

# Senate Bill 1534

Sponsored by Senator WHITSETT; Senators ATKINSON, FERRIOLI, GEORGE, JOHNSON, KRUSE, MORSE, OLSEN, STARR, TELFER, VERGER, WINTERS (Pre-session filed.)

## SUMMARY

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

Creates crime of aggravated solicitation applicable to use of electronic communication to solicit two or more persons to commit specific crime at specific time and location.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to the solicitation of criminal activity; creating new provisions; amending ORS 131.125,  
3 131.215, 131.315, 131.558, 131.602, 131A.005, 131A.020, 135.737, 137.712, 147.433, 161.475, 161.485,  
4 167.164, 419A.260, 419B.340, 419B.502, 421.121 and 443.004; and prescribing an effective date.

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

6 **SECTION 1. (1) As used in this section, "electronic communication" has the meaning**  
7 **given that term in ORS 133.721.**

8 **(2) A person commits the crime of aggravated solicitation if, with the intent of causing**  
9 **two or more other persons to engage in specific conduct constituting a crime, the person**  
10 **uses an electronic communication to command or solicit other persons to engage in that**  
11 **conduct at a specific time and at a specific location.**

12 **(3) In a prosecution under this section, the state need not prove that the electronic**  
13 **communication was received by specific persons or that the defendant intended for specific**  
14 **persons to engage in the criminal activity.**

15 **(4) Aggravated solicitation is a:**

16 **(a) Class A felony if the offense solicited is a Class A felony or is murder or treason.**

17 **(b) Class B felony if the offense solicited is a Class B felony.**

18 **(c) Class C felony if the offense solicited is a misdemeanor or a Class C felony.**

19 **SECTION 2. Section 1 of this 2012 Act is added to and made a part of ORS 161.405 to**  
20 **161.485.**

21 **SECTION 3. ORS 161.475 is amended to read:**

22 161.475. (1) Except as provided in subsection (2) of this section, it is immaterial to the liability  
23 of a person who solicits or conspires with another to commit a crime that:

24 (a) The person or the person whom the person solicits or with whom the person conspires does  
25 not occupy a particular position or have a particular characteristic which is an element of such  
26 crime, if the person believes that one of them does; *[or]*

27 (b) The person whom the person solicits or with whom the person conspires is irresponsible or  
28 has an immunity to prosecution or conviction for the commission of the crime, or, in the case of  
29 conspiracy, has feigned the agreement; or

30 (c) The person with whom the person conspires has not been prosecuted for or convicted of the

**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 conspiracy or a crime based upon the conduct in question, or has previously been acquitted.

2 (2) It is a defense to a charge of solicitation, **aggravated solicitation** or conspiracy to commit  
3 a crime that if the criminal object were achieved, the actor would not be guilty of a crime under  
4 the law defining the offense or as an accomplice under ORS 161.150 to 161.165.

5 **SECTION 4.** ORS 161.485 is amended to read:

6 161.485. (1) It is no defense to a prosecution under ORS 161.405, 161.435 or 161.450 **or section**  
7 **1 of this 2012 Act** that the offense the defendant [*either*] attempted to commit, solicited to commit  
8 or conspired to commit was actually committed pursuant to such attempt, solicitation or conspiracy.

9 (2) A person [*shall*] **may** not be convicted of more than one offense defined by ORS 161.405,  
10 161.435 and 161.450 **or section 1 of this 2012 Act** for conduct designed to commit or to culminate  
11 in commission of the same crime.

12 (3) A person [*shall*] **may** not be convicted on the basis of the same course of conduct of both  
13 the actual commission of an offense and an attempt to commit that offense [*or*], solicitation **or ag-**  
14 **gravated solicitation** of that offense or conspiracy to commit that offense.

15 (4) Nothing in this section [*shall be construed to bar*] **bars** inclusion of multiple counts charging  
16 violation of the substantive crime and ORS 161.405, 161.435 and 161.450 **and section 1 of this 2012**  
17 **Act** in a single indictment or information, provided the penal conviction is consistent with sub-  
18 sections (2) and (3) of this section.

