

B-Engrossed
House Bill 2285

Ordered by the Senate June 4
Including House Amendments dated May 6 and Senate Amendments dated
June 4

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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.

Makes crime of delivery of marijuana punishable by maximum of five years' imprisonment, \$125,000 fine, or both if delivery is for no consideration.

Allows peace officer to cite person who casts artificial light from motor vehicle when person possesses or is in immediate physical presence of bow and arrow, rifle, gun, revolver or other firearm.

Harmonizes definition of "firearm."

Eliminates sunset on provision that sets evidentiary standard for analytic report of controlled substances.

A BILL FOR AN ACT

1
2 Relating to crime; creating new provisions; amending ORS 40.460, 40.510, 161.610, 161.705, 164.055,
3 166.210, 166.660, 166.663, 475.235 and 475.860; and repealing section 5, chapter 636, Oregon Laws
4 2007.

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

6 **SECTION 1.** ORS 475.860 is amended to read:

7 475.860. (1) It is unlawful for any person to deliver marijuana.

8 (2) Unlawful delivery of marijuana is a:

9 (a) Class B felony if the delivery is for consideration.

10 (b) **Class C felony if the delivery is for no consideration.**

11 (3) Notwithstanding subsection (2) of this section, unlawful delivery of marijuana is a:

12 (a) Class A misdemeanor, if the delivery is for no consideration and consists of less than one
13 avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae; or

14 (b) Violation, if the delivery is for no consideration and consists of less than five grams of the
15 dried leaves, stems and flowers of the plant Cannabis family Moraceae. A violation under this par-
16 agraph is punishable by a fine of not less than \$500 and not more than \$1,000. Fines collected under
17 this paragraph shall be forwarded to the Department of Revenue for deposit in the Criminal Fine
18 and Assessment Account established in ORS 137.300.

19 (4) Notwithstanding subsections (2) and (3) of this section, unlawful delivery of marijuana is a:

20 (a) Class A felony, if the delivery is to a person under 18 years of age and the defendant is at
21 least 18 years of age and is at least three years older than the person to whom the marijuana is
22 delivered; or

23 (b) Class C misdemeanor, if the delivery:

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) Is for no consideration;

2 (B) Consists of less than five grams of the dried leaves, stems and flowers of the plant Cannabis
3 family Moraceae;

4 (C) Takes place in a public place, as defined in ORS 161.015, that is within 1,000 feet of the real
5 property comprising a public or private elementary, secondary or career school attended primarily
6 by minors; and

7 (D) Is to a person who is 18 years of age or older.

8 **SECTION 2.** ORS 161.705 is amended to read:

9 161.705. Notwithstanding ORS 161.525, the court may enter judgment of conviction for a Class
10 A misdemeanor and make disposition accordingly when:

11 (1)(a) A person is convicted of any Class C felony;

12 (b) A person is convicted of a Class B felony pursuant to ORS 475.860 (2)(a);

13 (c) A person is convicted of the Class B felony of possession of marijuana pursuant to ORS
14 475.864 (2); or

15 (d) A person convicted of any of the felonies described in paragraphs (a) to (c) of this subsection,
16 or of a Class A felony pursuant to ORS 166.720, has successfully completed a sentence of probation;
17 and

18 (2) The court, considering the nature and circumstances of the crime and the history and char-
19 acter of the defendant, believes that it would be unduly harsh to sentence the defendant for a felony.

20 **SECTION 3.** ORS 166.663 is amended to read:

21 166.663. (1) *[No person shall]* **A person may not** cast from a motor vehicle an artificial light
22 while there is in the possession or in the immediate physical presence of the person a bow and ar-
23 row or a rifle, gun, revolver or other firearm.

24 (2) Subsection (1) of this section does not apply to a person casting an artificial light:

25 (a) From the headlights of a motor vehicle that is being operated on a road in the usual manner.

26 (b) When the bow and arrow, rifle, gun, revolver or other firearm that the person has in the
27 possession or immediate physical presence of the person is disassembled or stored, or in the trunk
28 or storage compartment of the motor vehicle.

29 (c) When the ammunition or arrows are stored separate from the weapon.

30 (d) On land owned or lawfully occupied by that person.

31 (e) On publicly owned land when that person has an agreement with the public body to use that
32 property.

33 (f) When the person is a peace officer or government employee engaged in the performance of
34 official duties.

35 (g) When the person has been issued a license under ORS 166.291 and 166.292 to carry a con-
36 cealed weapon.

37 **(3) A peace officer may issue a citation to a person for a violation of subsection (1) of this**
38 **section when the violation is committed in the presence of the peace officer or when the**
39 **peace officer has probable cause to believe that a violation has occurred based on a de-**
40 **scription of the vehicle or other information received from a peace officer who observed the**
41 **violation.**

42 *[(3)]* (4) Violation of subsection (1) of this section is punishable as a Class B violation.

