

# House Bill 2714

Sponsored by Representative TOMEI; Representatives BAILEY, BARKER, DOHERTY, FREDERICK, GELSER, HARKER, MATTHEWS (Presession filed.)

## 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**.

Modifies crime of prostitution.

Creates crime of patronizing a prostitute. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both. Authorizes court to impose fine of \$20,000 under certain circumstances.

## A BILL FOR AN ACT

1  
2 Relating to crime; creating new provisions; and amending ORS 12.117, 90.396, 105.555, 131.602,  
3 133.724, 133.726, 167.007, 342.143 and 419B.005.

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

5 **SECTION 1.** ORS 167.007 is amended to read:

6 167.007. (1) A person commits the crime of prostitution if[.]

7 [(a)] the person engages in, or offers or agrees to engage in, sexual conduct or sexual contact  
8 in return for a fee.[: or]

9 [(b) *The person pays or offers or agrees to pay a fee to engage in sexual conduct or sexual*  
10 *contact.*]

11 (2) Prostitution is a Class A misdemeanor.

12 **SECTION 2.** **Section 3 of this 2011 Act is added to and made a part of ORS 167.007 to**  
13 **167.017.**

14 **SECTION 3.** (1) **A person commits the crime of patronizing a prostitute if the person**  
15 **pays, or offers or agrees to pay, a fee to engage in sexual conduct or sexual contact.**

16 **(2) Patronizing a prostitute is a Class A misdemeanor.**

17 **(3)(a) Notwithstanding ORS 161.635, when a person is convicted of violating this section,**  
18 **the court shall impose, and may not suspend, a fine in the amount of \$20,000 if the person**  
19 **paid, or offered or agreed to pay, a fee to a minor to engage in sexual conduct or sexual**  
20 **contact. In a prosecution in which it is alleged that this paragraph applies, the state need**  
21 **not prove that the person knew the minor was under 18 years of age, and it is no defense**  
22 **that the person did not know the minor's age or that the person reasonably believed the**  
23 **minor to be older than 18 years of age.**

24 **(b) Notwithstanding paragraph (a) of this subsection, if the court determines that the**  
25 **person is unable to pay the full amount of the fine, the court shall impose, and may not**  
26 **suspend, a fine in an amount the court determines the person is able to pay.**

27 **(c) As used in this subsection, "minor" means a person under 18 years of age.**

28 **SECTION 4.** ORS 12.117 is amended to read:

29 12.117. (1) Notwithstanding ORS 12.110, 12.115 or 12.160, an action based on conduct that con-  
30 stitutes child abuse or conduct knowingly allowing, permitting or encouraging child abuse that oc-

**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 curs while the person is under 18 years of age must be commenced before the person attains 40  
 2 years of age, or if the person has not discovered the causal connection between the injury and the  
 3 child abuse, nor in the exercise of reasonable care should have discovered the causal connection  
 4 between the injury and the child abuse, not more than five years from the date the person discovers  
 5 or in the exercise of reasonable care should have discovered the causal connection between the  
 6 child abuse and the injury, whichever period is longer.

7 (2) As used in subsection (1) of this section, "child abuse" means any of the following:

8 (a) Intentional conduct by an adult that results in:

9 (A) Any physical injury to a child; or

10 (B) Any mental injury to a child which results in observable and substantial impairment of the  
 11 child's mental or psychological ability to function caused by cruelty to the child, with due regard  
 12 to the culture of the child;

13 (b) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual pene-  
 14 tration and incest, as those acts are defined in ORS chapter 163;

15 (c) Sexual abuse, as defined in ORS chapter 163, when the victim is a child; or

16 (d) Sexual exploitation of a child, including but not limited to:

17 (A) Conduct constituting violation of ORS 163.435 and any other conduct which allows, employs,  
 18 authorizes, permits, induces or encourages a child to engage in the performing for people to observe  
 19 or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts  
 20 sexual conduct or contact; and

21 (B) Allowing, permitting, encouraging or hiring a child to engage in prostitution **or to patronize**  
 22 **a prostitute**, as defined in ORS chapter 167.

23 (3) Nothing in this section creates a new cause of action or enlarges any existing cause of  
 24 action.

25 **SECTION 5.** ORS 90.396 is amended to read:

26 90.396. (1) Except as provided in subsection (2) of this section, after at least 24 hours' written  
 27 notice specifying the acts and omissions constituting the cause and specifying the date and time of  
 28 the termination, the landlord may terminate the rental agreement and take possession as provided  
 29 in ORS 105.105 to 105.168, if:

30 (a) The tenant, someone in the tenant's control or the tenant's pet seriously threatens to inflict  
 31 substantial personal injury, or inflicts any substantial personal injury, upon a person on the prem-  
 32 ises other than the tenant;

33 (b) The tenant or someone in the tenant's control recklessly endangers a person on the premises  
 34 other than the tenant by creating a serious risk of substantial personal injury;

35 (c) The tenant, someone in the tenant's control or the tenant's pet inflicts any substantial per-  
 36 sonal injury upon a neighbor living in the immediate vicinity of the premises;

37 (d) The tenant or someone in the tenant's control intentionally inflicts any substantial damage  
 38 to the premises or the tenant's pet inflicts substantial damage to the premises on more than one  
 39 occasion;

40 (e)(A) The tenant intentionally provided substantial false information on the application for the  
 41 tenancy within the past year;

42 (B) The false information was with regard to a criminal conviction of the tenant that would have  
 43 been material to the landlord's acceptance of the application; and

44 (C) The landlord terminates the rental agreement within 30 days after discovering the falsity  
 45 of the information; or

