

House Bill 3152

Sponsored by Representative BARKER (at the request of Department of Justice)

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**.

Renames crime of intimidation as hate crime.

Includes commission of assault in fourth degree as hate crime in first degree when committed by one person and motivated by perception of victim's race, color, religion, national origin, ethnicity, gender, disability or sexual orientation.

Requires court to impose term of incarceration of at least 60 days when person is convicted of assault in fourth degree as hate crime.

Modifies authority of certain law enforcement officials to bring civil action based on commission of hate crime.

Directs law enforcement agencies to report statistics regarding hate crimes to Department of Justice.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to hate crimes; creating new provisions; amending ORS 30.198, 30.200, 90.396, 131.602,
3 137.225, 137.712, 163.707, 166.155, 166.165, 166.715 and 181.550; and declaring an emergency.

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

5 **SECTION 1.** ORS 166.165 is amended to read:

6 166.165. (1) Two or more persons acting together commit [*the crime of intimidation*] **a hate crime**
7 in the first degree, if the persons:

8 (a)(A) Intentionally, knowingly or recklessly cause physical injury to another person because of
9 the actors' perception of that person's race, color, religion, **national origin, ethnicity, gender,**
10 **disability or** sexual orientation [*or national origin*]; or

11 (B) With criminal negligence cause physical injury to another person by means of a deadly
12 weapon because of the actors' perception of that person's race, color, religion, **national origin,**
13 **ethnicity, gender, disability or** sexual orientation [*or national origin*];

14 (b) Intentionally, because of the actors' perception of another person's race, color, religion, **na-**
15 **tional origin, ethnicity, gender, disability or** sexual orientation [*or national origin*], place another
16 person in fear of imminent serious physical injury; or

17 (c) Commit such acts as would constitute [*the crime of intimidation*] **a hate crime** in the second
18 degree, if undertaken by one person acting alone.

19 **(2) A person commits a hate crime in the first degree if the person:**

20 (a) **Intentionally, knowingly or recklessly causes physical injury to another person be-**
21 **cause of the actor's perception of the other person's race, color, religion, national origin,**
22 **ethnicity, gender, disability or sexual orientation; or**

23 (b) **With criminal negligence causes physical injury to another person by means of a**
24 **deadly weapon because of the actor's perception of the other person's race, color, religion,**
25 **national origin, ethnicity, gender, disability or sexual orientation.**

26 [(2)] **(3) [*Intimidation*] A hate crime** in the first degree is a Class C felony.

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 (4) **When a person is convicted of violating subsection (1)(a) or (2) of this section, in ad-**
 2 **dition to any other sentence the court may impose, the court shall impose a term of**
 3 **incarceration of at least 60 days.**

4 **SECTION 2.** ORS 166.155 is amended to read:

5 166.155. (1) A person commits [*the crime of intimidation*] **a hate crime** in the second degree if
 6 the person:

7 (a) Tamper or interferes with property, having no right to do so nor reasonable ground to be-
 8 lieve that the person has such right, with the intent to cause substantial inconvenience to another
 9 because of the person's perception of the other's race, color, religion, **national origin, ethnicity,**
 10 **gender, disability or** sexual orientation [*or national origin*];

11 (b) Intentionally subjects another to offensive physical contact because of the person's percep-
 12 tion of the other's race, color, religion, **national origin, ethnicity, gender, disability or** sexual
 13 orientation [*or national origin*]; or

14 (c) Intentionally, because of the person's perception of race, color, religion, **national origin,**
 15 **ethnicity, gender, disability or** sexual orientation [*or national origin*] of another or of a member
 16 of the other's family, subjects the other person to alarm by threatening:

17 (A) To inflict serious physical injury upon or to commit a felony affecting the other person, or
 18 a member of the person's family; or

19 (B) To cause substantial damage to the property of the other person or of a member of the other
 20 person's family.

21 (2) [*Intimidation*] **A hate crime** in the second degree is a Class A misdemeanor.

22 (3) For purposes of this section, "property" means any tangible personal property or real prop-
 23 erty.

24 **SECTION 3.** ORS 30.200 is amended to read:

25 30.200. (1) If [*any*] **the Attorney General or a** district attorney has reasonable cause to believe
 26 that any person or group of persons is engaged in violation of ORS 166.155 or 166.165, the **Attorney**
 27 **General or** district attorney may bring a civil claim for relief in the appropriate court, setting forth
 28 facts pertaining to such violation, and request such relief as may be necessary to restrain or prevent
 29 such violation. **In addition to any other available remedy, the court may:**

30 (a) **Order the person or group to make restitution in specific amounts to any person who**
 31 **suffered any ascertainable loss of money or property as a result of the violation.**

32 (b) **Make any additional orders or judgments as may be necessary to restore to any per-**
 33 **son in interest any moneys or property, real or personal, of which the person was deprived**
 34 **as a result of the violation.**

35 (c) **Impose a penalty of not more than \$250,000.**

36 (2) Any claim for relief under this section does not prevent any person from seeking any other
 37 remedy otherwise available under law.

38 **SECTION 4.** ORS 30.198 is amended to read:

39 30.198. (1) Irrespective of any criminal prosecution or the result thereof, any person injured by
 40 a violation of ORS 166.155 or 166.165 shall have a civil action to secure an injunction, damages or
 41 other appropriate relief against any and all persons whose actions are unlawful under ORS 166.155
 42 and 166.165.

43 (2) Upon prevailing in such action, the plaintiff may recover:

44 (a) Both special and general damages, including damages for emotional distress; and

45 (b) Punitive damages.

1 (3) The court shall award reasonable attorney fees to the prevailing plaintiff in an action under
 2 this section. The court may award reasonable attorney fees and expert witness fees incurred by a
 3 defendant who prevails in the action if the court determines that the plaintiff had no objectively
 4 reasonable basis for asserting a claim or no reasonable basis for appealing an adverse decision of
 5 a trial court.

6 (4) The parent, parents or legal guardian of an unemancipated minor shall be liable for any
 7 judgment recovered against such minor under this section, in an amount not to exceed \$5,000.

