

House Bill 3553

Sponsored by Representatives FLORES, THATCHER; Representatives CAMERON, DALLUM, ESQUIVEL, GILLIAM, HANNA, KRIEGER, KRUMMEL, MAURER, MINNIS, MORGAN, NELSON, OLSON, SCOTT, WHISNANT

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 subjecting another to involuntary servitude in first degree. Punishes by maximum of 20 years' imprisonment, \$375,000 fine, or both.

Creates crime of subjecting another to involuntary servitude in second degree. Punishes by maximum of 10 years' imprisonment, \$250,000 fine, or both.

Creates crime of subjecting another to involuntary servitude in third degree. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both.

Creates crime of sexual servitude of minor in first degree. Punishes by maximum of 25 years' imprisonment, \$375,000 fine, or both.

Creates crime of sexual servitude of minor in second degree. Punishes by maximum of 20 years' imprisonment, \$375,000 fine, or both.

Creates crime of trafficking in persons. Punishes by maximum of 20 years' imprisonment, \$375,000 fine, or both.

Expands definition of "economic damages" for purposes of restitution for certain crimes.

Permits law enforcement agencies to apprehend person based upon probable cause that person is in violation of immigration law.

Requires district attorney to investigate residency status of convicted persons and to take all reasonable steps to transfer custody of convicted aliens to federal government.

A BILL FOR AN ACT

1
2 Relating to crime; creating new provisions; and amending ORS 137.103, 137.295, 161.005 and 181.850.

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

SECTION 1. As used in sections 1 to 7 of this 2007 Act:

4
5 (1) "Commercial sexual activity" means any sex act on account of which something of
6 value is given or promised to, or received by, a person.

7 (2) "Labor" means work of economic or financial value.

8 (3) "Obtain" means to secure the performance of labor or services.

9 (4) "Services" means an ongoing relationship between two persons in which one person
10 performs activities under the supervision or for the benefit of the other person. Commercial
11 sexual activity and sexually explicit performances are services.

12 (5) "Sexually explicit performance" means a live or public act or show intended to arouse
13 or satisfy the sexual desires or appeal to the prurient interest in sex of persons watching the
14 performance.

15 SECTION 2. (1) A person commits the crime of subjecting another to involuntary
16 servitude in the first degree if the person knowingly and without lawful authority forces or
17 attempts to force another person to perform labor or engage in services by:

18 (a) Causing or threatening to cause serious physical injury to a person; or

19 (b) Physically restraining or threatening to physically restrain a person.

20 (2) Subjecting another to involuntary servitude in the first degree is a Class A felony.

21 SECTION 3. (1) A person commits the crime of subjecting another to involuntary

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 servitude in the second degree if the person knowingly and without lawful authority forces
2 or attempts to force another person to perform labor or engage in services by abusing or
3 threatening to abuse the law or legal process.

4 (2) Subjecting another to involuntary servitude in the second degree is a Class B felony.

5 **SECTION 4.** (1) A person commits the crime of subjecting another to involuntary
6 servitude in the third degree if the person knowingly and without lawful authority forces or
7 attempts to force another person to perform labor or engage in services by:

8 (a) Destroying, concealing, removing, confiscating or possessing an actual or purported
9 passport or immigration document or another actual or purported government identification
10 document of another person;

11 (b) Engaging in coercion as defined in ORS 163.275 or in theft by extortion as defined in
12 ORS 164.075; or

13 (c) Engaging in acts prohibited by ORS 41.580 or 82.010.

14 (2) Subjecting another to involuntary servitude in the third degree is a Class C felony.

15 **SECTION 5.** (1) A person commits the crime of sexual servitude of a minor in the second
16 degree if the person knowingly:

17 (a) Recruits, entices, harbors, transports, provides or obtains by any means, or attempts
18 to recruit, entice, harbor, transport, provide or obtain by any means, a minor knowing that
19 the minor will engage in commercial sexual activity, a sexually explicit performance or the
20 production of pornography; or

21 (b) Causes or attempts to cause a minor to engage in commercial sexual activity, a
22 sexually explicit performance or the production of pornography.

23 (2) Sexual servitude of a minor in the second degree is a Class A felony.