1 (f) The tenant, someone in the tenant’s control or the tenant’s pet commits any act that is out-  
 2 rageous in the extreme, on the premises or in the immediate vicinity of the premises. For purposes  
 3 of this paragraph, an act is outrageous in the extreme if the act is not described in paragraphs (a)  
 4 to (e) of this subsection, but is similar in degree and is one that a reasonable person in that com-  
 5 munity would consider to be so offensive as to warrant termination of the tenancy within 24 hours,  
 6 considering the seriousness of the act or the risk to others. An act that is outrageous in the extreme  
 7 is more extreme or serious than an act that warrants a 30-day termination under ORS 90.392. Acts  
 8 that are “outrageous in the extreme” include, but are not limited to, the following acts by a person:

9 (A) Prostitution, **patronizing a prostitute** or [*promotion of*] **promoting** prostitution, as de-  
 10 scribed in ORS 167.007 and 167.012 **and section 3 of this 2011 Act**;

11 (B) Manufacture, delivery or possession of a controlled substance, as described in ORS 475.005,  
 12 but not including:

13 (i) The medical use of marijuana in compliance with ORS 475.300 to 475.346;

14 (ii) Possession of, or delivery for no consideration of, less than one avoirdupois ounce of  
 15 marijuana as described in ORS 475.860 (3) or 475.864 (3); or

16 (iii) Possession of prescription drugs;

17 (C) Intimidation, as described in ORS 166.155 and 166.165; or

18 (D) Burglary as described in ORS 164.215 and 164.225.

19 (2) If the cause for a termination notice given pursuant to subsection (1) of this section is based  
 20 upon the acts of the tenant’s pet, the tenant may cure the cause and avoid termination of the  
 21 tenancy by removing the pet from the premises prior to the end of the notice period. The notice  
 22 must describe the right of the tenant to cure the cause. If the tenant returns the pet to the premises  
 23 at any time after having cured the violation, the landlord, after at least 24 hours’ written notice  
 24 specifying the subsequent presence of the offending pet, may terminate the rental agreement and  
 25 take possession as provided in ORS 105.105 to 105.168. The tenant does not have a right to cure this  
 26 subsequent violation.

27 (3) For purposes of subsection (1) of this section, someone is in the tenant’s control if that per-  
 28 son enters or remains on the premises with the tenant’s permission or consent after the tenant  
 29 reasonably knows or should know of that person’s act or likelihood to commit any act of the type  
 30 described in subsection (1) of this section.

31 (4) An act can be proven to be outrageous in the extreme even if the act is one that does not  
 32 violate a criminal statute. Notwithstanding the references to criminal statutes in subsection (1)(f)  
 33 of this section, the landlord’s burden of proof in an action for possession under subsection (1) of this  
 34 section is the civil standard of proof by a preponderance of the evidence.

35 (5) If a good faith effort by a landlord to terminate the tenancy under subsection (1)(f) of this  
 36 section and to recover possession of the rental unit under ORS 105.105 to 105.168 fails by decision  
 37 of the court, the landlord may not be found in violation of any state statute or local ordinance re-  
 38 quiring the landlord to remove that tenant upon threat of fine, abatement or forfeiture as long as  
 39 the landlord continues to make a good faith effort to terminate the tenancy.

40 **SECTION 6.** ORS 105.555 is amended to read:

41 105.555. (1) The following are declared to be nuisances and shall be enjoined and abated as  
 42 provided in ORS 105.550 to 105.600:

43 (a) Any place that, as a regular course of business, is used for the purpose of prostitution and  
 44 any place where acts of prostitution **or patronizing a prostitute** occur;

45 (b) Any place that is used and maintained for profit and for the purpose of gambling or a lottery,

1 as defined in ORS 167.117, by any person, partnership or corporation organized for profit and  
 2 wherein take place any of the acts or wherein are kept, stored or located any of the games, devices  
 3 or things that are forbidden by or made punishable by ORS 167.108 to 167.164;

4 (c) Any place that has been determined to be not fit for use under ORS 453.876 and that has  
 5 not been decontaminated and certified as fit for use under ORS 453.885 within 180 days after the  
 6 determination under ORS 453.876; and

7 (d) Any place where activity involving the unauthorized delivery, manufacture or possession of  
 8 a controlled substance, as defined in ORS 475.005, occurs or any place wherein are kept, stored or  
 9 located any of the devices, equipment, things or substances used for unauthorized delivery, manu-  
 10 facture or possession of a controlled substance. As used in this paragraph, “devices, equipment,  
 11 things” does not include hypodermic syringes or needles. This paragraph does not apply to acts that  
 12 constitute violations under ORS 475.860 or 475.864.

13 (2) Nothing in ORS 105.550 to 105.600, 166.715 and 167.158 applies to property to the extent that  
 14 the devices, equipment, things or substances that are used for delivery, manufacture or possession  
 15 of a controlled substance are kept, stored or located in or on the property for the purpose of lawful  
 16 sale or use of these items.

17 **SECTION 7.** ORS 131.602 is amended to read:

18 131.602. The crimes to which ORS 131.550 (12)(b) applies are:

