

**HOUSE AMENDMENTS TO  
B-ENGROSSED SENATE BILL 412  
(INCLUDING AMENDMENTS TO RESOLVE CONFLICTS)**

By COMMITTEE ON RULES

June 27

1 On page 1 of the printed B-engrossed bill, line 4, after “181.610,” insert “181.781, 181.783,  
2 181.796,” and after the semicolon insert “repealing sections 4, 14, 15, 16, 17, 23, 24 and 39, chapter  
3 506, Oregon Laws 2011 (Enrolled Senate Bill 405);”.

4 Delete lines 18 through 25 and delete pages 2 through 6.

5 On page 7, delete lines 1 through 7 and insert:

6 **“SECTION 2. A tribal police officer is eligible to act as an authorized tribal police officer  
7 if the officer:**

8 **“(1) Is acting within the scope of employment as a tribal police officer;**

9 **“(2) Is certified as a police officer under the provisions of ORS 181.610 to 181.712;**

10 **“(3) Is in compliance with any rules adopted by the Department of Public Safety Stan-  
11 dards and Training under sections 1 to 4 of this 2011 Act; and**

12 **“(4) Is employed by a tribal government that:**

13 **“(a) Is in compliance with the requirements of ORS 181.610 to 181.712 applicable to a law  
14 enforcement unit as defined in ORS 181.610;**

15 **“(b) Is in compliance with sections 1 to 4 of this 2011 Act and any rules adopted by the  
16 department under sections 1 to 4 of this 2011 Act;**

17 **“(c) Has submitted to the department the resolution and documents described in section  
18 3 of this 2011 Act;**

19 **“(d) Has adopted a provision of tribal law:**

20 **“(A) That requires the tribal government to participate in, and be bound by, a deadly  
21 physical force plan approved under ORS 181.781 to 181.796, to the same extent that the  
22 county sheriff is required to participate in, and be bound by, the plan;**

23 **“(B) That requires the tribal government to retain records related to the exercise of the  
24 authority granted to authorized tribal police officers under sections 1 to 4 of this 2011 Act  
25 in a manner substantially similar to the manner in which the provisions of ORS 192.005 to  
26 192.170 require the Department of State Police to retain public records;**

27 **“(C) That provides members of the public with the right to inspect records of the tribal  
28 government related to the exercise of the authority granted to authorized tribal police offi-  
29 cers under sections 1 to 4 of this 2011 Act in a manner substantially similar to the manner  
30 in which the provisions of ORS 192.410 to 192.505 provide members of the public with the  
31 right to inspect public records of the Department of State Police;**

32 **“(D) That requires the tribal government to preserve biological evidence in a manner  
33 substantially similar to sections 2 to 6, chapter 275, Oregon Laws 2011, when the biological  
34 evidence:**

1       “(i) Is collected as part of a criminal investigation, conducted by an authorized tribal  
2 police officer, into a covered offense as defined in section 2, chapter 275, Oregon Laws 2011;  
3 or

4       “(ii) Is otherwise in the possession of the tribal government and reasonably may be used  
5 to incriminate or exculpate any person for a covered offense as defined in section 2, chapter  
6 275, Oregon Laws 2011; and

7       “(E) That waives sovereign immunity, in a manner similar to the waiver expressed in  
8 ORS 30.260 to 30.300, as to tort claims asserted in the tribal government’s court that arise  
9 from the conduct of an authorized tribal police officer. The waiver described in this subpar-  
10 agraph:

11       “(i) Must apply to the conduct of an authorized tribal police officer that occurs while the  
12 provision of tribal law is in effect;

13       “(ii) Must allow for recovery against the tribal government in an amount equal to or  
14 greater than the amounts described in ORS 30.260 to 30.300 that are applicable to a local  
15 public body;

16       “(iii) May require that the claim be asserted in accordance with any applicable tort  
17 claims procedures of the tribal government; and

18       “(iv) May exclude claims that could be brought in federal court under the Federal Tort  
19 Claims Act; and

20       “(e) Has adopted or is exempt from adopting, in accordance with this paragraph, a writ-  
21 ten pretrial discovery policy that describes how a tribal government and its authorized tribal  
22 police officers will assist the district attorney, in criminal prosecutions conducted in state  
23 court in which an authorized tribal police officer arrested or cited the defendant, in meeting  
24 the pretrial discovery obligations imposed on the state by ORS 135.805 to 135.873. The process  
25 for adopting, and determining whether a tribal government is exempt from adopting, a  
26 written pretrial discovery policy is as follows:

27       “(A) A tribal government may request in writing that the sheriff of a county with land  
28 that is contiguous to the land of the tribal government provide the tribal government with  
29 a copy of any written pretrial discovery policy adopted by the sheriff that describes how the  
30 sheriff’s office assists the district attorney in meeting the pretrial discovery obligations im-  
31 posed by ORS 135.805 to 135.873. Not later than 30 days after receiving the request, the  
32 sheriff shall provide the tribal government with a copy of the policy or notify the tribal  
33 government that the sheriff has not adopted the policy.

34       “(B) If a tribal government fails to submit a written request to each sheriff of a county  
35 that is contiguous to the land of the tribal government or if each sheriff has adopted a  
36 written pretrial discovery policy described in subparagraph (A) of this paragraph, the tribal  
37 government shall, not later than 90 days after the effective date of this 2011 Act, adopt a  
38 written pretrial discovery policy.

39       “(C) A tribal government may create and adopt a written pretrial discovery policy or may  
40 adopt the written pretrial discovery policy adopted by the sheriff of a county with land that  
41 is contiguous to the land of the tribal government.

42       “(D) If the sheriff of any county with land that is contiguous to the land of the tribal  
43 government has not, on the date the sheriff receives a request described in subparagraph (A)  
44 of this paragraph, adopted a written pretrial discovery policy, the tribal government is ex-  
45 empt from adopting a written pretrial discovery policy.

1       **“SECTION 3. (1) The Legislative Assembly finds and declares that the purpose of sections**  
2 **1 to 4 of this 2011 Act is to provide authorized tribal police officers with a limited ability to**  
3 **exercise the powers of, and to receive the same authority and protections provided to, law**  
4 **enforcement officers under the laws of this state, without incurring any additional costs or**  
5 **loss of revenue to the State of Oregon or a political subdivision of the State of Oregon.**

6       **“(2) Notwithstanding section 2 of this 2011 Act, a tribal police officer may not act as an**  
7 **authorized tribal police officer outside of Indian country, unless the officer:**

8       **“(a) Is investigating an offense alleged to have been committed within Indian country;**

9       **“(b) Leaves Indian country in fresh pursuit as defined in ORS 133.420;**

10       **“(c) Is acting in response to an offense committed in the officer’s presence; or**

11       **“(d) Has received the express approval of a law enforcement agency having jurisdiction**  
12 **over the geographic area in which the tribal police officer is acting.**

13       **“(3) When an authorized tribal police officer issues a citation for the commission of an**  
14 **offense for which the State of Oregon has jurisdiction and the tribal government employing**  
15 **the officer does not have jurisdiction, the citation must:**

16       **“(a) Summon the person cited to appear in the circuit court of the county in which the**  
17 **offense was committed; and**

18       **“(b) Be submitted to the district attorney of the county in which the offense was com-**  
19 **mitted.**

20       **“(4) A tribal government that employs tribal police officers may submit to the Depart-**  
21 **ment of Public Safety Standards and Training a resolution declaring that the tribal govern-**  
22 **ment is self-insured or has purchased and maintains in force:**

23       **“(a) Public liability and property damage insurance for vehicles operated by authorized**  
24 **tribal police officers; and**

25       **“(b) Police professional liability insurance from a company licensed to sell insurance in**  
26 **this state.**

27       **“(5) The tribal government shall attach the following documents to the resolution sub-**  
28 **mitted to the department under subsection (4) of this section:**

29       **“(a) A declaration that the tribal government has complied with the requirements of**  
30 **sections 1 to 4 of this 2011 Act; and**

31       **“(b)(A) A full copy of the public liability and property damage insurance policy for vehi-**  
32 **cles operated by the tribal government’s authorized tribal police officers and a full copy of**  
33 **the police professional liability insurance policy from a company licensed to sell insurance**  
34 **in this state; or**

35       **“(B) A description of the tribal government’s self-insurance program.**

36       **“(6) A self-insurance program or insurance policy described in subsections (4) and (5) of**  
37 **this section must provide:**

38       **“(a) That the self-insurance program or insurance policy is available to satisfy settle-**  
39 **ments and judgments arising from the tortious conduct of authorized tribal police officers**  
40 **in an amount equal to or greater than the amounts described in ORS 30.260 to 30.300 that**  
41 **are applicable to a local public body; and**

42       **“(b) That the tribal government and the insurance carrier will not raise the defense of**  
43 **sovereign immunity for claims that are asserted in the tribal government’s court and involve**  
44 **the tortious conduct of an authorized tribal police officer, provided that the claims:**

45       **“(A) Are asserted in accordance with any applicable tort claims procedures of the tribal**

1 **government; and**

2 **“(B) Could not be brought in federal court under the Federal Tort Claims Act.**

3 **“(7) If, after submitting the resolution and documents described in subsections (4) and**  
4 **(5) of this section, there is a material change in the tribal government’s self-insurance pro-**  
5 **gram or insurance policy, the tribal government shall file with the department a written**  
6 **description of the change within 30 days of the effective date of the change.**

7 **“(8) The department shall maintain a file of submissions made by tribal governments**  
8 **under this section. The department shall permit inspection and copying of the submissions**  
9 **in accordance with ORS 192.410 to 192.505.**

10 **“(9) For purposes of ORS 30.260 to 30.300, an authorized tribal police officer is not an**  
11 **officer, employee or agent of the State of Oregon or of any other public body as defined in**  
12 **ORS 174.109. A public body or an officer, employee or agent of a public body is not liable for**  
13 **certifying a tribal police officer under ORS 181.610 to 181.712, for accepting for filing the re-**  
14 **solution and documents described in subsections (4) and (5) of this section or for the acts**  
15 **or omissions of an authorized tribal police officer.**

16 **“(10) Nothing in sections 1 to 4 of this 2011 Act:**

17 **“(a) Affects the authority of a county sheriff to appoint duly commissioned police officers**  
18 **as deputy sheriffs authorized to enforce the criminal and traffic laws of the State of Oregon;**

19 **“(b) Affects the existing status and sovereignty of tribal governments whose traditional**  
20 **lands and territories lie within the borders of the State of Oregon as established under the**  
21 **laws of the United States; or**

22 **“(c) Authorizes a tribal government to receive funds from, or in lieu of, the State of**  
23 **Oregon or a political subdivision of the State of Oregon.**

24 **“(11) A tribal government or tribal police department is not a seizing agency for purposes**  
25 **of ORS 131.550 to 131.600 or ORS chapter 131A.**

26 **“(12) The department may adopt rules to carry out the provisions of sections 1 to 4 of**  
27 **this 2011 Act and shall require tribal governments that employ authorized tribal police offi-**  
28 **cers to reimburse the department for any costs incurred in carrying out the provisions of**  
29 **sections 1 to 4 of this 2011 Act.**

