

CHAPTER 645

AN ACT

HB 2356

Relating to invasion of personal privacy; creating new provisions; and amending ORS 131.125, 135.873, 161.005, 163.700, 163.702, 181.803, 181.805 and 443.004.

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

SECTION 1. ORS 163.700 is amended to read:

163.700. (1) Except as provided in ORS 163.702, a person commits the crime of invasion of personal privacy **in the second degree** if:

[(a)(A) The person knowingly makes or records a photograph, motion picture, videotape or other visual recording of another person in a state of nudity without the consent of the person being recorded; and]

[(B) At the time the visual recording is made or recorded the person being recorded is in a place and circumstances where the person has a reasonable expectation of personal privacy; or]

[(b)(A) For the purpose of arousing or gratifying the sexual desire of the person, the person is in a location to observe another person in a state of nudity without the consent of the other person; and]

[(B) The other person is in a place and circumstances where the person has a reasonable expectation of personal privacy.]

(a) For the purpose of arousing or gratifying the sexual desire of the person, the person is in a location to observe another person in a state of nudity without the consent of the other person; and

(b) The other person is in a place and circumstances where the person has a reasonable expectation of personal privacy.

(2) As used in this section and section 2 of this 2015 Act:

(a) “Makes or records a photograph, motion picture, videotape or other visual recording” includes, but is not limited to, making or recording or employing, authorizing, permitting, compelling or inducing another person to make or record a photograph, motion picture, videotape or other visual recording.

(b) “Nudity” means any part of the uncovered or less than opaquely covered:

- (A) Genitals;
- (B) Pubic area; or

(C) Female breast below a point immediately above the top of the areola.

(c) “Places and circumstances where the person has a reasonable expectation of personal privacy” includes, but is not limited to, a bathroom, dressing room, locker room that includes an enclosed area for dressing or showering, tanning booth and any area where a person undresses in an enclosed space that is not open to public view.

(d) “Public view” means that an area can be readily seen and that a person within the area can be distinguished by normal unaided vision when

viewed from a public place as defined in ORS 161.015.

(3) Invasion of personal privacy **in the second degree** is a Class A misdemeanor.

SECTION 2. (1) Except as provided in ORS 163.702, a person commits the crime of invasion of personal privacy in the first degree if:

(a)(A) The person knowingly makes or records a photograph, motion picture, videotape or other visual recording of another person in a state of nudity without the consent of the other person; and

(B) At the time the visual recording is made or recorded the person being recorded is in a place and circumstances where the person has a reasonable expectation of personal privacy; or

(b) The person violates ORS 163.700 and, at the time of the offense, has a prior conviction for:

(A) Invasion of personal privacy in any degree, public indecency, private indecency or a sex crime as defined in ORS 181.805; or

(B) The statutory counterpart of an offense described in subparagraph (A) of this paragraph in another jurisdiction.

(2)(a) Invasion of personal privacy in the first degree is a Class C felony.

(b) The Oregon Criminal Justice Commission shall classify invasion of personal privacy in the first degree as crime category 6 of the sentencing guidelines grid of the commission.

(3) The court may designate invasion of personal privacy in the first degree as a sex crime under ORS 181.805 if the court finds that the circumstances of the offense require the defendant to register and report as a sex offender for the safety of the community.

SECTION 3. ORS 181.805 is amended to read:

181.805. As used in ORS 181.800 to 181.845:

(1) “Another United States court” means a federal court, a military court, the tribal court of a federally recognized Indian tribe or a court of:

- (a) A state other than Oregon;
- (b) The District of Columbia;
- (c) The Commonwealth of Puerto Rico;
- (d) Guam;
- (e) American Samoa;
- (f) The Commonwealth of the Northern Mariana Islands; or
- (g) The United States Virgin Islands.

(2) “Attends” means is enrolled on a full-time or part-time basis.

(3)(a) “Correctional facility” means any place used for the confinement of persons:

(A) Charged with or convicted of a crime or otherwise confined under a court order.

(B) Found to be within the jurisdiction of the juvenile court for having committed an act that if committed by an adult would constitute a crime.