19 **SECTION 5.** ORS 131.215 is amended to read:

20 131.215. Except as otherwise provided in ORS 131.205 to 131.235, a person is subject to prose-  
21 cution under the laws of this state for an offense that the person commits by the conduct of the  
22 person or the conduct of another for which the person is criminally liable if:

23 (1) Either the conduct that is an element of the offense or the result that is an element occurs  
24 within this state; [*or*]

25 (2) Conduct occurring outside this state is sufficient under the law of this state to constitute  
26 an attempt to commit an offense within this state; [*or*]

27 (3) Conduct occurring outside this state is sufficient under the law of this state to constitute a  
28 conspiracy to commit an offense within this state and an overt act in furtherance of the conspiracy  
29 occurs within this state; [*or*]

30 (4) Conduct occurring within this state establishes complicity in the commission of, or an at-  
31 tempt, solicitation, **aggravated solicitation** or conspiracy to commit an offense in another juris-  
32 diction which also is an offense under the law of this state; [*or*]

33 (5) The offense consists of the omission to perform a legal duty imposed by the law of this state  
34 with respect to domicile, residence or a relationship to a person, thing or transaction in this state;  
35 or

36 (6) The offense violates a statute of this state that expressly prohibits conduct outside this state  
37 affecting a legislatively protected interest of or within this state and the actor has reason to know  
38 that the conduct of the actor is likely to affect that interest.

39 **SECTION 6.** ORS 131.315 is amended to read:

40 131.315. (1) If conduct constituting elements of an offense or results constituting elements of an  
41 offense occur in two or more counties, trial of the offense may be held in any of the counties con-  
42 cerned.

43 (2) If a cause of death is inflicted on a person in one county and the person dies therefrom in  
44 another county, trial of the offense may be held in either county.

45 (3) If the commission of an offense commenced outside this state is consummated within this

1 state, trial of the offense shall be held in the county in which the offense is consummated or the  
2 interest protected by the criminal statute in question is impaired.

3 (4) If an offense is committed on any body of water located in, or adjacent to, two or more  
4 counties or forming the boundary between two or more counties, trial of the offense may be held in  
5 any nearby county bordering on the body of water.

6 (5) If an offense is committed in or upon any railroad car, vehicle, aircraft, boat or other  
7 conveyance in transit and it cannot readily be determined in which county the offense was com-  
8 mitted, trial of the offense may be held in any county through or over which the conveyance passed.

9 (6) If an offense is committed on the boundary of two or more counties or within one mile  
10 thereof, trial of the offense may be held in any of the counties concerned.

11 (7) A person who commits theft, burglary or robbery may be tried in any county in which the  
12 person exerts control over the property that is the subject of the crime.

13 (8) If the offense is an attempt [*or*], solicitation **or aggravated solicitation** to commit a crime,  
14 trial of the offense may be held in any county in which any act that is an element of the offense is  
15 committed.

16 (9) If the offense is criminal conspiracy, trial of the offense may be held in any county in which  
17 any act or agreement that is an element of the offense occurs.

18 (10) A person who in one county commits an inchoate offense that results in the commission of  
19 an offense by another person in another county, or who commits the crime of hindering prosecution  
20 of the principal offense, may be tried in either county.

21 (11) A criminal nonsupport action may be tried in any county in which the dependent child is  
22 found, irrespective of the domicile of the parent, guardian or other person lawfully charged with  
23 support of the child.

24 (12) If the offense is theft, forgery or identity theft and the offense consists of an aggregate  
25 transaction involving more than one county, trial of the offense may be held in any county in which  
26 one of the acts of theft, forgery or identity theft was committed.

27 (13) When a prosecution is for violation of the Oregon Securities Law, the trial of the offense  
28 may be held in the county in which:

29 (a) The offer to purchase or sell securities took place or where the sale or purchase of securities  
30 took place; or

31 (b) Any act that is an element of the offense occurred.

32 (14) When a prosecution under ORS 165.692 and 165.990 or 411.675 and 411.990 (2) and (3) in-  
33 volves Medicaid funds, the trial of the offense may be held in the county in which the claim was  
34 submitted for payment or in the county in which the claim was paid.