30 **“SECTION 4. (1) Not later than 90 days after the effective date of this 2011 Act, the Su-**  
31 **perintendent of State Police, the sheriff of any county with land that is contiguous to the**  
32 **land of a tribal government, or the chief executive officer of any other local law enforcement**  
33 **unit whose political boundaries are contiguous to the land of a tribal government, may sub-**  
34 **mit a written application requesting that the tribal government authorize nontribal police**  
35 **officers employed by the applicant to exercise all or a portion of the powers of a tribal police**  
36 **officer while on tribal land. The application shall be addressed to the tribal government and**  
37 **shall propose terms and conditions under which the nontribal police officers employed by the**  
38 **applicant would be eligible to exercise all or a portion of the powers of a tribal police officer**  
39 **while on tribal lands. The application:**

40 **“(a) Must name each proposed nontribal police officer employed by the applicant;**

41 **“(b) Must describe how the nontribal police officers employed by the applicant will comply**  
42 **with requirements established by the tribal government that are substantially similar to the**  
43 **requirements necessary for a tribal police officer to act as an authorized tribal police officer**  
44 **under sections 1 to 4 of this 2011 Act;**

45 **“(c) Must describe how the political entity that employs the nontribal police officers will**

1 comply with requirements established by the tribal government that are substantially similar  
2 to the requirements necessary for a tribal government to employ authorized tribal police  
3 officers under sections 1 to 4 of this 2011 Act;

4 “(d) May propose that the tribal government authorize nontribal police officers employed  
5 by the applicant to enforce state or tribal law while on tribal lands;

6 “(e) May propose that the tribal government adopt provisions of state criminal law into  
7 the tribal code; and

8 “(f) Must indicate that the nontribal police officers employed by the applicant will com-  
9 plete, before exercising all or a portion of the powers of a tribal police officer while on tribal  
10 land, any training and educational prerequisites specified by the tribal government, including  
11 instruction in the tribal government’s history, culture, sovereign authority, tribal code and  
12 court procedures.

13 “(2) When a citation for the commission of a tribal offense is issued by a nontribal police  
14 officer employed by an applicant and authorized by a tribal government to exercise all or a  
15 portion of the powers of a tribal police officer as to tribal members suspected of committing  
16 violations of tribal law while on tribal land, the citation must:

17 “(a) Summon the person cited to appear in the tribal court of the tribal government on  
18 whose lands the offense was committed; and

19 “(b) Be submitted to the prosecutor of the tribal government on whose lands the tribal  
20 offense was committed.

21 “(3)(a) A tribal government may adopt a provision of tribal law providing that, for pur-  
22 poses of the Tort Claims Act of the tribal government, a nontribal police officer employed  
23 by an applicant and authorized by a tribal government to exercise all or a portion of the  
24 powers of a tribal police officer while on tribal land is not an officer, employee or agent of  
25 the tribal government.

26 “(b) Unless the law of the tribal government provides otherwise, a tribal government is  
27 not liable for authorizing a nontribal police officer employed by an applicant to exercise all  
28 or a portion of the powers of a tribal police officer while on tribal land or for the acts or  
29 omissions of a nontribal police officer authorized under this section.

30 “(4) Nothing in this section:

31 “(a) Affects the authority of the tribal government to appoint any person as a tribal po-  
32 lice officer for any purpose;

33 “(b) Affects the existing status and sovereignty of the State of Oregon or the tribal  
34 government; or

35 “(c) Authorizes the State of Oregon or any of its political subdivisions to receive funds  
36 from, or in lieu of, a tribal government.

37 “(5) A tribal government that authorizes a nontribal police officer employed by an appli-  
38 cant to exercise all or a portion of the powers of a tribal police officer while on tribal land  
39 may require the applicant to reimburse the tribal government for any costs incurred in  
40 carrying out the provisions of this section.

41 “(6)(a) A tribal government that employs, or seeks to employ, authorized tribal police  
42 officers under sections 1 to 4 of this 2011 Act, no later than 90 days after receiving an ap-  
43 plication under subsection (1) of this section, or within such additional time as the tribal  
44 government determines is appropriate, shall accept, accept with modifications or reject an  
45 application filed under this section.



1 was committed; and

2 “(b) Be submitted to the district attorney of the county in which the offense was committed.

3 “[4] (3) A tribal government that employs tribal police officers may submit to the Department  
4 of Public Safety Standards and Training a resolution declaring that the tribal government is self-  
5 insured or has purchased and maintains in force:

6 “(a) Public liability and property damage insurance for vehicles operated by authorized tribal  
7 police officers; and

8 “(b) Police professional liability insurance from a company licensed to sell insurance in this  
9 state.

10 “[5] (4) The tribal government shall attach the following documents to the resolution submitted  
11 to the department under subsection [4] (3) of this section:

12 “(a) A declaration that the tribal government has complied with the requirements of sections 1  
13 to 4 of this 2011 Act; and

14 “(b)(A) A full copy of the public liability and property damage insurance policy for vehicles op-  
15 erated by the tribal government’s authorized tribal police officers and a full copy of the police pro-  
16 fessional liability insurance policy from a company licensed to sell insurance in this state; or

17 “(B) A description of the tribal government’s self-insurance program.

18 “[6] (5) A self-insurance program or insurance policy described in subsections [4] and (5) (3)  
19 **and (4)** of this section must provide:

20 “(a) That the self-insurance program or insurance policy is available to satisfy settlements and  
21 judgments arising from the tortious conduct of authorized tribal police officers in an amount equal  
22 to or greater than the amounts described in ORS 30.260 to 30.300 that are applicable to a local  
23 public body; and

24 “(b) That the tribal government and the insurance carrier will not raise the defense of sovereign  
25 immunity for claims that are asserted in the tribal government’s court and involve the tortious  
26 conduct of an authorized tribal police officer, provided that the claims:

27 “(A) Are asserted in accordance with any applicable tort claims procedures of the tribal gov-  
28 ernment; and

29 “(B) Could not be brought in federal court under the Federal Tort Claims Act.

30 “[7] (6) If, after submitting the resolution and documents described in subsections [4] and (5)  
31 (3) **and (4)** of this section, there is a material change in the tribal government’s self-insurance pro-  
32 gram or insurance policy, the tribal government shall file with the department a written description  
33 of the change within 30 days of the effective date of the change.

34 “[8] (7) The department shall maintain a file of submissions made by tribal governments under  
35 this section. The department shall permit inspection and copying of the submissions in accordance  
36 with ORS 192.410 to 192.505.

37 “[9] (8) For purposes of ORS 30.260 to 30.300, an authorized tribal police officer is not an of-  
38 ficer, employee or agent of the State of Oregon or of any other public body as defined in ORS  
39 174.109. A public body or an officer, employee or agent of a public body is not liable for certifying  
40 a tribal police officer under ORS 181.610 to 181.712, for accepting for filing the resolution and doc-  
41 uments described in subsections [4] and (5) (3) **and (4)** of this section or for the acts or omissions  
42 of an authorized tribal police officer.

43 “[10] (9) Nothing in sections 1 to 4 of this 2011 Act:

44 “(a) Affects the authority of a county sheriff to appoint duly commissioned police officers as  
45 deputy sheriffs authorized to enforce the criminal and traffic laws of the State of Oregon;

1 “(b) Affects the existing status and sovereignty of tribal governments whose traditional lands  
2 and territories lie within the borders of the State of Oregon as established under the laws of the  
3 United States; or

4 “(c) Authorizes a tribal government to receive funds from, or in lieu of, the State of Oregon or  
5 a political subdivision of the State of Oregon.

6 “[11] (10) A tribal government or tribal police department is not a seizing agency for purposes  
7 of ORS 131.550 to 131.600 or ORS chapter 131A.

8 “[12] (11) The department may adopt rules to carry out the provisions of sections 1 to 4 of this  
9 2011 Act and shall require tribal governments that employ authorized tribal police officers to reim-  
10 burse the department for any costs incurred in carrying out the provisions of sections 1 to 4 of this  
11 2011 Act.

12 “**SECTION 7.** Section 1 of this 2011 Act is amended to read:

13 “**Sec. 1.** As used in sections 1 to 4 of this 2011 Act:

14 “(1) ‘Authorized tribal police officer’ means a tribal police officer who is acting:

15 “(a) In accordance with sections 1 to 4 of this 2011 Act; and

16 “(b) While employed by a tribal government that is in compliance with sections 1 to 4 of this  
17 2011 Act.

18 “[2] ‘Indian country’ has the meaning given that term in 18 U.S.C. 1151.]

19 “[3] (2) ‘Tribal government’ means a federally recognized sovereign tribal government whose  
20 borders lie within this state or an intertribal organization formed by two or more of those govern-  
21 ments.

22 “[4] (3) ‘Tribal police officer’ means an employee of a tribal government whose duties include  
23 the enforcement of criminal law.

24 “**SECTION 8. The amendments to sections 1 and 3 of this 2011 Act by sections 6 and 7  
25 of this 2011 Act become operative on July 1, 2013.**

26 “**NOTE:** Section 9 was deleted by amendment. Subsequent sections were not renumbered.

27  
28 **“PROVISIONS APPLICABLE FROM**  
29 **EFFECTIVE DATE TO JUNE 30, 2015”.**  
30

31 On page 23, after line 14, insert:

32 “**SECTION 27a.** ORS 181.781 is amended to read:

33 “181.781. As used in ORS 181.781 to 181.796:

34 “(1) ‘Employ,’ when used in the context of the relationship between a law enforcement agency  
35 and a police officer, includes the assignment of law enforcement duties on a volunteer basis to a  
36 reserve officer.

37 “(2) ‘Law enforcement agency’ means the Department of State Police, the Department of Justice,  
38 a district attorney, a political subdivision of the State of Oregon, [and] a municipal corporation of  
39 the State of Oregon **and a tribal government**, that maintains a law enforcement unit as defined in  
40 ORS 181.610 (12)(a)(A).

41 “(3) ‘Police officer’ means a person who is:

42 “(a) A police officer or reserve officer as defined in ORS 181.610; and

43 “(b) Employed by a law enforcement agency to enforce the criminal laws of this state.

44 “(4) ‘Tribal government’ means a tribal government as defined in section 1 of this 2011  
45 **Act:**



1       “(a) With land that is contiguous to the county in which the deadly physical force plan-  
2       ning authority is created; and

3       “(b) That has adopted the provision of tribal law described in section 2 (4)(d)(A) of this  
4       2011 Act.

5       “**SECTION 27b.** ORS 181.783 is amended to read:

6       “181.783. (1) There is created in each county a deadly physical force planning authority con-  
7       sisting of the following members:

8       “(a) The district attorney and sheriff of the county.

9       “(b) A nonmanagement police officer selected by the district attorney and sheriff. If there are  
10       unions representing police officers within the county, the district attorney and sheriff shall select  
11       the police officer from among candidates nominated by any union representing police officers within  
12       the county.

13       “(c) If at least one city within the county employs a police chief, a police chief selected by the  
14       police chiefs within the county.

