



JUDICIARY

Oregon Legislative Policy and Research Office | 79th Legislative Assembly

March 19, 2018

2018 SUMMARY OF LEGISLATION: MEASURE SUMMARIES

The *2018 Summary of Legislation – Judiciary* summarizes selected measures related to this policy area that were considered by the 79th Oregon Legislative Assembly, including bills, memorials, and resolutions. This publication will become part of a more comprehensive *2018 Summary of Legislation* that includes all topic area summaries and committee membership lists.

This publication begins with a table highlighting measures that establish task forces or create reporting requirements. The summaries of selected measures follow in three groups—bills, memorials, and resolutions—each listed in numerical order.

Each summary provides information on the chief sponsors, committees assigned, background and current law, description of the measure, and date when the measure, if enacted, becomes effective. Each summary also includes a link to the measure on the [Oregon Legislative Information System \(OLIS\)](#), which provides a more comprehensive staff measure summary, all versions of the measure, amendments, public testimony, a complete measure history, and final vote tallies.

The *2018 Summary of Legislation* focuses on policy measures. Information on revenue measures is available on the [Legislative Revenue Office website](#). Information on the state budget and selected legislation that impacts state agencies is available on the [Legislative Fiscal Office website](#).

The Legislative Policy and Research Office will update this publication with each bill's effective date and assigned chapter in Oregon Laws 2018 when that information becomes available.

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JUDICIARY TASK FORCES AND REPORTING REQUIREMENTS

The following bills created task forces and reporting requirements. Additional information is provided in the bill summaries.

Bill Number	Requirement	Deadline
HB 4049	The Department of State Police must report on the status of the statewide SAFE kit tracking system to the Task Force on the Testing of the Sexual Assault Forensic Evidence Kits, the Governor, and the Attorney General. The measure extends the lifetime of the Task Force until June 30, 2021.	January 1, 2019
HB 4056	Requires the Higher Education Coordinating Commission report to interim Judiciary committees on scholarship program for children of public safety officers.	January 1, 2021
HB 4135	Requires the Advance Directive Adoption Committee to submit any advance directive form it adopts under this Act to an interim committee of the Legislative Assembly related to the Judiciary.	On or before September 1 of an even-numbered year following the date the Committee adopts the form

Senate Bill 1531

Not Enacted

Mental Health Sessions for Law Enforcement Officers

Chief Sponsors: Sens. Frederick, Manning Jr.; Rep. Piluso

Committees: Senate Judiciary

Background and Current Law: Current law requires police officers involved in the use of deadly physical force to complete at least one session with a mental health professional within six months. Law enforcement agencies are responsible for the cost of up to two sessions. No other mental health-related requirements are imposed on law enforcement officers, except fitness and background examinations that occur in the normal course of seeking certification and employment.

Bill Summary: Senate Bill 1531 would have added a requirement for law enforcement officers to participate in at least one session with a mental health professional every two years, paid for by law enforcement agencies.

Senate Bill 1538

Effective Date: January 1, 2019

Driver License Suspension Reform

At the request of: Senate Interim Committee on Business and Transportation

Committees: Senate Judiciary, House Judiciary

Background and Current Law: The Joint Interim Task Force on Reentry, Employment and Housing, created by Senate Bill 969 (2015), studied ways to improve successful reentry for persons with criminal histories. The task force met formally for more than a year and continued on its own initiative through the 2017 interim. It found that a driver license is critical to secure and maintain employment, but could be suspended for a number of reasons unrelated to driving.

Bill Summary: Senate Bill 1538 makes several changes to provisions involving driver licenses. First, it treats National Oceanic and Atmospheric Administration personnel the same as members of the military for certain driver license exceptions. It also eliminates probationary permits for persons whose licenses are revoked as habitual offenders; standardizes hardship permits (issued to drivers for a variety of reasons after a license suspension); and eliminates several types of suspensions for reasons unrelated to driving, as recommended by the Joint Interim Task Force on Reentry, Employment and Housing.

Oregon Laws 2018: Chapter 76

Senate Bill 1543

Effective Date: April 13, 2018

Public Safety Catchall

At the request of: Senate Interim Committee on Judiciary

Committees: Senate Judiciary, House Judiciary

Background and Current Law: Senate Bill 1543 addresses a number of public safety matters ranging from criminal offenses to appellate review of certain litigation.

