

# 2023 Legislative Summary Brief

## Criminal Justice



### Cannabis

The Task Force on Cannabis-Derived Intoxicants and Illegal Cannabis Operations was created by [House Bill 3000](#) (2021), and then expanded by [Senate Bill 1564](#) (2022) to recommend legislative changes to support law enforcement’s response to illegal cannabis operations. The Task Force’s Law Enforcement Subcommittee heard from law enforcement about the need to address problems from larger and increasingly complex illegal cannabis operations by drug trafficking organizations. These included: the need for multi-jurisdiction warrants and increased judicial availability for issuing warrants; clarifying the types of personnel that may accompany law enforcement during execution of the warrant; the need for increased penalties relating to large quantities; the need to address labor trafficking, water theft, and environmental harms from the illegal operations; and addressing the cleanup of illegal cannabis sites after law enforcement action. The Task Force agreed upon several recommendations, which were included in [Senate Bill 326](#), [Senate Bill 954](#), and [Senate Bill 766 A](#) (*not enacted*).

[Senate Bill 326](#) prohibits water use for an illegal cannabis operation; permits warrants to authorize surveillance tools for illegal cannabis operation enforcement; sets higher penalties for operations that involve large quantities, environmental violations, or certain labor violations; requires landowners to clean up sites of illegal cannabis production or manufacture; and permits enforcement of cleanup through public nuisance proceedings, a lien for costs of cleanup, and injunction. [Senate Bill 954](#) authorizes issuance of a search warrant in any

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See the **2023 Legislative Summary Report** for [Criminal Justice](#), which highlights policy measures that received a public hearing during Oregon’s 2023 Regular Legislative Session.

judicial district where there is interrelated conduct, clarifies that a duly authorized senior judge may issue a search warrant, and specifies persons who may accompany law enforcement in the execution of a search warrant. [Senate Bill 766 A](#) (*not enacted*) would have appropriated additional General Fund money to the Criminal Justice Commission for deposit in the Illegal Marijuana Market Grant Program and allowed grants to be awarded to the Department of State Police for expenses related to the investigation and prosecution of unlawful marijuana operations.

### Crimes & Criminal Procedure

Organized retail crime refers to groups operating multijurisdictional, coordinated schemes or enterprises to commit a variety of financial crimes that sometimes include violent tactics. The Oregon-based Organized Retail Crime Task Force (Task Force) was formed in 2022, and its members include public and

private stakeholders with participation from local law enforcement, business representatives, and private loss prevention officers. The Task Force distinguishes organized retail crime from petty shoplifting and states that it has a major impact on retailers in Oregon. In a survey conducted by the National Retail Federation in 2022, retailers reported a 53 percent increase in organized retail theft nationwide over the past two years.

The Task Force brought forward three measures for consideration during the 2023 Legislative Session. [Senate Bill 340](#) made several changes to current statutes governing property crimes and organized retail theft. It added the organized retail theft statute to the repeat property offender statute, authorizing judges to impose a longer sentence for repeat offenders. It allows prosecutors to aggregate the value of stolen property over 180 days for purposes of proving the crime of organized retail theft, and allows prosecutors to add multiple theft transactions together if they were against the same or multiple victims within a one-year period.

[Senate Bill 900](#) established an Organized Retail Theft Grant Program to assist counties, cities, the Oregon State Police, and community-based organizations address organized retail theft. [Senate Bill 318 A](#) (*not enacted*) would have appropriated money for analyst and investigator positions within the Oregon Department of Justice to coordinate with local law enforcement, prosecutors, and private sector loss prevention personnel tasked with investigating and prosecuting organized retail theft. That appropriation was instead incorporated into Section 20 of [Senate Bill 5506](#).

In March 2022, the Oregon Secretary of State Audits Division released an [advisory report](#) that ranked Oregon sixth in the nation for the number of domestic violent extremist incidents between 2011 and 2020, with the number rising precipitously between 2019 and 2021. The U.S. Department of Justice is the governing entity that most often brings domestic terrorism and

violent extremism charges against individuals. However, several states also have legislation defining and criminalizing such activity. The advisory report's findings were cited in the legislation proposed by [House Bill 2772](#) and [House Bill 3035](#) (*not enacted*).