35 (15)(a) If the offense is stalking under ORS 163.732 and involves contacts as defined in ORS  
36 163.730 in more than one county, trial of the offense may be held in any county in which a contact  
37 occurred.

38 (b) If the offense is violating a court's stalking protective order under ORS 163.750, trial of the  
39 offense may be held in the county in which the defendant engaged in conduct prohibited by the order  
40 or in the county in which the order was issued.

41 **SECTION 7.** ORS 131.558 is amended to read:

42 131.558. The following are subject to criminal forfeiture:

43 (1) All controlled substances that have been manufactured, distributed, dispensed, possessed or  
44 acquired in the course of prohibited conduct;

45 (2) All raw materials, products and equipment of any kind that are used, or intended for use, in

1 providing, manufacturing, compounding, processing, delivering, importing or exporting any service  
2 or substance in the course of prohibited conduct;

3 (3) All property that is used, or intended for use, as a container for property described in sub-  
4 section (1) or (2) of this section;

5 (4) All conveyances, including aircraft, vehicles and vessels, that are used, or are intended for  
6 use, to transport or facilitate the transportation, sale, receipt, possession or concealment of property  
7 described in subsection (1) or (2) of this section, and all conveyances, including aircraft, vehicles and  
8 vessels, that are used or intended for use in prohibited conduct or to facilitate prohibited conduct,  
9 except that:

10 (a) No conveyance used by any person as a common carrier in the transaction of business as a  
11 common carrier is subject to criminal forfeiture under the provisions of this section unless the  
12 owner or other person in charge of such conveyance was a consenting party or knew of and  
13 acquiesced in the prohibited conduct; and

14 (b) No conveyance is subject to criminal forfeiture under the provisions of this section by reason  
15 of any act or omission established by the owner thereof to have been committed or omitted by any  
16 person other than such owner while such conveyance was unlawfully in the possession of a person  
17 other than the owner in violation of the criminal laws of the United States or of any state;

18 (5) All books, records, computers and research, including formulae, microfilm, tapes and data  
19 that are used or intended for use to facilitate prohibited conduct;

20 (6) All moneys, negotiable instruments, balances in deposit or other accounts, securities or other  
21 things of value furnished or intended to be furnished by any person in the course of prohibited  
22 conduct, all proceeds of or from prohibited conduct, and all moneys, negotiable instruments, bal-  
23 ances in deposit and other accounts and securities used or intended to be used to facilitate any  
24 prohibited conduct;

25 (7) All real property, including any right, title and interest in the whole of any lot or tract of  
26 land and any appurtenances or improvements, that is used or intended to be used to commit or fa-  
27 cilitate the commission of prohibited conduct;

28 (8) All weapons possessed, used or available for use to facilitate conduct giving rise to criminal  
29 forfeiture;

30 (9) All property described in this section that is intended for use in committing or facilitating  
31 an attempt to commit a crime as described in ORS 161.405, a solicitation as described in ORS  
32 161.435, **an aggravated solicitation as described in section 1 of this 2012 Act** or a conspiracy  
33 as described in ORS 161.450; and

34 (10) All personal property that is used or intended to be used to commit or facilitate prohibited  
35 conduct.

36 **SECTION 8.** ORS 131.602 is amended to read:

37 131.602. The crimes to which ORS 131.550 (12)(b) applies are:

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

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

40 (3) Public investment fraud, as defined in ORS 162.117.

41 (4) Bribing a witness, as defined in ORS 162.265.

42 (5) Bribe receiving by a witness, as defined in ORS 162.275.

43 (6) Simulating legal process, as defined in ORS 162.355.

44 (7) Official misconduct in the first degree, as defined in ORS 162.415.

45 (8) Assisting another person to commit suicide, as defined in ORS 163.193.

