

House Bill 2843

Sponsored by Representatives OLSON, MINNIS, Senators BROWN, VERGER; Representatives BARKER, BERGER, BEYER, BOONE, BOQUIST, BRUUN, BUCKLEY, BURLEY, BUTLER, CAMERON, CANNON, CLEM, DALLUM, C EDWARDS, D EDWARDS, ESQUIVEL, FLORES, GARRARD, GILLIAM, GILMAN, GIROD, GREENLICK, HANNA, HOLVEY, HUNT, JENSON, KOMP, KOTEK, KRIEGER, KRUMMEL, LIM, MAURER, MERKLEY, MORGAN, NELSON, READ, RICHARDSON, RILEY, ROBLAN, SCHAUFLEER, SCOTT, G SMITH, P SMITH, THATCHER, TOMEI, WHISNANT, WITT, Senators ATKINSON, AVAKIAN, BATES, BEYER, BURDICK, CARTER, COURTNEY, DECKERT, DEVLIN, FERRIOLI, G GEORGE, L GEORGE, JOHNSON, KRUSE, METSGER, MONNES ANDERSON, MONROE, NELSON, PROZANSKI, STARR, WESTLUND, WINTERS

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Creates crime of furnishing sexually explicit material to child. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.

Creates crime of luring minor. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both.

Modifies crime of sending obscene materials to minors to crime of sending sexually explicit material to minor.

A BILL FOR AN ACT

1
2 Relating to crime; creating new provisions; amending ORS 131.125, 131.602, 161.005, 166.715, 166.725,
3 167.062, 167.070 and 342.143; and repealing ORS 167.065, 167.087 and 167.089.

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

SECTION 1. As used in sections 2 and 3 of this 2007 Act:

5 (1) **"Child" means a person under 13 years of age.**

6 (2) **"Furnishes" means to sell, give, rent, loan or otherwise provide.**

7 (3) **"Minor" means a person under 18 years of age.**

8 (4) **"Sexual conduct" means actual or simulated:**

9 (a) **Human masturbation or sexual intercourse;**

10 (b) **Genital-genital, oral-genital, anal-genital or oral-anal contact, whether between per-**
11 **sons of the same or opposite sex or between humans and animals;**

12 (c) **Penetration of the vagina or rectum by any object other than as part of a medical**
13 **diagnosis or as part of a personal hygiene practice; or**

14 (d) **Touching of the genitals, pubic areas or buttocks of the human male or female or of**
15 **the breasts of the human female.**

16 (5) **"Sexually explicit material" means material containing visual images of acts of actual**
17 **or simulated:**

18 (a) **Human masturbation or sexual intercourse;**

19 (b) **Genital-genital, oral-genital, anal-genital or oral-anal contact, whether between per-**
20 **sons of the same or opposite sex or between humans and animals; or**

21 (c) **Penetration of the vagina or rectum by any object other than as part of a personal**
22 **hygiene practice.**

23 **SECTION 2. (1) A person commits the crime of furnishing sexually explicit material to**
24

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 a child if the person intentionally furnishes a child, or intentionally permits a child to view,
2 sexually explicit material and the person knows that the material is sexually explicit mate-
3 rial.

4 (2) An employee of a bona fide museum, school or public library, acting within the scope
5 of regular employment, is not liable to prosecution for violation of subsection (1) of this
6 section.

7 (3) In a prosecution under subsection (1) of this section, it is an affirmative defense:

8 (a) That the sexually explicit material was furnished, or the viewing was permitted, solely
9 for the purpose of sex education, art education or psychological or medical treatment and
10 was furnished or permitted by the child's parent or legal guardian, by an educator or treat-
11 ment provider or by another person acting on behalf of the parent, legal guardian, educator
12 or treatment provider;

13 (b) That the defendant was charged with furnishing, or permitting the viewing of, mate-
14 rial the sexually explicit portions of which form merely an incidental part of an otherwise
15 nonoffending whole and serve some purpose other than titillation;

16 (c) That the defendant had reasonable cause to believe that the person to whom the
17 sexually explicit material was furnished, or who was permitted to view the material, was not
18 a child; or

19 (d) That the defendant was less than three years older than the child at the time of the
20 alleged offense.

21 (4) In a prosecution under subsection (1) of this section, it is not a defense that the
22 person to whom the sexually explicit material was furnished or who was permitted to view
23 the material was not a child but was a law enforcement officer posing as a child.

24 (5) Furnishing sexually explicit material to a child is a Class A misdemeanor.

25 **SECTION 3.** (1) A person commits the crime of luring a minor if the person:

26 (a) Furnishes to, or uses with, a minor a visual representation or explicit verbal de-
27 scription or narrative account of sexual conduct; and

28 (b) Furnishes or uses the representation, description or account for the purpose of:

29 (A) Arousing or satisfying the sexual desires of the person or another person; or

30 (B) Inducing the minor to engage in sexual conduct.

31 (2) In a prosecution under subsection (1) of this section, it is an affirmative defense:

32 (a) That the representation, description or account was furnished or used for the purpose
33 of psychological or medical treatment and was furnished by a treatment provider or by an-
34 other person acting on behalf of the treatment provider;

35 (b) That the defendant had reasonable cause to believe that the person to whom the
36 representation, description or account was furnished or with whom the representation, de-
37 scription or account was used was not a minor;

38 (c) That the defendant was less than three years older than the minor at the time of the
39 alleged offense; or

40 (d) That the sexually explicit material was furnished, or the viewing was permitted, solely
41 for the purpose of sex education, art education or psychological or medical treatment and
42 was furnished or permitted by the child's parent or legal guardian, by an educator or treat-
43 ment provider or by another person acting on behalf of the parent, legal guardian, educator
44 or treatment provider.