43 (5) **As used in this section, “peace officer” has the meaning given that term in ORS**
44 **161.015.**

45 **SECTION 4.** ORS 166.210 is amended to read:

1 166.210. As used in ORS 166.250 to 166.270, 166.291 to 166.295 and 166.410 to 166.470:

2 (1) "Antique firearm" means:

3 (a) Any firearm, including any firearm with a matchlock, flintlock, percussion cap or similar type
4 of ignition system, manufactured in or before 1898; and

5 (b) Any replica of any firearm described in paragraph (a) of this subsection if the replica:

6 (A) Is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition;

7 or

8 (B) Uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in
9 the United States and that is not readily available in the ordinary channels of commercial trade.

10 (2) "Corrections officer" has the meaning given that term in ORS 181.610.

11 (3) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile
12 by the action of powder [*and which is readily capable of use as a weapon*].

13 (4) "Firearms silencer" means any device for silencing, muffling or diminishing the report of a
14 firearm.

15 (5) "Handgun" means any pistol or revolver using a fixed cartridge containing a propellant
16 charge, primer and projectile, and designed to be aimed or fired otherwise than from the shoulder.

17 (6) "Machine gun" means a weapon of any description by whatever name known, loaded or un-
18 loaded, which is designed or modified to allow two or more shots to be fired by a single pressure
19 on the trigger device.

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

21 (8) "Offense" has the meaning given that term in ORS 161.505.

22 (9) "Parole and probation officer" has the meaning given that term in ORS 181.610.

23 (10) "Peace officer" has the meaning given that term in ORS 133.005.

24 (11) "Short-barreled rifle" means a rifle having one or more barrels less than 16 inches in length
25 and any weapon made from a rifle if the weapon has an overall length of less than 26 inches.

26 (12) "Short-barreled shotgun" means a shotgun having one or more barrels less than 18 inches
27 in length and any weapon made from a shotgun if the weapon has an overall length of less than 26
28 inches.

29 **SECTION 5.** ORS 161.610 is amended to read:

30 161.610. (1) As used in this section, "firearm" [*means a weapon which is designed to expel a*
31 *projectile by the action of black powder or smokeless powder*] **has the meaning given that term in**
32 **ORS 166.210.**

33 (2) The use or threatened use of a firearm, whether operable or inoperable, by a defendant
34 during the commission of a felony may be pleaded in the accusatory instrument and proved at trial
35 as an element in aggravation of the crime as provided in this section. When a crime is so pleaded,
36 the aggravated nature of the crime may be indicated by adding the words "with a firearm" to the
37 title of the offense. The unaggravated crime shall be considered a lesser included offense.

38 (3) Notwithstanding the provisions of ORS 161.605 or 137.010 (3) and except as otherwise pro-
39 vided in subsection (6) of this section, if a defendant is convicted of a felony having as an element
40 the defendant's use or threatened use of a firearm during the commission of the crime, the court
41 shall impose at least the minimum term of imprisonment as provided in subsection (4) of this section.
42 Except as provided in ORS 144.122 and 144.126 and subsection (5) of this section, in no case shall
43 any person punishable under this section become eligible for work release, parole, temporary leave
44 or terminal leave until the minimum term of imprisonment is served, less a period of time equivalent
45 to any reduction of imprisonment granted for good time served or time credits earned under ORS

1 421.121, nor shall the execution of the sentence imposed upon such person be suspended by the
2 court.

3 (4) The minimum terms of imprisonment for felonies having as an element the defendant's use
4 or threatened use of a firearm in the commission of the crime shall be as follows:

5 (a) Except as provided in subsection (5) of this section, upon the first conviction for such felony,
6 five years, except that if the firearm is a machine gun, short-barreled rifle, short-barreled shotgun
7 or is equipped with a firearms silencer, the term of imprisonment shall be 10 years.

8 (b) Upon conviction for such felony committed after punishment pursuant to paragraph (a) of
9 this subsection or subsection (5) of this section, 10 years, except that if the firearm is a machine gun,
10 short-barreled rifle, short-barreled shotgun or is equipped with a firearms silencer, the term of
11 imprisonment shall be 20 years.

12 (c) Upon conviction for such felony committed after imprisonment pursuant to paragraph (b) of
13 this subsection, 30 years.

14 (5) If it is the first time that the defendant is subject to punishment under this section, rather
15 than impose the sentence otherwise required by subsection (4)(a) of this section, the court may:

16 (a) For felonies committed prior to November 1, 1989, suspend the execution of the sentence or
17 impose a lesser term of imprisonment, when the court expressly finds mitigating circumstances jus-
18 tifying such lesser sentence and sets forth those circumstances in its statement on sentencing; or

19 (b) For felonies committed on or after November 1, 1989, impose a lesser sentence in accordance
20 with the rules of the Oregon Criminal Justice Commission.