(b) “Correctional facility” applies to a state hospital or a secure intensive community inpatient fa-

cility only as to persons detained therein charged with or convicted of a crime, or detained therein after being found guilty except for insanity under ORS 161.290 to 161.370 or responsible except for insanity under ORS 419C.411.

(4) "Institution of higher education" means a public or private educational institution that provides a program of post-secondary education.

(5) "Sex crime" means:

- (a) Rape in any degree;
- (b) Sodomy in any degree;
- (c) Unlawful sexual penetration in any degree;
- (d) Sexual abuse in any degree;
- (e) Incest with a child victim;
- (f) Using a child in a display of sexually explicit conduct;
- (g) Encouraging child sexual abuse in any degree;
- (h) Transporting child pornography into the state;
- (i) Paying for viewing a child's sexually explicit conduct;
- (j) Compelling prostitution;
- (k) Promoting prostitution;
- (L) Kidnapping in the first degree if the victim was under 18 years of age;
- (m) Contributing to the sexual delinquency of a minor;
- (n) Sexual misconduct if the offender is at least 18 years of age;
- (o) Possession of materials depicting sexually explicit conduct of a child in the first degree;
- (p) Kidnapping in the second degree if the victim was under 18 years of age, except by a parent or by a person found to be within the jurisdiction of the juvenile court;
- (q) Online sexual corruption of a child in any degree if the offender reasonably believed the child to be more than five years younger than the offender;
- (r) Luring a minor, if:
 - (A) The offender reasonably believed the child to be more than five years younger than the offender or under 16 years of age; and
 - (B) The court designates in the judgment that the offense is a sex crime;
- (s) Sexual assault of an animal;
- (t) Public indecency or private indecency, if the person has a prior conviction for a crime listed in this subsection;
- (u) Trafficking in persons as described in ORS 163.266 (1)(b) or (c);
- (v) Purchasing sex with a minor if the court designates the offense as a sex crime pursuant to ORS 163.413 (3)(d), or the offense is the defendant's second or subsequent conviction under ORS 163.413 (3)(b)(B);
- (w) Invasion of personal privacy in the first degree, if the court designates the offense as a sex crime pursuant to section 2 (3) of this 2015 Act;**

[(w)] **(x)** Any attempt to commit any of the crimes listed in paragraphs (a) to [(s), (u) or (v)] **(w)** of this subsection;

[(x)] **(y)** Burglary, when committed with intent to commit any of the offenses listed in paragraphs (a) to [(v)] **(w)** of this subsection; or

[(y)] **(z)** Criminal conspiracy if the offender agrees with one or more persons to engage in or cause the performance of an offense listed in paragraphs (a) to [(t)] **(w)** of this subsection.

(6) "Sex offender" means a person who:

- (a) Has been convicted of a sex crime;
- (b) Has been found guilty except for insanity of a sex crime;
- (c) Has been convicted in another United States court of a crime:
 - (A) That would constitute a sex crime if committed in this state; or
 - (B) For which the person would have to register as a sex offender in that court's jurisdiction, or as required under federal law, regardless of whether the crime would constitute a sex crime in this state; or
- (d) Is described in ORS 181.809 (1).
- (7) "Works" or "carries on a vocation" means full-time or part-time employment for more than 14 days within one calendar year whether financially compensated, volunteered or for the purpose of governmental or educational benefit.

SECTION 4. ORS 181.803 is amended to read:

181.803. Notwithstanding any other provision of law:

- (1) A person required to report as a sex offender under ORS 181.806, 181.807 or 181.808 is classified as a level three sex offender under ORS 181.800 (3) unless:
 - (a) Following a risk assessment conducted under ORS 181.801, the person is classified as a level two sex offender under ORS 181.800 (2) or as a level one sex offender under ORS 181.800 (1); or
 - (b) After filing a petition under ORS 181.821 (2), the person is reclassified as a level two sex offender under ORS 181.800 (2) by the State Board of Parole and Post-Prison Supervision or the Psychiatric Security Review Board.
- (2) A person who is a sexually violent dangerous offender under ORS 137.765:
 - (a) Must be classified as a level three sex offender under ORS 181.800 (3); and
 - (b) Is not eligible for relief from the obligation to report as a sex offender or reclassification as a level two sex offender under ORS 181.800 (2), pursuant to a petition filed under ORS 181.821.
- (3) A person who has been convicted or found guilty except for insanity of one of the following offenses is not eligible for relief from the obligation to report as a sex offender pursuant to a petition filed under ORS 181.821 (1):
 - (a) Rape in the first degree;
 - (b) Sodomy in the first degree;
 - (c) Unlawful sexual penetration in the first degree;