8 **(5) Actions brought under this section shall be commenced within one year from the vi-**
 9 **olation. However, whenever any complaint is filed by the Attorney General or a district at-**
 10 **torney under ORS 30.200 to prevent, restrain or punish violations of ORS 166.155 or 166.165,**
 11 **running of the statute of limitations with respect to every private right of action under this**
 12 **section and based in whole or in part on any matter complained of in said proceeding shall**
 13 **be suspended during the pendency thereof.**

14 **SECTION 5.** ORS 181.550 is amended to read:

15 181.550. (1) All law enforcement agencies shall report to the Department of State Police statis-
 16 tics concerning crimes:

17 (a) As directed by the department, for purposes of the Uniform Crime Reporting System of the
 18 Federal Bureau of Investigation.

19 (b) As otherwise directed by the Governor concerning general criminal categories of criminal
 20 activities but not individual criminal records.

21 (c) Motivated by prejudice based on the perceived race, color, religion, **sexual orientation,**
 22 national origin, [*sexual orientation,*] **ethnicity, gender,** marital status, political affiliation or beliefs,
 23 membership or activity in or on behalf of a labor organization or against a labor organization,
 24 physical or mental disability, age, economic or social status or citizenship of the victim.

25 (d) And other incidents arising out of domestic disturbances under ORS 133.055 (2) and 133.310
 26 (3).

27 **(2) All law enforcement agencies shall report to the Department of Justice, in accordance**
 28 **with rules adopted by the Department of Justice, statistics concerning crimes motivated by**
 29 **prejudice based on the perceived race, color, religion, national origin, ethnicity, gender, dis-**
 30 **ability or sexual orientation of the victim.**

31 [(2)] (3) The Department of State Police shall prepare:

32 (a) Quarterly and annual reports for the use of agencies reporting under subsection (1) of this
 33 section, and others having an interest therein;

34 (b) An annual public report of the statistics on the incidence of crime motivated by prejudice
 35 based on the perceived race, color, religion, **sexual orientation,** national origin, [*sexual*
 36 *orientation,*] **ethnicity, gender,** marital status, political affiliation or beliefs, membership or activity
 37 in or on behalf of a labor organization or against a labor organization, physical or mental disability,
 38 age, economic or social status or citizenship of the victim;

39 (c) Quarterly and annual reports of the statistics on the incidence of crimes and incidents of
 40 domestic disturbances; and

41 (d) Special reports as directed by the Governor.

42 **SECTION 6.** ORS 131.602 is amended to read:

43 131.602. The crimes to which ORS 131.550 (12)(b) applies are:

44 (1) Bribe giving, as defined in ORS 162.015.

45 (2) Bribe receiving, as defined in ORS 162.025.

- 1 (3) Public investment fraud, as defined in ORS 162.117.
- 2 (4) Bribing a witness, as defined in ORS 162.265.
- 3 (5) Bribe receiving by a witness, as defined in ORS 162.275.
- 4 (6) Simulating legal process, as defined in ORS 162.355.
- 5 (7) Official misconduct in the first degree, as defined in ORS 162.415.
- 6 (8) Custodial interference in the second degree, as defined in ORS 163.245.
- 7 (9) Custodial interference in the first degree, as defined in ORS 163.257.
- 8 (10) Buying or selling a person under 18 years of age, as defined in ORS 163.537.
- 9 (11) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.
- 10 (12) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.
- 11 (13) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.
- 12 (14) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.
- 13 (15) Possession of materials depicting sexually explicit conduct of a child in the first degree, as
14 defined in ORS 163.688.
- 15 (16) Possession of materials depicting sexually explicit conduct of a child in the second degree,
16 as defined in ORS 163.689.
- 17 (17) Theft in the second degree, as defined in ORS 164.045.
- 18 (18) Theft in the first degree, as defined in ORS 164.055.
- 19 (19) Aggravated theft in the first degree, as defined in ORS 164.057.
- 20 (20) Theft by extortion, as defined in ORS 164.075.
- 21 (21) Theft by deception, as defined in ORS 164.085, if it is a felony or a Class A misdemeanor.
- 22 (22) Theft by receiving, as defined in ORS 164.095, if it is a felony or a Class A misdemeanor.
- 23 (23) Theft of services, as defined in ORS 164.125, if it is a felony or a Class A misdemeanor.
- 24 (24) Unauthorized use of a vehicle, as defined in ORS 164.135.
- 25 (25) Mail theft or receipt of stolen mail, as defined in ORS 164.162.
- 26 (26) Laundering a monetary instrument, as defined in ORS 164.170.
- 27 (27) Engaging in a financial transaction in property derived from unlawful activity, as defined
28 in ORS 164.172.
- 29 (28) Burglary in the second degree, as defined in ORS 164.215.
- 30 (29) Burglary in the first degree, as defined in ORS 164.225.
- 31 (30) Possession of a burglary tool or theft device, as defined in ORS 164.235.
- 32 (31) Unlawful entry into a motor vehicle, as defined in ORS 164.272.
- 33 (32) Arson in the second degree, as defined in ORS 164.315.
- 34 (33) Arson in the first degree, as defined in ORS 164.325.
- 35 (34) Computer crime, as defined in ORS 164.377.
- 36 (35) Robbery in the third degree, as defined in ORS 164.395.
- 37 (36) Robbery in the second degree, as defined in ORS 164.405.
- 38 (37) Robbery in the first degree, as defined in ORS 164.415.
- 39 (38) Unlawful labeling of a sound recording, as defined in ORS 164.868.
- 40 (39) Unlawful recording of a live performance, as defined in ORS 164.869.
- 41 (40) Unlawful labeling of a videotape recording, as defined in ORS 164.872.
- 42 (41) A violation of ORS 164.886.
- 43 (42)(a) Endangering aircraft in the first degree, as defined in ORS 164.885.
- 44 (b) Endangering aircraft in the second degree, as defined in ORS 164.885.
- 45 (43) Interference with agricultural operations, as defined in ORS 164.887.