- 19 (1) Bribe giving, as defined in ORS 162.015.
- 20 (2) Bribe receiving, as defined in ORS 162.025.
- 21 (3) Public investment fraud, as defined in ORS 162.117.
- 22 (4) Bribing a witness, as defined in ORS 162.265.
- 23 (5) Bribe receiving by a witness, as defined in ORS 162.275.
- 24 (6) Simulating legal process, as defined in ORS 162.355.
- 25 (7) Official misconduct in the first degree, as defined in ORS 162.415.
- 26 (8) Custodial interference in the second degree, as defined in ORS 163.245.
- 27 (9) Custodial interference in the first degree, as defined in ORS 163.257.
- 28 (10) Buying or selling a person under 18 years of age, as defined in ORS 163.537.
- 29 (11) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.
- 30 (12) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.
- 31 (13) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.
- 32 (14) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.
- 33 (15) Possession of materials depicting sexually explicit conduct of a child in the first degree, as  
 34 defined in ORS 163.688.
- 35 (16) Possession of materials depicting sexually explicit conduct of a child in the second degree,  
 36 as defined in ORS 163.689.
- 37 (17) Theft in the second degree, as defined in ORS 164.045.
- 38 (18) Theft in the first degree, as defined in ORS 164.055.
- 39 (19) Aggravated theft in the first degree, as defined in ORS 164.057.
- 40 (20) Theft by extortion, as defined in ORS 164.075.
- 41 (21) Theft by deception, as defined in ORS 164.085, if it is a felony or a Class A misdemeanor.
- 42 (22) Theft by receiving, as defined in ORS 164.095, if it is a felony or a Class A misdemeanor.
- 43 (23) Theft of services, as defined in ORS 164.125, if it is a felony or a Class A misdemeanor.
- 44 (24) Unauthorized use of a vehicle, as defined in ORS 164.135.
- 45 (25) Mail theft or receipt of stolen mail, as defined in ORS 164.162.

- 1 (26) Laundering a monetary instrument, as defined in ORS 164.170.
- 2 (27) Engaging in a financial transaction in property derived from unlawful activity, as defined
- 3 in ORS 164.172.
- 4 (28) Burglary in the second degree, as defined in ORS 164.215.
- 5 (29) Burglary in the first degree, as defined in ORS 164.225.
- 6 (30) Possession of a burglary tool or theft device, as defined in ORS 164.235.
- 7 (31) Unlawful entry into a motor vehicle, as defined in ORS 164.272.
- 8 (32) Arson in the second degree, as defined in ORS 164.315.
- 9 (33) Arson in the first degree, as defined in ORS 164.325.
- 10 (34) Computer crime, as defined in ORS 164.377.
- 11 (35) Robbery in the third degree, as defined in ORS 164.395.
- 12 (36) Robbery in the second degree, as defined in ORS 164.405.
- 13 (37) Robbery in the first degree, as defined in ORS 164.415.
- 14 (38) Unlawful labeling of a sound recording, as defined in ORS 164.868.
- 15 (39) Unlawful recording of a live performance, as defined in ORS 164.869.
- 16 (40) Unlawful labeling of a videotape recording, as defined in ORS 164.872.
- 17 (41) A violation of ORS 164.886.
- 18 (42)(a) Endangering aircraft in the first degree, as defined in ORS 164.885.
- 19 (b) Endangering aircraft in the second degree, as defined in ORS 164.885.
- 20 (43) Interference with agricultural operations, as defined in ORS 164.887.
- 21 (44) Forgery in the second degree, as defined in ORS 165.007.
- 22 (45) Forgery in the first degree, as defined in ORS 165.013.
- 23 (46) Criminal possession of a forged instrument in the second degree, as defined in ORS 165.017.
- 24 (47) Criminal possession of a forged instrument in the first degree, as defined in ORS 165.022.
- 25 (48) Criminal possession of a forgery device, as defined in ORS 165.032.
- 26 (49) Criminal simulation, as defined in ORS 165.037.
- 27 (50) Fraudulently obtaining a signature, as defined in ORS 165.042.
- 28 (51) Fraudulent use of a credit card, as defined in ORS 165.055.
- 29 (52) Negotiating a bad check, as defined in ORS 165.065.
- 30 (53) Possessing a fraudulent communications device, as defined in ORS 165.070.
- 31 (54) Unlawful factoring of a payment card transaction, as defined in ORS 165.074.
- 32 (55) Falsifying business records, as defined in ORS 165.080.
- 33 (56) Sports bribery, as defined in ORS 165.085.
- 34 (57) Sports bribe receiving, as defined in ORS 165.090.
- 35 (58) Misapplication of entrusted property, as defined in ORS 165.095.
- 36 (59) Issuing a false financial statement, as defined in ORS 165.100.
- 37 (60) Obtaining execution of documents by deception, as defined in ORS 165.102.
- 38 (61) A violation of ORS 165.543.
- 39 (62) Cellular counterfeiting in the third degree, as defined in ORS 165.577.
- 40 (63) Cellular counterfeiting in the second degree, as defined in ORS 165.579.
- 41 (64) Cellular counterfeiting in the first degree, as defined in ORS 165.581.
- 42 (65) Identity theft, as defined in ORS 165.800.
- 43 (66) A violation of ORS 166.190.
- 44 (67) Unlawful use of a weapon, as defined in ORS 166.220.
- 45 (68) A violation of ORS 166.240.

