

Enrolled
Senate Bill 1527

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CHAPTER

AN ACT

Relating to crime; creating new provisions; amending ORS 161.566, 161.568 and 163.187; and declaring an emergency.

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

SECTION 1. ORS 163.187 is amended to read:

163.187. (1) A person commits the crime of strangulation if the person knowingly impedes the normal breathing or circulation of the blood of another person by:

- (a) Applying pressure on the throat or neck of the other person; or
- (b) Blocking the nose or mouth of the other person.

(2) Subsection (1) of this section does not apply to legitimate medical or dental procedures or good faith practices of a religious belief.

(3) Strangulation is a Class A misdemeanor.

(4) Notwithstanding subsection (3) of this section, strangulation is a Class C felony if:

(a) The crime is committed in the immediate presence of, or is witnessed by, the person's or the victim's minor child or stepchild or a minor child residing within the household of the person or the victim;

(b) The victim is under 10 years of age;

(c) During the commission of the crime, the person used, attempted to use or threatened to use a dangerous or deadly weapon, as those terms are defined in ORS 161.015, unlawfully against another;

(d) The person has been previously convicted of violating this section or of committing an equivalent crime in another jurisdiction;

(e) The person has been previously convicted of violating ORS 163.160, 163.165, 163.175, 163.185 or 163.190 or of committing an equivalent crime in another jurisdiction, and the victim in the previous conviction is the same person who is the victim of the current [conviction] **crime**; or

(f) The person has at least three previous convictions of any combination of ORS 163.160, 163.165, 163.175, 163.185 or 163.190 or of equivalent crimes in other jurisdictions.

(5) For purposes of subsection (4)(a) of this section, a strangulation is witnessed if the strangulation is seen or directly perceived in any other manner by the child.

SECTION 2. ORS 161.566 is amended to read:

161.566. (1) Except as provided in subsection (4) of this section, a prosecuting attorney may elect to treat any misdemeanor as a Class A violation. The election must be made by the prosecuting attorney orally at the time of the first appearance of the defendant or in writing filed on or before

the time scheduled for the first appearance of the defendant. If no election is made within the time allowed, the case shall proceed as a misdemeanor.

(2) If a prosecuting attorney elects to treat a misdemeanor as a Class A violation under this section, the court shall amend the accusatory instrument to reflect the charged offense as a Class A violation and clearly denominate the offense as a Class A violation in any judgment entered in the matter. Notwithstanding ORS [153.018] **153.021**, the fine that a court may impose upon conviction of a violation under this section may not:

(a) Be less than the presumptive fine established by ORS 153.019 for a Class A violation; or

(b) Exceed the [amount provided in ORS 161.635 for the class of misdemeanor receiving violation treatment] **maximum fine established by ORS 153.018 for a Class A violation.**

(3) If a prosecuting attorney elects to treat a misdemeanor as a Class A violation under this section, and the defendant fails to make any required appearance in the matter, the court may enter a default judgment against the defendant in the manner provided by ORS 153.102. Notwithstanding ORS [153.018] **153.021**, the fine that the court may impose under a default judgment entered pursuant to ORS 153.102 may not:

(a) Be less than the presumptive fine established by ORS 153.019 for a Class A violation; or

(b) Exceed the maximum fine [for the class of misdemeanor receiving violation treatment] **established by ORS 153.018 for a Class A violation.**

(4) A prosecuting attorney may not elect to treat misdemeanors created under ORS 811.540 or 813.010 as violations under the provisions of this section.

(5) The election provided for in this section may be made by a city attorney acting as prosecuting attorney in the case of municipal ordinance offenses, a county counsel acting as prosecuting attorney under a county charter in the case of county ordinance offenses, and the Attorney General acting as prosecuting attorney in those criminal actions or proceedings within the jurisdiction of the Attorney General.

SECTION 3. ORS 161.568 is amended to read:

161.568. (1) Except as provided in subsection (4) of this section, a court may elect to treat any misdemeanor as a Class A violation for the purpose of entering a default judgment under ORS 153.102 if:

(a) A complaint or information has been filed with the court for the misdemeanor;

(b) The defendant has failed to make an appearance in the proceedings required by the court or by law; and

(c) The court has given notice to the district attorney for the county and the district attorney has informed the court that the district attorney does not object to treating the misdemeanor as a Class A violation.

(2) If the court treats a misdemeanor as a Class A violation under this section, the court shall amend the accusatory instrument to reflect the charged offense as a Class A violation and clearly denominate the offense as a Class A violation in the judgment entered in the matter.

(3) Notwithstanding ORS [153.018] **153.021**, if the court treats a misdemeanor as a Class A violation under this section, the fine that the court may impose under a default judgment entered pursuant to ORS 153.102 may not:

(a) Be less than the presumptive fine established by ORS 153.019 for a Class A violation; or

(b) Exceed the maximum fine [for the class of misdemeanor receiving violation treatment] **established by ORS 153.018 for a Class A violation.**

(4) A court may not treat misdemeanors created under ORS 811.540 or 813.010 as violations under the provisions of this section.

SECTION 4. The amendments to ORS 161.566 and 161.568 by sections 2 and 3 of this 2012 Act apply to elections made on or after the effective date of this 2012 Act.

SECTION 5. This 2012 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect on its passage.

Passed by Senate February 13, 2012

Repassed by Senate February 28, 2012

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House February 27, 2012

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Received by Governor:

.....M,....., 2012

Approved:

.....M,....., 2012

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2012

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Kate Brown, Secretary of State