45 (3) In a prosecution under subsection (1) of this section, it is not a defense that the

1 **person to whom the representation, description or account was furnished or with whom the**
2 **representation, description or account was used was not a minor but was a law enforcement**
3 **officer posing as a minor.**

4 **(4) Luring a minor is a Class C felony.**

5 **SECTION 4.** ORS 131.602 is amended to read:

6 131.602. The crimes to which ORS 131.550 (11)(b) applies are:

7 (1) Bribe giving, as defined in ORS 162.015.

8 (2) Bribe receiving, as defined in ORS 162.025.

9 (3) Public investment fraud, as defined in ORS 162.117.

10 (4) Bribing a witness, as defined in ORS 162.265.

11 (5) Bribe receiving by a witness, as defined in ORS 162.275.

12 (6) Simulating legal process, as defined in ORS 162.355.

13 (7) Official misconduct in the first degree, as defined in ORS 162.415.

14 (8) Custodial interference in the second degree, as defined in ORS 163.245.

15 (9) Custodial interference in the first degree, as defined in ORS 163.257.

16 (10) Buying or selling a person under 18 years of age, as defined in ORS 163.537.

17 (11) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.

18 (12) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.

19 (13) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.

20 (14) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.

21 (15) Possession of materials depicting sexually explicit conduct of a child in the first degree, as
22 defined in ORS 163.688.

23 (16) Possession of materials depicting sexually explicit conduct of a child in the second degree,
24 as defined in ORS 163.689.

25 (17) Theft in the second degree, as defined in ORS 164.045.

26 (18) Theft in the first degree, as defined in ORS 164.055.

27 (19) Aggravated theft in the first degree, as defined in ORS 164.057.

28 (20) Theft by extortion, as defined in ORS 164.075.

29 (21) Theft by deception, as defined in ORS 164.085, if it is a felony or a Class A misdemeanor.

30 (22) Theft by receiving, as defined in ORS 164.095, if it is a felony or a Class A misdemeanor.

31 (23) Theft of services, as defined in ORS 164.125, if it is a felony or a Class A misdemeanor.

32 (24) Unauthorized use of a vehicle, as defined in ORS 164.135.

33 (25) Mail theft or receipt of stolen mail, as defined in ORS 164.162.

34 (26) Laundering a monetary instrument, as defined in ORS 164.170.

35 (27) Engaging in a financial transaction in property derived from unlawful activity, as defined
36 in ORS 164.172.

37 (28) Burglary in the second degree, as defined in ORS 164.215.

38 (29) Burglary in the first degree, as defined in ORS 164.225.

39 (30) Possession of a burglary tool or theft device, as defined in ORS 164.235.

40 (31) Unlawful entry into a motor vehicle, as defined in ORS 164.272.

41 (32) Arson in the second degree, as defined in ORS 164.315.

42 (33) Arson in the first degree, as defined in ORS 164.325.

43 (34) Computer crime, as defined in ORS 164.377.

44 (35) Robbery in the third degree, as defined in ORS 164.395.

45 (36) Robbery in the second degree, as defined in ORS 164.405.

- 1 (37) Robbery in the first degree, as defined in ORS 164.415.
- 2 (38) Unlawful labeling of a sound recording, as defined in ORS 164.868.
- 3 (39) Unlawful recording of a live performance, as defined in ORS 164.869.
- 4 (40) Unlawful labeling of a videotape recording, as defined in ORS 164.872.
- 5 (41) A violation of ORS 164.877.
- 6 (42) Endangering aircraft, as defined in ORS 164.885.
- 7 (43) Interference with agricultural operations, as defined in ORS 164.887.
- 8 (44) Forgery in the second degree, as defined in ORS 165.007.
- 9 (45) Forgery in the first degree, as defined in ORS 165.013.
- 10 (46) Criminal possession of a forged instrument in the second degree, as defined in ORS 165.017.
- 11 (47) Criminal possession of a forged instrument in the first degree, as defined in ORS 165.022.
- 12 (48) Criminal possession of a forgery device, as defined in ORS 165.032.
- 13 (49) Criminal simulation, as defined in ORS 165.037.
- 14 (50) Fraudulently obtaining a signature, as defined in ORS 165.042.
- 15 (51) Fraudulent use of a credit card, as defined in ORS 165.055.
- 16 (52) Negotiating a bad check, as defined in ORS 165.065.
- 17 (53) Possessing a fraudulent communications device, as defined in ORS 165.070.
- 18 (54) Unlawful factoring of a payment card transaction, as defined in ORS 165.074.
- 19 (55) Falsifying business records, as defined in ORS 165.080.
- 20 (56) Sports bribery, as defined in ORS 165.085.
- 21 (57) Sports bribe receiving, as defined in ORS 165.090.
- 22 (58) Misapplication of entrusted property, as defined in ORS 165.095.
- 23 (59) Issuing a false financial statement, as defined in ORS 165.100.
- 24 (60) Obtaining execution of documents by deception, as defined in ORS 165.102.
- 25 (61) A violation of ORS 165.543.
- 26 (62) Cellular counterfeiting in the third degree, as defined in ORS 165.577.
- 27 (63) Cellular counterfeiting in the second degree, as defined in ORS 165.579.
- 28 (64) Cellular counterfeiting in the first degree, as defined in ORS 165.581.
- 29 (65) Identity theft, as defined in ORS 165.800.
- 30 (66) A violation of ORS 166.190.
- 31 (67) Unlawful use of a weapon, as defined in ORS 166.220.
- 32 (68) A violation of ORS 166.240.
- 33 (69) Unlawful possession of a firearm, as defined in ORS 166.250.
- 34 (70) A violation of ORS 166.270.
- 35 (71) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or
36 firearms silencer, as defined in ORS 166.272.
- 37 (72) A violation of ORS 166.275.
- 38 (73) Unlawful possession of armor piercing ammunition, as defined in ORS 166.350.
- 39 (74) A violation of ORS 166.370.
- 40 (75) Unlawful possession of a destructive device, as defined in ORS 166.382.
- 41 (76) Unlawful manufacture of a destructive device, as defined in ORS 166.384.
- 42 (77) Possession of a hoax destructive device, as defined in ORS 166.385.
- 43 (78) A violation of ORS 166.410.
- 44 (79) Providing false information in connection with a transfer of a firearm, as defined in ORS
45 166.416.

