

# CIVIL LAW



## CIVIL ACTIONS

### Civil Liability

Private schools in Oregon are subject to some, but not all, of the student safety-related statutes required for public schools. Public school districts must have a policy on sexual harassment that applies to the district's students and staff. Private schools are not required to have a policy or follow procedures for sexual harassment of students or staff. However, educators in private schools are mandatory reporters of abuse and must follow statutes outlining reporting and investigation of sexual conduct of an adult towards a child. [Senate Bill 197](#) allows a person to bring an action in court seeking to compel a private school to comply with the statutory requirements on teen dating violence, sexual harassment, and reporting of suspected child abuse or sexual conduct. The court order may specify requirements for showing compliance. If the school did not meet those requirements, the measure allows a student or parent to bring a private right of action against the private school for its failure to comply with the court order.

The Oregon Tort Claims Act makes public bodies liable for the torts of its officers, agents, and employees acting within the scope of their duties but limits the amount of damages that can be awarded against the public body. Claims against a state body, for claims arising between July 1, 2020 and July 1, 2021, are currently capped at \$2.3 million for single claimants and \$4.6 million for all claims arising out of an occurrence. Claims against local governments are capped at approximately \$770,000 for single claimants and \$1.5 million for all claims arising out of an occurrence. The caps increase each year based on changes to the Consumer Price Index. In its original form, [House Bill 2204](#) (HB 2204) would have increased the cap for damages against state and local governments for claims against public safety officers to \$5 million for single claimants and unlimited for all claims arising out of an occurrence and would have allowed an award of attorney fees to prevailing plaintiffs.

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See the **2021 Legislative Summary Report** for [Civil Law](#), which highlights policy measures that received a public hearing during Oregon's 2021 Regular Legislative Session.

The enrolled version of HB 2204 is described in the Civil Rights and Reparations section of this brief on [pg. 3](#).

The Legislative Assembly considered enacting a version of a Private Attorneys General Act (PAGA). The state of California enacted a PAGA in 2004, which allows an employee to file a claim with a state alleging violation of labor laws, and if the state does not provide notice that it will undertake an investigation, the individual may bring a claim against the employer directly on behalf of themselves or others. [House Bill 2205](#) (*not enacted*) would have created a process for private individuals and organizations to bring public enforcement actions on behalf of and in the name of the State of Oregon for violations of statute or rule for which a state official has the power to enforce.

On March 8, 2020, Governor Brown declared a state of emergency due to COVID-19 infections. In response to the COVID-19 emergency, various government entities at state, local, and federal levels, issued guidance and orders directing social distancing and methods for slowing the spread of coronavirus infections. [House Bill 2638](#) (*not enacted*), would have offered liability protection for damages caused by a person acting in reasonable compliance with the COVID-19 guidance applicable to the person's

business or professional services, but not for actions unrelated to COVID-19 or for those taken in gross negligence, recklessly, wantonly, or intentionally. The measure also did not provide liability protection for workers' compensation claims, fraud, or false claims brought on behalf of the state.

[House Bill 2571](#) requires the Oregon Department of Consumer and Business Services, in consultation with industry groups, to study liability for prescribed fires and report by July 1, 2022. The study must examine the accessibility of insurance coverage for prescribed fires and barriers to increasing accessibility to insurance coverage. The study must also examine the standards for liability, whether negligence or gross negligence, and whether states that have shifted from one standard to another observed a shift in the use of prescribed fire.

### Immigration

Respondents appearing in Immigration Court do not have a right to counsel, as it is categorized as a civil process. Unrepresented respondents are almost five-and-a-half times more likely to lose their deportation case than those who have an attorney. [House Bill 3230](#) (*not enacted*) would have created a statewide universal representation program to provide for specified immigration services, including legal services.

Oregon law prohibits any law enforcement agency of the State of Oregon or any political subdivision of the state from using agency moneys, equipment, or personnel for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws. This prohibition is frequently referred to as Oregon's Sanctuary law and was signed into law in July of 1987. [House Bill 3265](#) creates additional restrictions and clarifies certain existing restrictions on the use of public resources to assist in the enforcement of federal immigration laws and arrests of individuals based on violations of immigration laws.

