

CHAPTER 553**AN ACT**

SB 577

Relating to bias crimes; creating new provisions; amending ORS 30.198, 30.200, 90.396, 137.225, 137.712, 163.707, 166.155, 166.165, 166.715 and 181A.225; and declaring an emergency.

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

SECTION 1. ORS 166.155 is amended to read: 166.155. (1) A person commits [*the crime of intimidation*] a **bias crime** in the second degree if the person:

(a) Tampers or interferes with property, having no right to do so nor reasonable ground to believe that the person has such right, with the intent to cause substantial inconvenience to another **person** because of the person's perception of the [*other's*] **other person's** race, color, religion, **gender identity**, sexual orientation, disability or national origin;

(b) Intentionally subjects another **person** to offensive physical contact because of the person's perception of the [*other's*] **other person's** race, color, religion, **gender identity**, sexual orientation, disability or national origin; or

(c) Intentionally, because of the person's perception of race, color, religion, **gender identity**, sexual orientation, disability or national origin of another **person** or of a member of the [*other's*] **other person's** family, subjects the other person to alarm by threatening:

(A) To inflict serious physical injury upon or to commit a felony affecting the other person, or a member of the **other** person's family; or

(B) To cause substantial damage to the property of the other person or of a member of the other person's family.

(2) [*Intimidation*] A **bias crime** in the second degree is a Class A misdemeanor.

(3) [*For purposes of*] As used in this section and ORS 166.165[.]:

(a) "Gender identity" means an individual's gender-related identity, appearance, expression or behavior, regardless of whether the identity, appearance, expression or behavior differs from that associated with the gender assigned to the individual at birth.

(b) "Property" means any tangible personal property or real property.

SECTION 2. ORS 166.165 is amended to read: 166.165. [(1) Two or more persons acting together commit the crime of intimidation in the first degree, if the persons:]

[(a)](A) Intentionally, knowingly or recklessly cause physical injury to another person because of the actors' perception of that person's race, color, religion, sexual orientation, disability or national origin; or]

[(B)](B) With criminal negligence cause physical injury to another person by means of a deadly weapon because of the actors' perception of that person's race,

color, religion, sexual orientation, disability or national origin;]

[(b)](b) Intentionally, because of the actors' perception of another person's race, color, religion, sexual orientation, disability or national origin, place another person in fear of imminent serious physical injury; or]

[(c)](c) Commit such acts as would constitute the crime of intimidation in the second degree, if undertaken by one person acting alone.]

(1) A **person** commits a **bias crime** in the first degree if the person:

(a) Intentionally, knowingly or recklessly causes physical injury to another person because of the person's perception of the other person's race, color, religion, gender identity, sexual orientation, disability or national origin;

(b) With criminal negligence causes physical injury to another person by means of a deadly weapon because of the person's perception of the other person's race, color, religion, gender identity, sexual orientation, disability or national origin; or

(c) Intentionally, because of the person's perception of another person's race, color, religion, gender identity, sexual orientation, disability or national origin, places another person in fear of imminent serious physical injury.

(2) [Intimidation] A **bias crime** in the first degree is a Class C felony.

SECTION 3. ORS 181A.225 is amended to read:

181A.225. (1) All law enforcement agencies shall report to the Department of State Police statistics concerning crimes:

(a) As directed by the department, for purposes of the Uniform Crime Reporting System of the Federal Bureau of Investigation.

(b) As otherwise directed by the Governor concerning general criminal categories of criminal activities but not individual criminal records.

(c) Motivated by prejudice based on the perceived race, color, religion, national origin, sexual orientation, [marital status, political affiliation or beliefs, membership or activity in or on behalf of a labor organization or against a labor organization, physical or mental] disability[, age, economic or social status or citizenship] or **gender identity** of the victim.

(d) And other incidents arising out of domestic disturbances under ORS 133.055 (2) and 133.310 (3).

(2) The department shall prepare:

(a) Quarterly and annual reports for the use of agencies reporting under subsection (1) of this section, and others having an interest therein;

(b) An annual public report of the statistics on the incidence of crime motivated by prejudice based on the perceived race, color, religion, national origin, sexual orientation, [marital status, political affiliation or beliefs, membership or activity in or on behalf of a labor organization or against a labor organization, physical or mental] disability[, age, economic or social status or citizenship] or **gender identity** of the victim;

(c) Quarterly and annual reports of the statistics on the incidence of crimes and incidents of domestic disturbances; and

(d) Special reports as directed by the Governor.

(3)(a) The department shall report to the Oregon Criminal Justice Commission, continually and at least quarterly, all primary data collected pursuant to subsection (1) of this section.