21 (6) When a defendant who is convicted of a felony having as an element the defendant's use or
22 threatened use of a firearm during the commission of the crime is a person who was waived from
23 juvenile court under ORS 137.707 (5)(b)(A), 419C.349, 419C.352, 419C.364 or 419C.370, the court is
24 not required to impose a minimum term of imprisonment under this section.

25 **SECTION 6.** ORS 164.055 is amended to read:

26 164.055. (1) A person commits the crime of theft in the first degree if, by other than extortion,
27 the person commits theft as defined in ORS 164.015 and:

28 (a) The total value of the property in a single or aggregate transaction is \$200 or more in a case
29 of theft by receiving, and \$750 or more in any other case;

30 (b) The theft is committed during a riot, fire, explosion, catastrophe or other emergency in an
31 area affected by the riot, fire, explosion, catastrophe or other emergency;

32 (c) The theft is theft by receiving committed by buying, selling, borrowing or lending on the
33 security of the property;

34 (d) The subject of the theft is a firearm or explosive;

35 (e) The subject of the theft is a livestock animal, a companion animal or a wild animal removed
36 from habitat or born of a wild animal removed from habitat, pursuant to ORS 497.308 (2)(c); or

37 (f) The subject of the theft is a precursor substance.

38 (2) As used in this section:

39 (a) "Companion animal" means a dog or cat possessed by a person, business or other entity for
40 purposes of companionship, security, hunting, herding or providing assistance in relation to a phys-
41 ical disability.

42 (b) "Explosive" means a chemical compound, mixture or device that is commonly used or in-
43 tended for the purpose of producing a chemical reaction resulting in a substantially instantaneous
44 release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin,
45 blasting caps and nitrojelly, but excluding fireworks as defined in ORS 480.110 (1), black powder,

1 smokeless powder, small arms ammunition and small arms ammunition primers.

2 (c) "Firearm" [*means a weapon, by whatever name known, which is designed to expel a projectile*
3 *by the action of black powder or smokeless powder and which is readily capable of use as a weapon*]
4 **has the meaning given that term in ORS 166.210.**

5 (d) "Livestock animal" means a ratite, psittacine, horse, gelding, mare, stallion, colt, mule, ass,
6 jenny, bull, steer, cow, calf, goat, sheep, lamb, llama, pig or hog.

7 (e) "Precursor substance" has the meaning given that term in ORS 475.940.

8 (3) Theft in the first degree is a Class C felony.

9 **SECTION 7.** ORS 166.660 is amended to read:

10 166.660. (1) A person commits the crime of unlawful paramilitary activity if the person:

11 (a) Exhibits, displays or demonstrates to another person the use, application or making of any
12 firearm, explosive or incendiary device or any technique capable of causing injury or death to per-
13 sons and intends or knows that such firearm, explosive or incendiary device or technique will be
14 unlawfully employed for use in a civil disorder; or

15 (b) Assembles with one or more other persons for the purpose of training with, practicing with
16 or being instructed in the use of any firearm, explosive or incendiary device or technique capable
17 of causing injury or death to persons with the intent to unlawfully employ such firearm, explosive
18 or incendiary device or technique in a civil disorder.

19 (2)(a) Nothing in this section makes unlawful any act of any law enforcement officer performed
20 in the otherwise lawful performance of the officer's official duties.

21 (b) Nothing in this section makes unlawful any activity of the State Department of Fish and
22 Wildlife, or any activity intended to teach or practice self-defense or self-defense techniques, such
23 as karate clubs or self-defense clinics, and similar lawful activity, or any facility, program or lawful
24 activity related to firearms instruction and training intended to teach the safe handling and use of
25 firearms, or any other lawful sports or activities related to the individual recreational use or pos-
26 session of firearms, including but not limited to hunting activities, target shooting, self-defense,
27 firearms collection or any organized activity including, but not limited to any hunting club, rifle
28 club, rifle range or shooting range which does not include a conspiracy as defined in ORS 161.450
29 or the knowledge of or the intent to cause or further a civil disorder.

30 (3) Unlawful paramilitary activity is a Class C felony.

31 (4) As used in this section:

32 (a) "Civil disorder" means acts of physical violence by assemblages of three or more persons
33 which cause damage or injury, or immediate danger thereof, to the person or property of any other
34 individual.

35 (b) "Firearm" [*means a weapon, by whatever name known, which is designed to expel a projectile*
36 *by the action of black powder or smokeless black powder and which is readily capable of use as a*
37 *weapon*] **has the meaning given that term in ORS 166.210.**

38 (c) "Explosive" means a chemical compound, mixture or device that is commonly used or in-
39 tended for the purpose of producing a chemical reaction resulting in a substantially instantaneous
40 release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin,
41 blasting caps and nitrojelly, but excluding fireworks as defined in ORS 480.110 (1), black powder,
42 smokeless powder, small arms ammunition and small arms ammunition primers.

