

B-Engrossed
Senate Bill 1527

Ordered by the House February 23
Including Senate Amendments dated February 9 and House Amendments
dated February 23

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Makes technical correction to provision that makes strangulation Class C felony under certain circumstances.

Reduces maximum fine court may impose when misdemeanor reduced to violation.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to crime; creating new provisions; amending ORS 161.566, 161.568 and 163.187; and declar-
3 ing an emergency.

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

5 **SECTION 1.** ORS 163.187 is amended to read:

6 163.187. (1) A person commits the crime of strangulation if the person knowingly impedes the
7 normal breathing or circulation of the blood of another person by:

8 (a) Applying pressure on the throat or neck of the other person; or

9 (b) Blocking the nose or mouth of the other person.

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

12 (3) Strangulation is a Class A misdemeanor.

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

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

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

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

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

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 (f) The person has at least three previous convictions of any combination of ORS 163.160,
2 163.165, 163.175, 163.185 or 163.190 or of equivalent crimes in other jurisdictions.

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

5 **SECTION 2.** ORS 161.566 is amended to read:

6 161.566. (1) Except as provided in subsection (4) of this section, a prosecuting attorney may elect
7 to treat any misdemeanor as a Class A violation. The election must be made by the prosecuting at-
8 torney orally at the time of the first appearance of the defendant or in writing filed on or before the
9 time scheduled for the first appearance of the defendant. If no election is made within the time al-
10 lowed, the case shall proceed as a misdemeanor.

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

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

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

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

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

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

27 (4) A prosecuting attorney may not elect to treat misdemeanors created under ORS 811.540 or
28 813.010 as violations under the provisions of this section.

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

34 **SECTION 3.** ORS 161.568 is amended to read:

35 161.568. (1) Except as provided in subsection (4) of this section, a court may elect to treat any
36 misdemeanor as a Class A violation for the purpose of entering a default judgment under ORS
37 153.102 if:

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

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

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

44 (2) If the court treats a misdemeanor as a Class A violation under this section, the court shall
45 amend the accusatory instrument to reflect the charged offense as a Class A violation and clearly

1 denominate the offense as a Class A violation in the judgment entered in the matter.

2 (3) Notwithstanding ORS [153.018] **153.021**, if the court treats a misdemeanor as a Class A vio-
3 lation under this section, the fine that the court may impose under a default judgment entered pur-
4 suant to ORS 153.102 may not:

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

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

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

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

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

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