15       “(d) A representative of the public selected by the district attorney and sheriff. The person se-  
16       lected under this paragraph may not be employed by a law enforcement agency.

17       “(e) A representative of the Oregon State Police selected by the Superintendent of State Police.

18       “(f) **A tribal police officer as defined in section 1 of this 2011 Act, when requested by a**  
19       **tribal government.**

20       “(2) The district attorney and sheriff are cochairpersons of the planning authority.

21       “(3) The law enforcement agency that employs the police officer selected under subsection (1)(b)  
22       of this section shall release the officer from other duties for at least 16 hours per year to enable the  
23       officer to serve on the planning authority. The agency shall compensate the officer at the officer’s  
24       regular hourly wage while the officer is engaged in planning authority activities.

25       “(4) The planning authority shall develop a plan consisting of the following:

26       “(a) An element dealing with education, outreach and training regarding the use of deadly  
27       physical force for police officers, attorneys employed by state or local government within the county  
28       and members of the community.

29       “(b) An element dealing with the immediate aftermath of an incident in which a police officer  
30       used deadly physical force.

31       “(c) An element dealing with the investigation of an incident in which a police officer used  
32       deadly physical force.

33       “(d) An element dealing with the exercise of district attorney discretion to resolve issues of  
34       potential criminal responsibility resulting from a police officer’s use of deadly physical force.

35       “(e) An element dealing with collecting information regarding a police officer’s use of deadly  
36       physical force, debriefing after an incident in which a police officer used deadly physical force and  
37       revising a plan developed under this subsection based on experience.

38       “(f) An estimate of the fiscal impact on the law enforcement agencies to which the plan applies  
39       of each element described in paragraphs (a) to (e) of this subsection.

40       “(5) The planning authority shall conduct at least one public hearing in the county before sub-  
41       mitting a plan, or a revision of a plan, to the governing bodies in the county under subsection (7)  
42       of this section.

43       “(6) The planning authority may consult with anyone the planning authority determines may be  
44       helpful in carrying out its responsibilities.

45       “(7) The planning authority shall submit the plan developed under subsection (4) of this section,

1 and revisions of the plan, to the governing body of each law enforcement agency within the county  
2 except for the Department of State Police and the Department of Justice.

3 “(8) A governing body shall approve or disapprove the plan submitted to it under subsection (7)  
4 of this section within 60 days after receiving the plan. The governing body may not amend the plan.

5 “(9) If the plan is not approved by at least two-thirds of the governing bodies to which the plan  
6 is submitted, the planning authority shall develop and submit a revised plan.

7 “(10) If the plan is approved by at least two-thirds of the governing bodies to which the plan is  
8 submitted, the planning authority shall submit the approved plan to the Attorney General. No later  
9 than 30 days after receiving the plan, the Attorney General shall review the plan for compliance  
10 with the minimum requirements described in ORS 181.786. If the Attorney General determines that  
11 the plan complies with the minimum requirements, the Attorney General shall approve the plan.  
12 Upon approval of the plan:

13 “(a) Each law enforcement agency within the county to which the plan applies is subject to the  
14 provisions of the plan; and

15 “(b) Each law enforcement agency subject to the plan is entitled to grants as provided in ORS  
16 181.796.

17 “(11) If the plan is not approved by the Attorney General, the planning authority shall develop  
18 and submit a revised plan.

19 “(12) Notwithstanding subsection (10)(a) of this section, a law enforcement agency is not subject  
20 to a provision of a plan approved under subsection (10) of this section that:

21 “(a) Conflicts with a provision of a city or county charter or a general ordinance that applies  
22 to the law enforcement agency; or

23 “(b) Imposes an obligation not required by ORS 181.789 if complying with the provision would  
24 require the law enforcement agency to budget moneys, or submit a revenue measure for a vote of  
25 the people, in order to comply with the provision.

26 “(13) The Attorney General shall periodically publish all approved plans.

27 “(14) A law enforcement agency within a county has a duty to participate in good faith in the  
28 planning process of the planning authority for the county.

29 “(15) A person bringing an action challenging the validity or enforceability of a plan approved  
30 under subsection (10) of this section shall serve the Attorney General with a copy of the complaint.  
31 If the Attorney General is not a party to the action, the Attorney General may intervene in the  
32 action.

33 “**SECTION 27c.** ORS 181.796 is amended to read:

34 “181.796. (1) As used in this section, ‘expenses’ does not include personnel costs.

35 “(2) To the extent that funds are appropriated to it for such purposes, the Department of Justice  
36 shall make grants to law enforcement agencies to reimburse the law enforcement agencies for ex-  
37 penses incurred in implementing and revising the plans required by ORS 181.783. A grant under this  
38 section may not exceed 75 percent of the expenses incurred by the law enforcement agency.

39 “(3) The department may not make a grant under this section to a law enforcement agency un-  
40 less the law enforcement agency is subject to a plan that has been approved by the Attorney Gen-  
41 eral under ORS 181.783 (10).

42 “(4) **The department may not make a grant under this section to a tribal government.**

43 “[4] (5) The department shall adopt rules necessary for the administration of this section.”.

44 On page 28, line 21, after “181.610,” insert “181.781, 181.783, 181.796,”.

45 In line 26, delete “2019” and insert “2015”.

1 On page 41, after line 20, insert:

2 “**SECTION 50a.** ORS 181.781, as amended by section 27a of this 2011 Act, is amended to read:

3 “181.781. As used in ORS 181.781 to 181.796:

4 “(1) ‘Employ,’ when used in the context of the relationship between a law enforcement agency  
5 and a police officer, includes the assignment of law enforcement duties on a volunteer basis to a  
6 reserve officer.

7 “(2) ‘Law enforcement agency’ means the Department of State Police, the Department of Justice,  
8 a district attorney, a political subdivision of the State of Oregon[,] **and** a municipal corporation of  
9 the State of Oregon [*and a tribal government*], that maintains a law enforcement unit as defined in  
10 ORS 181.610 (12)(a)(A).

11 “(3) ‘Police officer’ means a person who is:

12 “(a) A police officer or reserve officer as defined in ORS 181.610; and

13 “(b) Employed by a law enforcement agency to enforce the criminal laws of this state.

14 “[*(4) ‘Tribal government’ means a tribal government as defined in section 1 of this 2011 Act:*]

15 “[*(a) With land that is contiguous to the county in which the deadly physical force planning au-*  
16 *thority is created; and]*

17 “[*(b) That has adopted the provision of tribal law described in section 2 (4)(d)(A) of this 2011*  
18 *Act.*]

19 “**SECTION 50b.** ORS 181.783, as amended by section 27b of this 2011 Act, is amended to read:

20 “181.783. (1) There is created in each county a deadly physical force planning authority con-  
21 sisting of the following members:

22 “(a) The district attorney and sheriff of the county.

23 “(b) A nonmanagement police officer selected by the district attorney and sheriff. If there are  
24 unions representing police officers within the county, the district attorney and sheriff shall select  
25 the police officer from among candidates nominated by any union representing police officers within  
26 the county.

27 “(c) If at least one city within the county employs a police chief, a police chief selected by the  
28 police chiefs within the county.

29 “(d) A representative of the public selected by the district attorney and sheriff. The person se-  
30 lected under this paragraph may not be employed by a law enforcement agency.

31 “(e) A representative of the Oregon State Police selected by the Superintendent of State Police.

32 “[*(f) A tribal police officer as defined in section 1 of this 2011 Act, when requested by a tribal*  
33 *government.*]

34 “(2) The district attorney and sheriff are cochairpersons of the planning authority.

35 “(3) The law enforcement agency that employs the police officer selected under subsection (1)(b)  
36 of this section shall release the officer from other duties for at least 16 hours per year to enable the  
37 officer to serve on the planning authority. The agency shall compensate the officer at the officer’s  
38 regular hourly wage while the officer is engaged in planning authority activities.

39 “(4) The planning authority shall develop a plan consisting of the following:

40 “(a) An element dealing with education, outreach and training regarding the use of deadly  
41 physical force for police officers, attorneys employed by state or local government within the county  
42 and members of the community.

43 “(b) An element dealing with the immediate aftermath of an incident in which a police officer  
44 used deadly physical force.

45 “(c) An element dealing with the investigation of an incident in which a police officer used

1 deadly physical force.

2 “(d) An element dealing with the exercise of district attorney discretion to resolve issues of  
3 potential criminal responsibility resulting from a police officer’s use of deadly physical force.

4 “(e) An element dealing with collecting information regarding a police officer’s use of deadly  
5 physical force, debriefing after an incident in which a police officer used deadly physical force and  
6 revising a plan developed under this subsection based on experience.

7 “(f) An estimate of the fiscal impact on the law enforcement agencies to which the plan applies  
8 of each element described in paragraphs (a) to (e) of this subsection.

9 “(5) The planning authority shall conduct at least one public hearing in the county before sub-  
10 mitting a plan, or a revision of a plan, to the governing bodies in the county under subsection (7)  
11 of this section.

12 “(6) The planning authority may consult with anyone the planning authority determines may be  
13 helpful in carrying out its responsibilities.

14 “(7) The planning authority shall submit the plan developed under subsection (4) of this section,  
15 and revisions of the plan, to the governing body of each law enforcement agency within the county  
16 except for the Department of State Police and the Department of Justice.

17 “(8) A governing body shall approve or disapprove the plan submitted to it under subsection (7)  
18 of this section within 60 days after receiving the plan. The governing body may not amend the plan.

19 “(9) If the plan is not approved by at least two-thirds of the governing bodies to which the plan  
20 is submitted, the planning authority shall develop and submit a revised plan.

21 “(10) If the plan is approved by at least two-thirds of the governing bodies to which the plan is  
22 submitted, the planning authority shall submit the approved plan to the Attorney General. No later  
23 than 30 days after receiving the plan, the Attorney General shall review the plan for compliance  
24 with the minimum requirements described in ORS 181.786. If the Attorney General determines that  
25 the plan complies with the minimum requirements, the Attorney General shall approve the plan.  
26 Upon approval of the plan:

27 “(a) Each law enforcement agency within the county to which the plan applies is subject to the  
28 provisions of the plan; and

29 “(b) Each law enforcement agency subject to the plan is entitled to grants as provided in ORS  
30 181.796.

31 “(11) If the plan is not approved by the Attorney General, the planning authority shall develop  
32 and submit a revised plan.

33 “(12) Notwithstanding subsection (10)(a) of this section, a law enforcement agency is not subject  
34 to a provision of a plan approved under subsection (10) of this section that:

35 “(a) Conflicts with a provision of a city or county charter or a general ordinance that applies  
36 to the law enforcement agency; or

37 “(b) Imposes an obligation not required by ORS 181.789 if complying with the provision would  
38 require the law enforcement agency to budget moneys, or submit a revenue measure for a vote of  
39 the people, in order to comply with the provision.

40 “(13) The Attorney General shall periodically publish all approved plans.

41 “(14) A law enforcement agency within a county has a duty to participate in good faith in the  
42 planning process of the planning authority for the county.

43 “(15) A person bringing an action challenging the validity or enforceability of a plan approved  
44 under subsection (10) of this section shall serve the Attorney General with a copy of the complaint.  
45 If the Attorney General is not a party to the action, the Attorney General may intervene in the

1 action.