Oregon does not currently define or criminalize domestic terrorism or violent extremism. [House Bill 2772](#) creates the crime of domestic terrorism in the first and second degree. The new crime of domestic terrorism in the first degree is a Class B felony and is committed if a person intentionally destroys or substantially damages critical infrastructure, or intentionally introduces, releases, or disperses a toxic substance into widespread contact with humans. Domestic terrorism in the second degree is a Class C felony and is committed if a person intentionally possesses a toxic substance with the intent to introduce it into widespread contact with humans, intentionally possesses a destructive device with the intent to destroy or substantially damage critical infrastructure, or intentionally attempts to engage in conduct that would constitute domestic terrorism in the first degree. [House Bill 3035](#) (*not enacted*) would have created the crime of threatening a mass injury event.

[House Bill 2316](#) contains multiple statutory amendments related to the crime of Driving Under the Influence of Intoxicant (DUI). Prior to enactment of [House Bill 2316](#), a person could only be convicted of driving while under the influence of intoxicants on the basis of being under the influence of intoxicating liquor, cannabis, psilocybin, a controlled substance, an inhalant, or any combination of the above. The statute did not include intoxication by any drug other than those listed or categorized as a controlled substance under [ORS 475.005](#) (2021), defined as a drug or its immediate precursor classified in Schedules I through V under the federal Controlled Substances Act. Furthermore, a person could not be convicted of a DUI on the basis of being under the influence



of a controlled substance or an inhalant unless the fact that the person was under the influence of a controlled substance, or an inhalant was pleaded in the accusatory instrument. Prior to enactment of [House Bill 2316](#), persons convicted of DUII involving a bicycle were subject to the same statutory drivers' license restrictions as persons convicted of DUII involving a motor vehicle. And, finally, Oregon law allowed a defendant to participate in diversion for the crime of DUII if the defendant had not participated in a diversion or rehabilitation program within the period beginning 15 years before the date of the commission of the present offense.

[House Bill 2316](#) expands the offense of DUII to include being under the influence of any impairing drug; removes a requirement that impairment by a controlled substance or an inhalant be pleaded in the accusatory instrument and removes certain driving restrictions for persons convicted of DUII involving a bicycle. The measure also removes diversion ineligibility for the crime of DUII for persons who have participated in rehabilitation programs within 15 years of a present offense for DUII.

Prior to enactment of [House Bill 2645](#) during the 2023 legislative session, Oregon statute did not provide for a Class A misdemeanor charge for possession of fentanyl as it did for possession of similarly categorized controlled substances such as heroin, methamphetamine, and cocaine. Additionally, statutes criminalizing possession of fentanyl required proof of specific quantities defined by weight and could not be established by possession of "pills, tablets, capsules or user units" as allowed for in statutes relating to oxycodone under [ORS 475.834](#) (2021).

[House Bill 2645](#) establishes a Class A misdemeanor penalty for possession of certain amounts of fentanyl and adds a user unit measurement of fentanyl for purposes of calculating the crime category level for certain

offenses involving possession, delivery or manufacture of fentanyl.

## Firearms and Ballot Measure 114

In November 2022, Oregon voters passed [Ballot Measure \(BM\) 114](#), which established requirements for and restrictions surrounding gun purchasing and ownership. [Ballot Measure 114](#) required anyone purchasing a firearm to take a firearm safety training course and obtain a permit. It also banned large capacity magazines holding more than ten rounds and closed the "Charleston loophole," which allowed firearm transfers to go forward if the required background check had not been completed after three days.

In December 2022, Judge Karin Immergut in the Oregon U.S. District Court denied a request by the Oregon Firearms Federation and other plaintiffs to temporarily prevent implementation of the large-capacity magazine restrictions in [Ballot Measure 114](#). Judge Immergut ruled that [Ballot Measure 114](#) could take effect pending further arguments, but allowed the state to postpone the implementation of the permit requirement until the systems necessary to administer it were in place. In February 2023, the Oregon Supreme Court denied a petition to overturn a lower court ruling blocking the measure in its entirety. In a separate county-level case, *Joseph Arnold, et al v. Ellen Rosenblum, et al*, Judge Robert Raschio granted a preliminary injunction blocking the implementation of the law.