### Other Civil Actions

Federal law requires that protection orders issued by other states, Indian tribes, or territories be given full faith and credit, meaning they must be recognized and enforced as though the order had been issued in the

enforcing jurisdiction. In Oregon, these orders are called "foreign restraining orders" ([ORS 24.190 \(2019\)](#)). U.S. Attorney for the District of Oregon, Billy J. Williams, and Oregon Attorney General Ellen Rosenblum, jointly issued Official Guidance for Enforcement of Tribal Protection Orders/"Foreign Restraining Orders" in January 2020, concluding that it was critical that "any gaps or obstacles that prevent adequate and appropriate enforcement [of tribal protection orders] from happening across the state or in individual jurisdictions be addressed and resolved." [Senate Bill 183](#) is the Legislative Assembly's response, establishing a statewide process for a party seeking enforcement of an order or judgment of a tribal court of record or a federally recognized Indian tribe and includes any judgment, decree, or order of those courts as a "foreign judgment."

### CIVIL RIGHTS AND REPARATIONS

The Create a Respectful and Open World for Natural Hair (CROWN) Act prohibits discrimination based on hairstyle and texture and was first enacted in California in 2019. Oregon prohibits school and workplace discrimination based on race, but the applicable definitions did not explicitly include hair type, texture, or style. The Legislative Assembly clarified that with [House Bill 2935](#), which prohibits discrimination based on physical characteristics including hair type, texture, and style within the definition of race in school discrimination policies, interscholastic organization activities, and in unlawful employment practices. The measure also prohibits school or employer dress codes or policies from disproportionately impacting members of a protected class.

[Senate Joint Memorial 4](#) urges Congress to pass [House Resolution 40](#), which establishes the Federal Commission to Study and Develop Reparation Proposals for African-Americans Act. Under the Act, the commission would examine slavery and discrimination in the colonies and the United States from 1619 to the present and recommend appropriate remedies. The Legislative Assembly considered two measures focused on state reparations. [Senate Bill 618](#) (*not enacted*) would have directed the Department of Administrative Services to study methods of providing reparations for slavery to Black

Oregonians while [Senate Bill 619](#) (*not enacted*) would have directed the Department of Revenue to establish a program to pay reparations to Black Oregonians who can demonstrate heritage in slavery.

Restorative Justice programs are an alternative approach to the traditional criminal justice processes. Restorative Justice is a community response to crime and other misconduct that focuses on addressing the harms done to victims and communities by holding offenders meaningfully accountable for their offenses. Examples of restorative justice practices include victim and offender dialogue meetings, restorative community service, and restorative community panels or boards.

The Justice Reinvestment Program is one approach Oregon has taken to spending resources with the goals of reducing recidivism while also decreasing prison use, protecting the public, and holding offenders accountable. [House Bill 2204](#), as adopted by the Legislative Assembly, directs the Oregon Criminal Justice Commission to establish a program to award grants to public and private entities for restorative justice programs and to adopt rules and convene an advisory committee to administer the grant program.

The Legislative Assembly considered [Senate Bill 499](#) (*not enacted*), which would have allowed a person to recover financial compensation if convicted of a felony and imprisoned, and later the conviction was reversed or vacated or the person received a grant of pardon on the grounds of innocence. Thirty-five states, the federal government, and Washington, D.C. allow for compensation for those who have been wrongfully convicted.

While Oregon has a variety of organizations and services for its immigrant communities, there is currently no statewide strategy. According to the American Immigration Council, one out of every 10 Oregonians is foreign-born, and one of every nine Oregon residents is a native-born American who has at least one immigrant parent. [Senate Bill 778](#) establishes the Office of Immigrant and Refugee Advancement to operate a statewide immigration and refugee integration strategy, which includes partnering with existing immigrant and refugee programs, collecting data on immigrant and refugee

populations in Oregon and their needs and being involved in the legislative process at the state and federal levels.