2 “**SECTION 50c.** ORS 181.796, as amended by section 27c of this 2011 Act, is amended to read:

3 “181.796. (1) As used in this section, ‘expenses’ does not include personnel costs.

4 “(2) To the extent that funds are appropriated to it for such purposes, the Department of Justice  
5 shall make grants to law enforcement agencies to reimburse the law enforcement agencies for ex-  
6 penses incurred in implementing and revising the plans required by ORS 181.783. A grant under this  
7 section may not exceed 75 percent of the expenses incurred by the law enforcement agency.

8 “(3) The department may not make a grant under this section to a law enforcement agency un-  
9 less the law enforcement agency is subject to a plan that has been approved by the Attorney Gen-  
10 eral under ORS 181.783 (10).

11 “[~~(4)~~ *The department may not make a grant under this section to a tribal government.*]

12 “[~~(5)~~] (4) The department shall adopt rules necessary for the administration of this section.”.

13 On page 45, line 39, delete “2019” and insert “2015”.

14 In line 41, after “181.610,” insert “181.781, 181.783, 181.796,”.

15 In line 43, delete “2019” and insert “2015”.

16 On page 46, line 1, after “181.610,” insert “181.781, 181.783, 181.796,”.

17 After line 14, insert:

18  
19 **“CONFLICT AMENDMENTS**

20  
21 **“SECTION 61. If Senate Bill 405 becomes law, section 4, chapter 506, Oregon Laws 2011**  
22 **(Enrolled Senate Bill 405) (amending ORS 90.440), is repealed and ORS 90.440, as amended by**  
23 **section 11 of this 2011 Act, is amended to read:**

24 “90.440. (1) As used in this section:

25 “(a) ‘Group recovery home’ means a place that provides occupants with shared living facilities  
26 and that meets the description of a group home under 42 U.S.C. 300x-25.

27 “(b) ‘Illegal drugs’ includes controlled substances or prescription drugs:

28 “(A) For which the tenant does not have a valid prescription; or

29 “(B) That are used by the tenant in a manner contrary to the prescribed regimen.

30 “[~~(c)~~ *‘Peace officer’ means a sheriff, constable, marshal or deputy, a member of a state or city police*  
31 *force or an authorized tribal police officer as defined in section 1 of this 2011 Act.*]

32 **“(c) ‘Peace officer’ means:**

33 **“(A) A sheriff, constable, marshal or deputy;**

34 **“(B) A member of a state or city police force;**

35 **“(C) A police officer commissioned by a university under section 1, chapter 506, Oregon**  
36 **Laws 2011 (Enrolled Senate Bill 405); or**

37 **“(D) An authorized tribal police officer as defined in section 1 of this 2011 Act.**

38 “(2) Notwithstanding ORS 90.375 and 90.435, a group recovery home may terminate a tenancy  
39 and peaceably remove a tenant without complying with ORS 105.105 to 105.168 if the tenant has  
40 used or possessed alcohol or illegal drugs within the preceding seven days. For purposes of this  
41 subsection, the following are sufficient proof that a tenant has used or possessed alcohol or illegal  
42 drugs:

43 “(a) The tenant fails a test for alcohol or illegal drug use;

44 “(b) The tenant refuses a request made in good faith by the group recovery home that the tenant  
45 take a test for alcohol or illegal drug use; or

1           “(c) Any person has personally observed the tenant using or possessing alcohol or illegal drugs.  
2           “(3) A group recovery home that undertakes the removal of a tenant under this section shall  
3 personally deliver to the tenant a written notice that:  
4           “(a) Describes why the tenant is being removed;  
5           “(b) Describes the proof that the tenant has used or possessed alcohol or illegal drugs within  
6 the seven days preceding delivery of the notice;  
7           “(c) Specifies the date and time by which the tenant must move out of the group recovery home;  
8           “(d) Explains that if the removal was wrongful or in bad faith the tenant may seek injunctive  
9 relief to recover possession under ORS 105.121 and may bring an action to recover monetary dam-  
10 ages; and  
11           “(e) Gives contact information for the local legal services office and for the Oregon State Bar’s  
12 Lawyer Referral Service, identifying those services as possible sources for free or reduced-cost legal  
13 services.  
14           “(4) A written notice in substantially the following form meets the requirements of subsection  
15 (3) of this section:  
16           “ \_\_\_\_\_  
17  
18           “This notice is to inform you that you must move out of \_\_\_\_\_ (insert address of group  
19 recovery home) by \_\_\_\_\_ (insert date and time that is not less than 24 hours after delivery  
20 of notice).  
21           “The reason for this notice is \_\_\_\_\_ (specify use or possession of alcohol or illegal  
22 drugs, as applicable, and dates of occurrence).  
23           “The proof of your use or possession is \_\_\_\_\_ (specify facts).  
24           “If you did not use or possess alcohol or illegal drugs within the seven days before delivery of  
25 this notice, if this notice was given in bad faith or if your group recovery home has not substantially  
26 complied with ORS 90.440, you may be able to get a court to order the group recovery home to let  
27 you move back in. You may also be able to recover monetary damages.  
28           “You may be eligible for free legal services at your local legal services office \_\_\_\_\_  
29 (insert telephone number) or reduced fee legal services through the Oregon State Bar at  
30 1-800-452-7636.  
31           “ \_\_\_\_\_  
32  
33           “(5) Within the notice period, a group recovery home shall allow a tenant removed under this  
34 section to follow any emergency departure plan that was prepared by the tenant and approved by  
35 the group recovery home at the time the tenancy began. If the removed tenant does not have an  
36 emergency departure plan, a representative of the group recovery home shall offer to take the re-  
37 moved tenant to a public shelter, detoxification center or similar location if existing in the commu-  
38 nity.  
39           “(6) The date and time for moving out specified in a notice under subsection (3) of this section  
40 must be at least 24 hours after the date and time the notice is delivered to the tenant. If the tenant  
41 remains on the group recovery home premises after the date and time for moving out specified in  
42 the notice, the tenant is a person remaining unlawfully in a dwelling as described in ORS 164.255  
43 and not a person described in ORS 105.115. Only a peace officer may forcibly remove a tenant who  
44 remains on the group recovery home premises after the date and time specified for moving out.  
45           “(7) A group recovery home that removes a tenant under this section shall send a copy of the

1 notice described in subsection (3) of this section to the Oregon Health Authority no later than 72  
2 hours after delivering the notice to the tenant.

3 “(8) A tenant who is removed under subsection (2) of this section may obtain injunctive relief  
4 to recover possession and may recover an amount equal to the greater of actual damages or three  
5 times the tenant’s monthly rent if:

6 “(a) The group recovery home removed the tenant in bad faith or without substantially com-  
7 plying with this section; or

8 “(b) If removal is under subsection (2)(c) of this section, the removal was wrongful because the  
9 tenant did not use or possess alcohol or illegal drugs.

10 “(9) Notwithstanding ORS 12.125, a tenant who seeks to obtain injunctive relief to recover pos-  
11 session under ORS 105.121 must commence the action to seek relief not more than 90 days after the  
12 date specified in the notice for the tenant to move out.

13 “(10) In any court action regarding the removal of a tenant under this section, a group recovery  
14 home may present evidence that the tenant used or possessed alcohol or illegal drugs within seven  
15 days preceding the removal, whether or not the evidence was described in the notice required by  
16 subsection (3) of this section.

17 “(11) This section does not prevent a group recovery home from terminating a tenancy as pro-  
18 vided by any other provision of this chapter and evicting a tenant as provided in ORS 105.105 to  
19 105.168.

20 “**SECTION 62. If Senate Bill 405 becomes law, section 14, chapter 506, Oregon Laws 2011**  
21 **(Enrolled Senate Bill 405) (amending ORS 133.721), is repealed and ORS 133.721, as amended**  
22 **by section 17 of this 2011 Act, is amended to read:**

23 “133.721. As used in ORS 41.910 and 133.721 to 133.739, unless the context requires otherwise:

24 “(1) ‘Aggrieved person’ means a person who was a party to any wire, electronic or oral com-  
25 munication intercepted under ORS 133.724 or 133.726 or a person against whom the interception was  
26 directed and who alleges that the interception was unlawful.

27 “(2) ‘Contents,’ when used with respect to any wire, electronic or oral communication, includes  
28 any information concerning the identity of the parties to such communication or the existence,  
29 substance, purport or meaning of that communication.

30 “(3) ‘Electronic communication’ means any transfer of signs, signals, writing, images, sounds,  
31 data or intelligence of any nature transmitted in whole or in part by a radio, electromagnetic,  
32 photoelectronic or photo-optical system, or transmitted in part by wire, but does not include:

33 “(a) Any oral communication or any communication that is completely by wire; or

34 “(b) Any communication made through a tone-only paging device.

35 “(4) ‘Electronic, mechanical or other device’ means any device or apparatus that can be used  
36 to intercept a wire, electronic or oral communication other than:

37 “(a) Any telephone or telegraph instrument, equipment or facility, or any component thereof that  
38 is furnished to the subscriber or user by a telecommunications carrier in the ordinary course of its  
39 business and that is being used by the subscriber or user in the ordinary course of its business or  
40 being used by a telecommunications carrier in the ordinary course of its business, or by an investi-  
41 gative or law enforcement officer in the ordinary course of official duties; or

42 “(b) A hearing aid or similar device being used to correct subnormal hearing to not better than  
43 normal.

44 “(5) ‘Intercept’ means the acquisition, by listening or recording, of the contents of any wire,  
45 electronic or oral communication through the use of any electronic, mechanical or other device.