43 (d) "Law enforcement officer" means any duly constituted police officer of the United States,
44 any state, any political subdivision of a state or the District of Columbia, and also includes members
45 of the military reserve forces or National Guard as defined in 10 U.S.C. 101 (9), members of the or-

1 ganized militia of any state or territory of the United States, the Commonwealth of Puerto Rico or
2 the District of Columbia not included within the definition of National Guard as defined by 10 U.S.C.
3 101 (9), members of the Armed Forces of the United States and such persons as are defined in ORS
4 161.015 (4) when in the performance of official duties.

5 **SECTION 8.** ORS 475.235, as amended by section 2, chapter 636, Oregon Laws 2007, is amended
6 to read:

7 475.235. (1) It is not necessary for the state to negate any exemption or exception in ORS
8 475.005 to 475.285 and 475.840 to 475.980 in any complaint, information, indictment or other pleading
9 or in any trial, hearing or other proceeding under ORS 475.005 to 475.285 and 475.840 to 475.980.
10 The burden of proof of any exemption or exception is upon the person claiming it.

11 (2) In the absence of proof that a person is the duly authorized holder of an appropriate regis-
12 tration or order form issued under ORS 475.005 to 475.285 and 475.840 to 475.980, the person is
13 presumed not to be the holder of the registration or form. The burden of proof is upon the person
14 to rebut the presumption.

15 (3)(a) When a controlled substance is at issue in a criminal proceeding before a grand jury, at
16 a preliminary hearing, in a proceeding on a district attorney's information or for purposes of an
17 early disposition program, it is prima facie evidence of the identity of the controlled substance if:

18 (A) A sample of the controlled substance is tested using a presumptive test for controlled sub-
19 stances;

20 (B) The test is conducted by a law enforcement officer trained to use the test or by a forensic
21 scientist; and

22 (C) The test is positive for the particular controlled substance.

23 (b) When the identity of a controlled substance is established using a presumptive test for pur-
24 poses of a criminal proceeding before a grand jury, a preliminary hearing, a proceeding on a district
25 attorney's information or an early disposition program, the defendant, upon notice to the district
26 attorney, may request that the controlled substance be sent to a state police forensic laboratory for
27 analysis.

28 **(4) Notwithstanding any other provision of law, in all prosecutions in which an analysis**
29 **of a controlled substance or sample was conducted, a certified copy of the analytical report**
30 **signed by the director of a state police forensic laboratory or the analyst or forensic scientist**
31 **conducting the analysis shall be admitted as prima facie evidence of the results of the ana-**
32 **lytical findings unless the defendant has provided notice of an objection in accordance with**
33 **subsection (5) of this section.**

34 **(5) If the defendant intends to object at trial to the admission of a certified copy of an**
35 **analytical report as provided in subsection (4) of this section, not less than 15 days prior to**
36 **trial the defendant shall file written notice of the objection with the court and serve a copy**
37 **on the district attorney.**

38 [(4)] (6) As used in this section[,]:

39 (a) "Analyst" means a person employed by the Department of State Police to conduct
40 analysis in forensic laboratories established by the department under ORS 181.080.

41 (b) "Presumptive test" includes, but is not limited to, chemical tests using Marquis reagent,
42 Duquenois-Levine reagent, Scott reagent system or modified Chen's reagent.

43 **SECTION 9.** ORS 40.460, as amended by section 3, chapter 636, Oregon Laws 2007, is amended
44 to read:

45 40.460. The following are not excluded by ORS 40.455, even though the declarant is available

1 as a witness:

2 (1) (Reserved.)

3 (2) A statement relating to a startling event or condition made while the declarant was under
4 the stress of excitement caused by the event or condition.

5 (3) A statement of the declarant's then existing state of mind, emotion, sensation or physical
6 condition, such as intent, plan, motive, design, mental feeling, pain or bodily health, but not includ-
7 ing a statement of memory or belief to prove the fact remembered or believed unless it relates to
8 the execution, revocation, identification, or terms of the declarant's will.

9 (4) Statements made for purposes of medical diagnosis or treatment and describing medical his-
10 tory, or past or present symptoms, pain or sensations, or the inception or general character of the
11 cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

12 (5) A memorandum or record concerning a matter about which a witness once had knowledge
13 but now has insufficient recollection to enable the witness to testify fully and accurately, shown to
14 have been made or adopted by the witness when the matter was fresh in the memory of the witness
15 and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into
16 evidence but may not itself be received as an exhibit unless offered by an adverse party.