- 1 (9) Custodial interference in the second degree, as defined in ORS 163.245.
- 2 (10) Custodial interference in the first degree, as defined in ORS 163.257.
- 3 (11) Buying or selling a person under 18 years of age, as defined in ORS 163.537.
- 4 (12) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.
- 5 (13) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.
- 6 (14) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.
- 7 (15) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.
- 8 (16) Possession of materials depicting sexually explicit conduct of a child in the first degree, as
- 9 defined in ORS 163.688.
- 10 (17) Possession of materials depicting sexually explicit conduct of a child in the second degree,
- 11 as defined in ORS 163.689.
- 12 (18) Theft in the second degree, as defined in ORS 164.045.
- 13 (19) Theft in the first degree, as defined in ORS 164.055.
- 14 (20) Aggravated theft in the first degree, as defined in ORS 164.057.
- 15 (21) Theft by extortion, as defined in ORS 164.075.
- 16 (22) Theft by deception, as defined in ORS 164.085, if it is a felony or a Class A misdemeanor.
- 17 (23) Theft by receiving, as defined in ORS 164.095, if it is a felony or a Class A misdemeanor.
- 18 (24) Theft of services, as defined in ORS 164.125, if it is a felony or a Class A misdemeanor.
- 19 (25) Unauthorized use of a vehicle, as defined in ORS 164.135.
- 20 (26) Mail theft or receipt of stolen mail, as defined in ORS 164.162.
- 21 (27) Laundering a monetary instrument, as defined in ORS 164.170.
- 22 (28) Engaging in a financial transaction in property derived from unlawful activity, as defined
- 23 in ORS 164.172.
- 24 (29) Burglary in the second degree, as defined in ORS 164.215.
- 25 (30) Burglary in the first degree, as defined in ORS 164.225.
- 26 (31) Possession of a burglary tool or theft device, as defined in ORS 164.235.
- 27 (32) Unlawful entry into a motor vehicle, as defined in ORS 164.272.
- 28 (33) Arson in the second degree, as defined in ORS 164.315.
- 29 (34) Arson in the first degree, as defined in ORS 164.325.
- 30 (35) Computer crime, as defined in ORS 164.377.
- 31 (36) Robbery in the third degree, as defined in ORS 164.395.
- 32 (37) Robbery in the second degree, as defined in ORS 164.405.
- 33 (38) Robbery in the first degree, as defined in ORS 164.415.
- 34 (39) Unlawful labeling of a sound recording, as defined in ORS 164.868.
- 35 (40) Unlawful recording of a live performance, as defined in ORS 164.869.
- 36 (41) Unlawful labeling of a videotape recording, as defined in ORS 164.872.
- 37 (42) A violation of ORS 164.886.
- 38 (43)(a) Endangering aircraft in the first degree, as defined in ORS 164.885.
- 39 (b) Endangering aircraft in the second degree, as defined in ORS 164.885.
- 40 (44) Interference with agricultural operations, as defined in ORS 164.887.
- 41 (45) Forgery in the second degree, as defined in ORS 165.007.
- 42 (46) Forgery in the first degree, as defined in ORS 165.013.
- 43 (47) Criminal possession of a forged instrument in the second degree, as defined in ORS 165.017.
- 44 (48) Criminal possession of a forged instrument in the first degree, as defined in ORS 165.022.
- 45 (49) Criminal possession of a forgery device, as defined in ORS 165.032.