- 1 (80) Improperly transferring a firearm, as defined in ORS 166.418.
- 2 (81) Unlawfully purchasing a firearm, as defined in ORS 166.425.
- 3 (82) A violation of ORS 166.429.
- 4 (83) A violation of ORS 166.470.
- 5 (84) A violation of ORS 166.480.
- 6 (85) A violation of ORS 166.635.
- 7 (86) A violation of ORS 166.638.
- 8 (87) Unlawful paramilitary activity, as defined in ORS 166.660.
- 9 (88) A violation of ORS 166.720.
- 10 (89) Prostitution, as defined in ORS 167.007.
- 11 (90) Promoting prostitution, as defined in ORS 167.012.
- 12 (91) Compelling prostitution, as defined in ORS 167.017.
- 13 (92) Exhibiting an obscene performance to a minor, as defined in ORS 167.075.
- 14 (93) Unlawful gambling in the second degree, as defined in ORS 167.122.
- 15 (94) Unlawful gambling in the first degree, as defined in ORS 167.127.
- 16 (95) Possession of gambling records in the second degree, as defined in ORS 167.132.
- 17 (96) Possession of gambling records in the first degree, as defined in ORS 167.137.
- 18 (97) Possession of a gambling device, as defined in ORS 167.147.
- 19 (98) Possession of a gray machine, as defined in ORS 167.164.
- 20 (99) Cheating, as defined in ORS 167.167.
- 21 (100) Tampering with drug records, as defined in ORS 167.212.
- 22 (101) A violation of ORS 167.262.
- 23 (102) Research and animal interference, as defined in ORS 167.312.
- 24 (103) Animal abuse in the first degree, as defined in ORS 167.320.
- 25 (104) Aggravated animal abuse in the first degree, as defined in ORS 167.322.
- 26 (105) Animal neglect in the first degree, as defined in ORS 167.330.
- 27 (106) Interfering with an assistance, a search and rescue or a therapy animal, as defined in ORS
- 28 167.352.
- 29 (107) Involvement in animal fighting, as defined in ORS 167.355.
- 30 (108) Dogfighting, as defined in ORS 167.365.
- 31 (109) Participation in dogfighting, as defined in ORS 167.370.
- 32 (110) Unauthorized use of a livestock animal, as defined in ORS 167.385.
- 33 (111) Interference with livestock production, as defined in ORS 167.388.
- 34 (112) A violation of ORS 167.390.
- 35 (113) A violation of ORS 471.410.
- 36 (114) Failure to report missing precursor substances, as defined in ORS 475.955.
- 37 (115) Illegally selling drug equipment, as defined in ORS 475.960.
- 38 (116) Providing false information on a precursor substances report, as defined in ORS 475.965.
- 39 (117) Unlawful delivery of an imitation controlled substance, as defined in ORS 475.912.
- 40 (118) A violation of ORS 475.840, if it is a felony or a Class A misdemeanor.
- 41 (119) A violation of ORS 475.914, if it is a felony or a Class A misdemeanor.
- 42 (120) A violation of ORS 475.916.
- 43 (121) A violation of ORS 475.906, if it is a felony or a Class A misdemeanor.
- 44 (122) A violation of ORS 475.904 (2).
- 45 (123) Misuse of an identification card, as defined in ORS 807.430.

1 (124) Unlawful production of identification cards, licenses, permits, forms or camera cards, as
2 defined in ORS 807.500.

3 (125) Transfer of documents for the purposes of misrepresentation, as defined in ORS 807.510.

4 (126) Using an invalid license, as defined in ORS 807.580.

5 (127) Permitting misuse of a license, as defined in ORS 807.590.

6 (128) Using another's license, as defined in ORS 807.600.

7 (129) Criminal driving while suspended or revoked, as defined in ORS 811.182, when it is a fel-
8 ony.

9 (130) Driving while under the influence of intoxicants, as defined in ORS 813.010, when it is a
10 felony.