(b) The data reported to, and maintained by, the commission under this subsection:

(A) Shall be used only for statistical purposes and not for any other purpose.

(B) Is exempt from public disclosure if the data directly identifies any individual involved in a bias crime.

SECTION 4. The Oregon Criminal Justice Commission, in the rules of the commission concerning sentencing departure factors, shall include gender identity as defined in ORS 166.155 as a characteristic of the victim constituting an aggravating factor when the characteristic was the motivation, entirely or in part, for the commission of the crime.

SECTION 5. (1)(a) No later than July 1, 2020, the Oregon Criminal Justice Commission, in consultation with the Oregon District Attorneys Association and the Department of State Police, shall develop and implement a standardized method for district attorneys to record the data described in subsection (2) of this section and report the data to the commission.

(b) The commission shall analyze the data reported under this section to identify gaps or weaknesses in the investigation, presentation, prosecution and sanctioning of crimes motivated by bias.

(2) The data subject to recording and reporting under this section includes, at a minimum, the following data concerning any crime or alleged crime in which the bias of the actor was, in whole or in part, a motivating factor in the commission of the crime or alleged crime:

(a) Charges presented to the district attorney for prosecution;

(b) Cases issued by the district attorney;

(c) Charges indicted;

(d) Sentencing enhancements requested;

(e) Sentences imposed, including conditions of supervision;

(f) Charges to which a defendant enters a plea of guilty or no contest; and

(g) Trial outcomes.

(3) No later than July 1, 2020, the district attorneys of Multnomah County and two additional counties identified by the commission shall begin to record the data described in subsection (2) of this section. The counties shall report the data to the commission using the method identified in subsection (1) of this section.

(4)(a) The commission shall select one or more statistical analysis methodologies, determined to be consistent with current best practices, with which to analyze the data received under subsection (3) of this section.

(b) The commission shall analyze all data received under subsection (3) of this section using the selected methodology.

(5) No later than July 1, 2021, the commission shall report on the analysis of the data received under subsection (3) of this section to the Legislative Assembly in the manner provided under ORS 192.245.

(6) After completing the report described in subsection (5) of this section, the commission, in consultation with the Oregon District Attorneys Association and the Department of State Police, shall make any necessary refinements to the data reporting, recording and analysis methodologies.

(7) No later than July 1, 2022, the district attorney of each county in this state shall record the data described in subsection (2) of this section and report the data to the commission.

(8) The data reported to, and maintained by, the commission under this section:

(a) Shall be used only for statistical purposes and not for any other purpose.

(b) Is exempt from public disclosure if the data directly identifies any individual involved in the crime or alleged crime described in subsection (2) of this section.

(9) Any data recorded by a district attorney under this section that reveals the identity of any individual is exempt from public disclosure.

(10) The commission may adopt rules to carry out the provisions of this section.

SECTION 6. Section 5 of this 2019 Act is amended to read:

Sec. 5. (1)(a) [No later than July 1, 2020,] The Oregon Criminal Justice Commission, in consultation with the Oregon District Attorneys Association and the Department of State Police, shall develop and implement a standardized method for district attorneys to record the data described in subsection (2) of this section and report the data to the commission.

(b) The commission shall analyze the data reported under this section to identify gaps or weaknesses in the investigation, presentation, prosecution and sanctioning of crimes motivated by bias.

(2) The data subject to recording and reporting under this section includes, at a minimum, the following data concerning any crime or alleged crime in which the bias of the actor was, in whole or in part, a motivating factor in the commission of the crime or alleged crime:

(a) Charges presented to the district attorney for prosecution;

(b) Cases issued by the district attorney;

(c) Charges indicted;

(d) Sentencing enhancements requested;

(e) Sentences imposed, including conditions of supervision;

(f) Charges to which a defendant enters a plea of guilty or no contest; and

(g) Trial outcomes.

[(3) No later than July 1, 2020, the district attorneys of Multnomah County and two additional counties identified by the commission shall begin to record the data described in subsection (2) of this section. The counties shall report the data to the commission using the method identified in subsection (1) of this section.]

[(4)(a) The commission shall select one or more statistical analysis methodologies, determined to be consistent with current best practices, with which to analyze the data received under subsection (3) of this section.]

[(b) The commission shall analyze all data received under subsection (3) of this section using the selected methodology.]

[(5) No later than July 1, 2021, the commission shall report on the analysis of the data received under subsection (3) of this section to the Legislative Assembly in the manner provided under ORS 192.245.]

[(6) After completing the report described in subsection (5) of this section, the commission, in consultation with the Oregon District Attorneys Association and the Department of State Police, shall make any necessary refinements to the data reporting, recording and analysis methodologies.]