24 (3) As used in this section:

25 (a) "Minor" means a person under 18 years of age.

26 (b) "Pornography" means a visual depiction of sexually explicit conduct involving a mi-
27 nor, possession of which is prohibited under ORS 163.670 to 163.693.

28 **SECTION 6.** (1) A person commits the crime of sexual servitude of a minor in the first
29 degree if the person violates section 5 of this 2007 Act by use of force or threat.

30 (2) Sexual servitude of a minor in the first degree is a felony punishable by a maximum
31 term of imprisonment of 25 years and a maximum fine of \$375,000.

32 **SECTION 7.** (1) A person commits the crime of trafficking in persons if the person
33 knowingly:

34 (a) Recruits, entices, harbors, transports, provides or obtains by any means, or attempts
35 to recruit, entice, harbor, transport, provide or obtain by any means, another person know-
36 ing that the other person will be subjected to involuntary servitude as described in section
37 2, 3 or 4 of this 2007 Act; or

38 (b) Benefits financially or receives something of value from participation in a venture
39 that involves an act prohibited by section 2, 3, 4, 5 or 6 of this 2007 Act.

40 (2) Trafficking in persons is a Class A felony.

41 **SECTION 8.** ORS 137.103 is amended to read:

42 137.103. As used in ORS 137.101 to 137.109, 161.675 and 161.685:

43 (1) "Criminal activities" means any offense with respect to which the defendant is convicted or
44 any other criminal conduct admitted by the defendant.

45 (2) "Economic damages" has the meaning given that term in ORS 31.710, except that "economic

1 damages” does not include future impairment of earning capacity.

2 **(3) In cases involving criminal activities described in sections 1 to 7 of this 2007 Act,**
 3 **“economic damages” means the greater of:**

4 **(a) The gross income or value to the defendant of the victim’s labor or services; or**

5 **(b) The value of the victim’s labor or services computed using the Oregon minimum wage**
 6 **and the overtime provisions of the Fair Labor Standards Act of 1938.**

7 [(3)] (4) “Restitution” means full, partial or nominal payment of economic damages to a victim.
 8 Restitution is independent of and may be awarded in addition to a compensatory fine awarded under
 9 ORS 137.101.

10 [(4)] (5) “Victim” means:

11 (a) The person against whom the defendant committed the criminal offense, if the court deter-
 12 mines that the person has suffered economic damages as a result of the offense.

13 (b) Any person not described in paragraph (a) of this subsection whom the court determines has
 14 suffered economic damages as a result of the defendant’s criminal activities.

15 (c) The Criminal Injuries Compensation Account, if it has expended moneys on behalf of a victim
 16 described in paragraph (a) of this subsection.

17 (d) An insurance carrier, if it has expended moneys on behalf of a victim described in paragraph
 18 (a) of this subsection.

19 [(5)] (6) “Victim” does not include any coparticipant in the defendant’s criminal activities.

20 **SECTION 9.** ORS 137.295 is amended to read:

21 137.295. (1) When a defendant convicted of a crime or violation in the circuit, justice or munic-
 22 ipal court, or allowed diversion in such a case, makes a payment of money to be credited against
 23 monetary obligations imposed as a result of that conviction or diversion, the clerk shall distribute
 24 the payment as provided in this section.

25 (2) There are four categories of monetary obligations. The categories are as follows:

26 (a) Category 1 consists of compensatory fines under ORS 137.101.

27 (b) Category 2 consists of restitution as defined in ORS 137.103 and restitution under ORS
 28 419C.450 and a monetary obligation imposed under ORS 811.706.

29 (c) Category 3 consists of the unitary assessment imposed under ORS 137.290, costs imposed
 30 under ORS 151.505 or 161.665 and those fines, costs, forfeited security amounts and other monetary
 31 obligations payable to the state or to the General Fund of the state in criminal and quasi-criminal
 32 cases for which moneys the law does not expressly provide other disposition.

33 (d) Category 4 consists of monetary obligations imposed upon the defendant as a result of the
 34 conviction, but which do not fall under category 1, category 2 or category 3 of the obligation cate-
 35 gories. These include, but are not limited to, fines and other monetary obligations that the law ex-
 36 pressly directs be paid to an agency, person or political subdivision of the state, and any other
 37 obligation to reimburse for payment of a reward under ORS 131.897.