(d) Kidnapping in the first degree as described in ORS 163.235 (1)(e) or when the victim is under 18 years of age; or

(e) Burglary in the first degree when committed with the intent to commit any of the offenses listed in ORS 181.805 (5)(a) to [(t)] (w).

SECTION 5. 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 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) Rape in the first degree under ORS 163.375.

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

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

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

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

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

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

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

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

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

(o) Incest under ORS 163.525.

(p) Promoting prostitution under ORS 167.012.

(q) Compelling prostitution under ORS 167.017.

(r) Luring a minor under ORS 167.057.

(3) 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.

(4) In the case of crimes described in subsection (2)(m) of this section, the victim is the child engaged in sexual conduct. In the case of the crime described in subsection (2)(o) 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 (2)(p) and (q) of this section, the victim is the child whose acts of prostitution are promoted or compelled.

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

(6) 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.

(7) Except as provided in subsection (8) 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.

(8) If the period prescribed in subsection (7) 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 discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is not a party to the offense, but in no case shall the period of limitation otherwise applicable be extended by more than three years;

(b) If the offense is based upon misconduct in office by a public officer or employee, prosecution may be commenced at any time while the defendant is in public office or employment or within two years thereafter, but in no case shall the period of limita-

tion otherwise applicable be extended by more than three years; or

(c) If the offense is an invasion of personal privacy under ORS 163.700 or **section 2 of this 2015 Act**, prosecution may be commenced within one year after discovery of the offense by the person aggrieved by the offense, by a person who has a legal duty to represent the person aggrieved by the offense or by a law enforcement agency, but in no case shall the period of limitation otherwise applicable be extended by more than three years.

(9) Notwithstanding subsection (2) of this section, if the defendant is identified after the period described in subsection (2) of this section on the basis of DNA (deoxyribonucleic acid) sample comparisons, a prosecution for:

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

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

(10) Notwithstanding subsection (9) of this section, if a prosecution for a felony listed in subsection (9) of this section would otherwise be barred by subsection (2) of this section, the prosecution must be commenced within two years of the DNA-based identification of the defendant.

SECTION 6. ORS 135.873 is amended to read:

135.873. (1) As used in this section:

(a) "Local government" has the meaning given that term in ORS 174.116.

(b) "Sexual offense" includes but is not limited to a sex crime as defined in ORS 181.805.

(c) "State government" has the meaning given that term in ORS 174.111.

(d) "Victim" has the meaning given that term in ORS 131.007.

(2) Upon a showing of good cause, the court may at any time order that specified disclosures be denied, restricted or deferred, or make such other order as is appropriate.

(3) Upon request of any party, the court may permit a showing of good cause for denial or regulation of disclosures, or portion of such showing, to be made in camera. A record shall be made of such proceedings.

(4) If the court enters an order granting relief following a showing in camera, the entire record of the showing shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal. Except for information or materials subject to an order that has been entered under subsection (5) or (6) of this section, the trial court, in its discretion, may, after the case has been concluded, unseal matters previously sealed.

(5) Upon the request of a district attorney or the victim, the court shall enter a protective order pro-

hibiting any party to or attorney in, or the agent of a party to or attorney in, criminal proceedings involving a sexual offense, an offense involving the visual or audio recording of sexual conduct by a child or invasion of personal privacy under ORS 163.700 or **section 2 of this 2015 Act** from copying or disseminating any information of a sexually explicit nature including, but not limited to, photographs depicting a person in a state of nudity, photographs of human genitalia, any information of the prior sexual history of the victim and any visual or audio recording of the sexual victimization.

