

## HOUSE AMENDMENTS TO HOUSE BILL 2290

By COMMITTEE ON JUDICIARY

April 30

1 In line 2 of the printed bill, after the semicolon delete the rest of the line and insert “creating  
2 new provisions; amending ORS 40.460, 40.510, 161.610, 164.055, 166.210, 166.660, 166.663 and 475.235;  
3 and repealing section 5, chapter 636, Oregon Laws 2007.”.

4 Delete lines 4 through 8 and insert:

5 “**SECTION 1.** ORS 166.663 is amended to read:

6 “166.663. (1) [*No person shall*] **A person may not** cast from a motor vehicle an artificial light  
7 while there is in the possession or in the immediate physical presence of the person a bow and ar-  
8 row or a rifle, gun, revolver or other firearm.

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

10 “(a) From the headlights of a motor vehicle that is being operated on a road in the usual man-  
11 ner.

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

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

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

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

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

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

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

28 “[3] (4) Violation of subsection (1) of this section is punishable as a Class B violation.

29 “**(5) As used in this section, ‘peace officer’ has the meaning given that term in ORS**  
30 **161.015.**

31 “**SECTION 2.** ORS 166.210 is amended to read:

32 “166.210. As used in ORS 166.250 to 166.270, 166.291 to 166.295 and 166.410 to 166.470:

33 “(1) ‘Antique firearm’ means:

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

1 “(b) Any replica of any firearm described in paragraph (a) of this subsection if the replica:  
2 “(A) Is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition;  
3 or  
4 “(B) Uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in  
5 the United States and that is not readily available in the ordinary channels of commercial trade.  
6 “(2) ‘Corrections officer’ has the meaning given that term in ORS 181.610.  
7 “(3) ‘Firearm’ means a weapon, by whatever name known, which is designed to expel a projectile  
8 by the action of powder [*and which is readily capable of use as a weapon*].  
9 “(4) ‘Firearms silencer’ means any device for silencing, muffling or diminishing the report of a  
10 firearm.  
11 “(5) ‘Handgun’ means any pistol or revolver using a fixed cartridge containing a propellant  
12 charge, primer and projectile, and designed to be aimed or fired otherwise than from the shoulder.  
13 “(6) ‘Machine gun’ means a weapon of any description by whatever name known, loaded or un-  
14 loaded, which is designed or modified to allow two or more shots to be fired by a single pressure  
15 on the trigger device.  
16 “(7) ‘Minor’ means a person under 18 years of age.  
17 “(8) ‘Offense’ has the meaning given that term in ORS 161.505.  
18 “(9) ‘Parole and probation officer’ has the meaning given that term in ORS 181.610.  
19 “(10) ‘Peace officer’ has the meaning given that term in ORS 133.005.  
20 “(11) ‘Short-barreled rifle’ means a rifle having one or more barrels less than 16 inches in length  
21 and any weapon made from a rifle if the weapon has an overall length of less than 26 inches.  
22 “(12) ‘Short-barreled shotgun’ means a shotgun having one or more barrels less than 18 inches  
23 in length and any weapon made from a shotgun if the weapon has an overall length of less than 26  
24 inches.  
25 “**SECTION 3.** ORS 161.610 is amended to read:  
26 “161.610. (1) As used in this section, ‘firearm’ [*means a weapon which is designed to expel a*  
27 *projectile by the action of black powder or smokeless powder*] **has the meaning given that term in**  
28 **ORS 166.210.**  
29 “(2) The use or threatened use of a firearm, whether operable or inoperable, by a defendant  
30 during the commission of a felony may be pleaded in the accusatory instrument and proved at trial  
31 as an element in aggravation of the crime as provided in this section. When a crime is so pleaded,  
32 the aggravated nature of the crime may be indicated by adding the words ‘with a firearm’ to the title  
33 of the offense. The unaggravated crime shall be considered a lesser included offense.  
34 “(3) Notwithstanding the provisions of ORS 161.605 or 137.010 (3) and except as otherwise pro-  
35 vided in subsection (6) of this section, if a defendant is convicted of a felony having as an element  
36 the defendant’s use or threatened use of a firearm during the commission of the crime, the court  
37 shall impose at least the minimum term of imprisonment as provided in subsection (4) of this section.  
38 Except as provided in ORS 144.122 and 144.126 and subsection (5) of this section, in no case shall  
39 any person punishable under this section become eligible for work release, parole, temporary leave  
40 or terminal leave until the minimum term of imprisonment is served, less a period of time equivalent  
41 to any reduction of imprisonment granted for good time served or time credits earned under ORS  
42 421.121, nor shall the execution of the sentence imposed upon such person be suspended by the  
43 court.  
44 “(4) The minimum terms of imprisonment for felonies having as an element the defendant’s use  
45 or threatened use of a firearm in the commission of the crime shall be as follows:

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

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

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

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

12           “(a) For felonies committed prior to November 1, 1989, suspend the execution of the sentence  
13 or impose a lesser term of imprisonment, when the court expressly finds mitigating circumstances  
14 justifying such lesser sentence and sets forth those circumstances in its statement on sentencing;  
15 or

16           “(b) For felonies committed on or after November 1, 1989, impose a lesser sentence in accord-  
17 ance with the rules of the Oregon Criminal Justice Commission.

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

22          “**SECTION 4.** ORS 164.055 is amended to read:

23          “164.055. (1) A person commits the crime of theft in the first degree if, by other than extortion,  
24 the person commits theft as defined in ORS 164.015 and:

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

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

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

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

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

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

35          “(2) As used in this section:

36           “(a) ‘Companion animal’ means a dog or cat possessed by a person, business or other entity for  
37 purposes of companionship, security, hunting, herding or providing assistance in relation to a phys-  
38 ical disability.

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

44           “(c) ‘Firearm’ [*means a weapon, by whatever name known, which is designed to expel a projectile*  
45 *by the action of black powder or smokeless powder and which is readily capable of use as a weapon*]

1 **has the meaning given that term in ORS 166.210.**

2 “(d) ‘Livestock animal’ means a ratite, psittacine, horse, gelding, mare, stallion, colt, mule, ass,  
3 jenny, bull, steer, cow, calf, goat, sheep, lamb, llama, pig or hog.

4 “(e) ‘Precursor substance’ has the meaning given that term in ORS 475.940.

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

6 “**SECTION 5.** ORS 166.660 is amended to read:

7 “166.660. (1) A person commits the crime of unlawful paramilitary activity if the person:

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

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

16 “(2)(a) Nothing in this section makes unlawful any act of any law enforcement officer performed  
17 in the otherwise lawful performance of the officer’s official duties.

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

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

28 “(4) As used in this section:

29 “(a) ‘Civil disorder’ means acts of physical violence by assemblages of three or more persons  
30 which cause damage or injury, or immediate danger thereof, to the person or property of any other  
31 individual.

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

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

40 “(d) ‘Law enforcement officer’ means any duly constituted police officer of the United States,  
41 any state, any political subdivision of a state or the District of Columbia, and also includes members  
42 of the military reserve forces or National Guard as defined in 10 U.S.C. 101 (9), members of the or-  
43 ganized militia of any state or territory of the United States, the Commonwealth of Puerto Rico or  
44 the District of Columbia not included within the definition of National Guard as defined by 10 U.S.C.  
45 101 (9), members of the Armed Forces of the United States and such persons as are defined in ORS

1 161.015 (4) when in the performance of official duties.

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

4 “475.235. (1) It is not necessary for the state to negate any exemption or exception in ORS  
5 475.005 to 475.285 and 475.840 to 475.980 in any complaint, information, indictment or other pleading  
6 or in any trial, hearing or other proceeding under ORS 475.005 to 475.285 and 475.840 to 475.980.  
7 The burden of proof of any exemption or exception is upon the person claiming it.

8 “(2) In the absence of proof that a person is the duly authorized holder of an appropriate reg-  
9 istration or order form issued under ORS 475.005 to 475.285 and 475.840 to 475.980, the person is  
10 presumed not to be the holder of the registration or form. The burden of proof is upon the person  
11 to rebut the presumption.

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

15 “(A) A sample of the controlled substance is tested using a presumptive test for controlled sub-  
16 stances;

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

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

20 “(b) When the identity of a controlled substance is established using a presumptive test for  
21 purposes of a criminal proceeding before a grand jury, a preliminary hearing, a proceeding on a  
22 district attorney’s information or an early disposition program, the defendant, upon notice to the  
23 district attorney, may request that the controlled substance be sent to a state police forensic labo-  
24 ratory for analysis.