[(7)] (3) [No later than July 1, 2022,] The district attorney of each county in this state shall record the data described in subsection (2) of this section and report the data to the commission.

[(8)] (4) The data reported to, and maintained by, the commission under this section:

(a) Shall be used only for statistical purposes and not for any other purpose.

(b) Is exempt from public disclosure if the data directly identifies any individual involved in the crime or alleged crime described in subsection (2) of this section.

[(9)] (5) Any data recorded by a district attorney under this section that reveals the identity of any individual is exempt from public disclosure.

[(10)] (6) The commission may adopt rules to carry out the provisions of this section.

NOTE: Section 7 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 8. (1) As used in this section:

(a) "Bias crime" means the commission, attempted commission or alleged commission of an offense described in ORS 166.155 or 166.165.

(b) "Bias incident" means a person's hostile expression of animus toward another person, relating to the other person's perceived race, color, religion, gender identity, sexual orientation, disability or national origin, of which criminal investigation or prosecution is impossible or inappropriate. "Bias incident" does not include any incident in which probable cause of

the commission of a crime is established by the investigating law enforcement officer.

(c) "Hate crimes hotline" means the telephone hotline established by the Department of Justice under subsection (3) of this section.

(d) "Local victims' services" means services provided to a victim of a bias crime or bias incident, including but not limited to safety planning, trauma management and data reporting, by an entity located in the same geographic area as the law enforcement agency that responds to the bias crime or bias incident.

(2)(a) A law enforcement agency that responds to a report of a bias incident shall refer the victim of the bias incident to qualifying local victims' services.

(b) The Department of Justice shall by rule designate qualifying local victims' services.

(c) If qualifying local victims' services are unavailable, the law enforcement agency shall refer the victim of the bias incident to the hate crimes hotline.

(3) The Department of Justice shall establish a staffed hate crimes telephone hotline dedicated to assisting the victims of bias crimes and bias incidents.

(4) There is created in the Department of Justice the position of Hate Crimes Response Coordinator. The Hate Crimes Response Coordinator shall:

(a) Respond to all reports of bias crimes and bias incidents made to the hate crimes hotline.

(b) Provide assistance to victims of bias crimes and bias incidents that is culturally competent and designed to reduce the effects of trauma, prevent further trauma and reach a diverse community.

(c) Assist with safety planning for victims of bias crimes and bias incidents.

(d) Coordinate with local nongovernmental organizations and service providers in assisting victims of bias crimes and bias incidents.

(e) Develop training for nongovernmental organizations and service providers to standardize methods for assisting victims of bias crimes and bias incidents.

(5)(a) The Department of Justice shall:

(A) In coordination with the Oregon Criminal Justice Commission, develop a standardized intake process for all reports of bias crimes and bias incidents made to the department.

(B) Collect all data possible concerning the character, location and impacted protected class of any bias crime or bias incident reported to the department.

(C) Report to the commission continually and at least quarterly all data collected pursuant to this subsection.

(b) The data reported to the commission under this subsection may not contain information that reveals the identity of any individual.

(6) Any data collected by the Department of Justice under this section that reveals the iden-

tity of any individual is exempt from public disclosure.

(7) The Department of Justice may adopt rules to carry out the provisions of this section.

SECTION 9. (1) As used in this section:

(a) "Bias crime" means the commission, attempted commission or alleged commission of an offense described in ORS 166.155 or 166.165.

(b) "Bias incident" means a person's hostile expression of animus toward another person, relating to the other person's perceived race, color, religion, gender identity, sexual orientation, disability or national origin, of which criminal investigation or prosecution is impossible or inappropriate. "Bias incident" does not include any incident in which probable cause of the commission of a crime is established by the investigating law enforcement officer.

(2) The Oregon Criminal Justice Commission shall review all data pertaining to bias crimes and bias incidents submitted to the commission:

(a) By district attorneys under section 5 of this 2019 Act;

(b) By the Department of State Police under ORS 181A.225; and

(c) By the Department of Justice under section 8 of this 2019 Act.

(3) The commission shall select one or more statistical analysis methodologies, determined to be consistent with current best practices, with which to analyze the data described in subsection (2) of this section.

(4) No later than July 1, 2020, and at least annually thereafter, the commission shall report the results of the data analysis to the Governor, the Legislative Assembly, the Attorney General, the Oregon District Attorneys Association, the Department of State Police and the Department of Public Safety Standards and Training.

(5) Except as provided in subsection (7) of this section, the data described in subsection (2) of this section shall be made publicly accessible to the fullest extent possible under state and federal law.