38 (3) So long as there remains unpaid any obligation under category 1, the clerk shall credit to-
 39 ward category 1 all of each payment received.

40 (4) After the total obligation has been credited under category 1, then so long as there remains
 41 unpaid any obligation under both categories 2 and 3, the clerk shall credit toward each such cate-
 42 gory 50 percent of each payment received.

43 (5) The clerk shall monthly transfer the moneys credited under category 1 and under category
 44 2 to the victims for whose benefit moneys under that category were ordered paid. If there are mul-
 45 tiple victims for whose benefit moneys have been ordered paid under category 2, the clerk shall first

1 transfer moneys credited under category 2 to the victim, as defined in ORS 137.103 [(4)(a)] (5)(a).
 2 When the moneys due the victim, as defined in ORS 137.103 [(4)(a)] (5)(a), have been fully paid, the
 3 clerk shall transfer moneys credited under category 2 to the Criminal Injuries Compensation Ac-
 4 count if moneys have been ordered paid to the account under category 2. When the moneys due the
 5 account have been fully paid, the clerk shall transfer moneys credited under category 2 to any other
 6 victims, as defined in ORS 137.103 [(4)(b)] (5)(b) or (d), for whose benefit moneys under that category
 7 were ordered paid in proportion to the amounts ordered. The clerk of a circuit court shall monthly
 8 transfer the moneys credited under category 3 as directed by the State Court Administrator for de-
 9 posit in the State Treasury to the credit of the Criminal Fine and Assessment Account established
 10 under ORS 137.300. The clerk of a justice or municipal court shall monthly transfer the moneys
 11 credited under category 3 to the Department of Revenue as provided in ORS 305.830.

12 (6) When the entire amount owing for purposes of either category 2 or category 3 has been
 13 credited, further payments by the defendant shall be credited by the clerk entirely to the unpaid
 14 balance of whichever of those categories remains unpaid, until both category 2 and category 3 have
 15 been entirely paid.

16 (7) When category 1, category 2 and category 3 have been entirely paid and any obligation re-
 17 mains owing under category 4, the clerk shall credit further payments by the defendant to the ob-
 18 ligations under category 4 and shall monthly transfer the moneys so received to the appropriate
 19 recipient, giving first priority to counties and cities entitled to revenues generated by prosecutions
 20 in justice and municipal courts and giving last priority to persons entitled to moneys as reimburse-
 21 ment for reward under ORS 131.897.

22 (8) Notwithstanding subsection (5) of this section, the clerk of a circuit court shall monthly
 23 transfer the moneys attributable to parking violations to the State Treasurer for deposit in the
 24 General Fund.

25 (9) The clerk of a justice or municipal court must make the transfers required by this section
 26 not later than the last day of the month immediately following the month in which a payment is
 27 made.

28 **SECTION 10.** ORS 137.295, as amended by section 1, chapter 1064, Oregon Laws 1999, section
 29 23, chapter 823, Oregon Laws 2001, section 3, chapter 687, Oregon Laws 2003, and section 5, chapter
 30 564, Oregon Laws 2005, is amended to read:

31 137.295. (1) When a defendant convicted of a crime or violation in the circuit, justice or munic-
 32 ipal court, or allowed diversion in such a case, makes a payment of money to be credited against
 33 monetary obligations imposed as a result of that conviction or diversion, the clerk shall distribute
 34 the payment as provided in this section.

35 (2) There are four categories of monetary obligations. The categories are as follows:

36 (a) Category 1 consists of compensatory fines under ORS 137.101.

37 (b) Category 2 consists of restitution as defined in ORS 137.103 and restitution under ORS
 38 419C.450 and a monetary obligation imposed under ORS 811.706.

39 (c) Category 3 consists of the unitary assessment imposed under ORS 137.290, costs imposed
 40 under ORS 151.505 or 161.665 and those fines, costs, forfeited security amounts and other monetary
 41 obligations payable to the state or to the General Fund of the state in criminal and quasi-criminal
 42 cases for which moneys the law does not expressly provide other disposition.