- 1 (44) Forgery in the second degree, as defined in ORS 165.007.
- 2 (45) Forgery in the first degree, as defined in ORS 165.013.
- 3 (46) Criminal possession of a forged instrument in the second degree, as defined in ORS 165.017.
- 4 (47) Criminal possession of a forged instrument in the first degree, as defined in ORS 165.022.
- 5 (48) Criminal possession of a forgery device, as defined in ORS 165.032.
- 6 (49) Criminal simulation, as defined in ORS 165.037.
- 7 (50) Fraudulently obtaining a signature, as defined in ORS 165.042.
- 8 (51) Fraudulent use of a credit card, as defined in ORS 165.055.
- 9 (52) Negotiating a bad check, as defined in ORS 165.065.
- 10 (53) Possessing a fraudulent communications device, as defined in ORS 165.070.
- 11 (54) Unlawful factoring of a payment card transaction, as defined in ORS 165.074.
- 12 (55) Falsifying business records, as defined in ORS 165.080.
- 13 (56) Sports bribery, as defined in ORS 165.085.
- 14 (57) Sports bribe receiving, as defined in ORS 165.090.
- 15 (58) Misapplication of entrusted property, as defined in ORS 165.095.
- 16 (59) Issuing a false financial statement, as defined in ORS 165.100.
- 17 (60) Obtaining execution of documents by deception, as defined in ORS 165.102.
- 18 (61) A violation of ORS 165.543.
- 19 (62) Cellular counterfeiting in the third degree, as defined in ORS 165.577.
- 20 (63) Cellular counterfeiting in the second degree, as defined in ORS 165.579.
- 21 (64) Cellular counterfeiting in the first degree, as defined in ORS 165.581.
- 22 (65) Identity theft, as defined in ORS 165.800.
- 23 (66) A violation of ORS 166.190.
- 24 (67) Unlawful use of a weapon, as defined in ORS 166.220.
- 25 (68) A violation of ORS 166.240.
- 26 (69) Unlawful possession of a firearm, as defined in ORS 166.250.
- 27 (70) A violation of ORS 166.270.
- 28 (71) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or
29 firearms silencer, as defined in ORS 166.272.
- 30 (72) A violation of ORS 166.275.
- 31 (73) Unlawful possession of armor piercing ammunition, as defined in ORS 166.350.
- 32 (74) A violation of ORS 166.370.
- 33 (75) Unlawful possession of a destructive device, as defined in ORS 166.382.
- 34 (76) Unlawful manufacture of a destructive device, as defined in ORS 166.384.
- 35 (77) Possession of a hoax destructive device, as defined in ORS 166.385.
- 36 (78) A violation of ORS 166.410.
- 37 (79) Providing false information in connection with a transfer of a firearm, as defined in ORS
38 166.416.
- 39 (80) Improperly transferring a firearm, as defined in ORS 166.418.
- 40 (81) Unlawfully purchasing a firearm, as defined in ORS 166.425.
- 41 (82) A violation of ORS 166.429.
- 42 (83) A violation of ORS 166.470.
- 43 (84) A violation of ORS 166.480.
- 44 (85) A violation of ORS 166.635.
- 45 (86) A violation of ORS 166.638.

- 1 (87) Unlawful paramilitary activity, as defined in ORS 166.660.
- 2 (88) A violation of ORS 166.720.
- 3 (89) Prostitution, as defined in ORS 167.007.
- 4 (90) Promoting prostitution, as defined in ORS 167.012.
- 5 (91) Compelling prostitution, as defined in ORS 167.017.
- 6 (92) Exhibiting an obscene performance to a minor, as defined in ORS 167.075.
- 7 (93) Unlawful gambling in the second degree, as defined in ORS 167.122.
- 8 (94) Unlawful gambling in the first degree, as defined in ORS 167.127.
- 9 (95) Possession of gambling records in the second degree, as defined in ORS 167.132.
- 10 (96) Possession of gambling records in the first degree, as defined in ORS 167.137.
- 11 (97) Possession of a gambling device, as defined in ORS 167.147.
- 12 (98) Possession of a gray machine, as defined in ORS 167.164.
- 13 (99) Cheating, as defined in ORS 167.167.
- 14 (100) Tampering with drug records, as defined in ORS 167.212.
- 15 (101) A violation of ORS 167.262.
- 16 (102) Research and animal interference, as defined in ORS 167.312.
- 17 (103) Animal abuse in the first degree, as defined in ORS 167.320.
- 18 (104) Aggravated animal abuse in the first degree, as defined in ORS 167.322.
- 19 (105) Animal neglect in the first degree, as defined in ORS 167.330.
- 20 (106) Interfering with an assistance, a search and rescue or a therapy animal, as defined in ORS
- 21 167.352.
- 22 (107) Involvement in animal fighting, as defined in ORS 167.355.
- 23 (108) Dogfighting, as defined in ORS 167.365.
- 24 (109) Participation in dogfighting, as defined in ORS 167.370.
- 25 (110) Unauthorized use of a livestock animal, as defined in ORS 167.385.
- 26 (111) Interference with livestock production, as defined in ORS 167.388.
- 27 (112) A violation of ORS 167.390.
- 28 (113) Participation in cockfighting, as defined in ORS 167.431.
- 29 (114) A violation of ORS 471.410.
- 30 (115) Failure to report missing precursor substances, as defined in ORS 475.955.
- 31 (116) Illegally selling drug equipment, as defined in ORS 475.960.
- 32 (117) Providing false information on a precursor substances report, as defined in ORS 475.965.
- 33 (118) Unlawful delivery of an imitation controlled substance, as defined in ORS 475.912.
- 34 (119) A violation of ORS 475.840, if it is a felony or a Class A misdemeanor.
- 35 (120) A violation of ORS 475.914, if it is a felony or a Class A misdemeanor.
- 36 (121) A violation of ORS 475.916.
- 37 (122) A violation of ORS 475.906, if it is a felony or a Class A misdemeanor.
- 38 (123) A violation of ORS 475.904.
- 39 (124) Misuse of an identification card, as defined in ORS 807.430.
- 40 (125) Unlawful production of identification cards, licenses, permits, forms or camera cards, as
- 41 defined in ORS 807.500.
- 42 (126) Transfer of documents for the purposes of misrepresentation, as defined in ORS 807.510.
- 43 (127) Using an invalid license, as defined in ORS 807.580.
- 44 (128) Permitting misuse of a license, as defined in ORS 807.590.
- 45 (129) Using another's license, as defined in ORS 807.600.