Bill Summary: Among other things, Senate Bill 1543:

- adds qualification requirements for certain members of the Batterers' Intervention Program Advisory Committee and specifies requirements for program standards;
- makes a conforming amendment to 2016's Melissa's Law, which required retention of sexual assault forensic evidence kits for 60 years, and directs the Department of Justice to create informational materials describing services payable from the Sexual Assault Victims' Emergency Medical Response Fund;
- requires a state hospital, community mental health program, and other health care service providers to provide the Psychiatric Security Review Board with records pertaining to a person under the board's jurisdiction;
- modifies the procedures for return to the state hospital or another facility of someone on conditional release after having been found guilty except for insanity;
- modifies the elements of and exceptions to the offense of unlawful operation of an unmanned aircraft system;
- extends the court's authority to vacate a prostitution conviction of a victim of sex trafficking, to include convictions of municipal prostitution ordinances;
- prohibits garnishment and similar actions for money the Department of Corrections collects from inmates for an inmate transitional fund;
- mandates a 30-day sentence of incarceration under the existing crime of initiating a false report to law enforcement, if a SWAT team deployment results in death or serious physical injury;
- makes it a general condition of probation to follow reasonable recommendations from the risk and needs assessments that existing law requires probationers to undergo;
- adds Class B felonies for possession of a controlled substance to the list of felonies that a person may seek to have reduced to a Class A misdemeanor;
- allows credit for time served in jail for persons revoked from an optional probation sentence, similar to certain existing credits;
- gives the Oregon Supreme Court jurisdiction over certain appeals addressing the constitutionality of House Bill 3078 (2017), which addressed several topics including the reduction of presumptive sentences for certain repeat property offenders; and
- makes a technical amendment to the reporting requirements in HB 4145 (2018) for a law enforcement agency or prosecuting attorney's office regarding their actions after receiving a report that a person purchased a firearm despite a prohibition against possessing firearms.

Oregon Laws 2018: Chapter 120

Senate Bill 1545

Not Enacted

State Agency Payments for eCourt

At the request of: Chief Justice Balmer for Judicial Department

Committees: Senate General Government and Accountability, Joint Ways and Means

Background and Current Law: The Oregon Judicial Department (OJD) implemented eCourt technology court-by-court starting in 2012 until June 2016 when it became available statewide. The technology enables a wide range of integrated applications and functions, including electronic filing, case management, and public access. It transitioned OJD and participants in court systems from paper-intensive to electronic processes. Services accessible to the private sector are funded by filing fees and subscriptions; the public is not charged for services; and services provided to state agencies are currently funded with General Fund dollars. State agencies consume a high volume of services: about 80 percent of Oregon Court of Appeals and Supreme Court cases involve state agencies; about 64,000 filings are submitted into circuit courts and the tax court involving state agencies; and state agencies have more than 300 accounts with nearly 4,000 users accessing court records.

Bill Summary: Senate Bill 1545 would have funded eCourt services provided to state agencies by apportioning the cost between them based on each agency's number of full-time equivalent positions beginning July 1, 2019.

Senate Bill 1551

Effective Date: June 2, 2018

Data Breach Notification

Chief Sponsors: Sen. Prozanski; Rep. Holvey

Committees: Senate Judiciary, House Business and Labor

Background and Current Law: Oregon's Consumer Identity Theft Protection Act was enacted in 2007. Under the law, consumers must be given notice when a breach of their personal information occurs. The law prescribes the method for providing notice to consumers and the Attorney General as well as safeguards and protections of personal information. The law also allows for credit freezes on consumers' accounts to prevent fraudulent lines of credit from being established on consumers' accounts. There are three major credit reporting agencies who can place a freeze on a consumer's account, and a \$10 fee can be charged for each freeze, removal, or thaw at each of the agencies.

Bill Summary: Senate Bill 1551 provides free-of-charge placement, removal, and temporary lifts of credit account freezes. If an entity suffers a data breach, the notice of that breach must be given to the consumer in the most expeditious manner, but within 45 days. Additionally, if the entity that suffers a breach provides free credit monitoring or mitigation services to consumers, the entity may not condition acceptance of the free offer on the consumer providing a credit or debit card number. If the entity wishes to offer other services, they must be offered separately and distinctly from the free service. The measure also strengthens the safeguards to protect the security, confidentiality, and integrity of personal information.