11 (131) Unlawful distribution of cigarettes, as defined in ORS 323.482.

12 (132) A violation of ORS 180.440 (2).

13 (133) A violation described in ORS 475.846 to 475.894, if it is a felony.

14 **(134) Furnishing sexually explicit material to a child, as defined in section 2 of this 2007**
15 **Act.**

16 **(135) Luring a minor, as defined in section 3 of this 2007 Act.**

17 ~~[(134)]~~ **(136)** An attempt, conspiracy or solicitation to commit a crime in subsections (1) to
18 ~~[(133)]~~ **(135)** of this section if the attempt, conspiracy or solicitation is a felony or a Class A
19 misdemeanor.

20 **SECTION 5.** ORS 161.005 is amended to read:

21 161.005. ORS 161.005 to 161.055, 161.085 to 161.125, 161.150 to 161.175, 161.190 to 161.275, 161.290
22 to 161.370, 161.405 to 161.485, 161.505 to 161.585, 161.605, 161.615 to 161.685, 161.705 to 161.737,
23 162.005, 162.015 to 162.035, 162.055 to 162.115, 162.135 to 162.205, 162.225 to 162.375, 162.405 to
24 162.425, 162.465, 163.005, 163.115, 163.125 to 163.145, 163.160 to 163.208, 163.215 to 163.257, 163.275,
25 163.285, 163.305 to 163.467, 163.505 to 163.575, 163.665 to 163.693, 164.005, 164.015 to 164.135, 164.140,
26 164.205 to 164.270, 164.305 to 164.377, 164.395 to 164.415, 164.805, 164.877, 165.002 to 165.109, 165.805,
27 166.005 to 166.095, 166.350, 166.382, 166.384, 166.660, 167.002 to 167.027, 167.060 to 167.100, 167.117,
28 167.122 to 167.162, 167.203 to 167.252, 167.310 to 167.340 and 167.350, 167.810 and 167.820 **and**
29 **sections 2 and 3 of this 2007 Act**, shall be known and may be cited as Oregon Criminal Code of
30 1971.

31 **SECTION 6.** ORS 131.125 is amended to read:

32 131.125. (1) A prosecution for aggravated murder, murder, attempted murder or aggravated
33 murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of
34 manslaughter may be commenced at any time after the commission of the attempt, conspiracy or
35 solicitation to commit aggravated murder or murder, or the death of the person killed.

36 (2) A prosecution for any of the following felonies may be commenced within six years after the
37 commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime
38 before the victim attains 30 years of age or within 12 years after the offense is reported to a law
39 enforcement agency or the Department of Human Services, whichever occurs first:

40 (a) Criminal mistreatment in the first degree under ORS 163.205.

41 (b) Rape in the third degree under ORS 163.355.

42 (c) Rape in the second degree under ORS 163.365.

43 (d) Rape in the first degree under ORS 163.375.

44 (e) Sodomy in the third degree under ORS 163.385.

45 (f) Sodomy in the second degree under ORS 163.395.

- 1 (g) Sodomy in the first degree under ORS 163.405.
- 2 (h) Unlawful sexual penetration in the second degree under ORS 163.408.
- 3 (i) Unlawful sexual penetration in the first degree under ORS 163.411.
- 4 (j) Sexual abuse in the second degree under ORS 163.425.
- 5 (k) Sexual abuse in the first degree under ORS 163.427.
- 6 (L) Using a child in a display of sexual conduct under ORS 163.670.
- 7 (m) Encouraging child sexual abuse in the first degree under ORS 163.684.
- 8 (n) Incest under ORS 163.525.
- 9 (o) Promoting prostitution under ORS 167.012.
- 10 (p) Compelling prostitution under ORS 167.017.

11 **(q) Luring a minor under section 3 of this 2007 Act.**

12 (3) A prosecution for any of the following misdemeanors may be commenced within four years
 13 after the commission of the crime or, if the victim at the time of the crime was under 18 years of
 14 age, anytime before the victim attains 22 years of age or within four years after the offense is re-
 15 ported to a law enforcement agency or the Department of Human Services, whichever occurs first:

- 16 (a) Sexual abuse in the third degree under ORS 163.415.
- 17 *[(b) Furnishing obscene materials to minors under ORS 167.065.]*

18 **(b) Furnishing sexually explicit material to a child under section 2 of this 2007 Act.**

19 (c) Sending *[obscene materials to minors]* **sexually explicit material to a minor** under ORS
 20 167.070.

- 21 (d) Exhibiting an obscene performance to a minor under ORS 167.075.
- 22 (e) Displaying obscene materials to minors under ORS 167.080.

23 (4) In the case of crimes described in subsection (2)(L) of this section, the “victim” is the child
 24 engaged in sexual conduct. In the case of the crime described in subsection (2)(n) of this section, the
 25 “victim” is the party to the incest other than the party being prosecuted. In the case of crimes de-
 26 scribed in subsection (2)(o) and (p) of this section, the “victim” is the child whose acts of prostitution
 27 are promoted or compelled.

28 (5) A prosecution for arson in any degree may be commenced within six years after the com-
 29 mission of the crime.

30 (6) Except as provided in subsection (7) of this section or as otherwise expressly provided by
 31 law, prosecutions for other offenses must be commenced within the following periods of limitations
 32 after their commission:

- 33 (a) For any other felony, three years.
- 34 (b) For any misdemeanor, two years.
- 35 (c) For a violation, six months.