1 (130) Criminal driving while suspended or revoked, as defined in ORS 811.182, when it is a fel-
2 ony.

3 (131) Driving while under the influence of intoxicants, as defined in ORS 813.010, when it is a
4 felony.

5 (132) Unlawful distribution of cigarettes, as defined in ORS 323.482.

6 (133) Unlawful distribution of tobacco products, as defined in ORS 323.632.

7 (134) A violation of ORS 180.440 (2) or 180.486 (2).

8 (135) A violation described in ORS 475.846 to 475.894, if it is a felony.

9 (136) Subjecting another person to involuntary servitude in the first degree, as defined in ORS
10 163.264.

11 (137) Subjecting another person to involuntary servitude in the second degree, as defined in ORS
12 163.263.

13 (138) Trafficking in persons, as defined in ORS 163.266.

14 (139) Furnishing sexually explicit material to a child, as defined in ORS 167.054.

15 (140) Luring a minor, as defined in ORS 167.057.

16 (141) Online sexual corruption of a child in the second degree, as defined in ORS 163.432.

17 (142) Online sexual corruption of a child in the first degree, as defined in ORS 163.433.

18 **(143) A hate crime in the second degree under ORS 166.155.**

19 **(144) A hate crime in the first degree under ORS 166.165.**

20 ~~[(143)]~~ **(145)** An attempt, conspiracy or solicitation to commit a crime in subsections (1) to
21 ~~[(142)]~~ **(144)** of this section if the attempt, conspiracy or solicitation is a felony or a Class A
22 misdemeanor.

23 **SECTION 7.** ORS 90.396 is amended to read:

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

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

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

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

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

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

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

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

44 (f) The tenant, someone in the tenant's control or the tenant's pet commits any act that is out-
45 rageous in the extreme, on the premises or in the immediate vicinity of the premises. For purposes

1 of this paragraph, an act is outrageous in the extreme if the act is not described in paragraphs (a)
 2 to (e) of this subsection, but is similar in degree and is one that a reasonable person in that com-
 3 munity would consider to be so offensive as to warrant termination of the tenancy within 24 hours,
 4 considering the seriousness of the act or the risk to others. An act that is outrageous in the extreme
 5 is more extreme or serious than an act that warrants a 30-day termination under ORS 90.392. Acts
 6 that are “outrageous in the extreme” include, but are not limited to, the following acts by a person:

- 7 (A) Prostitution or promotion of prostitution, as described in ORS 167.007 and 167.012;
- 8 (B) Manufacture, delivery or possession of a controlled substance, as described in ORS 475.005,
 9 but not including:
 - 10 (i) The medical use of marijuana in compliance with ORS 475.300 to 475.346;
 - 11 (ii) Possession of, or delivery for no consideration of, less than one avoirdupois ounce of
 12 marijuana as described in ORS 475.860 (3) or 475.864 (3); or
 - 13 (iii) Possession of prescription drugs;
 - 14 (C) *[Intimidation]* **A hate crime**, as described in ORS 166.155 and 166.165; or
 - 15 (D) Burglary as described in ORS 164.215 and 164.225.

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

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

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

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

37 **SECTION 8.** ORS 163.707 is amended to read:

38 163.707. (1) A motor vehicle used by the owner in a drive-by shooting is subject to civil in rem
 39 forfeiture.

40 (2) Seizure and forfeiture proceedings under this section shall be conducted in accordance with
 41 ORS chapter 131A.

42 (3) As used in this section, “drive-by shooting” means discharge of a firearm from a motor ve-
 43 hicle while committing or attempting to commit:

- 44 (a) Aggravated murder under ORS 163.095;
- 45 (b) Murder under ORS 163.115;

- 1 (c) Manslaughter in any degree under ORS 163.118 or 163.125;
- 2 (d) Assault in any degree under ORS 163.160, 163.165, 163.175 or 163.185;
- 3 (e) Menacing under ORS 163.190;
- 4 (f) Recklessly endangering another person under ORS 163.195;
- 5 (g) Assaulting a public safety officer under ORS 163.208; or
- 6 (h) [*Intimidation*] **A hate crime** in any degree under ORS 166.155 or 166.165.

7 **SECTION 9.** ORS 166.715 is amended to read:

8 166.715. As used in ORS 166.715 to 166.735, unless the context requires otherwise:

9 (1) “Documentary material” means any book, paper, document, writing, drawing, graph, chart,
 10 photograph, phonograph record, magnetic tape, computer printout, other data compilation from
 11 which information can be obtained or from which information can be translated into usable form,
 12 or other tangible item.

13 (2) “Enterprise” includes any individual, sole proprietorship, partnership, corporation, business
 14 trust or other profit or nonprofit legal entity, and includes any union, association or group of indi-
 15 viduals associated in fact although not a legal entity, and both illicit and licit enterprises and gov-
 16 ernmental and nongovernmental entities.

17 (3) “Investigative agency” means the Department of Justice or any district attorney.

18 (4) “Pattern of racketeering activity” means engaging in at least two incidents of racketeering
 19 activity that have the same or similar intents, results, accomplices, victims or methods of commis-
 20 sion or otherwise are interrelated by distinguishing characteristics, including a nexus to the same
 21 enterprise, and are not isolated incidents, provided at least one of such incidents occurred after
 22 November 1, 1981, and that the last of such incidents occurred within five years after a prior inci-
 23 dent of racketeering activity. Notwithstanding ORS 131.505 to 131.525 or 419A.190 or any other
 24 provision of law providing that a previous prosecution is a bar to a subsequent prosecution, conduct
 25 that constitutes an incident of racketeering activity may be used to establish a pattern of
 26 racketeering activity without regard to whether the conduct previously has been the subject of a
 27 criminal prosecution or conviction or a juvenile court adjudication, unless the prosecution resulted
 28 in an acquittal or the adjudication resulted in entry of an order finding the youth not to be within
 29 the jurisdiction of the juvenile court.