- 1 (50) Criminal simulation, as defined in ORS 165.037.
- 2 (51) Fraudulently obtaining a signature, as defined in ORS 165.042.
- 3 (52) Fraudulent use of a credit card, as defined in ORS 165.055.
- 4 (53) Negotiating a bad check, as defined in ORS 165.065.
- 5 (54) Possessing a fraudulent communications device, as defined in ORS 165.070.
- 6 (55) Unlawful factoring of a payment card transaction, as defined in ORS 165.074.
- 7 (56) Falsifying business records, as defined in ORS 165.080.
- 8 (57) Sports bribery, as defined in ORS 165.085.
- 9 (58) Sports bribe receiving, as defined in ORS 165.090.
- 10 (59) Misapplication of entrusted property, as defined in ORS 165.095.
- 11 (60) Issuing a false financial statement, as defined in ORS 165.100.
- 12 (61) Obtaining execution of documents by deception, as defined in ORS 165.102.
- 13 (62) A violation of ORS 165.543.
- 14 (63) Cellular counterfeiting in the third degree, as defined in ORS 165.577.
- 15 (64) Cellular counterfeiting in the second degree, as defined in ORS 165.579.
- 16 (65) Cellular counterfeiting in the first degree, as defined in ORS 165.581.
- 17 (66) Identity theft, as defined in ORS 165.800.
- 18 (67) A violation of ORS 166.190.
- 19 (68) Unlawful use of a weapon, as defined in ORS 166.220.
- 20 (69) A violation of ORS 166.240.
- 21 (70) Unlawful possession of a firearm, as defined in ORS 166.250.
- 22 (71) A violation of ORS 166.270.
- 23 (72) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or  
24 firearms silencer, as defined in ORS 166.272.
- 25 (73) A violation of ORS 166.275.
- 26 (74) Unlawful possession of armor piercing ammunition, as defined in ORS 166.350.
- 27 (75) A violation of ORS 166.370.
- 28 (76) Unlawful possession of a destructive device, as defined in ORS 166.382.
- 29 (77) Unlawful manufacture of a destructive device, as defined in ORS 166.384.
- 30 (78) Possession of a hoax destructive device, as defined in ORS 166.385.
- 31 (79) A violation of ORS 166.410.
- 32 (80) Providing false information in connection with a transfer of a firearm, as defined in ORS  
33 166.416.
- 34 (81) Improperly transferring a firearm, as defined in ORS 166.418.
- 35 (82) Unlawfully purchasing a firearm, as defined in ORS 166.425.
- 36 (83) A violation of ORS 166.429.
- 37 (84) A violation of ORS 166.470.
- 38 (85) A violation of ORS 166.480.
- 39 (86) A violation of ORS 166.635.
- 40 (87) A violation of ORS 166.638.
- 41 (88) Unlawful paramilitary activity, as defined in ORS 166.660.
- 42 (89) A violation of ORS 166.720.
- 43 (90) Prostitution, as defined in ORS 167.007.
- 44 (91) Patronizing a prostitute, as defined in ORS 167.008.
- 45 (92) Promoting prostitution, as defined in ORS 167.012.

- 1 (93) Compelling prostitution, as defined in ORS 167.017.
- 2 (94) Exhibiting an obscene performance to a minor, as defined in ORS 167.075.
- 3 (95) Unlawful gambling in the second degree, as defined in ORS 167.122.
- 4 (96) Unlawful gambling in the first degree, as defined in ORS 167.127.
- 5 (97) Possession of gambling records in the second degree, as defined in ORS 167.132.
- 6 (98) Possession of gambling records in the first degree, as defined in ORS 167.137.
- 7 (99) Possession of a gambling device, as defined in ORS 167.147.
- 8 (100) Possession of a gray machine, as defined in ORS 167.164.
- 9 (101) Cheating, as defined in ORS 167.167.
- 10 (102) Tampering with drug records, as defined in ORS 167.212.
- 11 (103) A violation of ORS 167.262.
- 12 (104) Research and animal interference, as defined in ORS 167.312.
- 13 (105) Animal abuse in the first degree, as defined in ORS 167.320.
- 14 (106) Aggravated animal abuse in the first degree, as defined in ORS 167.322.
- 15 (107) Animal neglect in the first degree, as defined in ORS 167.330.
- 16 (108) Interfering with an assistance, a search and rescue or a therapy animal, as defined in ORS  
17 167.352.
- 18 (109) Involvement in animal fighting, as defined in ORS 167.355.
- 19 (110) Dogfighting, as defined in ORS 167.365.
- 20 (111) Participation in dogfighting, as defined in ORS 167.370.
- 21 (112) Unauthorized use of a livestock animal, as defined in ORS 167.385.
- 22 (113) Interference with livestock production, as defined in ORS 167.388.
- 23 (114) A violation of ORS 167.390.
- 24 (115) Participation in cockfighting, as defined in ORS 167.431.
- 25 (116) A violation of ORS 471.410.
- 26 (117) Failure to report missing precursor substances, as defined in ORS 475.955.
- 27 (118) Illegally selling drug equipment, as defined in ORS 475.960.
- 28 (119) Providing false information on a precursor substances report, as defined in ORS 475.965.
- 29 (120) Unlawful delivery of an imitation controlled substance, as defined in ORS 475.912.
- 30 (121) A violation of ORS 475.752, if it is a felony or a Class A misdemeanor.
- 31 (122) A violation of ORS 475.914, if it is a felony or a Class A misdemeanor.
- 32 (123) A violation of ORS 475.916.
- 33 (124) A violation of ORS 475.906, if it is a felony or a Class A misdemeanor.
- 34 (125) A violation of ORS 475.904.
- 35 (126) Misuse of an identification card, as defined in ORS 807.430.
- 36 (127) Unlawful production of identification cards, licenses, permits, forms or camera cards, as  
37 defined in ORS 807.500.
- 38 (128) Transfer of documents for the purposes of misrepresentation, as defined in ORS 807.510.
- 39 (129) Using an invalid license, as defined in ORS 807.580.
- 40 (130) Permitting misuse of a license, as defined in ORS 807.590.
- 41 (131) Using another's license, as defined in ORS 807.600.
- 42 (132) Criminal driving while suspended or revoked, as defined in ORS 811.182, when it is a fel-  
43 ony.
- 44 (133) Driving while under the influence of intoxicants, as defined in ORS 813.010, when it is a  
45 felony.