36 (7) If the period prescribed in subsection (6) of this section has expired, a prosecution never-
 37 theless may be commenced as follows:

38 (a) If the offense has as a material element either fraud or the breach of a fiduciary obligation,
 39 prosecution may be commenced within one year after discovery of the offense by an aggrieved party
 40 or by a person who has a legal duty to represent an aggrieved party and who is not a party to the
 41 offense, but in no case shall the period of limitation otherwise applicable be extended by more than
 42 three years;

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

1 more than three years; or

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

7 (8) Notwithstanding subsection (2) of this section, a prosecution for rape in the first or second
 8 degree or sodomy in the first or second degree may be commenced within 12 years after the com-
 9 mission of the crime if the defendant is identified after the period described in subsection (2) of this
 10 section on the basis of DNA (deoxyribonucleic acid) sample comparisons.

11 **SECTION 7.** ORS 166.715 is amended to read:

12 166.715. As used in ORS 166.715 to 166.735, unless the context requires otherwise:

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

17 (2) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business
 18 trust or other profit or nonprofit legal entity, and includes any union, association or group of indi-
 19 viduals associated in fact although not a legal entity, and both illicit and licit enterprises and gov-
 20 ernmental and nongovernmental entities.

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

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

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

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

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

41 (A) ORS 59.005 to 59.451, 59.660 to 59.830, 59.991 and 59.995, relating to securities;

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

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

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

- 1 (E) ORS 162.455, relating to interference with legislative operation;
- 2 (F) ORS 163.095 to 163.115, 163.118, 163.125 and 163.145, relating to criminal homicide;
- 3 (G) ORS 163.160 to 163.205, relating to assault and related offenses;
- 4 (H) ORS 163.225 and 163.235, relating to kidnapping;
- 5 (I) ORS 163.275, relating to coercion;
- 6 (J) ORS 163.670 to 163.693, relating to sexual conduct of children;
- 7 (K) ORS 164.015, 164.043, 164.045, 164.055, 164.057, 164.075 to 164.095, 164.125, 164.135, 164.140,
- 8 164.215, 164.225 and 164.245 to 164.270, relating to theft, burglary, criminal trespass and related of-
- 9 fenses;
- 10 (L) ORS 164.315 to 164.335, relating to arson and related offenses;
- 11 (M) ORS 164.345 to 164.365, relating to criminal mischief;
- 12 (N) ORS 164.395 to 164.415, relating to robbery;
- 13 (O) ORS 164.865, 164.875 and 164.868 to 164.872, relating to unlawful recording or labeling of a
- 14 recording;
- 15 (P) ORS 165.007 to 165.022, 165.032 to 165.042 and 165.055 to 165.070, relating to forgery and
- 16 related offenses;
- 17 (Q) ORS 165.080 to 165.109, relating to business and commercial offenses;
- 18 (R) ORS 165.485 to 165.515, 165.540 and 165.555, relating to communication crimes;
- 19 (S) ORS 166.180, 166.190, 166.220, 166.250, 166.270, 166.275, 166.410, 166.450 and 166.470, relating
- 20 to firearms and other weapons;
- 21 (T) ORS 164.377 (2) to (4), as punishable under ORS 164.377 (5)(b), 167.007 to 167.017, 167.062 to
- 22 167.080, [167.087,] 167.090, 167.122 to 167.137, 167.147, 167.164, 167.167, 167.212, 167.355, 167.365,
- 23 167.370, 167.428, 167.431 and 167.439 **and sections 2 and 3 of this 2007 Act**, relating to prostitution,
- 24 obscenity, **sexually explicit material, sexual conduct**, gambling, computer crimes involving the
- 25 Oregon State Lottery, animal fighting, forcible recovery of a fighting bird and related offenses;
- 26 (U) ORS 171.990, relating to legislative witnesses;
- 27 (V) ORS 260.575 and 260.665, relating to election offenses;
- 28 (W) ORS 314.075, relating to income tax;
- 29 (X) ORS 180.440 (2) and ORS chapter 323, relating to cigarette and tobacco products taxes and
- 30 the directory developed under ORS 180.425;
- 31 (Y) ORS 411.630, 411.675, 411.690 and 411.840, relating to public assistance payments, and ORS
- 32 411.990 (2) and (3);
- 33 (Z) ORS 462.140, 462.415 and 462.420 to 462.520, relating to racing;
- 34 (AA) ORS 463.995, relating to boxing and wrestling, as defined in ORS 463.015;
- 35 (BB) ORS 471.305, 471.360, 471.392 to 471.400, 471.403, 471.404, 471.405, 471.425, 471.442, 471.445,
- 36 471.446, 471.485, 471.490 and 471.675, relating to alcoholic liquor, and any of the provisions of ORS
- 37 chapter 471 relating to licenses issued under the Liquor Control Act;
- 38 (CC) ORS 475.005 to 475.285 and 475.840 to 475.980, relating to controlled substances;
- 39 (DD) ORS 480.070, 480.210, 480.215, 480.235 and 480.265, relating to explosives;
- 40 (EE) ORS 819.010, 819.040, 822.100, 822.135 and 822.150, relating to motor vehicles;
- 41 (FF) ORS 658.452 or 658.991 (2) to (4), relating to farm labor contractors;
- 42 (GG) ORS chapter 706, relating to banking law administration;
- 43 (HH) ORS chapter 714, relating to branch banking;
- 44 (II) ORS chapter 716, relating to mutual savings banks;
- 45 (JJ) ORS chapter 723, relating to credit unions;