30 (5) “Person” means any individual or entity capable of holding a legal or beneficial interest in
 31 real or personal property.

32 (6) “Racketeering activity” includes conduct of a person committed both before and after the
 33 person attains the age of 18 years, and means to commit, to attempt to commit, to conspire to
 34 commit, or to solicit, coerce or intimidate another person to commit:

35 (a) Any conduct that constitutes a crime, as defined in ORS 161.515, under any of the following
 36 provisions of the Oregon Revised Statutes:

37 (A) ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995, relating to securities;

38 (B) ORS 162.015, 162.025 and 162.065 to 162.085, relating to bribery and perjury;

39 (C) ORS 162.235, 162.265 to 162.305, 162.325, 162.335, 162.355 and 162.365, relating to obstructing
 40 governmental administration;

41 (D) ORS 162.405 to 162.425, relating to abuse of public office;

42 (E) ORS 162.455, relating to interference with legislative operation;

43 (F) ORS 163.095 to 163.115, 163.118, 163.125 and 163.145, relating to criminal homicide;

44 (G) ORS 163.160 to 163.205, relating to assault and related offenses;

45 (H) ORS 163.225 and 163.235, relating to kidnapping;

- 1 (I) ORS 163.275, relating to coercion;
- 2 (J) ORS 163.670 to 163.693, relating to sexual conduct of children;
- 3 (K) ORS 164.015, 164.043, 164.045, 164.055, 164.057, 164.075 to 164.095, 164.098, 164.125, 164.135,
4 164.140, 164.215, 164.225 and 164.245 to 164.270, relating to theft, burglary, criminal trespass and
5 related offenses;
- 6 (L) ORS 164.315 to 164.335, relating to arson and related offenses;
- 7 (M) ORS 164.345 to 164.365, relating to criminal mischief;
- 8 (N) ORS 164.395 to 164.415, relating to robbery;
- 9 (O) ORS 164.865, 164.875 and 164.868 to 164.872, relating to unlawful recording or labeling of a
10 recording;
- 11 (P) ORS 165.007 to 165.022, 165.032 to 165.042 and 165.055 to 165.070, relating to forgery and
12 related offenses;
- 13 (Q) ORS 165.080 to 165.109, relating to business and commercial offenses;
- 14 (R) ORS 165.485 to 165.515, 165.540 and 165.555, relating to communication crimes;
- 15 (S) ORS 166.180, 166.190, 166.220, 166.250, 166.270, 166.275, 166.410, 166.450 and 166.470, relating
16 to firearms and other weapons;
- 17 (T) ORS 164.377 (2) to (4), as punishable under ORS 164.377 (5)(b), 167.007 to 167.017, 167.054,
18 167.057, 167.062 to 167.080, 167.090, 167.122 to 167.137, 167.147, 167.164, 167.167, 167.212, 167.355,
19 167.365, 167.370, 167.428, 167.431 and 167.439, relating to prostitution, obscenity, sexually explicit
20 material, sexual conduct, gambling, computer crimes involving the Oregon State Lottery, animal
21 fighting, forcible recovery of a fighting bird and related offenses;
- 22 (U) ORS 171.990, relating to legislative witnesses;
- 23 (V) ORS 260.575 and 260.665, relating to election offenses;
- 24 (W) ORS 314.075, relating to income tax;
- 25 (X) ORS 180.440 (2) and 180.486 (2) and ORS chapter 323, relating to cigarette and tobacco
26 products taxes and the directories developed under ORS 180.425 and 180.477;
- 27 (Y) ORS 411.630, 411.675, 411.690 and 411.840, relating to public assistance payments, and ORS
28 411.990 (2) and (3);
- 29 (Z) ORS 462.140, 462.415 and 462.420 to 462.520, relating to racing;
- 30 (AA) ORS 463.995, relating to boxing, mixed martial arts and entertainment wrestling, as defined
31 in ORS 463.015;
- 32 (BB) ORS 471.305, 471.360, 471.392 to 471.400, 471.403, 471.404, 471.405, 471.425, 471.442, 471.445,
33 471.446, 471.485, 471.490 and 471.675, relating to alcoholic liquor, and any of the provisions of ORS
34 chapter 471 relating to licenses issued under the Liquor Control Act;
- 35 (CC) ORS 475.005 to 475.285 and 475.840 to 475.980, relating to controlled substances;
- 36 (DD) ORS 480.070, 480.210, 480.215, 480.235 and 480.265, relating to explosives;
- 37 (EE) ORS 819.010, 819.040, 822.100, 822.135 and 822.150, relating to motor vehicles;
- 38 (FF) ORS 658.452 or 658.991 (2) to (4), relating to farm labor contractors;
- 39 (GG) ORS chapter 706, relating to banking law administration;
- 40 (HH) ORS chapter 714, relating to branch banking;
- 41 (II) ORS chapter 716, relating to mutual savings banks;
- 42 (JJ) ORS chapter 723, relating to credit unions;
- 43 (KK) ORS chapter 726, relating to pawnbrokers;
- 44 (LL) ORS 166.382 and 166.384, relating to destructive devices;
- 45 (MM) ORS 165.074;

- 1 (NN) ORS 86A.095 to 86A.198, relating to mortgage bankers and mortgage brokers;
- 2 (OO) ORS chapter 496, 497 or 498, relating to wildlife;
- 3 (PP) ORS 163.355 to 163.427, relating to sexual offenses;
- 4 (QQ) ORS 166.015, relating to riot;
- 5 (RR) ORS 166.155 and 166.165, relating to [*intimidation*] **hate crimes**;
- 6 (SS) ORS chapter 696, relating to real estate and escrow;
- 7 (TT) ORS chapter 704, relating to outfitters and guides;
- 8 (UU) ORS 165.692, relating to making a false claim for health care payment;
- 9 (VV) ORS 162.117, relating to public investment fraud;
- 10 (WW) ORS 164.170 or 164.172;
- 11 (XX) ORS 647.140, 647.145 or 647.150, relating to trademark counterfeiting;
- 12 (YY) ORS 164.886;
- 13 (ZZ) ORS 167.312 and 167.388;
- 14 (AAA) ORS 164.889;
- 15 (BBB) ORS 165.800; or
- 16 (CCC) ORS 163.263, 163.264 or 163.266.