In February 2006, the Governor's Taskforce on Equality in Oregon was established by Executive Order No. 06-03 to study whether changes to Oregon law were necessary to guarantee that Oregonians are protected from discrimination in employment, housing, public accommodations, and other opportunities, regardless of sexual orientation or gender identity. Based on the Taskforce's recommendations, the Legislative Assembly enacted the Oregon Equality Act (also known as [Senate Bill 2](#)) in 2007, a law to protect lesbian, gay, bisexual and transgender (LGBT) people from discrimination. [House Bill 3041](#) builds on this and adds "gender identity" to all statutes that reference "sexual orientation," and expands certain protections relating to real property to include gender identity.

### Constitutional Law

The 13th amendment to the United States Constitution provides that "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." Although slavery was formally abolished in the United States in 1865 after the Civil War, new criminal offenses known as "Black codes," were created to criminalize formerly enslaved Blacks, thereby ensuring their freedom would be limited and they could continue to be used as cheap labor.

The 13th amendment also allows companies to use prison labor programs for free or cheap labor, which are considered by some as a means of promoting trade skills and rehabilitation. Lawmakers in Washington, D.C. and in several states have pushed to remove what is known as the slavery loophole. [Senate Joint Memorial 2](#) urges Congress to remove the "punishment" clause from the 13th amendment which allows slavery or involuntary servitude to be punishment for a crime.

Similarly, Section 34, Article I of the [Oregon Constitution](#) states, "There shall be neither slavery, nor involuntary servitude in the State, otherwise than as a punishment for crime, where of the party shall

have been duly convicted.” Several states have removed or have begun the process to remove similar language from their constitutions, including Colorado, Nebraska, and Utah. The Legislative Assembly adopted [Senate Joint Resolution 10](#), which proposes to voters an amendment to the Oregon Constitution to remove language allowing slavery and involuntary servitude in all circumstances, including as punishment for a crime, while clarifying that a convicted person may still be ordered by a court or probation or parole agency to engage in alternatives to incarceration as a part of their sentencing.

### Rights of Homeless Persons

In 2019, the Circuit Court of Appeals in *Martin v. Boise* (920 F. 3d 584) held that the government cannot criminalize certain conduct, such as lying, sitting, or sleeping on the streets, that is unavoidable as a result of homelessness. Some localities in Oregon have enacted regulations for managing the use of public spaces. [House Bill 3115](#) requires local laws on outdoor public spaces to be reasonable with regards to persons experiencing homelessness and creates an affirmative defense to an alleged violation of a local law that the law is not objectively reasonable. The measure also allows persons experiencing homelessness to file suit for relief to challenge the objective reasonableness of local laws. It does not create a right of action for monetary damages; however, it does authorize the court, under certain circumstances, to award attorney fees to a prevailing plaintiff.

A related homelessness bill, [House Bill 2367](#) (*not enacted*) would have established the Oregon Right to Rest Act, giving homeless persons specific rights and aiming to decriminalize homelessness. It would also have created an affirmative defense to certain civil and criminal charges related to occupying public spaces and would have allowed a complaint alleging unlawful practice to be filed with the Bureau of Labor and Industry.

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## EMPLOYMENT, BUSINESS, AND LABOR REGULATION

The Legislative Assembly passed [Senate Bill 576](#) (Kaylee’s Law) during the 2019 legislative session to distinguish the appearance, equipment, and

authorities of campus public safety providers and certified law enforcement and private security providers. [Senate Bill 116](#) makes it unlawful for a private security provider or an entity that employs private security providers to possess or use equipment, vehicles, uniforms, or titles that imply that the provider or entity is affiliated with a public or private safety agency as defined in [ORS 181A.355](#) (2019).

Judicial marshals have the authority of police officers and are certified by the Department of Public Safety Standards and Training (DPSST). However, prior to the enactment of [Senate Bill 297](#) (SB 297), judicial marshals were not considered police officers for purposes of the Public Employees Retirement System (PERS). SB 297 includes certified judicial marshals within the definition of police officer in PERS.