- 1 (KK) ORS chapter 726, relating to pawnbrokers;
- 2 (LL) ORS 166.382 and 166.384, relating to destructive devices;
- 3 (MM) ORS 165.074;
- 4 (NN) ORS 59.840 to 59.980, relating to mortgage bankers and mortgage brokers;
- 5 (OO) ORS chapter 496, 497 or 498, relating to wildlife;
- 6 (PP) ORS 163.355 to 163.427, relating to sexual offenses;
- 7 (QQ) ORS 166.015, relating to riot;
- 8 (RR) ORS 166.155 and 166.165, relating to intimidation;
- 9 (SS) ORS chapter 696, relating to real estate and escrow;
- 10 (TT) ORS chapter 704, relating to outfitters and guides;
- 11 (UU) ORS 165.692, relating to making a false claim for health care payment;
- 12 (VV) ORS 162.117, relating to public investment fraud;
- 13 (WW) ORS 164.170 or 164.172;
- 14 (XX) ORS 647.140, 647.145 or 647.150, relating to trademark counterfeiting;
- 15 (YY) ORS 164.877;
- 16 (ZZ) ORS 167.312 and 167.388;
- 17 (AAA) ORS 164.889; or
- 18 (BBB) ORS 165.800.

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

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

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

24 (A) ORS chapter 462, relating to racing;

25 (B) ORS 167.108 to 167.164, relating to gambling; or

26 (C) ORS 82.010 to 82.170, relating to interest and usury.

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

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

33 **SECTION 8.** ORS 166.725 is amended to read:

34 166.725. (1) Any circuit court may, after making due provision for the rights of innocent persons,
35 enjoin violations of the provisions of ORS 166.720 (1) to (4) by issuing appropriate orders and judg-
36 ments, including, but not limited to:

37 (a) Ordering a divestiture by the defendant of any interest in any enterprise, including real
38 property.

39 (b) Imposing reasonable restrictions upon the future activities or investments of any defendant,
40 including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor
41 as the enterprise in which the defendant was engaged in violation of the provisions of ORS 166.720
42 (1) to (4).

43 (c) Ordering the dissolution or reorganization of any enterprise.

44 (d) Ordering the suspension or revocation of a license, permit or prior approval granted to any
45 enterprise by any agency of the state.

1 (e) Ordering the forfeiture of the charter of a corporation organized under the laws of this state,
 2 or the revocation of a certificate of authority authorizing a foreign corporation to conduct business
 3 within this state, upon finding that the board of directors or a managerial agent acting on behalf
 4 of the corporation, in conducting the affairs of the corporation, has authorized or engaged in con-
 5 duct in violation of ORS 166.720 (1) to (4) and that, for the prevention of future criminal activity,
 6 the public interest requires the charter of the corporation forfeited and the corporation dissolved
 7 or the certificate of authority revoked.

8 (2) All property, real or personal, including money, used in the course of, derived from or real-
 9 ized through conduct in violation of a provision of ORS 166.715 to 166.735 is subject to civil forfei-
 10 ture to the state. The state shall dispose of all forfeited property as soon as commercially feasible.
 11 If property is not exercisable or transferable for value by the state, it shall expire. All forfeitures
 12 or dispositions under this section shall be made with due provision for the rights of innocent per-
 13 sons. Forfeited property shall be distributed as follows:

14 (a)(A) All moneys and the clear proceeds of all other property forfeited shall be deposited with
 15 the State Treasurer to the credit of the Common School Fund.

16 (B) For purposes of subparagraph (A) of this paragraph, “clear proceeds” means proceeds of
 17 forfeited property less costs of maintaining and preserving property pending its sale or other dispo-
 18 sition, less costs of sale or disposition and, if the Department of Justice has not otherwise recovered
 19 its costs and expenses of the investigation and prosecution leading to the forfeiture, less 30 percent
 20 of the remaining proceeds of the property which is awarded to the department as reasonable re-
 21 imbursement for costs of such investigation and prosecution.

22 (b) Any amounts awarded to the Department of Justice pursuant to paragraph (a) of this sub-
 23 section shall be deposited in the Criminal Justice Revolving Account in the State Treasury.

24 (3) Property subject to forfeiture under this section may be seized by a police officer, as defined
 25 in ORS 133.525 (2), upon court process. Seizure without process may be made if:

26 (a) The seizure is incident to a lawful arrest or search or an inspection under an administrative
 27 inspection warrant; or

28 (b) The property subject to seizure has been the subject of a prior judgment in favor of the state
 29 in a forfeiture proceeding based upon this section.

30 (4) In the event of a seizure under subsection (3) of this section, a forfeiture proceeding shall
 31 be instituted promptly. Property taken or detained under this section shall not be subject to
 32 replevin, but is deemed to be in the custody of the police officer making the seizure, subject only
 33 to the order of the court. When property is seized under this section, pending forfeiture and final
 34 disposition, the police officer may:

35 (a) Place the property under seal;

36 (b) Remove the property to a place designated by the court; or

37 (c) Require another agency authorized by law to take custody of the property and remove it to
 38 an appropriate location.