17 (b) Any conduct defined as “racketeering activity” under 18 U.S.C. 1961 (1)(B), (C), (D) and (E).

18 (7) “Unlawful debt” means any money or other thing of value constituting principal or interest
 19 of a debt that is legally unenforceable in the state in whole or in part because the debt was incurred
 20 or contracted:

- 21 (a) In violation of any one of the following:
- 22 (A) ORS chapter 462, relating to racing;
- 23 (B) ORS 167.108 to 167.164, relating to gambling; or
- 24 (C) ORS 82.010 to 82.170, relating to interest and usury.

25 (b) In gambling activity in violation of federal law or in the business of lending money at a rate
 26 usurious under federal or state law.

27 (8) Notwithstanding contrary provisions in ORS 174.060, when this section references a statute
 28 in the Oregon Revised Statutes that is substantially different in the nature of its essential provisions
 29 from what the statute was when this section was enacted, the reference shall extend to and include
 30 amendments to the statute.

31 **SECTION 10.** ORS 137.225 is amended to read:

32 137.225. (1)(a) At any time after the lapse of three years from the date of pronouncement of
 33 judgment, any defendant who has fully complied with and performed the sentence of the court and
 34 whose conviction is described in subsection (5) of this section by motion may apply to the court
 35 where the conviction was entered for entry of an order setting aside the conviction; or

36 (b) At any time after the lapse of one year from the date of any arrest, if no accusatory in-
 37 strument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested per-
 38 son may apply to the court that would have jurisdiction over the crime for which the person was
 39 arrested, for entry of an order setting aside the record of the arrest. For the purpose of computing
 40 the one-year period, time during which the arrested person has secreted himself or herself within
 41 or without the state is not included.

42 (2)(a) A copy of the motion and a full set of the defendant’s fingerprints shall be served upon
 43 the office of the prosecuting attorney who prosecuted the crime or violation, or who had authority
 44 to prosecute the charge if there was no accusatory instrument filed, and opportunity shall be given
 45 to contest the motion. The fingerprint card with the notation “motion for setting aside conviction,”

1 or “motion for setting aside arrest record” as the case may be, shall be forwarded to the Department
 2 of State Police bureau of criminal identification. Information resulting from the fingerprint search
 3 along with the fingerprint card shall be returned to the prosecuting attorney.

4 (b) When a prosecuting attorney is served with a copy of a motion to set aside a conviction
 5 under this section, the prosecuting attorney shall provide a copy of the motion and notice of the
 6 hearing date to the victim, if any, of the crime by mailing a copy of the motion and notice to the
 7 victim’s last-known address.

8 (c) When a person makes a motion under subsection (1)(a) of this section, the person must pay
 9 a fee of \$80. The person shall attach a certified check payable to the Department of State Police in
 10 the amount of \$80 to the fingerprint card that is served upon the prosecuting attorney. The office
 11 of the prosecuting attorney shall forward the check with the fingerprint card to the Department of
 12 State Police bureau of criminal identification.

13 (3) Upon hearing the motion, the court may require the filing of such affidavits and may require
 14 the taking of such proofs as it deems proper. The court shall allow the victim to make a statement
 15 at the hearing. Except as otherwise provided in subsection (12) of this section, if the court deter-
 16 mines that the circumstances and behavior of the applicant from the date of conviction, or from the
 17 date of arrest as the case may be, to the date of the hearing on the motion warrant setting aside
 18 the conviction, or the arrest record as the case may be, it shall enter an appropriate order that shall
 19 state the original arrest charge and the conviction charge, if any and if different from the original,
 20 date of charge, submitting agency and disposition. The order shall further state that positive iden-
 21 tification has been established by the bureau and further identified as to state bureau number or
 22 submitting agency number. Upon the entry of the order, the applicant for purposes of the law shall
 23 be deemed not to have been previously convicted, or arrested as the case may be, and the court
 24 shall issue an order sealing the record of conviction and other official records in the case, including
 25 the records of arrest whether or not the arrest resulted in a further criminal proceeding.

26 (4) The clerk of the court shall forward a certified copy of the order to such agencies as directed
 27 by the court. A certified copy must be sent to the Department of Corrections when the person has
 28 been in the custody of the Department of Corrections. Upon entry of the order, the conviction, ar-
 29 rest or other proceeding shall be deemed not to have occurred, and the applicant may answer ac-
 30 cordingly any questions relating to its occurrence.

31 (5) The provisions of subsection (1)(a) of this section apply to a conviction of:

32 (a) A Class C felony, except for criminal mistreatment in the first degree under ORS 163.205
 33 when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime.

34 (b) The crime of possession of the narcotic drug marijuana when that crime was punishable as
 35 a felony only.

36 (c) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, except
 37 for:

38 (A) Any sex crime; and

39 (B) The following crimes when they would constitute child abuse as defined in ORS 419B.005:

40 (i) Criminal mistreatment in the first degree under ORS 163.205; and

41 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

42 (d) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may
 43 be imposed, except for endangering the welfare of a minor under ORS 163.575 (1)(a) when it would
 44 constitute child abuse, as defined in ORS 419B.005, or any sex crime.

45 (e) A violation, whether under state law or local ordinance.