(6) Upon the request of a district attorney or the victim, unless the court finds good cause to do otherwise, the court shall enter a protective order prohibiting any party to or attorney in, or the agent of a party to or attorney in, criminal proceedings involving a sexual offense, an offense involving the visual or audio recording of sexual conduct by a child or invasion of personal privacy under ORS 163.700 or **section 2 of this 2015 Act** from copying or disseminating a visual or audio recording of the victim describing the victim's sexual victimization.

(7) Notwithstanding a protective order entered under subsection (5) or (6) of this section, information or materials described in subsections (5) and (6) may be copied or disseminated for the purpose of:

(a) Providing discovery;

(b) Submitting evidence to a grand jury, a court, an agency of state government, a local government or a federal agency for use in judicial or administrative proceedings;

(c) Having the information or materials examined by an expert witness for the court, the state or any party;

(d) Providing copies of the information or materials to the parties' attorneys or agents; or

(e) Sharing the information or materials with an agency of state government for use in carrying out duties imposed on the agency by statute.

(8) Upon the request of the victim, the court may order that the victim be provided with a copy of information or materials described in subsections (5) and (6) of this section.

SECTION 7. ORS 163.702 is amended to read:

163.702. (1) The provisions of ORS 163.700 and **section 2 of this 2015 Act** do not apply to:

(a) Any legitimate medical procedure performed by or under the direction of a person licensed to provide medical service for the purpose of medical diagnosis, treatment, education or research, including, but not limited to, the recording of medical procedures; and

(b) Any activity undertaken in the course of bona fide law enforcement or corrections activity or necessary to the proper functioning of the criminal justice system, including but not limited to the operation and management of jails, prisons and other youth and adult corrections facilities.

(2) The provisions of [ORS 163.700 (1)(a)] **section 2 (1)(a) of this 2015 Act** do not apply to a visual recording of a person under 12 years of age if:

(a) The person who makes or records the visual recording is the father, mother, sibling, grandparent, aunt, uncle or first cousin, by blood, adoption or marriage, of the person under 12 years of age; and

(b) The visual recording is made or recorded for a purpose other than arousing or gratifying the sexual desire of the person or another person.

SECTION 8. ORS 443.004 is amended to read:

443.004. (1) The Department of Human Services or the Oregon Health Authority shall complete a criminal records check under ORS 181.534 on:

(a) An employee of a residential facility or an adult foster home;

(b) Any individual who is paid directly or indirectly with public funds who has or will have contact with a recipient of support services or a resident of an adult foster home or a residential facility; and

(c) A home care worker registering with the Home Care Commission or renewing a registration with the Home Care Commission.

(2)(a) A home health agency shall conduct a criminal background check before hiring or contracting with an individual and before allowing an individual to volunteer to provide services on behalf of the home health agency, if the individual will have direct contact with a patient of the home health agency.

(b) An in-home care agency shall conduct a criminal background check before hiring or contracting with an individual and before allowing an individual to volunteer to provide services on behalf of the in-home care agency, if the individual will have direct contact with a client of the in-home care agency.

(c) The authority shall prescribe by rule the process for conducting a criminal background check.

(3) Public funds may not be used to support, in whole or in part, the employment in any capacity having contact with a recipient of support services or a resident of a residential facility or an adult foster home, of an individual, other than a mental health or substance abuse treatment provider, who has been convicted:

(a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165, 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465, 163.467, 163.535, 163.537, 163.547, 163.689, 163.700, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d), 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032, 165.800, 165.803, 167.012, 167.017, 167.057, 167.320 or 167.322 **or section 2 of this 2015 Act**;

(b) Notwithstanding paragraph (a) of this subsection, of a crime described in ORS 163.465, 163.467, 163.700, 164.055, 164.125 or 164.377 **or section 2 of this 2015 Act**, the date of conviction for which was within the five years immediately preceding employment in any capacity of an individual, other than a mental health or substance abuse treatment provider, having contact with a recipient of support

services, a resident of a residential facility or a resident of an adult foster home, when the recipient or resident is 65 years of age or older;

(c) Of a crime listed in ORS 181.805;

(d) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(e) Of an attempt, conspiracy or solicitation to commit a crime described in paragraphs (a) to (d) of this subsection; or

(f) Of a crime in another jurisdiction that is substantially equivalent, as defined by rule, to a crime described in paragraphs (a) to (e) of this subsection.