17 (6) A memorandum, report, record, or data compilation, in any form, of acts, events, conditions,
18 opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person
19 with knowledge, if kept in the course of a regularly conducted business activity, and if it was the
20 regular practice of that business activity to make the memorandum, report, record, or data compi-
21 lation, all as shown by the testimony of the custodian or other qualified witness, unless the source
22 of information or the method of circumstances of preparation indicate lack of trustworthiness. The
23 term "business" as used in this subsection includes business, institution, association, profession, oc-
24 cupation, and calling of every kind, whether or not conducted for profit.

25 (7) Evidence that a matter is not included in the memoranda, reports, records, or data compila-
26 tions, and in any form, kept in accordance with the provisions of subsection (6) of this section, to
27 prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a
28 memorandum, report, record, or data compilation was regularly made and preserved, unless the
29 sources of information or other circumstances indicate lack of trustworthiness.

30 (8) Records, reports, statements or data compilations, in any form, of public offices or agencies,
31 including federally recognized American Indian tribal governments, setting forth:

32 (a) The activities of the office or agency;

33 (b) Matters observed pursuant to duty imposed by law as to which matters there was a duty to
34 report, excluding, in criminal cases, matters observed by police officers and other law enforcement
35 personnel; or

36 (c) In civil actions and proceedings and against the government in criminal cases, factual
37 findings, resulting from an investigation made pursuant to authority granted by law, unless the
38 sources of information or other circumstances indicate lack of trustworthiness.

39 (9) Records or data compilations, in any form, of births, fetal deaths, deaths or marriages, if the
40 report thereof was made to a public office, including a federally recognized American Indian tribal
41 government, pursuant to requirements of law.

42 (10) To prove the absence of a record, report, statement or data compilation, in any form, or the
43 nonoccurrence or nonexistence of a matter of which a record, report, statement or data compilation,
44 in any form, was regularly made and preserved by a public office or agency, including a federally
45 recognized American Indian tribal government, evidence in the form of a certification in accordance

1 with ORS 40.510, or testimony, that diligent search failed to disclose the record, report, statement
2 or data compilation, or entry.

3 (11) Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood
4 or marriage, or other similar facts of personal or family history, contained in a regularly kept record
5 of a religious organization.

6 (12) A statement of fact contained in a certificate that the maker performed a marriage or other
7 ceremony or administered a sacrament, made by a member of the clergy, a public official, an official
8 of a federally recognized American Indian tribal government or any other person authorized by the
9 rules or practices of a religious organization or by law to perform the act certified, and purporting
10 to have been issued at the time of the act or within a reasonable time thereafter.

11 (13) Statements of facts concerning personal or family history contained in family bibles,
12 genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts,
13 or tombstones, or the like.

14 (14) The record of a document purporting to establish or affect an interest in property, as proof
15 of content of the original recorded document and its execution and delivery by each person by whom
16 it purports to have been executed, if the record is a record of a public office, including a federally
17 recognized American Indian tribal government, and an applicable statute authorizes the recording
18 of documents of that kind in that office.

19 (15) A statement contained in a document purporting to establish or affect an interest in prop-
20 erty if the matter stated was relevant to the purpose of the document, unless dealings with the
21 property since the document was made have been inconsistent with the truth of the statement or
22 the purport of the document.

23 (16) Statements in a document in existence 20 years or more the authenticity of which is es-
24 tablished.

25 (17) Market quotations, tabulations, lists, directories, or other published compilations, generally
26 used and relied upon by the public or by persons in particular occupations.

27 (18) (Reserved.)

28 (18a)(a) A complaint of sexual misconduct, complaint of abuse as defined in ORS 107.705 or
29 419B.005, complaint of abuse of an elderly person, as those terms are defined in ORS 124.050, or a
30 complaint relating to a violation of ORS 163.205 or 164.015 in which a person 65 years of age or
31 older is the victim, made by the witness after the commission of the alleged misconduct or abuse
32 at issue. Except as provided in paragraph (b) of this subsection, such evidence must be confined to
33 the fact that the complaint was made.

34 (b) A statement made by a person concerning an act of abuse as defined in ORS 107.705 or
35 419B.005, a statement made by a person concerning an act of abuse of an elderly person, as those
36 terms are defined in ORS 124.050, or a statement made by a person concerning a violation of ORS
37 163.205 or 164.015 in which a person 65 years of age or older is the victim, is not excluded by ORS
38 40.455 if the declarant either testifies at the proceeding and is subject to cross-examination, or is
39 unavailable as a witness but was chronologically or mentally under 12 years of age when the
40 statement was made or was 65 years of age or older when the statement was made. However, if a
41 declarant is unavailable, the statement may be admitted in evidence only if the proponent estab-
42 lishes that the time, content and circumstances of the statement provide indicia of reliability, and
43 in a criminal trial that there is corroborative evidence of the act of abuse and of the alleged
44 perpetrator's opportunity to participate in the conduct and that the statement possesses indicia of
45 reliability as is constitutionally required to be admitted. No statement may be admitted under this