1       “(6) ‘Investigative or law enforcement officer’ means:]  
2       “[(a) An officer or other person employed to investigate or enforce criminal laws by:]  
3       “[(A) A county sheriff or municipal police department;]  
4       “[(B) The Oregon State Police, the Department of Corrections, the Attorney General or a district  
5 attorney; or]  
6       “[(C) Law enforcement agencies of other states or the federal government; or]  
7       “[(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.]  
8       **“(6) ‘Investigative or law enforcement officer’ means:**  
9       **“(a) An officer or other person employed to investigate or enforce the law by:**  
10       **“(A) A county sheriff or municipal police department, or a police department established**  
11 **by a university under section 1, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405);**  
12       **“(B) The Oregon State Police, the Department of Corrections, the Attorney General or**  
13 **a district attorney; or**  
14       **“(C) Law enforcement agencies of other states or the federal government; or**  
15       **“(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.**  
16       “(7) ‘Oral communication’ means:  
17       “(a) Any oral communication, other than a wire or electronic communication, uttered by a per-  
18 son exhibiting an expectation that such communication is not subject to interception under circum-  
19 stances justifying such expectation; or  
20       “(b) An utterance by a person who is participating in a wire or electronic communication, if the  
21 utterance is audible to another person who, at the time the wire or electronic communication oc-  
22 curs, is in the immediate presence of the person participating in the communication.  
23       “(8) ‘Telecommunications carrier’ means:  
24       “(a) A telecommunications utility as defined in ORS 759.005; or  
25       “(b) A cooperative corporation organized under ORS chapter 62 that provides telecommuni-  
26 cations services.  
27       “(9) ‘Telecommunications service’ has the meaning given that term in ORS 759.005.  
28       “(10) ‘Wire communication’ means any communication made in whole or in part through the use  
29 of facilities for the transmission of communications by the aid of wire, cable or other like connection  
30 between the point of origin and the point of reception, whether furnished or operated by a public  
31 utility or privately owned or leased.  
32       **“SECTION 63. If Senate Bill 405 becomes law, section 15, chapter 506, Oregon Laws 2011**  
33 **(Enrolled Senate Bill 405) (amending ORS 133.726), is repealed and ORS 133.726, as amended**  
34 **by section 18 of this 2011 Act, is amended to read:**  
35       “133.726. (1) Notwithstanding ORS 133.724, under the circumstances described in this section, a  
36 law enforcement officer is authorized to intercept an oral communication to which the officer or a  
37 person under the direct supervision of the officer is a party, without obtaining an order for the in-  
38 terception of a wire, electronic or oral communication under ORS 133.724.  
39       “(2) For purposes of this section and ORS 133.736, a person is a party to an oral communication  
40 if the oral communication is made in the person’s immediate presence and is audible to the person  
41 regardless of whether the communication is specifically directed to the person.  
42       “(3) An ex parte order for intercepting an oral communication in any county of this state under  
43 this section may be issued by any judge as defined in ORS 133.525 upon written application made  
44 upon oath or affirmation of the district attorney or a deputy district attorney authorized by the  
45 district attorney for the county in which the order is sought or upon the oath or affirmation of any



1 peace officer as defined in ORS 133.005. The application shall include:

2 “(a) The name of the applicant and the applicant’s authority to make the application;

3 “(b) A statement demonstrating that:

4 “(A) There is probable cause to believe that a person whose oral communication is to be inter-  
5 cepted is engaged in committing, has committed or is about to commit a particular felony, or a  
6 misdemeanor under ORS 167.007, and that intercepting the oral communication will yield evidence  
7 thereof; or

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

10 “(ii) There is reasonable suspicion to believe that the circumstances in which the oral commu-  
11 nication is to be intercepted present a substantial risk of death, serious physical injury or sexual  
12 assault to a law enforcement officer or a person under the direct supervision of the officer;

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

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

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

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

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

24 “(a)(A) There is probable cause to believe that a person is engaged in committing, has committed  
25 or is about to commit a particular felony, or a misdemeanor under ORS 167.007; and

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

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

30 “(B) There is reasonable suspicion to believe that the circumstances in which the oral commu-  
31 nication is to be intercepted present a substantial risk of death, serious physical injury or sexual  
32 assault to a law enforcement officer or a person under the direct supervision of the officer;

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

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

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

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

40 “(b) A statement identifying the particular crime to which the oral communication is expected  
41 to relate;

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

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

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

45 “(f) A statement that the order authorizes only the interception of an oral communication to

1 which a law enforcement officer or a person under the direct supervision of a law enforcement of-  
2 ficer is a party.

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

7 “(a) A crime punishable as a felony under ORS 475.840, 475.846 to 475.894 or 475.904 to 475.910  
8 or as a misdemeanor under ORS 167.007; or

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

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

18 “(9) A law enforcement officer may not divulge the contents of an oral communication inter-  
19 cepted under this section before a preliminary hearing or trial in which an oral communication is  
20 going to be introduced as evidence against a person except:

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

23 “(b) To a magistrate;

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

25 “(d) In compliance with a court order.

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

28 “[11] *As used in this section, ‘law enforcement officer’ means:*]

29 “[*(a) An officer employed to enforce criminal laws by:*]

30 “[*(A) The United States, this state or a municipal government within this state; or*]

31 “[*(B) A political subdivision, agency, department or bureau of the governments described in sub-*  
32 *paragraph (A) of this paragraph; or*]

33 “[*(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.*]

34 “(11) **As used in this section, ‘law enforcement officer’ means:**

35 “(a) **An officer employed to enforce criminal laws by:**

36 “(A) **The United States, this state or a municipal government within this state;**

37 “(B) **A political subdivision, agency, department or bureau of the governments described**  
38 **in subparagraph (A) of this paragraph; or**

39 “(C) **A police department established by a university under section 1, chapter 506, Oregon**  
40 **Laws 2011 (Enrolled Senate Bill 405); or**

41 “(b) **An authorized tribal police officer as defined in section 1 of this 2011 Act.**

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

43 “**SECTION 64. If Senate Bill 405 becomes law, section 16, chapter 506, Oregon Laws 2011**  
44 **(Enrolled Senate Bill 405) (amending ORS 133.726), is repealed and ORS 133.726, as amended**  
45 **by section 3, chapter 442, Oregon Laws 2007, and section 19 of this 2011 Act, is amended to**

1 **read:**

2 “133.726. (1) Notwithstanding ORS 133.724, under the circumstances described in this section, a  
3 law enforcement officer is authorized to intercept an oral communication to which the officer or a  
4 person under the direct supervision of the officer is a party, without obtaining an order for the in-  
5 terception of a wire, electronic or oral communication under ORS 133.724.

6 “(2) For purposes of this section and ORS 133.736, a person is a party to an oral communication  
7 if the oral communication is made in the person’s immediate presence and is audible to the person  
8 regardless of whether the communication is specifically directed to the person.

9 “(3) An ex parte order for intercepting an oral communication in any county of this state under  
10 this section may be issued by any judge as defined in ORS 133.525 upon written application made  
11 upon oath or affirmation of the district attorney or a deputy district attorney authorized by the  
12 district attorney for the county in which the order is sought or upon the oath or affirmation of any  
13 peace officer as defined in ORS 133.005. The application shall include:

14 “(a) The name of the applicant and the applicant’s authority to make the application;

15 “(b) A statement demonstrating that there is probable cause to believe that a person whose oral  
16 communication is to be intercepted is engaged in committing, has committed or is about to commit  
17 a particular felony, or a misdemeanor under ORS 167.007, and that intercepting the oral communi-  
18 cation will yield evidence thereof; 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) 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; and

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

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

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

33 “(b) A statement identifying the particular crime to which the oral communication is expected  
34 to relate;

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

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

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

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

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

45 “(a) A crime punishable as a felony under ORS 475.840, 475.846 to 475.894 or 475.906 or as a

1 misdemeanor under ORS 167.007; or

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

5 “(8) A law enforcement officer who intercepts an oral communication pursuant to this section  
6 may not intentionally fail to record and preserve the oral communication in its entirety. A law  
7 enforcement officer, or a person under the direct supervision of the officer, who is authorized under  
8 this section to intercept an oral communication is not required to exclude from the interception an  
9 oral communication made by a person for whom probable cause does not exist if the officer or the  
10 person under the officer’s direct supervision is a party to the oral communication.

11 “(9) A law enforcement officer may not divulge the contents of an oral communication inter-  
12 cepted under this section before a preliminary hearing or trial in which an oral communication is  
13 going to be introduced as evidence against a person except:

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

16 “(b) To a magistrate;

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

18 “(d) In compliance with a court order.

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

21 “[*11*] As used in this section, ‘law enforcement officer’ means:]

22 “[*(a)* An officer employed to enforce criminal laws by:]

23 “[*(A)* The United States, this state or a municipal government within this state; or]

24 “[*(B)* A political subdivision, agency, department or bureau of the governments described in sub-  
25 paragraph (A) of this paragraph; or]

26 “[*(b)* An authorized tribal police officer as defined in section 1 of this 2011 Act.]

27 “(11) As used in this section, ‘law enforcement officer’ means:

28 “(a) An officer employed to enforce criminal laws by:

29 “(A) The United States, this state or a municipal government within this state;

30 “(B) A political subdivision, agency, department or bureau of the governments described  
31 in subparagraph (A) of this paragraph; or

32 “(C) A police department established by a university under section 1, chapter 506, Oregon  
33 Laws 2011 (Enrolled Senate Bill 405); or

34 “(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.

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

36 “**SECTION 65. If Senate Bill 405 becomes law, section 17, chapter 506, Oregon Laws 2011**  
37 **(Enrolled Senate Bill 405) (amending ORS 136.595), is repealed and ORS 136.595, as amended**  
38 **by section 20 of this 2011 Act, is amended to read:**

39 “136.595. (1) Except as provided in ORS 136.447 and 136.583 and subsection (2) of this section,  
40 a subpoena is served by delivering a copy to the witness personally. If the witness is under 14 years  
41 of age, the subpoena may be served by delivering a copy to the witness or to the witness’s parent,  
42 guardian or guardian ad litem. Proof of the service is made in the same manner as in the service  
43 of a summons.

44 “(2)(a) Every law enforcement agency shall designate an individual or individuals upon whom  
45 service of subpoena may be made. At least one of the designated individuals shall be available dur-

1 ing normal business hours. In the absence of the designated individuals, service of subpoena pursu-  
2 ant to paragraph (b) of this subsection may be made upon the officer in charge of the law  
3 enforcement agency.

4 “(b) If a peace officer’s attendance at trial is required as a result of employment as a peace of-  
5 ficer, a subpoena may be served on such officer by delivering a copy personally to the officer or to  
6 one of the individuals designated by the agency that employs the officer. A subpoena may be served  
7 by delivery to one of the individuals designated by the agency that employs the officer only if the  
8 subpoena is delivered at least 10 days before the date the officer’s attendance is required, the officer  
9 is currently employed as a peace officer by the agency, and the officer is present within the state  
10 at the time of service.

11 “(c) When a subpoena has been served as provided in paragraph (b) of this subsection, the law  
12 enforcement agency shall make a good faith effort to actually notify the officer whose attendance  
13 is sought of the date, time and location of the court appearance. If the officer cannot be notified,  
14 the law enforcement agency shall contact the court and a continuance may be granted to allow the  
15 officer to be personally served.

16 “[*(d) As used in this subsection, ‘law enforcement agency’ means the Oregon State Police, a county*  
17 *sheriff’s department, a municipal police department or, if the witness whose attendance at trial is re-*  
18 *quired is an authorized tribal police officer as defined in section 1 of this 2011 Act, a tribal government*  
19 *as defined in section 1 of this 2011 Act.*]

20 “**(d) As used in this subsection, ‘law enforcement agency’ means the Oregon State Police,**  
21 **a county sheriff’s department, a municipal police department, a police department estab-**  
22 **lished by a university under section 1, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill**  
23 **405), or, if the witness whose attendance at trial is required is an authorized tribal police**  
24 **officer as defined in section 1 of this 2011 Act, a tribal government as defined in section 1**  
25 **of this 2011 Act.**

26 “(3) When a subpoena has been served as provided in ORS 136.583 or subsection (1) or (2) of this  
27 section and, subsequent to service, the date on, or the time at, which the person subpoenaed is to  
28 appear has changed, a new subpoena is not required to be served if:

29 “(a) The subpoena is continued orally in open court in the presence of the person subpoenaed;  
30 or

31 “(b) The party who issued the original subpoena notifies the person subpoenaed of the change  
32 by first class mail and by:

33 “(A) Certified or registered mail, return receipt requested; or

34 “(B) Express mail.