(6) The commission may use the data described in subsection (2) of this section only for statistical purposes and not for any other purpose.

(7) Any data described in subsection (2) of this section that reveals the identity of any individual is exempt from public disclosure.

(8) The commission may adopt rules to carry out the provisions of this section.

NOTE: Section 10 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 11. ORS 90.396 is amended to read:

90.396. (1) Except as provided in subsection (2) of this section, after at least 24 hours' written notice specifying the acts and omissions constituting the cause and specifying the date and time of the termination, the landlord may terminate the rental agree-

ment and take possession as provided in ORS 105.105 to 105.168, if:

(a) The tenant, someone in the tenant's control or the tenant's pet seriously threatens to inflict substantial personal injury, or inflicts any substantial personal injury, upon a person on the premises other than the tenant;

(b) The tenant or someone in the tenant's control recklessly endangers a person on the premises other than the tenant by creating a serious risk of substantial personal injury;

(c) The tenant, someone in the tenant's control or the tenant's pet inflicts any substantial personal injury upon a neighbor living in the immediate vicinity of the premises;

(d) The tenant or someone in the tenant's control intentionally inflicts any substantial damage to the premises or the tenant's pet inflicts substantial damage to the premises on more than one occasion;

(e)(A) The tenant intentionally provided substantial false information on the application for the tenancy within the past year;

(B) The false information was with regard to a criminal conviction of the tenant that would have been material to the landlord's acceptance of the application; and

(C) The landlord terminates the rental agreement within 30 days after discovering the falsity of the information; or

(f) The tenant, someone in the tenant's control or the tenant's pet commits any act that is outrageous in the extreme, on the premises or in the immediate vicinity of the premises. For purposes of this paragraph, an act is outrageous in the extreme if the act is not described in paragraphs (a) to (e) of this subsection, but is similar in degree and is one that a reasonable person in that community would consider to be so offensive as to warrant termination of the tenancy within 24 hours, considering the seriousness of the act or the risk to others. An act that is outrageous in the extreme is more extreme or serious than an act that warrants a 30-day termination under ORS 90.392. Acts that are "outrageous in the extreme" include, but are not limited to, the following acts by a person:

(A) Prostitution, commercial sexual solicitation or promoting prostitution, as described in ORS 167.007, 167.008 and 167.012;

(B) Unlawful manufacture, delivery or possession of a controlled substance, as defined in ORS 475.005;

(C) Manufacture of a cannabinoid extract, as defined in ORS 475B.015, unless the person manufacturing the cannabinoid extract holds a license issued under ORS 475B.090 or is registered under ORS 475B.840;

(D) [Intimidation] A bias crime, as described in ORS 166.155 and 166.165; or

(E) Burglary as described in ORS 164.215 and 164.225.

(2) If the cause for a termination notice given pursuant to subsection (1) of this section is based upon the acts of the tenant's pet, the tenant may cure the cause and avoid termination of the tenancy

by removing the pet from the premises prior to the end of the notice period. The notice must describe the right of the tenant to cure the cause. If the tenant returns the pet to the premises at any time after having cured the violation, the landlord, after at least 24 hours' written notice specifying the subsequent presence of the offending pet, may terminate the rental agreement and take possession as provided in ORS 105.105 to 105.168. The tenant does not have a right to cure this subsequent violation.

(3) For purposes of subsection (1) of this section, someone is in the tenant's control if that person enters or remains on the premises with the tenant's permission or consent after the tenant reasonably knows or should know of that person's act or likelihood to commit any act of the type described in subsection (1) of this section.

(4) An act can be proven to be outrageous in the extreme even if the act is one that does not violate a criminal statute. Notwithstanding the references to criminal statutes in subsection (1)(f) of this section, the landlord's burden of proof in an action for possession under subsection (1) of this section is the civil standard of proof by a preponderance of the evidence.

(5) If a good faith effort by a landlord to terminate the tenancy under subsection (1)(f) of this section and to recover possession of the rental unit under ORS 105.105 to 105.168 fails by decision of the court, the landlord may not be found in violation of any state statute or local ordinance requiring the landlord to remove that tenant upon threat of fine, abatement or forfeiture as long as the landlord continues to make a good faith effort to terminate the tenancy.

SECTION 12. ORS 137.225, as amended by section 12, chapter 120, Oregon Laws 2018, 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, issuance of a criminal citation or criminal charge, if no accusatory instrument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested, cited or charged person may apply to the court that would have jurisdiction over the crime for which the person was arrested, cited or charged, for entry of an order setting aside the record of the arrest, citation or charge. For the purpose of computing the one-year period, time during which the person has secreted

himself or herself within or without this state is not included.