- 1 (69) Unlawful possession of a firearm, as defined in ORS 166.250.
- 2 (70) A violation of ORS 166.270.
- 3 (71) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or
- 4 firearms silencer, as defined in ORS 166.272.
- 5 (72) A violation of ORS 166.275.
- 6 (73) Unlawful possession of armor piercing ammunition, as defined in ORS 166.350.
- 7 (74) A violation of ORS 166.370.
- 8 (75) Unlawful possession of a destructive device, as defined in ORS 166.382.
- 9 (76) Unlawful manufacture of a destructive device, as defined in ORS 166.384.
- 10 (77) Possession of a hoax destructive device, as defined in ORS 166.385.
- 11 (78) A violation of ORS 166.410.
- 12 (79) Providing false information in connection with a transfer of a firearm, as defined in ORS
- 13 166.416.
- 14 (80) Improperly transferring a firearm, as defined in ORS 166.418.
- 15 (81) Unlawfully purchasing a firearm, as defined in ORS 166.425.
- 16 (82) A violation of ORS 166.429.
- 17 (83) A violation of ORS 166.470.
- 18 (84) A violation of ORS 166.480.
- 19 (85) A violation of ORS 166.635.
- 20 (86) A violation of ORS 166.638.
- 21 (87) Unlawful paramilitary activity, as defined in ORS 166.660.
- 22 (88) A violation of ORS 166.720.
- 23 (89) Prostitution, as defined in ORS 167.007.
- 24 **(90) Patronizing a prostitute, as defined in section 3 of this 2011 Act.**
- 25 [(90)] **(91)** Promoting prostitution, as defined in ORS 167.012.
- 26 [(91)] **(92)** Compelling prostitution, as defined in ORS 167.017.
- 27 [(92)] **(93)** Exhibiting an obscene performance to a minor, as defined in ORS 167.075.
- 28 [(93)] **(94)** Unlawful gambling in the second degree, as defined in ORS 167.122.
- 29 [(94)] **(95)** Unlawful gambling in the first degree, as defined in ORS 167.127.
- 30 [(95)] **(96)** Possession of gambling records in the second degree, as defined in ORS 167.132.
- 31 [(96)] **(97)** Possession of gambling records in the first degree, as defined in ORS 167.137.
- 32 [(97)] **(98)** Possession of a gambling device, as defined in ORS 167.147.
- 33 [(98)] **(99)** Possession of a gray machine, as defined in ORS 167.164.
- 34 [(99)] **(100)** Cheating, as defined in ORS 167.167.
- 35 [(100)] **(101)** Tampering with drug records, as defined in ORS 167.212.
- 36 [(101)] **(102)** A violation of ORS 167.262.
- 37 [(102)] **(103)** Research and animal interference, as defined in ORS 167.312.
- 38 [(103)] **(104)** Animal abuse in the first degree, as defined in ORS 167.320.
- 39 [(104)] **(105)** Aggravated animal abuse in the first degree, as defined in ORS 167.322.
- 40 [(105)] **(106)** Animal neglect in the first degree, as defined in ORS 167.330.
- 41 [(106)] **(107)** Interfering with an assistance, a search and rescue or a therapy animal, as defined
- 42 in ORS 167.352.
- 43 [(107)] **(108)** Involvement in animal fighting, as defined in ORS 167.355.
- 44 [(108)] **(109)** Dogfighting, as defined in ORS 167.365.
- 45 [(109)] **(110)** Participation in dogfighting, as defined in ORS 167.370.

- 1        [(110)] (111) Unauthorized use of a livestock animal, as defined in ORS 167.385.  
 2        [(111)] (112) Interference with livestock production, as defined in ORS 167.388.  
 3        [(112)] (113) A violation of ORS 167.390.  
 4        [(113)] (114) Participation in cockfighting, as defined in ORS 167.431.  
 5        [(114)] (115) A violation of ORS 471.410.  
 6        [(115)] (116) Failure to report missing precursor substances, as defined in ORS 475.955.  
 7        [(116)] (117) Illegally selling drug equipment, as defined in ORS 475.960.  
 8        [(117)] (118) Providing false information on a precursor substances report, as defined in ORS  
 9        475.965.  
 10       [(118)] (119) Unlawful delivery of an imitation controlled substance, as defined in ORS 475.912.  
 11       [(119)] (120) A violation of ORS 475.840, if it is a felony or a Class A misdemeanor.  
 12       [(120)] (121) A violation of ORS 475.914, if it is a felony or a Class A misdemeanor.  
 13       [(121)] (122) A violation of ORS 475.916.  
 14       [(122)] (123) A violation of ORS 475.906, if it is a felony or a Class A misdemeanor.  
 15       [(123)] (124) A violation of ORS 475.904.  
 16       [(124)] (125) Misuse of an identification card, as defined in ORS 807.430.  
 17       [(125)] (126) Unlawful production of identification cards, licenses, permits, forms or camera  
 18       cards, as defined in ORS 807.500.  
 19       [(126)] (127) Transfer of documents for the purposes of misrepresentation, as defined in ORS  
 20       807.510.  
 21       [(127)] (128) Using an invalid license, as defined in ORS 807.580.  
 22       [(128)] (129) Permitting misuse of a license, as defined in ORS 807.590.  
 23       [(129)] (130) Using another’s license, as defined in ORS 807.600.  
 24       [(130)] (131) Criminal driving while suspended or revoked, as defined in ORS 811.182, when it is  
 25       a felony.  
 26       [(131)] (132) Driving while under the influence of intoxicants, as defined in ORS 813.010, when  
 27       it is a felony.  
 28       [(132)] (133) Unlawful distribution of cigarettes, as defined in ORS 323.482.  
 29       [(133)] (134) Unlawful distribution of tobacco products, as defined in ORS 323.632.  
 30       [(134)] (135) A violation of ORS 180.440 (2) or 180.486 (2).  
 31       [(135)] (136) A violation described in ORS 475.846 to 475.894, if it is a felony.  
 32       [(136)] (137) Subjecting another person to involuntary servitude in the first degree, as defined  
 33       in ORS 163.264.  
 34       [(137)] (138) Subjecting another person to involuntary servitude in the second degree, as defined  
 35       in ORS 163.263.  
 36       [(138)] (139) Trafficking in persons, as defined in ORS 163.266.  
 37       [(139)] (140) Furnishing sexually explicit material to a child, as defined in ORS 167.054.  
 38       [(140)] (141) Luring a minor, as defined in ORS 167.057.  
 39       [(141)] (142) Online sexual corruption of a child in the second degree, as defined in ORS 163.432.  
 40       [(142)] (143) Online sexual corruption of a child in the first degree, as defined in ORS 163.433.  
 41       [(143)] (144) An attempt, conspiracy or solicitation to commit a crime in subsections (1) to  
 42       [(142)] (143) of this section if the attempt, conspiracy or solicitation is a felony or a Class A  
 43       misdemeanor.  
 44       **SECTION 8.** ORS 133.724 is amended to read:  
 45       133.724. (1) An ex parte order for the interception of wire, electronic or oral communications