Oregon Laws 2018: Chapter 10

Senate Bill 1556-A

Not Enacted

Lawsuits on Trust Deed Interest Transfers

Chief Sponsors: Sen. Hansell (at request of Community Banks of Oregon)

Committees: Senate Judiciary, Senate Rules, House Business and Labor

Background and Current Law: A trust deed is a legal instrument like a mortgage. It gives one party, the trustee, the right to secure performance of an obligation that the borrower owes to the lender. The trust deed is filed with the county after it is created, with trust deeds often transferred into the secondary mortgage market through an entity called the Mortgage Electronic Registration System (MERS). Once in the secondary market, subsequent transfers of the interest are not recorded with the county. In 2012, Multnomah County filed a lawsuit against several banks and MERS, alleging they failed to properly record transfers of trust deeds. The suit was settled in the county's favor. Currently, 11 other Oregon counties have filed on the same basis.

Bill Summary: Senate Bill 1556-A prohibits new lawsuits by counties based on the designation of the grantee or beneficiary, or upon lack of presenting the trust deed for recording in the county. The measure also prohibits the counties from charging a fee for instruments that transfer an interest in a trust deed but are not presented for recording.

Senate Bill 1562

Effective Date: January 1, 2019

Strangulation

Chief Sponsors: Sen. Taylor; Reps. Stark, Salinas; Sens. Hansell, Prozanski; Rep. Piluso

Committees: Senate Judiciary, House Judiciary

Background and Current Law: The crime of strangulation occurs when a person knowingly impedes the normal breathing or blood circulation of another person by applying pressure on the throat or neck, or blocking the nose or mouth. Strangulation is a Class A misdemeanor, but is elevated to a Class C felony when the offense is committed in the immediate presence of, or witnessed by the person's or victim's minor child, stepchild, or a minor residing in the household; victim is under age 10; person used, attempted to use, or threatened to use a dangerous or deadly weapon; the person has a prior conviction of strangulation, any degree of assault, or menacing against the same victim or three prior convictions of these crimes against any victim; or person knows that the victim is pregnant.

Bill Summary: Senate Bill 1562 adds applying pressure to the chest of another person as a means of committing strangulation. The measure also elevates strangulation to a Class C felony when the victim is a family or household member.

Oregon Laws 2018: Chapter 84

2018 MEASURE SUMMARIES: JUDICIARY

House Bill 4008

Effective Date: January 1, 2019

Racial and Ethnic Data in Civil Damage Award Calculations

Chief Sponsors: Reps Power, Stark; Sen. Prozanski; Rep. Sanchez

Committees: House Judiciary, Senate Judiciary

Background and Current Law: In a civil lawsuit, the court may award the plaintiff monetary damages in an effort to make the plaintiff whole or to return the plaintiff to a position as if the injury had not occurred. In many personal injury cases, a plaintiff's future earning potential must be analyzed to determine an appropriate level of award to compensate for the injury and its impact on the plaintiff's future. Courts may utilize tools and studies, such as U.S. Department of Labor lifetime earnings studies, U.S. Census Bureau statistics, and actuarial tables with mortality and work-life expectancy statistics, to assist with determining future impairment of earning capacity. Many of these tools allow data to be sorted by race, ethnicity, and gender.

Bill Summary: House Bill 4008 makes any calculations of projected future earnings that take race or ethnicity into account inadmissible in civil actions. It also provides that juries should be instructed that they may not take race or ethnicity into account when determining damages.

Oregon Laws 2018: Chapter 11

House Bill 4009

Effective Date: April 10, 2018

Parental Rights Restoration

Chief Sponsors: Rep. Sanchez

Committees: House Judiciary, Senate Human Services

Background and Current Law: Under Oregon law, a person's parental rights may be terminated under certain circumstances. An individual who has had their parental rights terminated may appeal the decision, but if the decision to terminate is upheld by the court or the parent decides not to appeal, the parent loses all legal rights. Currently, there is no process for the reinstatement of parental rights once they have been terminated.

Bill Summary: House Bill 4009 provides a process to reinstate parental rights. To obtain reinstatement, several conditions must be met, including that the child has not been adopted, no adoption is pending, and all relevant parties have received notice of the motion to reinstate parental rights. Furthermore, the fitness of the parent must be shown by clear and convincing evidence, the child must consent to the reinstatement, and reinstatement must be in the child's best interest. After reinstatement, the court retains jurisdiction of the child for six months and the Department of Human Services provides reunification services to the family.