- 1 (f) An offense committed before January 1, 1972, that if committed after that date would be:
- 2 (A) A Class C felony, except for any sex crime or for the following crimes when they would
- 3 constitute child abuse as defined in ORS 419B.005:
- 4 (i) Criminal mistreatment in the first degree under ORS 163.205; and
- 5 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).
- 6 (B) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, ex-
- 7 cept for any sex crime or for the following crimes when they would constitute child abuse as defined
- 8 in ORS 419B.005:
- 9 (i) Criminal mistreatment in the first degree under ORS 163.205; and
- 10 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).
- 11 (C) A misdemeanor, except for endangering the welfare of a minor under ORS 163.575 (1)(a)
- 12 when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime.
- 13 (D) A violation.
- 14 (6) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section
- 15 do not apply to:
- 16 (a) A conviction for a state or municipal traffic offense.
- 17 (b) A person convicted, within the 10-year period immediately preceding the filing of the motion
- 18 pursuant to subsection (1) of this section, of any other offense, excluding motor vehicle violations,
- 19 whether or not the other conviction is for conduct associated with the same criminal episode that
- 20 caused the arrest or conviction that is sought to be set aside. Notwithstanding subsection (1) of this
- 21 section, a conviction that has been set aside under this section shall be considered for the purpose
- 22 of determining whether this paragraph is applicable.
- 23 (c) A person who at the time the motion authorized by subsection (1) of this section is pending
- 24 before the court is under charge of commission of any crime.
- 25 (7) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this sec-
- 26 tion do not apply to criminally negligent homicide under ORS 163.145, when that offense was
- 27 punishable as a Class C felony.
- 28 (8) The provisions of subsection (1)(b) of this section do not apply to:
- 29 (a) A person arrested within the three-year period immediately preceding the filing of the motion
- 30 for any offense, excluding motor vehicle violations, and excluding arrests for conduct associated
- 31 with the same criminal episode that caused the arrest that is sought to be set aside.
- 32 (b) An arrest for driving while under the influence of intoxicants if the charge is dismissed as
- 33 a result of the person's successful completion of a diversion agreement described in ORS 813.200.
- 34 (9) The provisions of subsection (1) of this section apply to convictions and arrests that occurred
- 35 before, as well as those that occurred after, September 9, 1971. There is no time limit for making
- 36 an application.
- 37 (10) For purposes of any civil action in which truth is an element of a claim for relief or affir-
- 38 mative defense, the provisions of subsection (3) of this section providing that the conviction, arrest
- 39 or other proceeding be deemed not to have occurred do not apply and a party may apply to the
- 40 court for an order requiring disclosure of the official records in the case as may be necessary in the
- 41 interest of justice.
- 42 (11) Upon motion of any prosecutor or defendant in a case involving records sealed under this
- 43 section, supported by affidavit showing good cause, the court with jurisdiction may order the reo-
- 44 pening and disclosure of any records sealed under this section for the limited purpose of assisting
- 45 the investigation of the movant. However, such an order has no other effect on the orders setting

1 aside the conviction or the arrest record.

2 (12) Unless the court makes written findings by clear and convincing evidence that granting the
 3 motion would not be in the best interests of justice, the court shall grant the motion and enter an
 4 order as provided in subsection (3) of this section if the defendant has been convicted of one of the
 5 following crimes and is otherwise eligible for relief under this section:

- 6 (a) Abandonment of a child, ORS 163.535.
- 7 (b) Attempted assault in the second degree, ORS 163.175.
- 8 (c) Assault in the third degree, ORS 163.165.
- 9 (d) Coercion, ORS 163.275.
- 10 (e) Criminal mistreatment in the first degree, ORS 163.205.
- 11 (f) Attempted escape in the first degree, ORS 162.165.
- 12 (g) Incest, ORS 163.525, if the victim was at least 18 years of age.
- 13 (h) [*Intimidation*] **A hate crime** in the first degree, ORS 166.165.
- 14 (i) Attempted kidnapping in the second degree, ORS 163.225.
- 15 (j) Attempted robbery in the second degree, ORS 164.405.
- 16 (k) Robbery in the third degree, ORS 164.395.
- 17 (L) Supplying contraband, ORS 162.185.
- 18 (m) Unlawful use of a weapon, ORS 166.220.

19 (13) As used in this section, “sex crime” has the meaning given that term in ORS 181.594.

20 **SECTION 11.** ORS 137.712 is amended to read:

21 137.712. (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person is convicted of
 22 manslaughter in the second degree as defined in ORS 163.125, assault in the second degree as de-
 23 fined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225, rape in the
 24 second degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395,
 25 unlawful sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first
 26 degree as defined in ORS 163.427 (1)(a)(A) or robbery in the second degree as defined in ORS
 27 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice
 28 Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700
 29 or 137.707 if the court, on the record at sentencing, makes the findings set forth in subsection (2)
 30 of this section and finds that a substantial and compelling reason under the rules of the Oregon
 31 Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under
 32 this subsection, the person is eligible for a reduction in the sentence as provided in ORS 421.121 and
 33 any other statute.

34 (b) In order to make a dispositional departure under this section, the court must make the fol-
 35 lowing additional findings on the record:

36 (A) There exists a substantial and compelling reason not relied upon in paragraph (a) of this
 37 subsection;

38 (B) A sentence of probation will be more effective than a prison term in reducing the risk of
 39 offender recidivism; and

40 (C) A sentence of probation will better serve to protect society.

41 (2) A conviction is subject to subsection (1) of this section only if the sentencing court finds on
 42 the record by a preponderance of the evidence:

43 (a) If the conviction is for manslaughter in the second degree:

44 (A) That the defendant is the mother or father of the victim;

45 (B) That the death of the victim was the result of an injury or illness that was not caused by

1 the defendant;

2 (C) That the defendant treated the injury or illness solely by spiritual treatment in accordance
3 with the religious beliefs or practices of the defendant and based on a good faith belief that spiritual
4 treatment would bring about the victim's recovery from the injury or illness;

5 (D) That no other person previously under the defendant's care has died or sustained significant
6 physical injury as a result of or despite the use of spiritual treatment, regardless of whether the
7 spiritual treatment was used alone or in conjunction with medical care; and

8 (E) That the defendant does not have a previous conviction for a crime listed in subsection (4)
9 of this section or for criminal mistreatment in the second degree.

10 (b) If the conviction is for assault in the second degree:

11 (A) That the victim was not physically injured by means of a deadly weapon;

12 (B) That the victim did not suffer a significant physical injury; and

13 (C) That the defendant does not have a previous conviction for a crime listed in subsection (4)
14 of this section.

