 (b) “Exhibition of fighting” means a public or private display of combat between two or more
39 animals in which the fighting, killing, maiming or injuring of animals is a significant feature. “Ex-
40 hibition of fighting” does not include demonstrations of the hunting or tracking skills of an animal
41 or the lawful use of animals for hunting, tracking or self-protection.

42 [(3) *Nothing in this section applies to or prohibits any customary practice of breeding or rearing*
43 *game cocks even though those cocks may be subsequently used in cock fighting exhibitions outside the*
44 *State of Oregon.*]

45 [(4)] (3) Involvement in animal fighting is a Class A misdemeanor.