Oregon Laws 2018: Chapter 89

House Bill 4030

Effective Date: January 1, 2019

Wildlife Restitution

At the request of: House Interim Committee on Agriculture and Natural Resources for Rep. Helm

Committees: House Agriculture and Natural Resources, Senate Environment and Natural Resources

Background and Current Law: In 2016, the Legislative Assembly enacted House Bill 4046, which increased penalties for unlawful taking of wildlife and allowed the Oregon Fish and Wildlife Commission to file suit for the recovery of civil damages for the taking of any listed wildlife. In 2017, a judge in Gilliam County found two men guilty of unlawfully possessing bighorn sheep remains, but ultimately denied the state's request for a restitution award, finding that the civil damages for unlawfully taking wildlife do not constitute "economic damages" necessary for purposes of restitution in criminal cases. This verdict was supported by a subsequent Court of Appeals case (*State v. Shockey*).

Bill Summary: House Bill 4030 allows courts to impose certain fines payable to the Oregon Fish and Wildlife Commission for criminal felony, misdemeanor, and violation offenses that involve the taking of wildlife.

Oregon Laws 2018: Chapter 14

House Bill 4049

Effective Date: April 3, 2018

Sexual Assault Forensic Evidence Kit Tracking System

Chief Sponsors: Rep. Barker

Committees: House Judiciary, Joint Ways and Means

Background and Current Law: Sexual assault forensic evidence kits (SAFE kits) are a series of tests and evidence collected from victims of sexual assault. The evidence gathered includes DNA, which may be tested to discover or verify the identity of an assailant. In 2016, Oregon began testing the backlog of approximately 5,600 untested kits. While efforts have been made to reduce the backlog, other factors have increased the number of kits being tested. The Task Force on the Testing of Sexual Assault Forensic Evidence Kits was established in 2016 to examine, review, and provide suggestions for improvement to the process of investigating sexual assaults and testing SAFE kits.

Bill Summary: House Bill 4049 directs the Oregon State Police (OSP) to form a committee to develop a SAFE kit tracking system. The OSP director must report the status of the tracking system to the Task Force, Governor, and Attorney General by January 1, 2019. Additionally, the measure extends the lifetime of the Task Force until June 30, 2021.

Oregon Laws 2018: Chapter 55

House Bill 4055

Effective Date: January 1, 2019

Failure to Perform the Duties of a Driver

Chief Sponsors: Reps. Olson, Barker

Committees: House Judiciary, Senate Judiciary

Background and Current Law: Three statutes require a driver in an accident involving damage to property, injury to or the death of another person, or injury to or the death of a domestic animal, to perform certain duties before leaving the scene of the accident. In *State v. Garcia-Cisneros*, the court held a driver is not obligated under the statute to return to the scene of the accident if the driver does not learn of the accident until after the driver has left the scene.

Bill Summary: House Bill 4055 modifies the duties a driver must perform when the driver knows or has reason to believe that the driver was in a collision involving property damage, injury to or the death of a person, or injury to or the death of a domestic animal. A driver who discovers, after leaving the scene, that the driver may have been involved in a collision must make a good faith effort to comply with these duties, and contact 9-1-1 if the collision resulted in injury or death.

Oregon Laws 2018: Chapter 22

House Bill 4056

Effective Date: March 16, 2018

Scholarships for Children of Deceased or Disabled Public Safety Officers

Chief Sponsors: Reps. Olson, Witt; Sen. Bentz; Rep. Salinas; Sen. Prozanski

Committees: House Judiciary, Senate Judiciary

Background and Current Law: In Oregon, property is subject to civil forfeiture when used in relation to prohibited conduct that involves criminal activities. Oregon law specifies disbursement of civil forfeiture proceeds, which fund a number of services and programs in the state. In 1999, the Public Safety Memorial Fund Board was created. It provides certain benefits to eligible officers and their family members, including educational scholarships. There is also a scholarship for children of public safety officers that is awarded by the Higher Education Coordinating Commission (HECC).

Bill Summary: House Bill 4056 distributes 10 percent of asset forfeitures into an account for scholarships awarded by the HECC, and changes the scholarship criteria, including specifying a qualifying death or disability for disbursement from the Public Safety Memorial Fund. The measure also allows disbursement of certain forfeiture proceeds for the support of all specialty courts.