1 paragraph unless the proponent of the statement makes known to the adverse party the proponent's
2 intention to offer the statement and the particulars of the statement no later than 15 days before
3 trial, except for good cause shown. For purposes of this paragraph, in addition to those situations
4 described in ORS 40.465 (1), the declarant shall be considered "unavailable" if the declarant has a
5 substantial lack of memory of the subject matter of the statement, is presently incompetent to tes-
6 tify, is unable to communicate about the abuse or sexual conduct because of fear or other similar
7 reason or is substantially likely, as established by expert testimony, to suffer lasting severe emo-
8 tional trauma from testifying. Unless otherwise agreed by the parties, the court shall examine the
9 declarant in chambers and on the record or outside the presence of the jury and on the record. The
10 examination shall be conducted immediately prior to the commencement of the trial in the presence
11 of the attorney and the legal guardian or other suitable person as designated by the court. If the
12 declarant is found to be unavailable, the court shall then determine the admissibility of the evidence.
13 The determinations shall be appealable under ORS 138.060 (1)(c) or (2)(a). The purpose of the ex-
14 amination shall be to aid the court in making its findings regarding the availability of the declarant
15 as a witness and the reliability of the statement of the declarant. In determining whether a state-
16 ment possesses indicia of reliability under this paragraph, the court may consider, but is not limited
17 to, the following factors:

18 (A) The personal knowledge of the declarant of the event;

19 (B) The age and maturity of the declarant or extent of disability if the declarant is a person
20 with a developmental disability;

21 (C) Certainty that the statement was made, including the credibility of the person testifying
22 about the statement and any motive the person may have to falsify or distort the statement;

23 (D) Any apparent motive the declarant may have to falsify or distort the event, including bias,
24 corruption or coercion;

25 (E) The timing of the statement of the declarant;

26 (F) Whether more than one person heard the statement;

27 (G) Whether the declarant was suffering pain or distress when making the statement;

28 (H) Whether the declarant's young age or disability makes it unlikely that the declarant fabri-
29 cated a statement that represents a graphic, detailed account beyond the knowledge and experience
30 of the declarant;

31 (I) Whether the statement has internal consistency or coherence and uses terminology appro-
32 priate to the declarant's age or to the extent of the declarant's disability if the declarant is a person
33 with a developmental disability;

34 (J) Whether the statement is spontaneous or directly responsive to questions; and

35 (K) Whether the statement was elicited by leading questions.

36 (c) This subsection applies to all civil, criminal and juvenile proceedings.

37 (d) This subsection applies to a child declarant, a declarant who is an elderly person as defined
38 in ORS 124.050 or an adult declarant with a developmental disability. For the purposes of this sub-
39 section, "developmental disability" means any disability attributable to mental retardation, autism,
40 cerebral palsy, epilepsy or other disabling neurological condition that requires training or support
41 similar to that required by persons with mental retardation, if either of the following apply:

42 (A) The disability originates before the person attains 22 years of age, or if the disability is at-
43 tributable to mental retardation the condition is manifested before the person attains 18 years of
44 age, the disability can be expected to continue indefinitely, and the disability constitutes a sub-
45 stantial handicap to the ability of the person to function in society.

1 (B) The disability results in a significant subaverage general intellectual functioning with con-
2 current deficits in adaptive behavior that are manifested during the developmental period.

3 (19) Reputation among members of a person's family by blood, adoption or marriage, or among
4 a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce,
5 death, legitimacy, relationship by blood or adoption or marriage, ancestry, or other similar fact of
6 a person's personal or family history.

7 (20) Reputation in a community, arising before the controversy, as to boundaries of or customs
8 affecting lands in the community, and reputation as to events of general history important to the
9 community or state or nation in which located.

10 (21) Reputation of a person's character among associates of the person or in the community.

11 (22) Evidence of a final judgment, entered after a trial or upon a plea of guilty, but not upon a
12 plea of no contest, adjudging a person guilty of a crime other than a traffic offense, to prove any
13 fact essential to sustain the judgment, but not including, when offered by the government in a
14 criminal prosecution for purposes other than impeachment, judgments against persons other than the
15 accused. The pendency of an appeal may be shown but does not affect admissibility.

16 (23) Judgments as proof of matters of personal, family or general history, or boundaries, essen-
17 tial to the judgment, if the same would be provable by evidence of reputation.