39 (5) The Attorney General, any district attorney or any state agency having jurisdiction over
 40 conduct in violation of a provision of ORS 166.715 to 166.735 may institute civil proceedings under
 41 this section. In any action brought under this section, the circuit court shall give priority to the
 42 hearing and determination. Pending final determination, the circuit court may at any time enter
 43 such injunctions, prohibitions or restraining orders, or take such actions, including the acceptance
 44 of satisfactory performance bonds, as the court may deem proper. The Attorney General, district
 45 attorney or state agency bringing an action under this section may be awarded, upon entry of a

1 judgment in favor of the state, costs of investigation and litigation, reasonably incurred. Amounts
 2 recovered may include costs and expenses of state and local governmental departments and agencies
 3 incurred in connection with the investigation or litigation.

4 (6)(a) Any aggrieved person may institute a proceeding under subsection (1) of this section:

5 (A) If the proceeding is based upon racketeering activity for which a criminal conviction has
 6 been obtained, any rights of appeal have expired and the action is against the individual convicted
 7 of the racketeering activity; or

8 (B) If the person is entitled to pursue a cause of action under subsection (7)(a)(B) of this section.

9 (b) In such proceeding, relief shall be granted in conformity with the principles that govern the
 10 granting of injunctive relief from threatened loss or damage in other civil cases, except that no
 11 showing of special or irreparable damage to the person shall have to be made. Upon the execution
 12 of proper bond against damages for an injunction improvidently granted and a showing of immediate
 13 danger of significant loss or damage, a temporary restraining order and a preliminary injunction
 14 may be issued in any such action before a final determination on the merits.

15 (7)(a) Any person who is injured by reason of any violation of the provisions of ORS 166.720 (1)
 16 to (4) shall have a cause of action for three-fold the actual damages sustained and, when appropriate,
 17 punitive damages:

18 (A) If a criminal conviction for the racketeering activity that is the basis of the violation has
 19 been obtained, any rights of appeal have expired and the action is against the individual convicted
 20 of the racketeering activity; or

21 (B) If the violation is based on racketeering activity as defined in ORS 166.715 (6)(a)(B) to (J),
 22 (K) as it relates to burglary and criminal trespass, (L) to (P), (S), (T), [*except for claims arising under*
 23 *ORS 167.087,*] (U), (V), (X) to (Z), (AA) to (DD), (KK), (LL) or (OO) to (VV).

24 (b) The defendant or any injured person may demand a trial by jury in any civil action brought
 25 pursuant to this subsection.

26 (c) Any injured person shall have a right or claim to forfeited property or to the proceeds de-
 27 rived therefrom superior to any right or claim the state has in the same property or proceeds.

28 (8) An investigative agency may bring an action for civil penalties for any violation of ORS
 29 166.720 (1) to (4). Upon proof of any such violation, the court shall impose a civil penalty of not more
 30 than \$250,000.

31 (9) A judgment rendered in favor of the state in any criminal proceeding under ORS 166.715 to
 32 166.735 shall estop the defendant in any subsequent civil action or proceeding brought by the state
 33 or any other person as to all matters as to which such judgment would be an estoppel as between
 34 the state and the defendant.

35 (10) The Attorney General may, upon timely application, intervene in any civil action or pro-
 36 ceeding brought under subsection (6) or (7) of this section if the Attorney General certifies that, in
 37 the opinion of the Attorney General, the action or proceeding is of general public importance. In
 38 such action or proceeding, the state shall be entitled to the same relief as if the Attorney General
 39 instituted the action or proceeding.

40 (11)(a) Notwithstanding any other provision of law, a criminal or civil action or proceeding un-
 41 der ORS 166.715 to 166.735 may be commenced at any time within five years after the conduct in
 42 violation of a provision of ORS 166.715 to 166.735 terminates or the cause of action accrues. If a
 43 criminal prosecution or civil action or other proceeding is brought, or intervened in, to punish,
 44 prevent or restrain any violation of the provisions of ORS 166.715 to 166.735, the running of the
 45 period of limitations prescribed by this section with respect to any cause of action arising under

1 subsection (6) or (7) of this section which is based in whole or in part upon any matter complained
 2 of in any such prosecution, action or proceeding shall be suspended during the pendency of such
 3 prosecution, action or proceeding and for two years following its termination.

4 (b) A cause of action arising under subsection (6)(a)(A) or (7)(a)(A) of this section accrues when
 5 the criminal conviction for the underlying activity is obtained. In addition to any suspension of the
 6 running of the period of limitations provided for in paragraph (a) of this subsection, the period of
 7 limitations prescribed by paragraph (a) of this subsection is suspended during any appeal from the
 8 criminal conviction for the underlying activity.

9 (12) The application of one civil remedy under any provision of ORS 166.715 to 166.735 shall not
 10 preclude the application of any other remedy, civil or criminal, under ORS 166.715 to 166.735 or any
 11 other provision of law. Civil remedies under ORS 166.715 to 166.735 are supplemental and not mu-
 12 tually exclusive.

13 (13) Notwithstanding subsection (6) or (7) of this section, a person may not institute a proceed-
 14 ing under subsection (6) of this section and does not have a cause of action under subsection (7) of
 15 this section if the conduct that is the basis of the proceeding or action could also be the basis of
 16 a claim of discrimination because of sex that constitutes sexual harassment.

