

House Bill 2401

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Council of Police Associations)

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**.

Expands crime of assault in the third degree to include assault with dangerous substance on public safety officer.

A BILL FOR AN ACT

1
2 Relating to assault; creating new provisions; and amending ORS 163.165 and section 1, chapter 35,
3 Oregon Laws 2008.

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

5 **SECTION 1.** ORS 163.165 is amended to read:

6 163.165. (1) **As used in this section:**

7 (a) **"Dangerous substance" includes, but is not limited to, blood, urine, saliva, semen and**
8 **feces.**

9 (b) **"Public safety officer" means an emergency medical technician as defined in ORS**
10 **682.025 or a fire service professional, a parole and probation officer or a police officer as**
11 **those terms are defined in ORS 181.610.**

12 (c) **"Staff member" means:**

13 (A) **A corrections officer as defined in ORS 181.610, a youth correction officer, a Depart-**
14 **ment of Corrections or Oregon Youth Authority staff member or a person employed pursu-**
15 **ant to a contract with the department or youth authority to work with, or in the vicinity**
16 **of, inmates or youth offenders; or**

17 (B) **A volunteer authorized by the department, youth authority or other entity in charge**
18 **of a corrections facility to work with, or in the vicinity of, inmates or youth offenders.**

19 (d) **"Youth correction facility" has the meaning given that term in ORS 162.135.**

20 [(1)] (2) A person commits the crime of assault in the third degree if the person:

21 (a) Recklessly causes serious physical injury to another by means of a deadly or dangerous
22 weapon;

23 (b) Recklessly causes serious physical injury to another under circumstances manifesting ex-
24 treme indifference to the value of human life;

25 (c) Recklessly causes physical injury to another by means of a deadly or dangerous weapon un-
26 der circumstances manifesting extreme indifference to the value of human life;

27 (d) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical
28 injury to the operator of a public transit vehicle while the operator is in control of or operating the
29 vehicle. As used in this paragraph, "public transit vehicle" has the meaning given that term in ORS
30 166.116;

31 (e) While being aided by another person actually present, intentionally or knowingly causes

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 physical injury to another;

2 (f) While committed to a youth correction facility, intentionally or knowingly causes physical
3 injury to another knowing the other person is a staff member of a youth correction facility while
4 the other person is acting in the course of official duty;

5 (g) Intentionally, knowingly or recklessly causes physical injury to an emergency medical tech-
6 nician [*or paramedic*], as [*those terms are*] defined in ORS 682.025, **or a paramedic** while the
7 **emergency medical** technician or paramedic is performing official duties;

8 (h) Being at least 18 years of age, intentionally or knowingly causes physical injury to a child
9 10 years of age or younger;

10 (i) Knowing the other person is a **public safety officer or a** staff member, intentionally or
11 knowingly propels [*any*] a dangerous substance at the **public safety officer or** staff member while
12 the **public safety officer or** staff member is acting in the course of official duty or as a result of
13 the **public safety officer's or** staff member's official duties; or

14 (j) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical
15 injury to the operator of a taxi while the operator is in control of the taxi.

16 [(2)] (3) Assault in the third degree is a Class C felony. When a person is convicted of violating
17 subsection [(1)(i)] (2)(i) of this section, in addition to any other sentence it may impose, the court
18 shall impose a term of incarceration in a state correction facility.

19 [(3) *As used in this section:*]

20 [(a) *“Dangerous substance” includes, but is not limited to, blood, urine, saliva, semen and feces.*]

21 [(b) *“Staff member” means:*]

22 [(A) *A corrections officer as defined in ORS 181.610, a youth correction officer, a Department of*
23 *Corrections or Oregon Youth Authority staff member or a person employed pursuant to a contract with*
24 *the department or youth authority to work with, or in the vicinity of, inmates or youth offenders; and]*

25 [(B) *A volunteer authorized by the department, youth authority or other entity in charge of a cor-*
26 *rections facility to work with, or in the vicinity of, inmates or youth offenders.*]

27 [(c) *“Youth correction facility” has the meaning given that term in ORS 162.135.*]

28 **SECTION 2.** Section 1, chapter 35, Oregon Laws 2008, is amended to read:

29 **Sec. 1.** (1) When a court sentences a defendant to a term of incarceration that exceeds one year,
30 the defendant may request a determination of the defendant's eligibility for release on post-prison
31 supervision under ORS 421.508 (4). The court shall order in the judgment that the Department of
32 Corrections may release the defendant on post-prison supervision under ORS 421.508 (4) only if, after
33 a hearing, the court finds that:

34 (a) The defendant meets the eligibility requirements of subsections (2) and (3) of this section;

35 (b) The defendant was not on probation, parole or post-prison supervision for an offense listed
36 in ORS 137.712 (4) or 811.705 (2)(b) at the time of the commission of the current crime of conviction;

37 (c) The defendant has not previously been released on post-prison supervision under ORS 421.508
38 (4);

39 (d) The harm or loss caused by the crime is not greater than usual for that type of crime;

40 (e) The crime was not part of an organized criminal operation; and

41 (f) After considering the nature of the offense and the harm to the victim, the defendant's suc-
42 cessful completion of the program would:

43 (A) Increase public safety;

44 (B) Enhance the likelihood that the defendant would be rehabilitated; and

45 (C) Not unduly reduce the appropriate punishment.

1 (2) Except as provided in subsection (4) of this section, a defendant may not be released on
 2 post-prison supervision under ORS 421.508 (4) if the defendant is being sentenced for a crime under
 3 ORS 163.145, [163.165 (1)(a) or (b)] **163.165 (2)(a) or (b)**, 163.525 or 811.705 (2)(b).

4 (3) A defendant may not be released on post-prison supervision under ORS 421.508 (4) if the de-
 5 fendant is being sentenced for a crime listed in ORS 137.700, 137.707, 163.095 or 181.594 (4).

6 (4) Notwithstanding subsection (1) of this section, the parties may stipulate to a defendant's el-
 7 igibility for release on post-prison supervision under ORS 421.508 (4). If the court accepts the stip-
 8 ulation, the court does not need to make explicit findings regarding the factors described in
 9 subsection (1)(b) to (f) of this section. The parties may not stipulate to the defendant's release on
 10 post-prison supervision under ORS 421.508 (4) if the defendant is being sentenced for a crime de-
 11 scribed in subsection (3) of this section.

12 (5) If the court makes the findings described in subsection (1) of this section or accepts the
 13 stipulation of the parties under subsection (4) of this section, the court shall:

14 (a) Order on the record in open court as part of the sentence imposed that the defendant may
 15 be considered by the department for release on post-prison supervision under ORS 421.508 (4); and

16 (b) Include the order described in paragraph (a) of this subsection in the judgment.

17 (6) Subject to the requirements of this section, the court may order that the defendant serve a
 18 minimum period of incarceration before the defendant is released on post-prison supervision under
 19 ORS 421.508 (4). Nothing in this section authorizes the release of the defendant on post-prison
 20 supervision before the defendant has served the period of time described in ORS 421.508 (4)(b).

21 **SECTION 3. The amendments to ORS 163.165 and section 1, chapter 35, Oregon Laws**
 22 **2008, by sections 1 and 2 of this 2009 Act apply to conduct occurring on or after the effective**
 23 **date of this 2009 Act.**