18 (24) Notwithstanding the limits contained in subsection (18a) of this section, in any proceeding
19 in which a child under 12 years of age at the time of trial, or a person with a developmental disa-
20 bility as described in subsection (18a)(d) of this section, may be called as a witness to testify con-
21 cerning an act of abuse, as defined in ORS 419B.005, or sexual conduct performed with or on the
22 child or person with a developmental disability by another, the testimony of the child or person with
23 a developmental disability taken by contemporaneous examination and cross-examination in another
24 place under the supervision of the trial judge and communicated to the courtroom by closed-circuit
25 television or other audiovisual means. Testimony will be allowed as provided in this subsection only
26 if the court finds that there is a substantial likelihood, established by expert testimony, that the
27 child or person with a developmental disability will suffer severe emotional or psychological harm
28 if required to testify in open court. If the court makes such a finding, the court, on motion of a
29 party, the child, the person with a developmental disability or the court in a civil proceeding, or on
30 motion of the district attorney, the child or the person with a developmental disability in a criminal
31 or juvenile proceeding, may order that the testimony of the child or the person with a developmental
32 disability be taken as described in this subsection. Only the judge, the attorneys for the parties, the
33 parties, individuals necessary to operate the equipment and any individual the court finds would
34 contribute to the welfare and well-being of the child or person with a developmental disability may
35 be present during the testimony of the child or person with a developmental disability.

36 (25)(a) Any document containing data prepared or recorded by the Oregon State Police pursuant
37 to ORS 813.160 (1)(b)(C) or (E), **or pursuant to ORS 475.235 (4)**, if the document is produced by
38 data retrieval from the Law Enforcement Data System or other computer system maintained and
39 operated by the Oregon State Police, and the person retrieving the data attests that the information
40 was retrieved directly from the system and that the document accurately reflects the data retrieved.

41 (b) Any document containing data prepared or recorded by the Oregon State Police that is
42 produced by data retrieval from the Law Enforcement Data System or other computer system
43 maintained and operated by the Oregon State Police and that is electronically transmitted through
44 public or private computer networks under an electronic signature adopted by the Oregon State
45 Police if the person receiving the data attests that the document accurately reflects the data re-

1 ceived.

2 (c) Notwithstanding any statute or rule to the contrary, in any criminal case in which docu-
3 ments are introduced under the provisions of this subsection, the defendant may subpoena the **an-**
4 **alyst, as defined in ORS 475.235 (6), or other** person that generated or keeps the original
5 document for the purpose of testifying at the preliminary hearing and trial of the issue. Except as
6 provided in ORS 44.550 to 44.566, no charge shall be made to the defendant for the appearance of
7 the **analyst or other** person.

8 (26)(a) A statement that purports to narrate, describe, report or explain an incident of domestic
9 violence, as defined in ORS 135.230, made by a victim of the domestic violence within 24 hours after
10 the incident occurred, if the statement:

11 (A) Was recorded, either electronically or in writing, or was made to a peace officer as defined
12 in ORS 161.015, corrections officer, youth correction officer, parole and probation officer, emergency
13 medical technician or firefighter; and

14 (B) Has sufficient indicia of reliability.

15 (b) In determining whether a statement has sufficient indicia of reliability under paragraph (a)
16 of this subsection, the court shall consider all circumstances surrounding the statement. The court
17 may consider, but is not limited to, the following factors in determining whether a statement has
18 sufficient indicia of reliability:

19 (A) The personal knowledge of the declarant.

20 (B) Whether the statement is corroborated by evidence other than statements that are subject
21 to admission only pursuant to this subsection.

22 (C) The timing of the statement.

23 (D) Whether the statement was elicited by leading questions.

24 (E) Subsequent statements made by the declarant. Recantation by a declarant is not sufficient
25 reason for denying admission of a statement under this subsection in the absence of other factors
26 indicating unreliability.

27 (27) A report prepared by a forensic scientist that contains the results of a presumptive test
28 conducted by the forensic scientist as described in ORS 475.235, if the forensic scientist attests that
29 the report accurately reflects the results of the presumptive test.

30 (28)(a) A statement not specifically covered by any of the foregoing exceptions but having
31 equivalent circumstantial guarantees of trustworthiness, if the court determines that:

32 (A) The statement is relevant;

33 (B) The statement is more probative on the point for which it is offered than any other evidence
34 that the proponent can procure through reasonable efforts; and

35 (C) The general purposes of the Oregon Evidence Code and the interests of justice will best be
36 served by admission of the statement into evidence.

37 (b) A statement may not be admitted under this subsection unless the proponent of it makes
38 known to the adverse party the intention to offer the statement and the particulars of it, including
39 the name and address of the declarant, sufficiently in advance of the trial or hearing, or as soon as
40 practicable after it becomes apparent that such statement is probative of the issues at hand, to
41 provide the adverse party with a fair opportunity to prepare to meet it.