[Senate Bill 348 A \(not enacted\)](#) was introduced to codify some of the requirements included in [Ballot Measure 114](#) and establish procedures and processes to allow for implementation and compliance with the measure as passed. It would have required a permit to purchase a firearm, other than a rifle capable of operating only with .22 caliber rimfire ammunition; a muzzleloader rifle; a pump, break, lever, or



revolving action shotgun; or other similar firearms, on or after July 1, 2024, and would have required a permit to purchase all firearms on or after July 1, 2026. It would have provided that only persons 21 years of age or older could use the permit to purchase a handgun or semi-automatic firearm. The measure would also have increased the number of days within which the permit agent had to approve or deny a permit from 30 days to 60 days and would have required a 72-hour wait period between the purchase and transfer of a firearm from a gun dealer. Finally, [Senate Bill 348 A](#) (*not enacted*) would have required any action challenging the legality or constitutionality of the measure to commence in the Circuit Court for Marion County.

Many other measures relating to firearms received hearings and were not ultimately enacted, including [Senate Bill 393](#) (*not enacted*) on waiting periods for firearms transfers, [Senate Bill 527](#) (*not enacted*) and [House Bill 2006](#) (*not enacted*) related to the minimum age for purchasing a firearm; [House Bill 2007](#) (*not enacted*) relating to firearms in public buildings; and [House Bill 3513](#) (*not enacted*) relating to firearm hold agreements.

Of the firearm-related measures that received public hearings in committee, [House Bill 2005](#) was ultimately enacted. [House Bill 2005](#) addresses the regulation of firearms commonly known as “ghost guns.” “Ghost guns,” are undetectable or unserialized firearms and can be obtained without a background check. According to the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), from 2016 to 2020, law enforcement agencies recovered 24,000 untraceable firearms. As of August 24, 2022, the federal government adopted rules requiring all unfinished frames and receivers to be serialized and sold through the legal background check process. The federal rules do not address undetectable firearms printed on 3D printers. Additionally, the federal rules only regulate Federal Firearm

License (FFL) holders: those engaged in the legal manufacture, import, sale, or dealing of firearms. Prior to enactment of House Bill 2005, Oregon law did not regulate the manufacture, sale, or possession of ghost guns.

[House Bill 2005](#) prohibits a person from knowingly manufacturing, importing, selling, or transferring an undetectable firearm; prohibits a person from knowingly possessing, selling, or transferring a firearm unless the firearm has been imprinted with a serial number by an FFL holder; and prohibits a person from possessing an unfinished frame or receiver unless the person is an FFL dealer or the frame or receiver has been serialized and the name of the manufacturer has been imprinted on it.

## Indigent Defense

In 1963, the U.S. Supreme Court declared in *Gideon v. Wainwright*, 372 U.S. 335 (1963) that anyone accused of a crime who cannot afford the cost of a lawyer “cannot be assured a fair trial unless counsel is provided for him.” Under *Gideon*, the Sixth Amendment right to effective counsel is an obligation of the states via the due process clause of the Fourteenth Amendment.

In 2018, the Sixth Amendment Center (6AC), a nonpartisan, nonprofit organization that provides technical assistance and evaluation services to policymakers focused on the constitutional requirement to provide effective assistance of counsel, assessed the Public Defense Services Commission (PDSC) and the systems they maintain to provide public defense for indigent defendants in Oregon's criminal justice system.

That [assessment](#) found: [T]he state has created a complex bureaucracy that collects a significant amount of indigent defense data, yet does not provide sufficient oversight or financial accountability. In some instances, the complex bureaucracy is itself a hindrance to effective assistance of counsel. Moreover, the report concludes that this complex bureaucracy



obscures an attorney compensation plan that is at root a fixed fee contract system that pits appointed lawyers' financial self-interest against the due process rights of their clients and is prohibited by national public defense standards.

In light of those findings, 6AC made recommendations for changes to Oregon's public defense system that were considered by a tri-branch workgroup that met for almost a year. The result of the workgroup was [Senate Bill 337](#), which makes large scale changes in public defense over the next decade. It modifies the makeup of the PDSC, transfers the PDSC from the judicial branch to the executive branch, and provides that until July 1, 2027, the PDSC executive director and commission members serve at the pleasure of the Governor. It disallows economic incentives or disincentives in the pay structure that could interfere with the ability of appointed counsel to provide effective assistance of counsel; directs the PDSC to contract directly with providers, making it responsible for selecting, appointing, paying, and supervising the individual attorneys appointed to represent indigent defendants; and requires the PDSC to promulgate and enforce standards, provide oversight and supervision, collect specific data, and regularly report to the Legislative Assembly on progress and needs.

The [American Bar Association](#) also found that Oregon needs approximately 1,300 additional public defenders. [House Bill 2467 A](#) (*not enacted*) would have created a student loan repayment program for public defenders and would have provided grants to support recruitment efforts.





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