43 (d) Category 4 consists of monetary obligations imposed upon the defendant as a result of the
 44 conviction, but which do not fall under category 1, category 2 or category 3 of the obligation cate-
 45 gories. These include, but are not limited to, fines and other monetary obligations that the law ex-

1 pressly directs be paid to an agency, person or political subdivision of the state, and any other
 2 obligation to reimburse for payment of a reward under ORS 131.897.

3 (3) As long as there remains unpaid any obligation under category 1, including any interest ac-
 4 crued on that obligation, the clerk shall credit toward category 1 all of each payment received.

5 (4) After the total obligation has been credited under category 1, then as long as there remains
 6 unpaid any obligation under both categories 2 and 3, including any interest accrued on those obli-
 7 gations, the clerk shall credit toward each such category 50 percent of each payment received.

8 (5) The clerk shall monthly transfer the principal amount of the moneys credited under category
 9 1 and under category 2, and all interest that has accrued on those principal amounts, to the victims
 10 for whose benefit moneys under that category were ordered paid. If there are multiple victims for
 11 whose benefit moneys have been ordered paid under category 2, the clerk shall first transfer moneys
 12 credited under category 2 to the victim, as defined in ORS 137.103 [(4)(a)] (5)(a). When the moneys
 13 due the victim, as defined in ORS 137.103 [(4)(a)] (5)(a), have been fully paid, the clerk shall transfer
 14 moneys credited under category 2 to the Criminal Injuries Compensation Account if moneys have
 15 been ordered paid to the account under category 2. When the moneys due the account have been
 16 fully paid, the clerk shall transfer moneys credited under category 2 to any other victims, as defined
 17 in ORS 137.103 [(4)(b)] (5)(b) or (d), for whose benefit moneys under that category were ordered paid
 18 in proportion to the amounts ordered. The clerk of a circuit court shall monthly transfer the prin-
 19 cipal amount of the moneys credited under category 3 as directed by the State Court Administrator
 20 for deposit in the State Treasury to the credit of the Criminal Fine and Assessment Account estab-
 21 lished under ORS 137.300. The clerk of a justice or municipal court shall monthly transfer the
 22 principal amount of the moneys credited under category 3 to the Department of Revenue as provided
 23 in ORS 305.830. The clerk shall transfer all interest on the principal amount of the moneys credited
 24 under category 3 to the State Court Administrator for deposit in the Court Facilities Account es-
 25 tablished under ORS 1.190.

26 (6) When the entire amount owing for purposes of either category 2 or category 3 has been
 27 credited, including any interest that has accrued on the amount, further payments by the defendant
 28 shall be credited by the clerk entirely to the unpaid balance of whichever of those categories re-
 29 mains unpaid, until both category 2 and category 3 have been entirely paid.

30 (7) When category 1, category 2 and category 3 have been entirely paid and any obligation re-
 31 mains owing under category 4, the clerk shall credit further payments by the defendant to the ob-
 32 ligations under category 4 and shall monthly transfer the principal amount of the moneys so
 33 received to the appropriate recipient, giving first priority to counties and cities entitled to revenues
 34 generated by prosecutions in justice and municipal courts and giving last priority to persons entitled
 35 to moneys as reimbursement for reward under ORS 131.897. The clerk shall transfer all interest on
 36 the principal amount of the moneys credited under category 4 to the agency, person or political
 37 subdivision of the state entitled to the principal amount. All interest on monetary obligations owing
 38 to the state under category 4 shall be transferred to the State Court Administrator for deposit in
 39 the Court Facilities Account established under ORS 1.190.

40 (8) Notwithstanding subsection (5) of this section, the clerk of a circuit court shall monthly
 41 transfer the moneys attributable to parking violations to the State Treasurer for deposit in the
 42 General Fund.

43 (9) The clerk of a justice or municipal court must make the transfers required by this section
 44 not later than the last day of the month immediately following the month in which a payment is
 45 made.