The DPSST, in consultation with the Board on Public Safety Standards and Training, currently regulates just over 20,000 providers of private security services through the issuance and removal of licensure. [House Bill 2527](#) amends the licensure requirements of private security entities and provides a process for obtaining licensure, including an investigation by DPSST into the character, competency, and reliability of the applicant.

[Senate Bill 768](#) (SB 768) updates the statutes governing attorneys, the practice of law, and the Oregon State Bar. Prior to enactment of SB 768, a person seeking to lawfully practice law in Oregon was required to pass the Oregon Bar exam. SB 768 authorizes the Supreme Court to adopt rules on admission of individuals with substantial legal education as associate members of the Bar without taking the exam.

[House Bill 3284](#) (HB 3284) provides protection for consumer data gathered by applications designed to trace the spread of COVID-19. HB 3284 prohibits covered entities from collecting, using, or disclosing a person's data related to exposure, infection, or other information related to COVID-19 without the individual's affirmative express consent.

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## FIDUCIARY AND PROTECTIVE PROCEEDINGS

Legislation passed during the 2021 regular session related to fiduciary and protective proceedings include measures concerning the appointment of guardians and other representatives.

[Senate Bill 182](#) provides that a petition for dissolution, separation, or annulment of a marriage by one partner prohibits the other partner from acting under authority of a power of attorney, health care representative under an advance directive, or attorney-in-fact under a declaration for mental health treatment and revokes the authority under those documents when the dissolution or annulment is complete. The measure also clarifies liability protection for spouses when property is held in certain trusts and specifies the process an attorney must use when destroying wills.

In 2019, the Legislative Assembly required notice of the appointment of a guardian to be sent by the newly appointed guardian to a list of interested persons, including the protected person. [Senate Bill 190](#) specifies the process for notice in these cases, including requiring the notice to be delivered in a manner reasonably calculated to be understood by the protected person. The guardian must then report back to the court, within 30 days, on the date, time, and method of giving notice to the protected person.

Prior to enactment of [Senate Bill 418](#) (SB 418), Oregon statutes did not limit a law enforcement officer's authority to use false information during the custodial interview of a minor. SB 418 establishes that a statement made by a minor during a custodial interview conducted by a peace officer, related to a misdemeanor or felony crime, is presumed to be involuntary if the peace officer intentionally used information known by the officer to be false to elicit the statement.

Special Immigrant Juvenile (SIJ) status is a type of lawful permanent residency for persons who meet the federal statutory requirements, which includes that the person be under age 21, not married, currently living in the U.S., and have a valid state court order that finds the person is a dependent of the court or in the custody of a state agency, department, or individual or entity appointed by the court; who cannot be reunified with one or both parents because of abuse,

abandonment, or neglect; and that it is not in the best interest of the person to be returned to the country of nationality or last residence. [Senate Bill 572](#) creates a new category of persons for whom a guardian may be appointed, called a "vulnerable youth," which is a person between the ages of 18 and 21 who is eligible for classification as a special immigrant juvenile and who cannot be reunified with one or more parent due to abuse, neglect, or abandonment that occurred when the person was a minor. Additionally, the youth must consent to the guardianship and it must be designed to encourage the youth's self-reliance and independence.

[Senate Bill 578](#) creates a three-county pilot program to provide counsel for proposed protected persons or persons already under guardianship when the person requests counsel, an objection is made or filed, the court visitor recommends counsel, or the court deems the person needs counsel. If the estate of the person cannot pay the attorney fees for representation, then costs of representation shall be at state expense through the Office of Public Defense Services.

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## PROBATE AND ESTATES

Oregon law requires several forms or documents to be executed or acknowledged in the presence of a witness to be effective. [Senate Bill 220](#) provides that remote attestation of documents and forms may be allowed if the person's identification is provided to a satisfactory level and all requirements are followed. The requirements include that the parties be in electronic communication in real time, and they complete a declaration of remote attestation under penalty of perjury. Remote attestation under this measure cannot be used for execution of wills, documents requiring notarial acts, or the witnessing of signatures on petitions.

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