- 1 (134) Unlawful distribution of cigarettes, as defined in ORS 323.482.  
 2 (135) Unlawful distribution of tobacco products, as defined in ORS 323.632.  
 3 (136) A violation of ORS 180.440 (2) or 180.486 (2).  
 4 (137) A violation described in ORS 475.806 to 475.894, if it is a felony.  
 5 (138) Subjecting another person to involuntary servitude in the first degree, as defined in ORS  
 6 163.264.  
 7 (139) Subjecting another person to involuntary servitude in the second degree, as defined in ORS  
 8 163.263.  
 9 (140) Trafficking in persons, as defined in ORS 163.266.  
 10 (141) Luring a minor, as defined in ORS 167.057.  
 11 (142) Online sexual corruption of a child in the second degree, as defined in ORS 163.432.  
 12 (143) Online sexual corruption of a child in the first degree, as defined in ORS 163.433.  
 13 (144) An attempt, conspiracy [*or*], solicitation **or aggravated solicitation** to commit a crime in  
 14 subsections (1) to (143) of this section if the attempt, conspiracy, [*or*] solicitation **or aggravated**  
 15 **solicitation** is a felony or a Class A misdemeanor.  
 16 **SECTION 9.** ORS 131A.005 is amended to read:  
 17 131A.005. As used in this chapter:  
 18 (1) “All persons known to have an interest” means:  
 19 (a) Any person who filed a notice of interest for seized property with any public office, in the  
 20 manner required or permitted by law, before the property was seized for forfeiture;  
 21 (b) Any person from whose custody property is seized for forfeiture; and  
 22 (c) Any person who has an interest in property seized for forfeiture, including all owners and  
 23 occupants of the property, whose identity and address is known or is ascertainable upon diligent  
 24 inquiry and whose rights and interest in the property may be affected by the action.  
 25 (2) “Attorney fees” has the meaning given that term in ORCP 68 A.  
 26 (3) “Financial institution” means any person lawfully conducting business as:  
 27 (a) A financial institution or trust company, as those terms are defined in ORS 706.008;  
 28 (b) A consumer finance company subject to the provisions of ORS chapter 725;  
 29 (c) A mortgage banker or a mortgage broker as those terms are defined in ORS 86A.100, a  
 30 mortgage servicing company or other mortgage company;  
 31 (d) An officer, agency, department or instrumentality of the federal government, including but  
 32 not limited to:  
 33 (A) The Secretary of Housing and Urban Development;  
 34 (B) The Federal Housing Administration;  
 35 (C) The United States Department of Veterans Affairs;  
 36 (D) Rural Development and the Farm Service Agency of the United States Department of Agri-  
 37 culture;  
 38 (E) The Federal National Mortgage Association;  
 39 (F) The Government National Mortgage Administration;  
 40 (G) The Federal Home Loan Mortgage Corporation;  
 41 (H) The Federal Agricultural Mortgage Corporation; and  
 42 (I) The Small Business Administration;  
 43 (e) An agency, department or instrumentality of the state, including but not limited to:  
 44 (A) The Housing and Community Services Department;  
 45 (B) The Department of Veterans’ Affairs; and