1 **SECTION 11. (1) No later than January 1, 2009, the Attorney General shall submit a re-**
 2 **port to the Seventy-fourth Legislative Assembly outlining how existing:**

3 **(a) Laws relating to crime victims' compensation, services and rights respond to the**
 4 **needs of victims of crimes defined in sections 1 to 7 of this 2007 Act; and**

5 **(b) Social service programs respond, or fail to respond, to the needs of victims of crimes**
 6 **defined in sections 1 to 7 of this 2007 Act and the interplay between state social service**
 7 **programs and federally funded victim service programs.**

8 **(2) The Attorney General shall include in the report required by subsection (1) of this**
 9 **section recommendations for improvement and modification of the laws and programs.**

10 **SECTION 12.** ORS 161.005 is amended to read:

11 161.005. ORS 161.005 to 161.055, 161.085 to 161.125, 161.150 to 161.175, 161.190 to 161.275, 161.290
 12 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,
 13 162.005, 162.015 to 162.035, 162.055 to 162.115, 162.135 to 162.205, 162.225 to 162.375, 162.405 to
 14 162.425, 162.465, 163.005, 163.115, 163.125 to 163.145, 163.160 to 163.208, 163.215 to 163.257, 163.275,
 15 163.285, 163.305 to 163.467, 163.505 to 163.575, 163.665 to 163.693, 164.005, 164.015 to 164.135, 164.140,
 16 164.205 to 164.270, 164.305 to 164.377, 164.395 to 164.415, 164.805, 164.877, 165.002 to 165.109, 165.805,
 17 166.005 to 166.095, 166.350, 166.382, 166.384, 166.660, 167.002 to 167.027, 167.060 to 167.100, 167.117,
 18 167.122 to 167.162, 167.203 to 167.252, 167.310 to 167.340 and 167.350, 167.810 and 167.820 **and**
 19 **sections 1 to 7 of this 2007 Act**, shall be known and may be cited as Oregon Criminal Code of 1971.

20 **SECTION 13.** ORS 181.850 is amended to read:

21 181.850. (1) [No] **To the extent authorized by federal law, and pursuant to a written**
 22 **agreement with the federal government, a law enforcement agency of the State of Oregon or of**
 23 **any political subdivision of the state** [*shall use agency moneys, equipment or personnel for the purpose*
 24 *of detecting or apprehending persons whose only violation of law is that they are persons of foreign*
 25 *citizenship present in the United States*] **may apprehend a person based upon probable cause that**
 26 **the person is** in violation of federal immigration laws.

27 (2) [*Notwithstanding subsection (1) of this section,*] A law enforcement agency may exchange in-
 28 formation with the United States Bureau of Immigration and Customs Enforcement, the United
 29 States Bureau of Citizenship and Immigration Services and the United States Bureau of Customs and
 30 Border Protection in order to:

31 (a) Verify the immigration status of a person if the person is arrested for any criminal offense;
 32 or

33 (b) Request criminal investigation information with reference to persons named in records of the
 34 United States Bureau of Immigration and Customs Enforcement, the United States Bureau of Citi-
 35 zenship and Immigration Services or the United States Bureau of Customs and Border Protection.

36 (3) [*Notwithstanding subsection (1) of this section,*] A law enforcement agency may arrest any
 37 person who:

38 (a) Is charged by the United States with a criminal violation of federal immigration laws under
 39 Title II of the Immigration and Nationality Act or 18 U.S.C. 1015, 1422 to 1429 or 1505; and

40 (b) Is subject to arrest for the crime pursuant to a warrant of arrest issued by a federal
 41 magistrate.

42 (4) For purposes of subsection (1) of this section, the Bureau of Labor and Industries is not a
 43 law enforcement agency.

44 (5) As used in this section, "warrant of arrest" has the meaning given that term in ORS 131.005.

45 **SECTION 14. (1) When a person is convicted of a crime, the district attorney shall con-**

1 **duct an investigation to determine if the convicted person is present in the United States in**
2 **violation of federal immigration laws.**

3 **(2) If the district attorney has reasonable grounds to believe that the convicted person**
4 **is present in the United States in violation of federal immigration laws, the district attorney**
5 **shall notify United States Immigration and Customs Enforcement of the grounds supporting**
6 **that belief and request the federal agency's assistance in confirming the person's legal sta-**
7 **tus.**

8 **(3) If the federal agency confirms that the convicted person is present in the United**
9 **States in violation of federal immigration laws, the district attorney shall take all reasonable**
10 **steps to ensure that the federal agency takes physical and legal custody of the convicted**
11 **person.**

12 _____