1 may be issued by any circuit court judge upon written application made upon oath or affirmation  
 2 of the individual who is the district attorney or a deputy district attorney authorized by the district  
 3 attorney for the county in which the order is sought. The application shall include:

4 (a) The name of the district attorney or the deputy district attorney making the application and  
 5 the authority of the district attorney or the deputy district attorney to make the application;

6 (b) The identity of the investigative or law enforcement officer making the application and the  
 7 officer authorizing the application;

8 (c) A statement demonstrating that there is probable cause to believe that an individual is  
 9 committing, has committed or is about to commit:

10 (A) A particular felony of murder, kidnapping, arson, robbery, bribery, extortion or other crime  
 11 dangerous to life and punishable as a felony;

12 (B) A crime punishable as a felony under ORS 166.720, 475.840, 475.846 to 475.894 or 475.904 to  
 13 475.910 or as a misdemeanor under ORS 167.007 **or section 3 of this 2011 Act**; or

14 (C) Any conspiracy to commit any of the foregoing crimes;

15 (d) A statement of the details, if known, of the particular crime alleged under paragraph (c) of  
 16 this subsection;

17 (e) A particular description of the nature and location of the facilities from which or the place  
 18 where the wire, electronic or oral communication is to be intercepted, if known;

19 (f) A particular description of the type of wire, electronic or oral communication sought to be  
 20 intercepted;

21 (g) The identity of the person, if known, suspected of committing the crime and whose wire,  
 22 electronic or oral communications are to be intercepted;

23 (h) A full and complete statement as to whether or not other investigative procedures have been  
 24 tried and failed or why other investigative procedures reasonably appear to be unlikely to succeed  
 25 if tried or are likely to be too dangerous;

26 (i) A statement of the period of time for which the interception is required to be maintained. If  
 27 the nature of the investigation is such that the authorization for interception should not automat-  
 28 ically terminate when the described type of wire, electronic or oral communication has been first  
 29 obtained, a description of facts establishing probable cause to believe that additional communi-  
 30 cations of the same type will occur thereafter;

31 (j) A statement as to whether any prior application has been made to intercept wire, electronic  
 32 or oral communications from the same person and, if such prior application exists, a statement of  
 33 the current status of that application; and

34 (k) Where the application is for the extension of an existing order, a statement setting forth the  
 35 results thus far obtained from the interception, or a reasonable explanation of the failure to obtain  
 36 such results.

37 (2) The judge may require the applicant to furnish further testimony or documentary evidence  
 38 in support of the application.

39 (3) Upon examination of such application and evidence the judge may enter an ex parte order,  
 40 as requested or as modified, authorizing or approving interception of wire, electronic or oral com-  
 41 munications within the state if the judge determines on the basis of the facts submitted by the ap-  
 42 plicant that:

43 (a) There is probable cause for belief that an individual is committing, has committed or is about  
 44 to commit a particular crime described in subsection (1)(c) of this section;

45 (b) There is probable cause for belief that particular communications concerning that crime will



1 be obtained through such interception;

2 (c) Normal investigative procedures have been tried and have failed or reasonably appear to be  
 3 unlikely to succeed if tried or are likely to be too dangerous; and

4 (d) There is probable cause for belief that the facilities from which, or the place where, the wire,  
 5 electronic or oral communications to be intercepted are being used, or are about to be used, in  
 6 connection with the planning or the commission of that crime are open to the public or are owned  
 7 by, leased to, listed in the name of, or commonly used by the individual suspected.

8 (4) Each order authorizing or approving the interception of any wire, electronic or oral com-  
 9 munication shall specify:

10 (a) The identity of the person, if known, whose communications are to be intercepted;

11 (b) The nature and location of the communications facilities as to which, or the place where,  
 12 authority to intercept is granted;

13 (c) A particular description of the type of communication sought to be intercepted, and a state-  
 14 ment of the particular crime to which it relates;

15 (d) The identity of the agency authorized to intercept the communications and of the person  
 16 authorizing the application;

17 (e) The period of time during which such interception is authorized, including a statement as to  
 18 whether or not the interception shall automatically terminate when the described communication  
 19 has been first obtained; and

20 (f) The name of the applicant, date of issuance, and the signature and title of the issuing judge.

21 (5) An order entered pursuant to this section may not authorize or approve the interception of  
 22 any wire, electronic or oral communication for any period longer than is necessary to achieve the  
 23 objective of authorization and in no event for longer than 30 days. Extensions of any order may be  
 24 granted, but only when application for an extension is made in accordance with subsection (1)(k)  
 25 of this section and the court makes the findings required by subsection (3) of this section. The period  
 26 of extension shall be no longer than the authorizing judge deems necessary to achieve the purpose  
 27 for which it is granted and in no event for longer than 30 days. Every order and extension of that  
 28 order shall contain a provision that the authorization to intercept must be executed as soon as  
 29 practicable, must be conducted in such a way as to minimize the interception of communications not  
 30 otherwise subject to interception, and must terminate upon attainment of the authorized objective,  
 31 or in any event in 30 days.

32 (6) Whenever an order authorizing interception is entered pursuant to this section, the order  
 33 may require reports to be made to the judge who issued the order showing what progress has been  
 34 made toward achievement of the authorized objective and the need for continued interception. Such  
 35 reports shall be made at such intervals as the judge may require.

36 **SECTION 9.** ORS 133.726 is amended to read:

37 133.726. (1) Notwithstanding ORS 133.724, under the circumstances described in this section, a  
 38 law enforcement officer is authorized to intercept an oral communication to which the officer or a  
 39 person under the direct supervision of the officer is a party, without obtaining an order for the in-  
 40 terception of a wire, electronic or oral communication under ORS 133.724.