- 1 (C) The Public Employees Retirement System;
- 2 (f) An agency, department or instrumentality of any local government, as defined by ORS  
3 174.116, or special government body, as defined by ORS 174.117, including but not limited to such  
4 agencies as the Portland Development Commission;
- 5 (g) An insurer as defined in ORS 731.106;
- 6 (h) A private mortgage insurance company;
- 7 (i) A pension plan or fund or other retirement plan; and
- 8 (j) A broker-dealer or investment adviser as defined in ORS 59.015.
- 9 (4) “Forfeiting agency” means a public body that is seeking forfeiture of property under this  
10 chapter.
- 11 (5) “Forfeiture counsel” means an attorney designated by a forfeiting agency to represent the  
12 forfeiting agency in forfeiture proceedings.
- 13 (6) “Forfeiture proceeds” means all property that has been forfeited in a proceeding under this  
14 chapter, including money, earnings from forfeited property and amounts realized from the sale of  
15 forfeited property.
- 16 (7) “Instrumentality” has the meaning given in ORS 131.550.
- 17 (8) “Law enforcement agency” means any agency that employs police officers or prosecutes  
18 criminal cases.
- 19 (9) “Motor vehicle with a hidden compartment” means a motor vehicle as defined in ORS 801.360  
20 that has had the vehicle’s original design modified by a person other than the manufacturer to cre-  
21 ate a container, space or enclosure for the purpose of concealing, hiding or otherwise preventing  
22 discovery of its contents and that is used or intended to be used to facilitate the commission of a  
23 criminal offense.
- 24 (10) “Police officer” has the meaning given that term in ORS 133.525.
- 25 (11) “Proceeds of prohibited conduct” means property derived directly or indirectly from pro-  
26 hibited conduct, or maintained by or realized through prohibited conduct. “Proceeds of prohibited  
27 conduct” includes any benefit, interest or property of any kind, without reduction for expenses of  
28 acquiring or maintaining the property.
- 29 (12) “Prohibited conduct” means:
- 30 (a) Violation of, solicitation to violate, **aggravated solicitation to violate**, attempt to violate  
31 or conspiracy to violate a provision of ORS 475.005 to 475.285 and 475.744 to 475.980 when the  
32 conduct constitutes the commission of a crime as described in ORS 161.515;
- 33 (b) Violation of, solicitation to violate, **aggravated solicitation to violate**, attempt to violate  
34 or conspiracy to violate a provision of ORS 163.263, 163.264, 163.266 or 167.017; and
- 35 (c) Other conduct that constitutes the commission of a crime as described in ORS 161.515, that  
36 provides for civil forfeiture of proceeds or instrumentalities of the conduct and that is made subject  
37 to the provisions of this chapter under ORS 131A.010 (4) or other law.
- 38 (13) “Property” means any interest in anything of value, including the whole of any lot or tract  
39 of land and tangible and intangible personal property, including currency, instruments or securities  
40 or any other kind of privilege, interest, claim or right whether due or to become due.
- 41 (14) “Public body” has the meaning given in ORS 174.109.
- 42 (15) “Seizing agency” means a law enforcement agency that has seized property for forfeiture.
- 43 (16) “Weapon” means any instrument of offensive or defensive combat or anything used, or de-  
44 signed to be used, in destroying, defeating or injuring a person.
- 45 **SECTION 10.** ORS 131A.020 is amended to read:

1 131A.020. The following property is subject to forfeiture under this chapter:

2 (1) All controlled substances that have been manufactured, distributed, dispensed, possessed or  
3 acquired in the course of prohibited conduct.