15 (c) If the conviction is for kidnapping in the second degree:

16 (A) That the victim was at least 12 years of age at the time the crime was committed; and

17 (B) That the defendant does not have a previous conviction for a crime listed in subsection (4)
18 of this section.

19 (d) If the conviction is for robbery in the second degree:

20 (A) That the victim did not suffer a significant physical injury;

21 (B) That, if the defendant represented by words or conduct that the defendant was armed with
22 a dangerous weapon, the representation did not reasonably put the victim in fear of imminent sig-
23 nificant physical injury;

24 (C) That, if the defendant represented by words or conduct that the defendant was armed with
25 a deadly weapon, the representation did not reasonably put the victim in fear of imminent physical
26 injury; and

27 (D) That the defendant does not have a previous conviction for a crime listed in subsection (4)
28 of this section.

29 (e) If the conviction is for rape in the second degree, sodomy in the second degree or sexual
30 abuse in the first degree:

31 (A) That the victim was at least 12 years of age, but under 14 years of age, at the time of the
32 offense;

33 (B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of
34 this section;

35 (C) That the defendant has not been previously found to be within the jurisdiction of a juvenile
36 court for an act that would have been a felony sexual offense if the act had been committed by an
37 adult;

38 (D) That the defendant was no more than five years older than the victim at the time of the
39 offense;

40 (E) That the offense did not involve sexual contact with any minor other than the victim; and

41 (F) That the victim's lack of consent was due solely to incapacity to consent by reason of being
42 under 18 years of age at the time of the offense.

43 (f) If the conviction is for unlawful sexual penetration in the second degree:

44 (A) That the victim was 12 years of age or older at the time of the offense;

45 (B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of

1 this section;

2 (C) That the defendant has not been previously found to be within the jurisdiction of a juvenile
 3 court for an act that would have been a felony sexual offense if the act had been committed by an
 4 adult;

5 (D) That the defendant was no more than five years older than the victim at the time of the
 6 offense;

7 (E) That the offense did not involve sexual contact with any minor other than the victim;

8 (F) That the victim's lack of consent was due solely to incapacity to consent by reason of being
 9 under 18 years of age at the time of the offense; and

10 (G) That the object used to commit the unlawful sexual penetration was the hand or any part
 11 thereof of the defendant.

12 (3) In making the findings required by subsections (1) and (2) of this section, the court may
 13 consider any evidence presented at trial and may receive and consider any additional relevant in-
 14 formation offered by either party at sentencing.

15 (4) The crimes to which subsection (2)(a)(E), (b)(C), (c)(B), (d)(D), (e)(B) and (f)(B) of this section
 16 refer are:

17 (a) A crime listed in ORS 137.700 (2) or 137.707 (4);

18 (b) Escape in the first degree, as defined in ORS 162.165;

19 (c) Aggravated murder, as defined in ORS 163.095;

20 (d) Criminally negligent homicide, as defined in ORS 163.145;

21 (e) Assault in the third degree, as defined in ORS 163.165;

22 (f) Criminal mistreatment in the first degree, as defined in ORS 163.205 (1)(b)(A);

23 (g) Rape in the third degree, as defined in ORS 163.355;

24 (h) Sodomy in the third degree, as defined in ORS 163.385;

25 (i) Sexual abuse in the second degree, as defined in ORS 163.425;

26 (j) Stalking, as defined in ORS 163.732;

27 (k) Burglary in the first degree, as defined in ORS 164.225, when it is classified as a person
 28 felony under the rules of the Oregon Criminal Justice Commission;

29 (L) Arson in the first degree, as defined in ORS 164.325;

30 (m) Robbery in the third degree, as defined in ORS 164.395;

31 (n) *[Intimidation]* **A hate crime** in the first degree, as defined in ORS 166.165;

32 (o) Promoting prostitution, as defined in ORS 167.012; and

33 (p) An attempt or solicitation to commit any Class A or B felony listed in paragraphs (a) to (L)
 34 of this subsection.

35 (5) Notwithstanding ORS 137.545 (5)(b), if a person sentenced to probation under this section
 36 violates a condition of probation by committing a new crime, the court shall revoke the probation
 37 and impose the presumptive sentence of imprisonment under the rules of the Oregon Criminal Jus-
 38 tice Commission.

39 (6) As used in this section:

40 (a) "Conviction" includes, but is not limited to:

41 (A) A juvenile court adjudication finding a person within the court's jurisdiction under ORS
 42 419C.005, if the person was at least 15 years of age at the time the person committed the offense
 43 that brought the person within the jurisdiction of the juvenile court. "Conviction" does not include
 44 a juvenile court adjudication described in this subparagraph if the person successfully asserted the
 45 defense set forth in ORS 419C.522.

1 (B) A conviction in another jurisdiction for a crime that if committed in this state would con-
2 stitute a crime listed in subsection (4) of this section.

3 (b) "Previous conviction" means a conviction that was entered prior to imposing sentence on the
4 current crime provided that the prior conviction is based on a crime committed in a separate crim-
5 inal episode. "Previous conviction" does not include a conviction for a Class C felony, including an
6 attempt or solicitation to commit a Class B felony, or a misdemeanor, unless the conviction was
7 entered within the 10-year period immediately preceding the date on which the current crime was
8 committed.

9 (c) "Significant physical injury" means a physical injury that:

10 (A) Creates a risk of death that is not a remote risk;

11 (B) Causes a serious and temporary disfigurement;

12 (C) Causes a protracted disfigurement; or

13 (D) Causes a prolonged impairment of health or the function of any bodily organ.

14 **SECTION 12. The amendments to ORS 30.198, 30.200, 90.396, 131.602, 137.225, 137.712,**
15 **163.707, 166.155, 166.165, 166.715 and 181.550 by sections 1 to 11 of this 2011 Act apply to con-**
16 **duct occurring on or after the effective date of this 2011 Act.**

17 **SECTION 13. This 2011 Act being necessary for the immediate preservation of the public**
18 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
19 **on its passage.**

20