41 (2) For purposes of this section and ORS 133.736, a person is a party to an oral communication  
 42 if the oral communication is made in the person's immediate presence and is audible to the person  
 43 regardless of whether the communication is specifically directed to the person.

44 (3) An ex parte order for intercepting an oral communication in any county of this state under  
 45 this section may be issued by any judge as defined in ORS 133.525 upon written application made

1 upon oath or affirmation of the district attorney or a deputy district attorney authorized by the  
 2 district attorney for the county in which the order is sought or upon the oath or affirmation of any  
 3 peace officer as defined in ORS 133.005. The application shall include:

- 4 (a) The name of the applicant and the applicant's authority to make the application;
- 5 (b) A statement demonstrating that:

6 (A) There is probable cause to believe that a person whose oral communication is to be inter-  
 7 cepted is engaged in committing, has committed or is about to commit a particular felony, or a  
 8 misdemeanor under ORS 167.007 **or section 3 of this 2011 Act**, and that intercepting the oral  
 9 communication will yield evidence thereof; or

10 (B)(i) There is reasonable suspicion to believe that a person whose oral communication is to be  
 11 intercepted is engaged in committing, has committed or is about to commit a crime;

12 (ii) There is reasonable suspicion to believe that the circumstances in which the oral communi-  
 13 cation is to be intercepted present a substantial risk of death, serious physical injury or sexual as-  
 14 sault to a law enforcement officer or a person under the direct supervision of the officer;

15 (iii) Interception of the oral communication is necessary to protect the safety of the person who  
 16 may be endangered; and

17 (iv) Other investigative procedures have been tried and have failed or reasonably appear to be  
 18 unlikely to succeed if tried or are likely to be too dangerous; and

19 (c) The identity of the person, if known, suspected of committing the crime and whose oral  
 20 communication is to be intercepted.

21 (4) The judge may require the applicant to furnish further testimony or documentary evidence  
 22 in support of the application.

23 (5) Upon examination of the application and evidence, the judge may enter an ex parte order,  
 24 as requested or as modified, authorizing or approving the interception of an oral communication  
 25 within the state if the judge determines on the basis of the facts submitted by the applicant that:

26 (a)(A) There is probable cause to believe that a person is engaged in committing, has committed  
 27 or is about to commit a particular felony, or a misdemeanor under ORS 167.007 **or section 3 of this**  
 28 **2011 Act**; and

29 (B) There is probable cause to believe that the oral communication to be obtained will contain  
 30 evidence concerning that crime; or

31 (b)(A) There is reasonable suspicion to believe that a person whose oral communication is to  
 32 be intercepted is engaged in committing, has committed or is about to commit a crime;

33 (B) There is reasonable suspicion to believe that the circumstances in which the oral communi-  
 34 cation is to be intercepted present a substantial risk of death, serious physical injury or sexual as-  
 35 sault to a law enforcement officer or a person under the direct supervision of the officer;

36 (C) Interception of the oral communication is necessary to protect the safety of the person who  
 37 may be endangered; and

38 (D) Other investigative procedures have been tried and have failed or reasonably appear to be  
 39 unlikely to succeed if tried or are likely to be too dangerous.

40 (6) An order authorizing or approving the interception of an oral communication under this  
 41 section must specify:

42 (a) The identity of the person, if known, whose oral communication is to be intercepted;

43 (b) A statement identifying the particular crime to which the oral communication is expected  
 44 to relate;

45 (c) The agency authorized under the order to intercept the oral communication;

1 (d) The name and office of the applicant and the signature and title of the issuing judge;

2 (e) A period of time after which the order shall expire; and

3 (f) A statement that the order authorizes only the interception of an oral communication to  
 4 which a law enforcement officer or a person under the direct supervision of a law enforcement of-  
 5 ficer is a party.

6 (7) An order under ORS 133.724 or this section is not required when a law enforcement officer  
 7 intercepts an oral communication to which the officer or a person under the direct supervision of  
 8 the officer is a party if the oral communication is made by a person whom the officer has probable  
 9 cause to believe has committed, is engaged in committing or is about to commit:

10 (a) A crime punishable as a felony under ORS 475.840, 475.846 to 475.894 or 475.904 to 475.910  
 11 or as a misdemeanor under ORS 167.007 **or section 3 of this 2011 Act**; or

12 (b) Any other crime punishable as a felony if the circumstances at the time the oral communi-  
 13 cation is intercepted are of such exigency that it would be unreasonable to obtain a court order  
 14 under ORS 133.724 or this section.

15 (8) A law enforcement officer who intercepts an oral communication pursuant to this section  
 16 may not intentionally fail to record and preserve the oral communication in its entirety. A law  
 17 enforcement officer, or a person under the direct supervision of the officer, who is authorized under  
 18 this section to intercept an oral communication is not required to exclude from the interception an  
 19 oral communication made by a person for whom probable cause does not exist if the officer or the  
 20 person under the officer's direct supervision is a party to the oral communication.

21 (9) A law enforcement officer may not divulge the contents of an oral communication intercepted  
 22 under this section before a preliminary hearing or trial in which an oral communication is going to  
 23 be introduced as evidence against a person except:

24 (a) To a superior officer or other official with whom the law enforcement officer is cooperating  
 25 in the enforcement of the criminal laws of this state or the United States;

26 (b) To a magistrate;

27 (c) In a presentation to a federal or state grand jury; or

28 (d) In compliance with a court order.

29 (10) A law enforcement officer may intercept an oral communication under this section only  
 30 when acting within the scope of the officer's employment and as a part of assigned duties.

31 (11) As used in this section, "law enforcement officer" means an officer employed by the United  
 32 States, this state or a municipal government within this state, or a political subdivision, agency,  
 33 department or bureau of those governments, to enforce criminal laws.