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

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

35 “[4] (6) As used in this section[.]:

36 **“(a) ‘Analyst’ means a person employed by the Department of State Police to conduct**  
37 **analysis in forensic laboratories established by the department under ORS 181.080.**

38 **“(b) ‘Presumptive test’ includes, but is not limited to, chemical tests using Marquis reagent,**  
39 **Duquenois-Levine reagent, Scott reagent system or modified Chen’s reagent.**

40 **“SECTION 7.** ORS 40.460, as amended by section 3, chapter 636, Oregon Laws 2007, is amended  
41 to read:

42 “40.460. The following are not excluded by ORS 40.455, even though the declarant is available  
43 as a witness:

44 “(1) (Reserved.)

45 “(2) A statement relating to a startling event or condition made while the declarant was under

1 the stress of excitement caused by the event or condition.

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

6 “(4) Statements made for purposes of medical diagnosis or treatment and describing medical  
7 history, or past or present symptoms, pain or sensations, or the inception or general character of  
8 the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

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

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

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

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

29 “(a) The activities of the office or agency;

30 “(b) Matters observed pursuant to duty imposed by law as to which matters there was a duty  
31 to report, excluding, in criminal cases, matters observed by police officers and other law enforce-  
32 ment personnel; or

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

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

39 “(10) To prove the absence of a record, report, statement or data compilation, in any form, or  
40 the nonoccurrence or nonexistence of a matter of which a record, report, statement or data compi-  
41 lation, in any form, was regularly made and preserved by a public office or agency, including a  
42 federally recognized American Indian tribal government, evidence in the form of a certification in  
43 accordance with ORS 40.510, or testimony, that diligent search failed to disclose the record, report,  
44 statement or data compilation, or entry.

45 “(11) Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by

1 blood or marriage, or other similar facts of personal or family history, contained in a regularly kept  
2 record of a religious organization.

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

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

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

16 “(15) A statement contained in a document purporting to establish or affect an interest in  
17 property if the matter stated was relevant to the purpose of the document, unless dealings with the  
18 property since the document was made have been inconsistent with the truth of the statement or  
19 the purport of the document.

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

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

24 “(18) (Reserved.)

25 “(18a)(a) A complaint of sexual misconduct, complaint of abuse as defined in ORS 107.705 or  
26 419B.005, complaint of abuse of an elderly person, as those terms are defined in ORS 124.050, or a  
27 complaint relating to a violation of ORS 163.205 or 164.015 in which a person 65 years of age or  
28 older is the victim, made by the witness after the commission of the alleged misconduct or abuse  
29 at issue. Except as provided in paragraph (b) of this subsection, such evidence must be confined to  
30 the fact that the complaint was made.

31 “(b) A statement made by a person concerning an act of abuse as defined in ORS 107.705 or  
32 419B.005, a statement made by a person concerning an act of abuse of an elderly person, as those  
33 terms are defined in ORS 124.050, or a statement made by a person concerning a violation of ORS  
34 163.205 or 164.015 in which a person 65 years of age or older is the victim, is not excluded by ORS  
35 40.455 if the declarant either testifies at the proceeding and is subject to cross-examination, or is  
36 unavailable as a witness but was chronologically or mentally under 12 years of age when the  
37 statement was made or was 65 years of age or older when the statement was made. However, if a  
38 declarant is unavailable, the statement may be admitted in evidence only if the proponent estab-  
39 lishes that the time, content and circumstances of the statement provide indicia of reliability, and  
40 in a criminal trial that there is corroborative evidence of the act of abuse and of the alleged  
41 perpetrator’s opportunity to participate in the conduct and that the statement possesses indicia of  
42 reliability as is constitutionally required to be admitted. No statement may be admitted under this  
43 paragraph unless the proponent of the statement makes known to the adverse party the proponent’s  
44 intention to offer the statement and the particulars of the statement no later than 15 days before  
45 trial, except for good cause shown. For purposes of this paragraph, in addition to those situations

1 described in ORS 40.465 (1), the declarant shall be considered ‘unavailable’ if the declarant has a  
2 substantial lack of memory of the subject matter of the statement, is presently incompetent to tes-  
3 tify, is unable to communicate about the abuse or sexual conduct because of fear or other similar  
4 reason or is substantially likely, as established by expert testimony, to suffer lasting severe emo-  
5 tional trauma from testifying. Unless otherwise agreed by the parties, the court shall examine the  
6 declarant in chambers and on the record or outside the presence of the jury and on the record. The  
7 examination shall be conducted immediately prior to the commencement of the trial in the presence  
8 of the attorney and the legal guardian or other suitable person as designated by the court. If the  
9 declarant is found to be unavailable, the court shall then determine the admissibility of the evidence.  
10 The determinations shall be appealable under ORS 138.060 (1)(c) or (2)(a). The purpose of the ex-  
11 amination shall be to aid the court in making its findings regarding the availability of the declarant  
12 as a witness and the reliability of the statement of the declarant. In determining whether a state-  
13 ment possesses indicia of reliability under this paragraph, the court may consider, but is not limited  
14 to, the following factors:

15 “(A) The personal knowledge of the declarant of the event;

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

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

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

22 “(E) The timing of the statement of the declarant;

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

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

25 “(H) Whether the declarant’s young age or disability makes it unlikely that the declarant fab-  
26 ricated a statement that represents a graphic, detailed account beyond the knowledge and experi-  
27 ence of the declarant;

28 “(I) Whether the statement has internal consistency or coherence and uses terminology appro-  
29 priate to the declarant’s age or to the extent of the declarant’s disability if the declarant is a person  
30 with a developmental disability;

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

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

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

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

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

43 “(B) The disability results in a significant subaverage general intellectual functioning with  
44 concurrent deficits in adaptive behavior that are manifested during the developmental period.

45 “(19) Reputation among members of a person’s family by blood, adoption or marriage, or among



1 a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce,  
2 death, legitimacy, relationship by blood or adoption or marriage, ancestry, or other similar fact of  
3 a person's personal or family history.

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

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

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

13 "(23) Judgments as proof of matters of personal, family or general history, or boundaries, es-  
14 sential to the judgment, if the same would be provable by evidence of reputation.

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

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

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

44 "(c) Notwithstanding any statute or rule to the contrary, in any criminal case in which docu-  
45 ments are introduced under the provisions of this subsection, the defendant may subpoena the an-

1 **alyst, as defined in ORS 475.235 (6), or other** person that generated or keeps the original  
2 document for the purpose of testifying at the preliminary hearing and trial of the issue. Except as  
3 provided in ORS 44.550 to 44.566, no charge shall be made to the defendant for the appearance of  
4 the **analyst or other** person.

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

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

11 “(B) Has sufficient indicia of reliability.

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

16 “(A) The personal knowledge of the declarant.

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

19 “(C) The timing of the statement.

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

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

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

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

29 “(A) The statement is relevant;

30 “(B) The statement is more probative on the point for which it is offered than any other evi-  
31 dence that the proponent can procure through reasonable efforts; and

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

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

39 “**SECTION 8.** ORS 40.510, as amended by section 4, chapter 636, Oregon Laws 2007, is amended  
40 to read:

41 “40.510. (1) Extrinsic evidence of authenticity as a condition precedent to admissibility is not  
42 required with respect to the following:

43 “(a) A document bearing a seal purporting to be that of the United States, or of any state, dis-  
44 trict, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the  
45 Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency

1 thereof, and a signature purporting to be an attestation or execution.

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

6 “(c) A document purporting to be:

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

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

11 “(i) The executing or attesting person; or

12 “(ii) Any foreign official whose certificate of genuineness of signature and official position re-  
13 lates to the execution or attestation or is in a chain of certificates of genuineness of signature and  
14 official position relating to the execution or attestation.

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

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

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

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

24 “(h) Documents accompanied by a certificate of acknowledgment executed in the manner pro-  
25 vided by law by a notary public or other officer authorized by law to take acknowledgments.

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

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

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

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

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

43 “(B) Any document containing data prepared or recorded by the Oregon State Police that is  
44 produced by data retrieval from the Law Enforcement Data System or other computer system  
45 maintained and operated by the Oregon State Police and that is electronically transmitted through

1 public or private computer networks under an electronic signature adopted by the Oregon State  
2 Police if the person receiving the data attests that the document accurately reflects the data re-  
3 ceived.

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

7 “(2) For the purposes of this section, ‘signature’ includes any symbol executed or adopted by a  
8 party with present intention to authenticate a writing.

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

16 “**SECTION 9. The amendments to ORS 166.663 by section 1 of this 2009 Act apply to ci-  
17 tations issued for violations of ORS 166.663 committed on or after the effective date of this  
18 2009 Act.**

19 “**SECTION 10. Section 5, chapter 636, Oregon Laws 2007, is repealed.”.**  
20

---