17 (14) In an action brought under the provisions of this section by a person other than the At-
 18 torney General, a district attorney or a state agency, the court may award reasonable attorney fees
 19 to the prevailing party. In a civil action brought under the provisions of this section by the Attorney
 20 General, a district attorney or a state agency:

21 (a) The court may award reasonable attorney fees to the Attorney General, district attorney or
 22 state agency if the Attorney General, district attorney or state agency prevails in the action; and

23 (b) The court may award reasonable attorney fees to a defendant who prevails in an action un-
 24 der this section if the court determines that the Attorney General, district attorney or state agency
 25 had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an
 26 adverse decision of the trial court.

27 **SECTION 9.** ORS 167.062 is amended to read:

28 167.062. (1) It is unlawful for any person to knowingly engage in sadomasochistic abuse or sex-
 29 ual conduct in a live public show.

30 (2) Violation of subsection (1) of this section is a Class A misdemeanor.

31 (3) It is unlawful for any person to knowingly direct, manage, finance or present a live public
 32 show in which the participants engage in sadomasochistic abuse or sexual conduct.

33 (4) Violation of subsection (3) of this section is a Class C felony.

34 (5) As used in ORS 167.002, 167.007[167.087] and this section unless the context requires oth-
 35 erwise:

36 (a) "Live public show" means a public show in which human beings, animals, or both appear
 37 bodily before spectators or customers.

38 (b) "Public show" means any entertainment or exhibition advertised or in some other fashion
 39 held out to be accessible to the public or member of a club, whether or not an admission or other
 40 charge is levied or collected and whether or not minors are admitted or excluded.

41 **SECTION 10.** ORS 167.070 is amended to read:

42 167.070. (1) A person commits the crime of sending [*obscene materials to minors*] **sexually ex-**
 43 **PLICIT MATERIAL TO A MINOR** if, within this state, the person knowingly arranges for or dispatches for
 44 delivery to a minor, whether the delivery is to be made within or outside this state, by mail, delivery
 45 service, **electronic transmission** or any other means, [*any of the materials enumerated in ORS*

1 **167.065] sexually explicit material, as defined in section 1 of this 2007 Act.**

2 (2) Unless the defendant knows or has good reason to know that the person to whom the [*ma-*
3 *terials are*] **material is** sent is a minor, it is a defense to a prosecution under this section that the
4 defendant caused to be printed on the outer package, wrapper or cover of the [*materials*] **material**
5 to be delivered, in words or substance, “This package (wrapper) (publication) contains material that,
6 by Oregon law, cannot be furnished to a minor.”

7 (3) Sending [*obscene materials to minors*] **sexually explicit material to a minor** is a Class A
8 misdemeanor. Notwithstanding ORS 161.635 and 161.655, a person convicted under this section may
9 be sentenced to pay a fine, fixed by the court, not exceeding \$10,000.

10 **SECTION 11.** ORS 342.143 is amended to read:

11 342.143. (1) No teaching, personnel service or administrative license shall be issued to any per-
12 son until the person has attained the age of 18 years and has furnished satisfactory evidence of
13 proper educational training.

14 (2) The Teacher Standards and Practices Commission may also require an applicant for a
15 teaching, personnel service or administrative license to furnish evidence satisfactory to the com-
16 mission of good moral character, mental and physical health, and such other evidence as it may
17 deem necessary to establish the applicant’s fitness to serve as a teacher.

18 (3) Without limiting the powers of the Teacher Standards and Practices Commission under sub-
19 section (2) of this section and notwithstanding ORS 670.280:

20 (a) No teaching, personnel service or administrative license or registration as a public charter
21 school teacher shall be issued to any person who:

22 (A) Has been convicted of a crime listed in ORS 163.095, 163.115, 163.185, 163.235, 163.355,
23 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 163.435, 163.445,
24 163.465, 163.515, 163.525, 163.547, 163.575, 163.670, 163.675 (1985 Replacement Part), 163.680 (1993
25 Edition), 163.684, 163.686, 163.687, 163.688, 163.689, 164.325, 164.415, 166.005, 166.087, 167.007, 167.012,
26 167.017, 167.062, 167.065, 167.070, 167.075, 167.080, 167.087, 167.090, 475.848, 475.852, 475.858, 475.860,
27 475.862, 475.864 (4), 475.868, 475.872, 475.878, 475.880, 475.882, 475.888, 475.890, 475.892, 475.904 or
28 475.906 **or section 2 or 3 of this 2007 Act;**

29 (B) Has been convicted under ORS 161.405 of an attempt to commit any of the crimes listed in
30 subparagraph (A) of this paragraph; or

31 (C) Has been convicted in another jurisdiction of a crime that is substantially equivalent, as
32 defined by rule, to any of the crimes listed in subparagraphs (A) and (B) of this paragraph.

33 (b) The Teacher Standards and Practices Commission may refuse to issue a license or registra-
34 tion to any person who has been convicted of a crime involving the illegal use, sale or possession
35 of controlled substances.

36 (4) In denying the issuance of a license or registration under this section, the commission shall
37 follow the procedure set forth in ORS 342.176 and 342.177.

38 (5) The Department of Education shall provide school districts and public charter schools a copy
39 of the list contained in subsection (3) of this section.

40 **SECTION 12.** ORS 167.065, 167.087 and 167.089 are repealed.