34 (12) Violation of subsection (9) of this section is a Class A misdemeanor.

35 **SECTION 10.** ORS 133.726, as amended by section 3, chapter 442, Oregon Laws 2007, is  
 36 amended to read:

37 133.726. (1) Notwithstanding ORS 133.724, under the circumstances described in this section, a  
 38 law enforcement officer is authorized to intercept an oral communication to which the officer or a  
 39 person under the direct supervision of the officer is a party, without obtaining an order for the in-  
 40 terception of a wire, electronic or oral communication under ORS 133.724.

41 (2) For purposes of this section and ORS 133.736, a person is a party to an oral communication  
 42 if the oral communication is made in the person's immediate presence and is audible to the person  
 43 regardless of whether the communication is specifically directed to the person.

44 (3) An ex parte order for intercepting an oral communication in any county of this state under  
 45 this section may be issued by any judge as defined in ORS 133.525 upon written application made

1 upon oath or affirmation of the district attorney or a deputy district attorney authorized by the  
 2 district attorney for the county in which the order is sought or upon the oath or affirmation of any  
 3 peace officer as defined in ORS 133.005. The application shall include:

4 (a) The name of the applicant and the applicant's authority to make the application;

5 (b) A statement demonstrating that there is probable cause to believe that a person whose oral  
 6 communication is to be intercepted is engaged in committing, has committed or is about to commit  
 7 a particular felony, or a misdemeanor under ORS 167.007 **or section 3 of this 2011 Act**, and that  
 8 intercepting the oral communication will yield evidence thereof; and

9 (c) The identity of the person, if known, suspected of committing the crime and whose oral  
 10 communication is to be intercepted.

11 (4) The judge may require the applicant to furnish further testimony or documentary evidence  
 12 in support of the application.

13 (5) Upon examination of the application and evidence, the judge may enter an ex parte order,  
 14 as requested or as modified, authorizing or approving the interception of an oral communication  
 15 within the state if the judge determines on the basis of the facts submitted by the applicant that:

16 (a) There is probable cause to believe that a person is engaged in committing, has committed  
 17 or is about to commit a particular felony, or a misdemeanor under ORS 167.007 **or section 3 of this**  
 18 **2011 Act**; and

19 (b) There is probable cause to believe that the oral communication to be obtained will contain  
 20 evidence concerning that crime.

21 (6) An order authorizing or approving the interception of an oral communication under this  
 22 section must specify:

23 (a) The identity of the person, if known, whose oral communication is to be intercepted;

24 (b) A statement identifying the particular crime to which the oral communication is expected  
 25 to relate;

26 (c) The agency authorized under the order to intercept the oral communication;

27 (d) The name and office of the applicant and the signature and title of the issuing judge;

28 (e) A period of time after which the order shall expire; and

29 (f) A statement that the order authorizes only the interception of an oral communication to  
 30 which a law enforcement officer or a person under the direct supervision of a law enforcement of-  
 31 ficer is a party.

32 (7) An order under ORS 133.724 or this section is not required when a law enforcement officer  
 33 intercepts an oral communication to which the officer or a person under the direct supervision of  
 34 the officer is a party if the oral communication is made by a person whom the officer has probable  
 35 cause to believe has committed, is engaged in committing or is about to commit:

36 (a) A crime punishable as a felony under ORS 475.840, 475.846 to 475.894 or 475.906 or as a  
 37 misdemeanor under ORS 167.007 **or section 3 of this 2011 Act**; or

38 (b) Any other crime punishable as a felony if the circumstances at the time the oral communi-  
 39 cation is intercepted are of such exigency that it would be unreasonable to obtain a court order  
 40 under ORS 133.724 or this section.

41 (8) A law enforcement officer who intercepts an oral communication pursuant to this section  
 42 may not intentionally fail to record and preserve the oral communication in its entirety. A law  
 43 enforcement officer, or a person under the direct supervision of the officer, who is authorized under  
 44 this section to intercept an oral communication is not required to exclude from the interception an  
 45 oral communication made by a person for whom probable cause does not exist if the officer or the

1 person under the officer's direct supervision is a party to the oral communication.

2 (9) A law enforcement officer may not divulge the contents of an oral communication intercepted  
 3 under this section before a preliminary hearing or trial in which an oral communication is going to  
 4 be introduced as evidence against a person except:

5 (a) To a superior officer or other official with whom the law enforcement officer is cooperating  
 6 in the enforcement of the criminal laws of this state or the United States;

7 (b) To a magistrate;

8 (c) In a presentation to a federal or state grand jury; or

9 (d) In compliance with a court order.

10 (10) A law enforcement officer may intercept an oral communication under this section only  
 11 when acting within the scope of the officer's employment and as a part of assigned duties.

12 (11) As used in this section, "law enforcement officer" means an officer employed by the United  
 13 States, this state or a municipal government within this state, or a political subdivision, agency,  
 14 department or bureau of those governments, to enforce criminal laws.

15 (12) Violation of subsection (9) of this section is a Class A misdemeanor.

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

17 342.143. (1) No teaching, personnel service or administrative license shall be issued to any per-  
 18 son until the person has attained the age of 18 years and has furnished satisfactory evidence of  
 19 proper educational training.

20 (2) The Teacher Standards and Practices Commission may require an applicant for a teaching,  
 21 personnel service or administrative license or for registration as a public charter school teacher or  
 22 administrator to furnish evidence satisfactory to the commission of good moral character, mental  
 23 and physical health, and such other evidence as it may deem necessary to establish the applicant's  
 24 fitness to serve as a teacher or administrator.