(4) If the criminal background check conducted by a home health agency or in-home care agency under subsection (2) of this section reveals that the individual who is subject to the criminal background check has been convicted of any of the crimes described in subsection (3) of this section, the home health agency or in-home care agency may not employ the individual.

(5) Public funds may not be used to support, in whole or in part, the employment, in any capacity having contact with a recipient of support services or a resident of a residential facility or an adult foster home, of a mental health or substance abuse treatment provider who has been convicted of committing, or convicted of an attempt, conspiracy or solicitation to commit, a crime described in ORS 163.095, 163.115, 163.375, 163.405, 163.411 or 163.427.

(6) Upon the request of a mental health or substance abuse treatment provider, the department or authority shall maintain a record of the results of any fitness determination made under ORS 181.534 (11) and (12). The department or authority may disclose the record only to a person the provider specifically authorizes, by a written release, to receive the information.

(7) If the department or authority has a record of substantiated abuse committed by an employee or potential employee of a home health agency, in-home care agency, adult foster home or residential facility, regardless of whether criminal charges were filed, the department or authority shall notify, in writing, the employer and the employee or potential employee.

(8) As used in this section:

(a) "Adult foster home" has the meaning given that term in ORS 443.705.

(b) "Home care worker" has the meaning given that term in ORS 410.600.

(c) "Home health agency" has the meaning given that term in ORS 443.005.

(d) "In-home care agency" has the meaning given that term in ORS 443.305.

(e) "Mental health or substance abuse treatment provider" means:

(A) A peer support specialist;

(B) An employee of a residential treatment facility or a residential treatment home that is licensed under ORS 443.415 to provide treatment for individuals with alcohol or drug dependence;

(C) An individual who provides treatment or services for persons with substance use disorders; or

(D) An individual who provides mental health treatment or services.

(f) "Peer support specialist" means a person who:

(A) Is providing peer support services as defined by the authority by rule;

(B) Is under the supervision of a qualified clinical supervisor;

(C) Has completed training required by the authority; and

(D) Is currently receiving or has formerly received mental health services, or is in recovery from a substance use disorder and meets the abstinence requirements for staff providing services in alcohol or other drug treatment programs.

(g) "Residential facility" has the meaning given that term in ORS 443.400.

SECTION 9. ORS 161.005 is amended to read:

161.005. ORS 161.005 to 161.055, 161.085 to 161.125, 161.150 to 161.175, 161.190 to 161.275, 161.290

to 161.370, 161.405 to 161.485, 161.505 to 161.585, 161.605, 161.615 to 161.685, 161.705 to 161.737, 162.005, 162.015 to 162.035, 162.055 to 162.115, 162.135 to 162.205, 162.225 to 162.375, 162.405 to 162.425, 162.465, 163.005, 163.115, 163.125 to 163.145, 163.149, 163.160 to 163.208, 163.196, 163.215 to 163.257, 163.261, 163.263, 163.264, 163.266, 163.275, 163.285, 163.305 to 163.467, 163.432, 163.433, 163.505 to 163.575, 163.665 to 163.693, **163.700**, 164.005, 164.015 to 164.135, 164.138, 164.140, 164.205 to 164.270, 164.305 to 164.377, 164.395 to 164.415, 164.805, 164.857, 164.886, 165.002 to 165.102, 165.109, 165.118, 165.805, 166.005 to 166.095, 166.350, 166.382, 166.384, 166.660, 167.002 to 167.027, 167.057, 167.060 to 167.100, 167.117, 167.122 to 167.162, 167.203 to 167.252, 167.310 to 167.340 and 167.350, 167.810 and 167.820 **and section 2 of this 2015 Act** shall be known and may be cited as Oregon Criminal Code of 1971.

Approved by the Governor July 6, 2015

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