42 **SECTION 10.** ORS 40.510, as amended by section 4, chapter 636, Oregon Laws 2007, is amended
43 to read:

44 40.510. (1) Extrinsic evidence of authenticity as a condition precedent to admissibility is not
45 required with respect to the following:

1 (a) A document bearing a seal purporting to be that of the United States, or of any state, dis-
2 trict, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the
3 Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency
4 thereof, and a signature purporting to be an attestation or execution.

5 (b) A document purporting to bear the signature, in an official capacity, of an officer or em-
6 ployee of any entity included in subsection (1)(a) of this section, having no seal, if a public officer
7 having a seal and having official duties in the district or political subdivision of the officer or em-
8 ployee certifies under seal that the signer has the official capacity and that the signature is genuine.

9 (c) A document purporting to be:

10 (A) Executed or attested in an official capacity by a person authorized by the laws of a foreign
11 country to make the execution or attestation; and

12 (B) Accompanied by a final certification as provided in subsection (3) of this section as to the
13 genuineness of the signature and official position of:

14 (i) The executing or attesting person; or

15 (ii) Any foreign official whose certificate of genuineness of signature and official position relates
16 to the execution or attestation or is in a chain of certificates of genuineness of signature and official
17 position relating to the execution or attestation.

18 (d) A copy of an official record or report or entry therein, or of a document authorized by law
19 to be recorded or filed and actually recorded or filed in a public office, including data compilations
20 in any form, certified as correct by the custodian or other person authorized to make the certif-
21 ication, by certificate complying with subsection (1)(a), (b) or (c) of this section or otherwise com-
22 plying with any law or rule prescribed by the Supreme Court.

23 (e) Books, pamphlets or other publications purporting to be issued by public authority.

24 (f) Printed materials purporting to be newspapers or periodicals.

25 (g) Inscriptions, signs, tags or labels purporting to have been affixed in the course of business
26 and indicating ownership, control or origin.

27 (h) Documents accompanied by a certificate of acknowledgment executed in the manner provided
28 by law by a notary public or other officer authorized by law to take acknowledgments.

29 (i) Commercial paper, signatures thereon and documents relating thereto to the extent provided
30 by the Uniform Commercial Code or ORS chapter 83.

31 (j) Any signature, documents or other matter declared by law to be presumptively or prima facie
32 genuine or authentic.

33 (k)(A) A document bearing a seal purporting to be that of a federally recognized Indian tribal
34 government or of a political subdivision, department, officer, or agency thereof, and a signature
35 purporting to be an attestation or execution.

36 (B) A document purporting to bear the signature, in an official capacity, of an officer or em-
37 ployee of any entity included in subparagraph (A) of this paragraph, having no seal, if a public of-
38 ficer having a seal and having official duties in the district or political subdivision or the officer or
39 employee certifies under seal that the signer has the official capacity and that the signature is
40 genuine.

41 (L)(A) Any document containing data prepared or recorded by the Oregon State Police pursuant
42 to ORS 813.160 (1)(b)(C) or (E), **or pursuant to ORS 475.235 (4)**, if the document is produced by
43 data retrieval from the Law Enforcement Data System or other computer system maintained and
44 operated by the Oregon State Police, and the person retrieving the data attests that the information
45 was retrieved directly from the system and that the document accurately reflects the data retrieved.

1 (B) Any document containing data prepared or recorded by the Oregon State Police that is
2 produced by data retrieval from the Law Enforcement Data System or other computer system
3 maintained and operated by the Oregon State Police and that is electronically transmitted through
4 public or private computer networks under an electronic signature adopted by the Oregon State
5 Police if the person receiving the data attests that the document accurately reflects the data re-
6 ceived.

7 (m) A report prepared by a forensic scientist that contains the results of a presumptive test
8 conducted by the forensic scientist as described in ORS 475.235, if the forensic scientist attests that
9 the report accurately reflects the results of the presumptive test.

10 (2) For the purposes of this section, "signature" includes any symbol executed or adopted by a
11 party with present intention to authenticate a writing.

12 (3) A final certification for purposes of subsection (1)(c) of this section may be made by a sec-
13 retary of embassy or legation, consul general, consul, vice consul, or consular agent of the United
14 States, or a diplomatic or consular official of the foreign country assigned or accredited to the
15 United States. If reasonable opportunity has been given to all parties to investigate the authenticity
16 and accuracy of official documents, the court may, for good cause shown, order that they be treated
17 as presumptively authentic without final certification or permit them to be evidenced by an attested
18 summary with or without final certification.

19 **SECTION 11. The amendments to ORS 161.610, 161.705, 164.055, 166.210, 166.660, 166.663**
20 **and 475.860 by sections 1 to 7 of this 2009 Act apply to conduct occurring on or after the ef-**
21 **fective date of this 2009 Act.**

22 **SECTION 12. Section 5, chapter 636, Oregon Laws 2007, is repealed.**

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