Oregon Laws 2018: Chapter 23

House Bill 4094

Effective Date: January 1, 2019

Protective Proceedings

At the request of: House Interim Committee on Judiciary

Committees: House Judiciary, Senate Judiciary

Background and Current Law: When a personal injury case is settled on behalf of a minor or incapacitated person, the probate court determines if the settlement is reasonable. The parties submit affidavits in support of the settlement, which may contain sensitive and personal information. The affidavits are not confidential and the parties must redact sensitive information from the affidavit. Additionally, there is no requirement that a person who has been removed as a fiduciary in a protective proceeding report that removal to the court.

Bill Summary: House Bill 4094 makes confidential the affidavits in support of a petition for approval of a settlement involving a minor, incapacitated person, or decedent. The measure also requires immediate disclosure to the court when a person who is nominated to serve as a fiduciary in a protective proceeding has been removed or surcharged in a different proceeding. Disclosure must also be made in any future petitions for appointment as a fiduciary for a proposed protected person.

Oregon Laws 2018: Chapter 59

House Bill 4095

Effective Date: January 1, 2019

Confidential Communications with Lawyer Referral Services

At the request of: House Interim Committee on Judiciary

Committees: House Judiciary, Senate Judiciary

Background and Current Law: “Attorney-client privilege” refers to the legal right of clients to maintain the confidentiality of certain communications with their lawyers. It applies primarily to legal advice provided in the context of an attorney-client relationship, but it also applies to consultations with attorneys when a person is seeking representation. Clients hold and exercise the privilege to prevent disclosures, and only clients may waive protection.

Bill Summary: House Bill 4095 extends attorney-client privilege to individuals in need of legal advice who use lawyer referral services to connect with attorneys.

Oregon Laws 2018: Chapter 2

House Bill 4097

Effective Date: January 1, 2019

Court Facilitation Programs

At the request of: Chief Justice Balmer for Judicial Department

Committees: House Judiciary, Senate Judiciary

Background and Current Law: Oregon Judicial Department data shows that in 2016, nearly 80 percent of family law cases had at least one self-represented litigant and in landlord-tenant actions, over 90 percent of parties were self-represented. In light of the high number of self-represented litigants and changing legal needs, courts are seeking options for better assisting self-represented litigants.

Bill Summary: House Bill 4097 allows courts to establish a court facilitation program under the supervision of the presiding judge of the court. The presiding judge must jointly plan the program with the county law library, the State Court Administrator, the local bar association, and local recipients of the Legal Services Program. Additionally, the measure allows counties with a population of over 700,000 to enter into governmental agreements with the Oregon Judicial Department to provide law library services or to contract with associations for services, and allows law library services to include family law facilitation or court facilitation programs.

Oregon Laws 2018: Chapter 29

House Bill 4116

Effective Date: March 16, 2018

Distracted Driving

Chief Sponsors: Rep. Noble; Sen. Prozanski

Committees: House Judiciary, Senate Judiciary

Background and Current Law: In 2007, legislation was enacted making it a traffic violation for a minor to operate a motor vehicle while using a mobile communication device. The law was expanded in 2009 to apply to any person. In 2015, the Oregon Court of Appeals interpreted the law as prohibiting only talking and texting. The legislature clarified and expanded the offense in 2017 and increased penalties to a Class B traffic violation for a first offense; a Class A traffic violation for a subsequent offense within 10 years or for a first offense that contributes to an accident; and a Class B misdemeanor for a third offense within 10 years.

Bill Summary: House Bill 4116 modifies the exceptions and affirmative defenses to the offense of operating a motor vehicle while using a mobile communication device. It also specifies that enhanced classifications that depend on prior offenses only include prior convictions occurring on or after July 1, 2018.

Oregon Laws 2018: Chapter 32

House Bill 4135

Effective Date: June 2, 2018

Advance Directives

Chief Sponsors: Rep. Kotek; Sens. Prozanski, Steiner Hayward

Committees: House Health Care, Senate Judiciary

Background and Current Law: In 1993, Oregon adopted the first advance directive legislation in the nation. An advance directive is a legal document that appoints a representative to make health care decisions for another individual and/or allows a person to provide directions and preferences on receiving life-sustaining treatments if that individual becomes incapacitated. The advance directive does not apply when individuals can make their own health care decisions. The current advance directive form has not been modified since 1993.

Bill Summary: House Bill 4135 modifies Oregon's statutory advance directive form, changes the witnessing requirements for the form, allows notarization instead of witnessing, and establishes the Advance Directive Adoption Committee. The Committee is required to review the section of the form dealing with health care instructions every four years. If the Committee recommends modifications to that section of the form, the Oregon Legislative Assembly must enact the proposed changes before they can take effect.