35 “**SECTION 66. If Senate Bill 405 becomes law, section 23, chapter 506, Oregon Laws 2011**  
36 **(Enrolled Senate Bill 405) (amending ORS 163.730), is repealed and ORS 163.730, as amended**  
37 **by section 24 of this 2011 Act, is amended to read:**

38 “163.730. As used in ORS 30.866 and 163.730 to 163.750, unless the context requires otherwise:

39 “(1) ‘Alarm’ means to cause apprehension or fear resulting from the perception of danger.

40 “(2) ‘Coerce’ means to restrain, compel or dominate by force or threat.

41 “(3) ‘Contact’ includes but is not limited to:

42 “(a) Coming into the visual or physical presence of the other person;

43 “(b) Following the other person;

44 “(c) Waiting outside the home, property, place of work or school of the other person or of a  
45 member of that person’s family or household;

1 “(d) Sending or making written or electronic communications in any form to the other person;  
2 “(e) Speaking with the other person by any means;  
3 “(f) Communicating with the other person through a third person;  
4 “(g) Committing a crime against the other person;  
5 “(h) Communicating with a third person who has some relationship to the other person with the  
6 intent of affecting the third person’s relationship with the other person;  
7 “(i) Communicating with business entities with the intent of affecting some right or interest of  
8 the other person;  
9 “(j) Damaging the other person’s home, property, place of work or school;  
10 “(k) Delivering directly or through a third person any object to the home, property, place of  
11 work or school of the other person; or  
12 “(L) Service of process or other legal documents unless the other person is served as provided  
13 in ORCP 7 or 9.  
14 “(4) ‘Household member’ means any person residing in the same residence as the victim.  
15 “(5) ‘Immediate family’ means father, mother, child, sibling, spouse, grandparent, stepparent and  
16 stepchild.  
17 “[*(6) ‘Law enforcement officer’ means:*]  
18 “[*(a) A person employed in this state as a police officer by a county sheriff, constable or marshal*  
19 *or a municipal or state police agency; or]*  
20 “[*(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.*]  
21 “(6) ‘Law enforcement officer’ means:  
22 “(a) A person employed in this state as a police officer by:  
23 “(A) A county sheriff, constable or marshal;  
24 “(B) A police department established by a university under section 1, chapter 506, Oregon  
25 Laws 2011 (Enrolled Senate Bill 405); or  
26 “(C) A municipal or state police agency; or  
27 “(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.  
28 “(7) ‘Repeated’ means two or more times.  
29 “(8) ‘School’ means a public or private institution of learning or a child care facility.  
30 “**SECTION 67. If Senate Bill 405 becomes law, section 24, chapter 506, Oregon Laws 2011**  
31 **(Enrolled Senate Bill 405) (amending ORS 165.535), is repealed and ORS 165.535, as amended**  
32 **by section 25 of this 2011 Act, is amended to read:**  
33 “165.535. As used in ORS 41.910, 133.723, 133.724, 165.540 and 165.545:  
34 “(1) ‘Conversation’ means the transmission between two or more persons of an oral communi-  
35 cation which is not a telecommunication or a radio communication.  
36 “[*(2) ‘Person’ has the meaning given that term in ORS 174.100 and includes:*]  
37 “[*(a) Public officials and law enforcement officers of the state and of a county, municipal corpo-*  
38 *ration or any other political subdivision of the state; and]*  
39 “[*(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.*]  
40 “(2) ‘Person’ has the meaning given that term in ORS 174.100 and includes:  
41 “(a) Public officials and law enforcement officers of:  
42 “(A) The state and of a county, municipal corporation or any other political subdivision  
43 of the state; and  
44 “(B) A police department established by a university under section 1, chapter 506, Oregon  
45 Laws 2011 (Enrolled Senate Bill 405); and

1           **“(b) An authorized tribal police officer as defined in section 1 of this 2011 Act.**

2           “(3) ‘Radio communication’ means the transmission by radio or other wireless methods of writ-  
3 ing, signs, signals, pictures and sounds of all kinds, including all instrumentalities, facilities, equip-  
4 ment and services (including, among other things, the receipt, forwarding and delivering of  
5 communications) incidental to such transmission.

6           “(4) ‘Telecommunication’ means the transmission of writing, signs, signals, pictures and sounds  
7 of all kinds by aid of wire, cable or other similar connection between the points of origin and re-  
8 ception of such transmission, including all instrumentalities, facilities, equipment and services (in-  
9 cluding, among other things, the receipt, forwarding and delivering of communications) incidental  
10 to such transmission.

11           **“SECTION 68. If Senate Bill 405 becomes law, section 39, chapter 506, Oregon Laws 2011**  
12 **(Enrolled Senate Bill 405) (amending ORS 419B.902), is repealed and ORS 419B.902, as**  
13 **amended by section 30 of this 2011 Act, is amended to read:**

14           “419B.902. (1) A subpoena may be served by the party or any other person 18 years of age or  
15 older. Except as provided in subsections (2), (3) and (4) of this section, the service must be made by  
16 delivering a copy to the witness personally. The service must be made so as to allow the witness a  
17 reasonable time for preparation and travel to the place of attendance. If the subpoena is not ac-  
18 companied by a command to appear at trial, hearing or deposition under ORS 419B.884, whether the  
19 subpoena is served personally or by mail, copies of a subpoena commanding production and in-  
20 spection of books, papers, documents or other tangible things before trial must be served on each  
21 party at least seven days before the subpoena is served on the person required to produce and per-  
22 mit inspection, unless the court orders a shorter period.

23           “(2)(a) A law enforcement agency shall designate an individual upon whom service of a subpoena  
24 may be made. A designated individual must be available during normal business hours. In the ab-  
25 sence of a designated individual, service of a subpoena under paragraph (b) of this subsection may  
26 be made upon the officer in charge of the law enforcement agency.

27           “(b) If a peace officer’s attendance at trial is required as a result of employment as a peace of-  
28 ficer, a subpoena may be served on the officer by delivering a copy personally to the officer or to  
29 an individual designated by the agency that employs the officer no later than 10 days prior to the  
30 date attendance is sought. A subpoena may be served in this manner only if the officer is currently  
31 employed as a peace officer and is present within the state at the time of service.

32           “(c) When a subpoena has been served as provided in paragraph (b) of this subsection, the law  
33 enforcement agency shall make a good faith effort to give actual notice to the officer whose at-  
34 tendance is sought of the date, time and location of the court appearance. If the officer cannot be  
35 notified, the law enforcement agency shall promptly notify the court and a postponement or contin-  
36 uance may be granted to allow the officer to be personally served.

37           “[(d) As used in this subsection, ‘law enforcement agency’ means the Oregon State Police, a county  
38 sheriff’s department, a municipal police department or, if the witness whose attendance at trial is re-  
39 quired is an authorized tribal police officer as defined in section 1 of this 2011 Act, a tribal government  
40 as defined in section 1 of this 2011 Act.]

41           **“(d) As used in this subsection, ‘law enforcement agency’ means the Oregon State Police,**  
42 **a county sheriff’s department, a municipal police department, a police department estab-**  
43 **lished by a university under section 1, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill**  
44 **405), or, if the witness whose attendance at trial is required is an authorized tribal police**  
45 **officer as defined in section 1 of this 2011 Act, a tribal government as defined in section 1**

1 **of this 2011 Act.**

2 “(3) Under the following circumstances, service of a subpoena to a witness by mail has the same  
3 legal force and effect as personal service:

4 “(a) The attorney mailing the subpoena certifies in connection with or upon the return of service  
5 that the attorney, or the attorney’s agent, has had personal or telephone contact with the witness  
6 and the witness indicated a willingness to appear at trial if subpoenaed; or

7 “(b) The subpoena was mailed to the witness more than five days before trial by certified mail  
8 or some other designation of mail that provides a receipt for the mail signed by the recipient and  
9 the attorney received a return receipt signed by the witness prior to trial.

10 “(4) Service of subpoena by mail may be used for a subpoena commanding production of books,  
11 papers, documents or other tangible things that is not accompanied by a command to appear at trial  
12 or hearing or at a deposition under ORS 419B.884.

13 “(5) Proof of service of a subpoena is made in the same manner as proof of service of a summons  
14 except that the server is not required to certify that the server is not a party in the action or an  
15 attorney for a party in the action.

16 **“SECTION 69. If Senate Bill 405 becomes law, section 38 of this 2011 Act (amending ORS**  
17 **90.440) is repealed and ORS 90.440, as amended by sections 11 and 61 of this 2011 Act, is**  
18 **amended to read:**

19 “90.440. (1) As used in this section:

20 “(a) ‘Group recovery home’ means a place that provides occupants with shared living facilities  
21 and that meets the description of a group home under 42 U.S.C. 300x-25.

22 “(b) ‘Illegal drugs’ includes controlled substances or prescription drugs:

23 “(A) For which the tenant does not have a valid prescription; or

24 “(B) That are used by the tenant in a manner contrary to the prescribed regimen.

25 “(c) ‘Peace officer’ means:

26 “(A) A sheriff, constable, marshal or deputy;

27 “(B) A member of a state or city police force; **or**

28 “(C) A police officer commissioned by a university under section 1, chapter 506, Oregon Laws  
29 2011 (Enrolled Senate Bill 405); *or*]

30 “[*D*) *An authorized tribal police officer as defined in section 1 of this 2011 Act*].

31 “(2) Notwithstanding ORS 90.375 and 90.435, a group recovery home may terminate a tenancy  
32 and peaceably remove a tenant without complying with ORS 105.105 to 105.168 if the tenant has  
33 used or possessed alcohol or illegal drugs within the preceding seven days. For purposes of this  
34 subsection, the following are sufficient proof that a tenant has used or possessed alcohol or illegal  
35 drugs:

36 “(a) The tenant fails a test for alcohol or illegal drug use;

37 “(b) The tenant refuses a request made in good faith by the group recovery home that the tenant  
38 take a test for alcohol or illegal drug use; or

39 “(c) Any person has personally observed the tenant using or possessing alcohol or illegal drugs.

40 “(3) A group recovery home that undertakes the removal of a tenant under this section shall  
41 personally deliver to the tenant a written notice that:

42 “(a) Describes why the tenant is being removed;

43 “(b) Describes the proof that the tenant has used or possessed alcohol or illegal drugs within  
44 the seven days preceding delivery of the notice;

45 “(c) Specifies the date and time by which the tenant must move out of the group recovery home;



1 “(d) Explains that if the removal was wrongful or in bad faith the tenant may seek injunctive  
2 relief to recover possession under ORS 105.121 and may bring an action to recover monetary dam-  
3 ages; and

4 “(e) Gives contact information for the local legal services office and for the Oregon State Bar’s  
5 Lawyer Referral Service, identifying those services as possible sources for free or reduced-cost legal  
6 services.

7 “(4) A written notice in substantially the following form meets the requirements of subsection  
8 (3) of this section:

9 “ \_\_\_\_\_  
10

11 This notice is to inform you that you must move out of \_\_\_\_\_ (insert address of group  
12 recovery home) by \_\_\_\_\_ (insert date and time that is not less than 24 hours after delivery  
13 of notice).