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

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

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

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

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

(e) The prosecuting attorney may not charge the defendant a fee for performing 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, citation or charge as the case may be, to the date of the hearing on the motion warrant setting aside the conviction, or the arrest, citation or charge record as the case may be, the court shall enter an appropriate order that shall state the original arrest or citation 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, cited or charged 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, citation or charge whether or not the arrest, citation or charge 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, citation, charge 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 the conviction sought to be set aside, whichever is later; and

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

(B) The Class B felony is described in paragraphs (b) to (d) of this subsection.

(b) Any misdemeanor, Class C felony or felony punishable as a misdemeanor pursuant to ORS 161.705.

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

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

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

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

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

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

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

(e) Assault in the third degree under ORS 163.165 (1)(h).

(f) Any sex crime, unless:

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

(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, citation, charge or conviction that is sought to be set aside. A single violation, other than a motor vehicle violation, within the last 10 years is not a conviction under this subsection. Notwithstanding subsection (1) of this section, a conviction that has been set aside under this section shall be considered for the purpose of determining whether this paragraph is applicable.

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

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

(a) A person arrested or criminally cited for or charged with an offense within the three-year period immediately preceding the filing of the motion for any offense, excluding motor vehicle violations, and excluding arrests, citations or charges for conduct associated with the same criminal episode that caused the arrest, citation or charge that is sought to be set aside. An arrest, citation or charge that has been set aside under this section may not be considered for the purpose of determining whether this paragraph is applicable.

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

(9) The provisions of subsection (1) of this section apply to convictions, arrests, citations and charges that occurred before, as well as those that occurred after, September 9, 1971. There is no time limit for making an application.

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

(11) Upon motion of any prosecutor or defendant in a case involving records sealed under this section, supported by affidavit showing good cause, the court with jurisdiction may order the reopening and disclosure of any records sealed under this section for the limited purpose of assisting the investigation of the movant. However, such an order has no other effect on the orders setting aside the conviction or the arrest, citation or charge 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] **A bias crime** 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 13. ORS 137.712 is amended to read:

137.712. (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person is convicted of manslaughter in the second degree as defined in ORS 163.125, assault in the second degree as defined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225, rape in the second degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395, unlawful sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first degree as defined in ORS 163.427 (1)(a)(A) or robbery in the second degree as defined in ORS 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700 or 137.707 if the court, on the record at sentencing, makes the findings set forth in subsection (2) of this section and finds that a substantial and compelling reason under the rules of the Oregon Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under this subsection, the person is eligible for a reduction in the sentence as provided in ORS 421.121 and any other statute.

(b) In order to make a dispositional departure under this section, the court must make the following additional findings on the record:

(A) There exists a substantial and compelling reason not relied upon in paragraph (a) of this subsection;

(B) A sentence of probation will be more effective than a prison term in reducing the risk of offender recidivism; and

(C) A sentence of probation will better serve to protect society.

(2) A conviction is subject to subsection (1) of this section only if the sentencing court finds on the record by a preponderance of the evidence:

(a) If the conviction is for manslaughter in the second degree:

(A) That the victim was a dependent person as defined in ORS 163.205 who was at least 18 years of age;

(B) That the defendant is the mother or father of the victim;

(C) That the death of the victim was the result of an injury or illness that was not caused by the defendant;

(D) That the defendant treated the injury or illness solely by spiritual treatment in accordance with the religious beliefs or practices of the defendant and based on a good faith belief that spiritual treat-

ment would bring about the victim's recovery from the injury or illness;

(E) That no other person previously under the defendant's care has died or sustained significant physical injury as a result of or despite the use of spiritual treatment, regardless of whether the spiritual treatment was used alone or in conjunction with medical care; and

(F) That the defendant does not have a previous conviction for a crime listed in subsection (4) of this section or for criminal mistreatment in the second degree.

(b) If the conviction is for assault in the second degree:

(A) That the victim was not physically injured by means of a deadly weapon;

(B) That the victim did not suffer a significant physical injury; and

(C) That the defendant does not have a previous conviction for a crime listed in subsection (4) of this section.

(c) If the conviction is for kidnapping in the second degree:

(A) That the victim was at least 12 years of age at the time the crime was committed; and

(B) That the defendant does not have a previous conviction for a crime listed in subsection (4) of this section.