25 (3) Without limiting the powers of the Teacher Standards and Practices Commission under sub-  
 26 section (2) of this section:

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

29 (A) Has been convicted of a crime listed in ORS 163.095, 163.115, 163.185, 163.235, 163.355,  
 30 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 163.432, 163.433,  
 31 163.435, 163.445, 163.465, 163.515, 163.525, 163.547, 163.575, 163.670, 163.675 (1985 Replacement Part),  
 32 163.680 (1993 Edition), 163.684, 163.686, 163.687, 163.688, 163.689, 164.325, 164.415, 166.005, 166.087,  
 33 167.007, 167.012, 167.017, 167.054, 167.057, 167.062, 167.075, 167.080, 167.090, 475.848, 475.852, 475.858,  
 34 475.860, 475.862, 475.864 (4), 475.868, 475.872, 475.878, 475.880, 475.882, 475.888, 475.890, 475.892,  
 35 475.904 or 475.906 **or section 3 of this 2011 Act.**

36 (B) Has been convicted under ORS 161.405 of an attempt to commit any of the crimes listed in  
 37 subparagraph (A) of this paragraph.

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

40 (D) Has had a teaching, personnel service or administrative license or registration revoked in  
 41 another jurisdiction for a reason that is substantially equivalent, as defined by rule, to a reason  
 42 described in ORS 342.175 and the revocation is not subject to further appeal. A person whose priv-  
 43 ilege to apply for a license or registration is denied under this subparagraph may apply for rein-  
 44 statement of the privilege as provided in ORS 342.175 (4).

45 (b) The Teacher Standards and Practices Commission may refuse to issue a license or registra-

1 tion to any person who has been convicted of a crime involving the illegal use, sale or possession  
 2 of controlled substances.

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

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

7 **SECTION 12.** ORS 419B.005, as amended by section 4, chapter 60, Oregon Laws 2010, is  
 8 amended to read:

9 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

10 (1)(a) "Abuse" means:

11 (A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child  
 12 which has been caused by other than accidental means, including any injury which appears to be  
 13 at variance with the explanation given of the injury.

14 (B) Any mental injury to a child, which shall include only observable and substantial impairment  
 15 of the child's mental or psychological ability to function caused by cruelty to the child, with due  
 16 regard to the culture of the child.

17 (C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual pene-  
 18 tration and incest, as those acts are described in ORS chapter 163.

19 (D) Sexual abuse, as described in ORS chapter 163.

20 (E) Sexual exploitation, including but not limited to:

21 (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any  
 22 other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage  
 23 in the performing for people to observe or the photographing, filming, tape recording or other ex-  
 24 hibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or  
 25 described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-  
 26 cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or  
 27 which is designed to serve educational or other legitimate purposes; and

28 (ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution **or to patronize**  
 29 **a prostitute**, as defined in ORS chapter 167.

30 (F) Negligent treatment or maltreatment of a child, including but not limited to the failure to  
 31 provide adequate food, clothing, shelter or medical care that is likely to endanger the health or  
 32 welfare of the child.

33 (G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm  
 34 to the child's health or welfare.

35 (H) Buying or selling a person under 18 years of age as described in ORS 163.537.

36 (I) Permitting a person under 18 years of age to enter or remain in or upon premises where  
 37 methamphetamines are being manufactured.

38 (J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, that subjects a child  
 39 to a substantial risk of harm to the child's health or safety.

40 (b) "Abuse" does not include reasonable discipline unless the discipline results in one of the  
 41 conditions described in paragraph (a) of this subsection.

42 (2) "Child" means an unmarried person who is under 18 years of age.

43 (3) "Public or private official" means:

44 (a) Physician, osteopathic physician, physician assistant, naturopathic physician, podiatric phy-  
 45 sician and surgeon, including any intern or resident.

- 1 (b) Dentist.
- 2 (c) School employee.
- 3 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide
- 4 or employee of an in-home health service.
- 5 (e) Employee of the Department of Human Services, Oregon Health Authority, State Commission
- 6 on Children and Families, Child Care Division of the Employment Department, the Oregon Youth
- 7 Authority, a county health department, a community mental health program, a community develop-
- 8 mental disabilities program, a county juvenile department, a licensed child-caring agency or an al-
- 9 cohol and drug treatment program.
- 10 (f) Peace officer.
- 11 (g) Psychologist.
- 12 (h) Member of the clergy.
- 13 (i) Regulated social worker.
- 14 (j) Optometrist.
- 15 (k) Chiropractor.
- 16 (L) Certified provider of foster care, or an employee thereof.
- 17 (m) Attorney.
- 18 (n) Licensed professional counselor.
- 19 (o) Licensed marriage and family therapist.
- 20 (p) Firefighter or emergency medical technician.
- 21 (q) A court appointed special advocate, as defined in ORS 419A.004.
- 22 (r) A child care provider registered or certified under ORS 657A.030 and 657A.250 to 657A.450.
- 23 (s) Member of the Legislative Assembly.
- 24 (t) Physical, speech or occupational therapist.
- 25 (u) Audiologist.
- 26 (v) Speech-language pathologist.
- 27 (w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
- 28 gations or discipline by the commission.
- 29 (x) Pharmacist.
- 30 (y) An operator of a preschool recorded program under ORS 657A.255.
- 31 (z) An operator of a school-age recorded program under ORS 657A.257.
- 32 (aa) Employee of a private agency or organization facilitating the provision of respite services,
- 33 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS
- 34 109.056.
- 35 (4) "Law enforcement agency" means:
- 36 (a) Any city or municipal police department.
- 37 (b) Any county sheriff's office.
- 38 (c) The Oregon State Police.
- 39 (d) A county juvenile department.

40 **SECTION 13. Section 3 of this 2011 Act and the amendments to ORS 12.117, 90.396,**  
41 **105.555, 131.602, 133.724, 133.726, 167.007, 342.143 and 419B.005 by sections 1 and 4 to 12 of this**  
42 **2011 Act apply to conduct occurring on or after the effective date of this 2011 Act.**

43