14 The reason for this notice is \_\_\_\_\_ (specify use or possession of alcohol or illegal drugs,  
15 as applicable, and dates of occurrence).

16 The proof of your use or possession is \_\_\_\_\_ (specify facts).

17 If you did not use or possess alcohol or illegal drugs within the seven days before delivery of  
18 this notice, if this notice was given in bad faith or if your group recovery home has not substantially  
19 complied with ORS 90.440, you may be able to get a court to order the group recovery home to let  
20 you move back in. You may also be able to recover monetary damages.

21 You may be eligible for free legal services at your local legal services office \_\_\_\_\_ (in-  
22 sert telephone number) or reduced fee legal services through the Oregon State Bar at 1-800-452-7636.

23 “ \_\_\_\_\_  
24

25 “(5) Within the notice period, a group recovery home shall allow a tenant removed under this  
26 section to follow any emergency departure plan that was prepared by the tenant and approved by  
27 the group recovery home at the time the tenancy began. If the removed tenant does not have an  
28 emergency departure plan, a representative of the group recovery home shall offer to take the re-  
29 moved tenant to a public shelter, detoxification center or similar location if existing in the commu-  
30 nity.

31 “(6) The date and time for moving out specified in a notice under subsection (3) of this section  
32 must be at least 24 hours after the date and time the notice is delivered to the tenant. If the tenant  
33 remains on the group recovery home premises after the date and time for moving out specified in  
34 the notice, the tenant is a person remaining unlawfully in a dwelling as described in ORS 164.255  
35 and not a person described in ORS 105.115. Only a peace officer may forcibly remove a tenant who  
36 remains on the group recovery home premises after the date and time specified for moving out.

37 “(7) A group recovery home that removes a tenant under this section shall send a copy of the  
38 notice described in subsection (3) of this section to the Oregon Health Authority no later than 72  
39 hours after delivering the notice to the tenant.

40 “(8) A tenant who is removed under subsection (2) of this section may obtain injunctive relief  
41 to recover possession and may recover an amount equal to the greater of actual damages or three  
42 times the tenant’s monthly rent if:

43 “(a) The group recovery home removed the tenant in bad faith or without substantially com-  
44 plying with this section; or

45 “(b) If removal is under subsection (2)(c) of this section, the removal was wrongful because the

1 tenant did not use or possess alcohol or illegal drugs.

2 “(9) Notwithstanding ORS 12.125, a tenant who seeks to obtain injunctive relief to recover pos-  
3 session under ORS 105.121 must commence the action to seek relief not more than 90 days after the  
4 date specified in the notice for the tenant to move out.

5 “(10) In any court action regarding the removal of a tenant under this section, a group recovery  
6 home may present evidence that the tenant used or possessed alcohol or illegal drugs within seven  
7 days preceding the removal, whether or not the evidence was described in the notice required by  
8 subsection (3) of this section.

9 “(11) This section does not prevent a group recovery home from terminating a tenancy as pro-  
10 vided by any other provision of this chapter and evicting a tenant as provided in ORS 105.105 to  
11 105.168.

12 **“SECTION 70. If Senate Bill 405 becomes law, section 41 of this 2011 Act (amending ORS**  
13 **133.721) is repealed and ORS 133.721, as amended by sections 17 and 62 of this 2011 Act, is**  
14 **amended to read:**

15 “133.721. As used in ORS 41.910 and 133.721 to 133.739, unless the context requires otherwise:

16 “(1) ‘Aggrieved person’ means a person who was a party to any wire, electronic or oral com-  
17 munication intercepted under ORS 133.724 or 133.726 or a person against whom the interception was  
18 directed and who alleges that the interception was unlawful.

19 “(2) ‘Contents,’ when used with respect to any wire, electronic or oral communication, includes  
20 any information concerning the identity of the parties to such communication or the existence,  
21 substance, purport or meaning of that communication.

22 “(3) ‘Electronic communication’ means any transfer of signs, signals, writing, images, sounds,  
23 data or intelligence of any nature transmitted in whole or in part by a radio, electromagnetic,  
24 photoelectronic or photo-optical system, or transmitted in part by wire, but does not include:

25 “(a) Any oral communication or any communication that is completely by wire; or

26 “(b) Any communication made through a tone-only paging device.

27 “(4) ‘Electronic, mechanical or other device’ means any device or apparatus that can be used  
28 to intercept a wire, electronic or oral communication other than:

29 “(a) Any telephone or telegraph instrument, equipment or facility, or any component thereof that  
30 is furnished to the subscriber or user by a telecommunications carrier in the ordinary course of its  
31 business and that is being used by the subscriber or user in the ordinary course of its business or  
32 being used by a telecommunications carrier in the ordinary course of its business, or by an investi-  
33 gative or law enforcement officer in the ordinary course of official duties; or

34 “(b) A hearing aid or similar device being used to correct subnormal hearing to not better than  
35 normal.

36 “(5) ‘Intercept’ means the acquisition, by listening or recording, of the contents of any wire,  
37 electronic or oral communication through the use of any electronic, mechanical or other device.

38 “(6) ‘Investigative or law enforcement officer’ means[:]

39 “[*a*] an officer or other person employed to investigate or enforce the law by:

40 “[*A*] (a) A county sheriff or municipal police department, or a police department established  
41 by a university under section 1, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405);

42 “[*B*] (b) The Oregon State Police, the Department of Corrections, the Attorney General or a  
43 district attorney; or

44 “[*C*] (c) Law enforcement agencies of other states or the federal government.[: or]

45 “[*b*] An authorized tribal police officer as defined in section 1 of this 2011 Act.]

1       “(7) ‘Oral communication’ means:

2       “(a) Any oral communication, other than a wire or electronic communication, uttered by a per-  
3 son exhibiting an expectation that such communication is not subject to interception under circum-  
4 stances justifying such expectation; or

5       “(b) An utterance by a person who is participating in a wire or electronic communication, if the  
6 utterance is audible to another person who, at the time the wire or electronic communication oc-  
7 curs, is in the immediate presence of the person participating in the communication.

8       “(8) ‘Telecommunications carrier’ means:

9       “(a) A telecommunications utility as defined in ORS 759.005; or

10       “(b) A cooperative corporation organized under ORS chapter 62 that provides telecommuni-  
11 cations services.

12       “(9) ‘Telecommunications service’ has the meaning given that term in ORS 759.005.

13       “(10) ‘Wire communication’ means any communication made in whole or in part through the use  
14 of facilities for the transmission of communications by the aid of wire, cable or other like connection  
15 between the point of origin and the point of reception, whether furnished or operated by a public  
16 utility or privately owned or leased.

17       “**SECTION 71. If Senate Bill 405 becomes law, section 42 of this 2011 Act (amending ORS**  
18 **133.726) is repealed and ORS 133.726, as amended by section 3, chapter 442, Oregon Laws 2007,**  
19 **and sections 19 and 64 of this 2011 Act, is amended to read:**

20       “133.726. (1) Notwithstanding ORS 133.724, under the circumstances described in this section, a  
21 law enforcement officer is authorized to intercept an oral communication to which the officer or a  
22 person under the direct supervision of the officer is a party, without obtaining an order for the in-  
23 terception of a wire, electronic or oral communication under ORS 133.724.

24       “(2) For purposes of this section and ORS 133.736, a person is a party to an oral communication  
25 if the oral communication is made in the person’s immediate presence and is audible to the person  
26 regardless of whether the communication is specifically directed to the person.

27       “(3) An ex parte order for intercepting an oral communication in any county of this state under  
28 this section may be issued by any judge as defined in ORS 133.525 upon written application made  
29 upon oath or affirmation of the district attorney or a deputy district attorney authorized by the  
30 district attorney for the county in which the order is sought or upon the oath or affirmation of any  
31 peace officer as defined in ORS 133.005. The application shall include:

32       “(a) The name of the applicant and the applicant’s authority to make the application;

33       “(b) A statement demonstrating that there is probable cause to believe that a person whose oral  
34 communication is to be intercepted is engaged in committing, has committed or is about to commit  
35 a particular felony, or a misdemeanor under ORS 167.007, and that intercepting the oral communi-  
36 cation will yield evidence thereof; and

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

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

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

44       “(a) There is probable cause to believe that a person is engaged in committing, has committed  
45 or is about to commit a particular felony, or a misdemeanor under ORS 167.007; and

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

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

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

6 “(b) A statement identifying the particular crime to which the oral communication is expected  
7 to relate;

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

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

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

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

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

18 “(a) A crime punishable as a felony under ORS 475.840, 475.846 to 475.894 or 475.906 or as a  
19 misdemeanor under ORS 167.007; or

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

23 “(8) A law enforcement officer who intercepts an oral communication pursuant to this section  
24 may not intentionally fail to record and preserve the oral communication in its entirety. A law  
25 enforcement officer, or a person under the direct supervision of the officer, who is authorized under  
26 this section to intercept an oral communication is not required to exclude from the interception an  
27 oral communication made by a person for whom probable cause does not exist if the officer or the  
28 person under the officer’s direct supervision is a party to the oral communication.

29 “(9) A law enforcement officer may not divulge the contents of an oral communication inter-  
30 cepted under this section before a preliminary hearing or trial in which an oral communication is  
31 going to be introduced as evidence against a person except:

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

34 “(b) To a magistrate;

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

36 “(d) In compliance with a court order.

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

39 “(11) As used in this section, ‘law enforcement officer’ means[:]

40 “[a)] an officer employed to enforce criminal laws by:

41 “[A)] (a) The United States, this state or a municipal government within this state;

42 “[B)] (b) A political subdivision, agency, department or bureau of the governments described in  
43 [subparagraph (A) of this paragraph] **paragraph (a) of this subsection**; or

44 “[C)] (c) A police department established by a university under section 1, chapter 506, Oregon  
45 Laws 2011 (Enrolled Senate Bill 405).[: or]

1       “(b) *An authorized tribal police officer as defined in section 1 of this 2011 Act.*]

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

3       “**SECTION 72. If Senate Bill 405 becomes law, section 43 of this 2011 Act (amending ORS**  
4 **136.595) is repealed and ORS 136.595, as amended by sections 20 and 65 of this 2011 Act, is**  
5 **amended to read:**

6       “136.595. (1) Except as provided in ORS 136.447 and 136.583 and subsection (2) of this section,  
7 a subpoena is served by delivering a copy to the witness personally. If the witness is under 14 years  
8 of age, the subpoena may be served by delivering a copy to the witness or to the witness’s parent,  
9 guardian or guardian ad litem. Proof of the service is made in the same manner as in the service  
10 of a summons.

11       “(2)(a) Every law enforcement agency shall designate an individual or individuals upon whom  
12 service of subpoena may be made. At least one of the designated individuals shall be available dur-  
13 ing normal business hours. In the absence of the designated individuals, service of subpoena pursu-  
14 ant to paragraph (b) of this subsection may be made upon the officer in charge of the law  
15 enforcement agency.