(d) If the conviction is for robbery in the second degree:

(A) That the victim did not suffer a significant physical injury;

(B) That, if the defendant represented by words or conduct that the defendant was armed with a dangerous weapon, the representation did not reasonably put the victim in fear of imminent significant physical injury;

(C) That, if the defendant represented by words or conduct that the defendant was armed with a deadly weapon, the representation did not reasonably put the victim in fear of imminent physical injury; and

(D) That the defendant does not have a previous conviction for a crime listed in subsection (4) of this section.

(e) If the conviction is for rape in the second degree, sodomy in the second degree or sexual abuse in the first degree:

(A) That the victim was at least 12 years of age, but under 14 years of age, at the time of the offense;

(B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of this section;

(C) That the defendant has not been previously found to be within the jurisdiction of a juvenile court for an act that would have been a felony sexual offense if the act had been committed by an adult;

(D) That the defendant was no more than five years older than the victim at the time of the offense;

(E) That the offense did not involve sexual contact with any minor other than the victim; and

(F) That the victim's lack of consent was due solely to incapacity to consent by reason of being under 18 years of age at the time of the offense.

(f) If the conviction is for unlawful sexual penetration in the second degree:

(A) That the victim was 12 years of age or older at the time of the offense;

(B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of this section;

(C) That the defendant has not been previously found to be within the jurisdiction of a juvenile court for an act that would have been a felony sexual offense if the act had been committed by an adult;

(D) That the defendant was no more than five years older than the victim at the time of the offense;

(E) That the offense did not involve sexual contact with any minor other than the victim;

(F) That the victim's lack of consent was due solely to incapacity to consent by reason of being under 18 years of age at the time of the offense; and

(G) That the object used to commit the unlawful sexual penetration was the hand or any part thereof of the defendant.

(3) In making the findings required by subsections (1) and (2) of this section, the court may consider any evidence presented at trial and may receive and consider any additional relevant information offered by either party at sentencing.

(4) The crimes to which subsection (2)(a)(F), (b)(C), (c)(B), (d)(D), (e)(B) and (f)(B) of this section refer are:

(a) A crime listed in ORS 137.700 (2) or 137.707 (4);

(b) Escape in the first degree, as defined in ORS 162.165;

(c) Aggravated murder, as defined in ORS 163.095;

(d) Criminally negligent homicide, as defined in ORS 163.145;

(e) Assault in the third degree, as defined in ORS 163.165;

(f) Criminal mistreatment in the first degree, as defined in ORS 163.205 (1)(b)(A);

(g) Rape in the third degree, as defined in ORS 163.355;

(h) Sodomy in the third degree, as defined in ORS 163.385;

(i) Sexual abuse in the second degree, as defined in ORS 163.425;

(j) Stalking, as defined in ORS 163.732;

(k) Burglary in the first degree, as defined in ORS 164.225, when it is classified as a person felony under the rules of the Oregon Criminal Justice Commission;

(L) Arson in the first degree, as defined in ORS 164.325;

(m) Robbery in the third degree, as defined in ORS 164.395;

(n) [Intimidation] A **bias crime** in the first degree, as defined in ORS 166.165;

(o) Promoting prostitution, as defined in ORS 167.012; and

(p) An attempt or solicitation to commit any Class A or B felony listed in paragraphs (a) to (L) of this subsection.

(5) Notwithstanding ORS 137.545 (5)(b), if a person sentenced to probation under this section violates a condition of probation by committing a new crime, the court shall revoke the probation and impose the presumptive sentence of imprisonment under the rules of the Oregon Criminal Justice Commission.

(6) As used in this section:

(a) "Conviction" includes, but is not limited to:

(A) A juvenile court adjudication finding a person within the court's jurisdiction under ORS 419C.005, if the person was at least 15 years of age at the time the person committed the offense that brought the person within the jurisdiction of the juvenile court. "Conviction" does not include a juvenile court adjudication described in this subparagraph if the person successfully asserted the defense set forth in ORS 419C.522.

(B) A conviction in another jurisdiction for a crime that if committed in this state would constitute a crime listed in subsection (4) of this section.

(b) "Previous conviction" means a conviction that was entered prior to imposing sentence on the current crime provided that the prior conviction is based on a crime committed in a separate criminal episode. "Previous conviction" does not include a conviction for a Class C felony, including an attempt or solicitation to commit a Class B felony, or a misdemeanor, unless the conviction was entered within the 10-year period immediately preceding the date on which the current crime was committed.

(c) "Significant physical injury" means a physical injury that:

(A) Creates a risk of death that is not a remote risk;

(B) Causes a serious and temporary disfigurement;

(C) Causes a protracted disfigurement; or

(D) Causes a prolonged impairment of health or the function of any bodily organ.

SECTION 14. ORS 163.707 is amended to read:

163.707. (1) A motor vehicle used by the owner in a drive-by shooting is subject to civil in rem forfeiture.