Oregon Laws 2018: Chapter 36

House Bill 4145

Effective Date: January 1, 2019

Possession of Firearm Restrictions and Reporting Requirements

At the request of: Governor Brown

Committees: House Judiciary, Senate Judiciary

Background and Current Law: Current Oregon law prohibits certain individuals from knowingly possessing firearms or ammunition. Among those prohibited are those subject to restraining orders and persons convicted of qualifying misdemeanors against intimate partners. "Intimate partner" means the person's spouse, parent of the person's child, or persons who have been or are cohabitating, which does not include individuals who are or were in a sexual relationship but do not live together.

Bill Summary: House Bill 4145 expands the prohibition on possessing firearms to include those who are under court orders or who have qualifying convictions relating to family or household members, which includes persons who have been involved in sexually intimate relationships but who may not reside together. It also includes those who have been convicted of stalking in the prohibition of possessing a firearm or ammunition.

Additionally, the measure requires the Oregon State Police to enter qualifying convictions and terms of the judgments in the appropriate state and national databases and to send reports of attempted firearm purchases by prohibited individuals to the appropriate law enforcement entities. The Department must annually report on the number of attempted purchases by prohibited individuals and the outcomes of those attempts, including any investigations, charges, and resolutions.

Oregon Laws 2018: Chapter 5

House Bill 4149

Effective Date: January 1, 2019

Plea and Release Agreements

Chief Sponsors: Rep. Williamson; Sens. Manning Jr., Winters

Committees: House Judiciary, Senate Judiciary

Background and Current Law: In criminal cases, a plea agreement is an agreement between the defendant and the prosecutor whereby both parties avoid the uncertainty of trial for the certainty of a plea agreement. Sometimes these plea agreements can involve the defendant waiving certain rights. District attorneys are prohibited from conditioning a plea offer on a waiver of the right to exculpatory evidence or to the grand jury recording when the grand jury resulted in "a true bill." Oregon law also governs agreements in criminal cases about the defendant's release from custody pre-trial or post-conviction if the defendant has appealed the conviction.

Bill Summary: House Bill 4149 prohibits prosecuting attorneys from conditioning plea offers on a stipulation that an existing law is unconstitutional. The measure also prohibits courts from conditioning defendant's release on defendant's waiver of appearance at trial.

Oregon Laws 2018: Chapter 37

House Bill 4150

Effective Date: July 1, 2018

School Sexual Harassment Policies

Chief Sponsors: Rep. Salinas; Sens. Gelser, Thatcher

Committees: House Judiciary, Senate Education

Background and Current Law: School districts must adopt a policy on sexual harassment of students by staff or other students. At a minimum, the policy must apply to all students and staff and require investigations in a manner that does not adversely affect the educational assignments or study environment of the student. Upon conclusion of the investigation, the student who initiated the complaint and the student's parents are notified that the investigation has concluded.

Bill Summary: House Bill 4150 requires the notice to the student and student's parents to include whether a violation occurred, subject to applicable state and federal confidentiality laws. The measure extends the school district's sexual harassment policy by applying it to all persons who are on school property, at a school event, using school transportation, or at a school bus stop. Finally, the measure requires school districts to provide individuals receiving a sexual harassment violation notice with a clear, easy-to-read handout on their rights, legal and disciplinary options, and available resources.

Oregon Laws 2018: Chapter 38

House Bill 4162

Effective Date: June 2, 2018

Unauthorized Use of a Vehicle Changes

At the request of: Rep. Williamson

Committees: House Rules, Senate Finance and Revenue

Background and Current Law: "In prosecutions for the unlawful use of a vehicle, the prosecutor must prove beyond a reasonable doubt that the defendant knows the vehicle is being operated without the owner's consent. While a judge or jury may base a conviction on reasonable inferences drawn from circumstantial evidence, the Oregon Court of Appeals in State v. Korth (2015) concluded that certain fact patterns "require [] the stacking of inferences to the point of speculation." Because it is difficult to prove what a person's mental state is in court, some counties are experiencing an increase in the number of acquittals in these cases and are, as a result, prosecuting fewer stolen car cases.

Bill Summary: House Bill 4161 reduces the required mental state and allows a conviction for the unlawful use of a vehicle if a person takes, operates, exercises control over, or otherwise uses a vehicle, boat, or aircraft without the consent of owner.

Oregon Laws 2018: Chapter 66