16       “(b) If a peace officer’s attendance at trial is required as a result of employment as a peace of-  
17 ficer, a subpoena may be served on such officer by delivering a copy personally to the officer or to  
18 one of the individuals designated by the agency that employs the officer. A subpoena may be served  
19 by delivery to one of the individuals designated by the agency that employs the officer only if the  
20 subpoena is delivered at least 10 days before the date the officer’s attendance is required, the officer  
21 is currently employed as a peace officer by the agency, and the officer is present within the state  
22 at the time of service.

23       “(c) When a subpoena has been served as provided in paragraph (b) of this subsection, the law  
24 enforcement agency shall make a good faith effort to actually notify the officer whose attendance  
25 is sought of the date, time and location of the court appearance. If the officer cannot be notified,  
26 the law enforcement agency shall contact the court and a continuance may be granted to allow the  
27 officer to be personally served.

28       “(d) As used in this subsection, ‘law enforcement agency’ means the Oregon State Police, a  
29 county sheriff’s department, a municipal police department[,] **or** a police department established by  
30 a university under section 1, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405)[, *or, if the*  
31 *witness whose attendance at trial is required is an authorized tribal police officer as defined in section*  
32 *1 of this 2011 Act, a tribal government as defined in section 1 of this 2011 Act*].

33       “(3) When a subpoena has been served as provided in ORS 136.583 or subsection (1) or (2) of this  
34 section and, subsequent to service, the date on, or the time at, which the person subpoenaed is to  
35 appear has changed, a new subpoena is not required to be served if:

36       “(a) The subpoena is continued orally in open court in the presence of the person subpoenaed;  
37 or

38       “(b) The party who issued the original subpoena notifies the person subpoenaed of the change  
39 by first class mail and by:

40       “(A) Certified or registered mail, return receipt requested; or

41       “(B) Express mail.

42       “**SECTION 73. If Senate Bill 405 becomes law, section 47 of this 2011 Act (amending ORS**  
43 **163.730) is repealed and ORS 163.730, as amended by sections 24 and 66 of this 2011 Act, is**  
44 **amended to read:**

45       “163.730. As used in ORS 30.866 and 163.730 to 163.750, unless the context requires otherwise:

1 “(1) ‘Alarm’ means to cause apprehension or fear resulting from the perception of danger.  
2 “(2) ‘Coerce’ means to restrain, compel or dominate by force or threat.  
3 “(3) ‘Contact’ includes but is not limited to:  
4 “(a) Coming into the visual or physical presence of the other person;  
5 “(b) Following the other person;  
6 “(c) Waiting outside the home, property, place of work or school of the other person or of a  
7 member of that person’s family or household;  
8 “(d) Sending or making written or electronic communications in any form to the other person;  
9 “(e) Speaking with the other person by any means;  
10 “(f) Communicating with the other person through a third person;  
11 “(g) Committing a crime against the other person;  
12 “(h) Communicating with a third person who has some relationship to the other person with the  
13 intent of affecting the third person’s relationship with the other person;  
14 “(i) Communicating with business entities with the intent of affecting some right or interest of  
15 the other person;  
16 “(j) Damaging the other person’s home, property, place of work or school;  
17 “(k) Delivering directly or through a third person any object to the home, property, place of  
18 work or school of the other person; or  
19 “(L) Service of process or other legal documents unless the other person is served as provided  
20 in ORCP 7 or 9.  
21 “(4) ‘Household member’ means any person residing in the same residence as the victim.  
22 “(5) ‘Immediate family’ means father, mother, child, sibling, spouse, grandparent, stepparent and  
23 stepchild.  
24 “(6) ‘Law enforcement officer’ means[:]  
25 “[*(a)*] a person employed in this state as a police officer by:  
26 “[*(A)*] (a) A county sheriff, constable or marshal;  
27 “[*(B)*] (b) A police department established by a university under section 1, chapter 506, Oregon  
28 Laws 2011 (Enrolled Senate Bill 405); or  
29 “[*(C)*] (c) A municipal or state police agency.[:; or]  
30 “[*(b)*] *An authorized tribal police officer as defined in section 1 of this 2011 Act.*]  
31 “(7) ‘Repeated’ means two or more times.  
32 “(8) ‘School’ means a public or private institution of learning or a child care facility.  
33 “**SECTION 74. If Senate Bill 405 becomes law, section 48 of this 2011 Act (amending ORS**  
34 **165.535) is repealed and ORS 165.535, as amended by sections 25 and 67 of this 2011 Act, is**  
35 **amended to read:**  
36 “165.535. As used in ORS 41.910, 133.723, 133.724, 165.540 and 165.545:  
37 “(1) ‘Conversation’ means the transmission between two or more persons of an oral communi-  
38 cation which is not a telecommunication or a radio communication.  
39 “(2) ‘Person’ has the meaning given that term in ORS 174.100 and includes[:]  
40 “[*(a)*] public officials and law enforcement officers of:  
41 “[*(A)*] (a) The state and of a county, municipal corporation or any other political subdivision  
42 of the state; and  
43 “[*(B)*] (b) A police department established by a university under section 1, chapter 506, Oregon  
44 Laws 2011 (Enrolled Senate Bill 405).[:; and]  
45 “[*(b)*] *An authorized tribal police officer as defined in section 1 of this 2011 Act.*]

1 “(3) ‘Radio communication’ means the transmission by radio or other wireless methods of writ-  
2 ing, signs, signals, pictures and sounds of all kinds, including all instrumentalities, facilities, equip-  
3 ment and services (including, among other things, the receipt, forwarding and delivering of  
4 communications) incidental to such transmission.

5 “(4) ‘Telecommunication’ means the transmission of writing, signs, signals, pictures and sounds  
6 of all kinds by aid of wire, cable or other similar connection between the points of origin and re-  
7 ception of such transmission, including all instrumentalities, facilities, equipment and services (in-  
8 cluding, among other things, the receipt, forwarding and delivering of communications) incidental  
9 to such transmission.

10 **“SECTION 75. If Senate Bill 405 becomes law, section 53 of this 2011 Act (amending ORS**  
11 **419B.902) is repealed and ORS 419B.902, as amended by sections 30 and 68 of this 2011 Act,**  
12 **is amended to read:**

13 “419B.902. (1) A subpoena may be served by the party or any other person 18 years of age or  
14 older. Except as provided in subsections (2), (3) and (4) of this section, the service must be made by  
15 delivering a copy to the witness personally. The service must be made so as to allow the witness a  
16 reasonable time for preparation and travel to the place of attendance. If the subpoena is not ac-  
17 companied by a command to appear at trial, hearing or deposition under ORS 419B.884, whether the  
18 subpoena is served personally or by mail, copies of a subpoena commanding production and in-  
19 spection of books, papers, documents or other tangible things before trial must be served on each  
20 party at least seven days before the subpoena is served on the person required to produce and per-  
21 mit inspection, unless the court orders a shorter period.

22 “(2)(a) A law enforcement agency shall designate an individual upon whom service of a subpoena  
23 may be made. A designated individual must be available during normal business hours. In the ab-  
24 sence of a designated individual, service of a subpoena under paragraph (b) of this subsection may  
25 be made upon the officer in charge of the law enforcement agency.

26 “(b) If a peace officer’s attendance at trial is required as a result of employment as a peace of-  
27 ficer, a subpoena may be served on the officer by delivering a copy personally to the officer or to  
28 an individual designated by the agency that employs the officer no later than 10 days prior to the  
29 date attendance is sought. A subpoena may be served in this manner only if the officer is currently  
30 employed as a peace officer and is present within the state at the time of service.

31 “(c) When a subpoena has been served as provided in paragraph (b) of this subsection, the law  
32 enforcement agency shall make a good faith effort to give actual notice to the officer whose at-  
33 tendance is sought of the date, time and location of the court appearance. If the officer cannot be  
34 notified, the law enforcement agency shall promptly notify the court and a postponement or contin-  
35 uance may be granted to allow the officer to be personally served.

36 “(d) As used in this subsection, ‘law enforcement agency’ means the Oregon State Police, a  
37 county sheriff’s department, a municipal police department[,] **or** a police department established by  
38 a university under section 1, chapter 506, Oregon Laws 2011 (Enrolled Senate Bill 405)[, *or, if the*  
39 *witness whose attendance at trial is required is an authorized tribal police officer as defined in section*  
40 *1 of this 2011 Act, a tribal government as defined in section 1 of this 2011 Act].*

41 “(3) Under the following circumstances, service of a subpoena to a witness by mail has the same  
42 legal force and effect as personal service:

43 “(a) The attorney mailing the subpoena certifies in connection with or upon the return of service  
44 that the attorney, or the attorney’s agent, has had personal or telephone contact with the witness  
45 and the witness indicated a willingness to appear at trial if subpoenaed; or

1 “(b) The subpoena was mailed to the witness more than five days before trial by certified mail  
2 or some other designation of mail that provides a receipt for the mail signed by the recipient and  
3 the attorney received a return receipt signed by the witness prior to trial.

4 “(4) Service of subpoena by mail may be used for a subpoena commanding production of books,  
5 papers, documents or other tangible things that is not accompanied by a command to appear at trial  
6 or hearing or at a deposition under ORS 419B.884.

7 “(5) Proof of service of a subpoena is made in the same manner as proof of service of a summons  
8 except that the server is not required to certify that the server is not a party in the action or an  
9 attorney for a party in the action.

10 **“SECTION 76. If Senate Bill 405 becomes law, the amendments to ORS 90.440, 133.721,  
11 133.726, 136.595, 163.730, 165.535 and 419B.902 by sections 61 to 68 of this 2011 Act become  
12 operative on January 1, 2012.**

13 **“SECTION 77.** If Senate Bill 405 becomes law, section 58 of this 2011 Act is amended to read:

14 **“Sec. 58.** (1) Sections 1 to 4 of this 2011 Act are repealed on July 1, 2015.

15 “(2) The amendments to ORS 40.275, 90.440, 133.005, 133.525, 133.721, 133.726, 136.595, 147.425,  
16 153.005, 161.015, 163.730, 165.535, 181.010, 181.610, 181.781, 181.783, 181.796, 348.270, 414.805,  
17 419B.902, 420.905, 801.395, 811.720 and 830.005 by sections 37 to 57 **and 69 to 75** of this 2011 Act  
18 become operative on July 1, 2015.

19 “(3) The repeal of sections 1 to 4 of this 2011 Act by subsection (1) of this section and the  
20 amendments to ORS 40.275, 90.440, 133.005, 133.525, 133.721, 133.726, 136.595, 147.425, 153.005,  
21 161.015, 163.730, 165.535, 181.010, 181.610, 181.781, 181.783, 181.796, 348.270, 414.805, 419B.902,  
22 420.905, 801.395, 811.720 and 830.005 by sections 37 to 57 **and 69 to 75** of this 2011 Act:

23 “(a) Return the law applicable to tribal police officers to the state in which the law existed on  
24 the date immediately before the effective date of this 2011 Act; and

25 “(b) Do not deprive tribal police officers of any power, authority or protection provided to tribal  
26 police officers by law on the date immediately before the effective date of this 2011 Act.”.

27 In line 18, delete “61” and insert “78”.  
28 \_\_\_\_\_