(2) Seizure and forfeiture proceedings under this section shall be conducted in accordance with ORS chapter 131A.

(3) As used in this section, "drive-by shooting" means discharge of a firearm from a motor vehicle while committing or attempting to commit:

(a) Aggravated murder under ORS 163.095;

(b) Murder under ORS 163.115;

(c) Manslaughter in any degree under ORS 163.118 or 163.125;

(d) Assault in any degree under ORS 163.160, 163.165, 163.175 or 163.185;

(e) Menacing under ORS 163.190;

(f) Recklessly endangering another person under ORS 163.195;

(g) Assaulting a public safety officer under ORS 163.208; or

(h) [Intimidation] **A bias crime** in any degree under ORS 166.155 or 166.165.

SECTION 15. ORS 166.715 is amended to read:

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

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

(2) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust or other profit or nonprofit legal entity, and includes any union, association or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

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

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

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

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

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

(A) ORS 59.005 to 59.505, 59.710 to 59.830, 59.991 and 59.995, relating to securities;

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

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

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

(E) ORS 162.455, relating to interference with legislative operation;

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

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

(H) ORS 163.225 and 163.235, relating to kidnapping;

(I) ORS 163.275, relating to coercion;

(J) ORS 163.665 to 163.693, relating to sexual conduct of children;

(K) ORS 164.015, 164.043, 164.045, 164.055, 164.057, 164.075 to 164.095, 164.098, 164.125, 164.135, 164.140, 164.215, 164.225 and 164.245 to 164.270, relating to theft, burglary, criminal trespass and related offenses;

(L) ORS 164.315 to 164.335, relating to arson and related offenses;

(M) ORS 164.345 to 164.365, relating to criminal mischief;

(N) ORS 164.395 to 164.415, relating to robbery;

(O) ORS 164.865, 164.875 and 164.868 to 164.872, relating to unlawful recording or labeling of a recording;

(P) ORS 165.007 to 165.022, 165.032 to 165.042 and 165.055 to 165.070, relating to forgery and related offenses;

(Q) ORS 165.080 to 165.109, relating to business and commercial offenses;

(R) ORS 165.540 and 165.555, relating to communication crimes;

(S) ORS 166.180, 166.190, 166.220, 166.250, 166.270, 166.275, 166.410, 166.450 and 166.470, relating to firearms and other weapons;

(T) ORS 164.377 (2) to (4), as punishable under ORS 164.377 (5)(b), 167.007 to 167.017, 167.057, 167.062 to 167.080, 167.090, 167.122 to 167.137, 167.147, 167.164, 167.167, 167.212, 167.355, 167.365, 167.370, 167.428, 167.431 and 167.439, relating to prostitution, obscenity, sexual conduct, gambling, computer crimes involving the Oregon State Lottery, animal fighting, forcible recovery of a fighting bird and related offenses;

(U) ORS 171.990, relating to legislative witnesses;

(V) ORS 260.575 and 260.665, relating to election offenses;

(W) ORS 314.075, relating to income tax;

(X) ORS 180.440 (2) and 180.486 (2) and ORS chapter 323, relating to cigarette and tobacco products taxes and the directories developed under ORS 180.425 and 180.477;

(Y) ORS 411.630, 411.675, 411.690 and 411.840, relating to public assistance payments or medical assistance benefits, and ORS 411.990 (2) and (3);

(Z) ORS 462.140, 462.415 and 462.420 to 462.520, relating to racing;

(AA) ORS 463.995, relating to entertainment wrestling and unarmed combat sports, as defined in ORS 463.015;

(BB) ORS 471.305, 471.360, 471.392 to 471.400, 471.403, 471.404, 471.405, 471.425, 471.442, 471.445, 471.446, 471.485, 471.490 and 471.675, relating to alcoholic liquor, and any of the provisions of ORS chapter 471 relating to licenses issued under the Liquor Control Act;

(CC) ORS 475B.010 to 475B.545, relating to marijuana items as defined in ORS 475B.015;

(DD) ORS 475.005 to 475.285 and 475.752 to 475.980, relating to controlled substances;

(EE) ORS 480.070, 480.210, 480.215, 480.235 and 480.265, relating to explosives;

(FF) ORS 819.010, 819.040, 822.100, 822.135 and 822.150, relating to motor vehicles;

(GG) ORS 658.452 or 658.991 (2) to (4), relating to labor contractors;

(HH) ORS chapter 706, relating to banking law administration;

(II) ORS chapter 714, relating to branch banking;

(JJ) ORS chapter 716, relating to mutual savings banks;

(KK) ORS chapter 723, relating to credit unions;

(LL) ORS chapter 726, relating to pawnbrokers;

(MM) ORS 166.382 and 166.384, relating to destructive devices;

(NN) ORS 165.074;

(OO) ORS 86A.095 to 86A.198, relating to mortgage bankers and mortgage brokers;

(PP) ORS chapter 496, 497 or 498, relating to wildlife;

(QQ) ORS 163.355 to 163.427, relating to sexual offenses;

(RR) ORS 166.015, relating to riot;

(SS) ORS 166.155 and 166.165, relating to [intimidation] **bias crimes**;

(TT) ORS chapter 696, relating to real estate and escrow;

(UU) ORS chapter 704, relating to outfitters and guides;

(VV) ORS 165.692, relating to making a false claim for health care payment;

(WW) ORS 162.117, relating to public investment fraud;

(XX) ORS 164.170 or 164.172;

(YY) ORS 647.140, 647.145 or 647.150, relating to trademark counterfeiting;

(ZZ) ORS 164.886;

(AAA) ORS 167.312 and 167.388;

(BBB) ORS 164.889;

(CCC) ORS 165.800; or

(DDD) ORS 163.263, 163.264 or 163.266.

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

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

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

(A) ORS chapter 462, relating to racing;
(B) ORS 167.108 to 167.164, relating to gambling;
or
(C) ORS 82.010 to 82.170, relating to interest and usury.

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

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

SECTION 16. ORS 30.198 is amended to read:

30.198. (1) Irrespective of any criminal prosecution or the result thereof, any person injured by a violation of ORS 166.155 or 166.165 shall have a civil action to secure an injunction, damages or other appropriate relief against any *[and all persons]* person whose actions are unlawful under ORS 166.155 and 166.165.

(2) Upon prevailing in such action, the plaintiff may recover:

(a) Both special and general damages, including damages for emotional distress; and

(b) Punitive damages.

(3) The court shall award reasonable attorney fees to the prevailing plaintiff in an action under this section. The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails in the action if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court.

(4) The parent, parents or legal guardian of an unemancipated minor shall be liable for any judgment recovered against such minor under this section, in an amount not to exceed \$5,000.

SECTION 17. ORS 30.200 is amended to read:

30.200. If any district attorney has reasonable cause to believe that any person *[or group of persons]* is engaged in violation of ORS 166.155 or 166.165, the district attorney may bring a civil claim for relief in the appropriate court, setting forth facts pertaining to such violation, and request such relief as may be necessary to restrain or prevent such violation. Any claim for relief under this section does not prevent any person from seeking any other remedy otherwise available under law.

SECTION 17a. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 3 (3), chapter

692, Oregon Laws 2019 (Enrolled Senate Bill 5515), for the biennium beginning July 1, 2019, as the maximum limit for payment of expenses from federal funds collected or received by the Department of Justice for the Crime Victim and Survivor Services Division is increased by \$201,380, for the purpose of carrying out the provisions of this 2019 Act.

SECTION 17b. Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Justice by section 1 (4), chapter 692, Oregon Laws 2019 (Enrolled Senate Bill 5515), for the biennium beginning July 1, 2019, for Crime Victim and Survivor Services is increased by \$46,453, for the purpose of carrying out the provisions of this 2019 Act.

SECTION 17c. In addition to and not in lieu of any other appropriation, there is appropriated to the Oregon Criminal Justice Commission, for the biennium beginning July 1, 2019, out of the General Fund, the amount of \$235,476, for the purpose of carrying out the provisions of this 2019 Act.

SECTION 18. Section 4 of this 2019 Act and the amendments to ORS 30.198, 30.200, 90.396, 137.225, 137.712, 163.707, 166.155, 166.165 and 166.715 by sections 1, 2 and 11 to 17 of this 2019 Act apply to conduct occurring on or after the effective date of this 2019 Act.

SECTION 19. (1)(a) Sections 5, 8 and 9 of this 2019 Act become operative on January 1, 2020.

(b) The Department of Justice and the Oregon Criminal Justice Commission may take any action before the operative date specified in paragraph (a) of this subsection that is necessary to enable the department or commission to exercise, on and after the operative date specified in paragraph (a) of this subsection, all of the duties, functions and powers conferred on the department or commission by sections 5, 8 and 9 of this 2019 Act.

(2) The amendments to section 5 of this 2019 Act by section 6 of this 2019 Act become operative on January 2, 2023.

SECTION 20. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.

Approved by the Governor July 15, 2019
Filed in the office of Secretary of State July 16, 2019
Effective date July 15, 2019