4 (2) All raw materials, products and equipment of any kind that are used in providing, manufac-  
5 turing, compounding, processing, delivering, importing or exporting any service or substance in the  
6 course of prohibited conduct.

7 (3) All property that is used as a container for property described in subsection (1) or (2) of this  
8 section.

9 (4) All conveyances, including aircraft, vehicles or vessels, that are used to transport or in any  
10 manner facilitate the transportation, sale, receipt, possession or concealment of property described  
11 in subsection (1) or (2) of this section, and all conveyances, including aircraft, vehicles or vessels,  
12 that are used in prohibited conduct or that are used to facilitate prohibited conduct in any manner.

13 (5) All books, records, computers and research, including formulae, microfilm, tapes and data  
14 that are used to facilitate prohibited conduct in any manner.

15 (6) All moneys, negotiable instruments, balances in deposit accounts or other accounts, securi-  
16 ties or other things of value furnished by any person in the course of prohibited conduct, all pro-  
17 ceeds of prohibited conduct, and all moneys, negotiable instruments, balances in deposit and other  
18 accounts and securities used to facilitate any prohibited conduct.

19 (7) All real property, including any right, title and interest in the whole of any lot or tract of  
20 land and any appurtenances or improvements, that is used in any manner, in whole or part, to  
21 commit or facilitate prohibited conduct.

22 (8) All weapons possessed, used or available for use in any manner to facilitate prohibited con-  
23 duct.

24 (9) Any property described in this section that was intended for use in committing or facilitating  
25 an attempt to commit a crime as described in ORS 161.405, a solicitation as described in ORS  
26 161.435, **an aggravated solicitation as described in section 1 of this 2012 Act** or a conspiracy  
27 as described in ORS 161.450.

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

29 137.712. (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person is convicted of  
30 manslaughter in the second degree as defined in ORS 163.125, assault in the second degree as de-  
31 fined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225, rape in the  
32 second degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395,  
33 unlawful sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first  
34 degree as defined in ORS 163.427 (1)(a)(A) or robbery in the second degree as defined in ORS  
35 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice  
36 Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700  
37 or 137.707 if the court, on the record at sentencing, makes the findings set forth in subsection (2)  
38 of this section and finds that a substantial and compelling reason under the rules of the Oregon  
39 Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under  
40 this subsection, the person is eligible for a reduction in the sentence as provided in ORS 421.121 and  
41 any other statute.

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

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

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

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

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

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

7 (A) That the victim was a dependent person as defined in ORS 163.205 who was at least 18 years  
8 of age;

9 (B) That the defendant is the mother or father of the victim;

10 (C) That the death of the victim was the result of an injury or illness that was not caused by  
11 the defendant;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (C) That the defendant has not been previously found to be within the jurisdiction of a juvenile

1 court for an act that would have been a felony sexual offense if the act had been committed by an  
 2 adult;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 (n) Intimidation in the first degree, as defined in ORS 166.165;

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

43 (p) An attempt [*or*], solicitation **or aggravated solicitation** to commit any Class A or B felony  
 44 listed in paragraphs (a) to (L) of this subsection.

45 (5) Notwithstanding ORS 137.545 (5)(b), if a person sentenced to probation under this section

1 violates a condition of probation by committing a new crime, the court shall revoke the probation  
 2 and impose the presumptive sentence of imprisonment under the rules of the Oregon Criminal Jus-  
 3 tice Commission.

4 (6) As used in this section:

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

6 (A) A juvenile court adjudication finding a person within the court's jurisdiction under ORS  
 7 419C.005, if the person was at least 15 years of age at the time the person committed the offense  
 8 that brought the person within the jurisdiction of the juvenile court. "Conviction" does not include  
 9 a juvenile court adjudication described in this subparagraph if the person successfully asserted the  
 10 defense set forth in ORS 419C.522.

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

13 (b) "Previous conviction" means a conviction that was entered prior to imposing sentence on the  
 14 current crime provided that the prior conviction is based on a crime committed in a separate crim-  
 15 inal episode. "Previous conviction" does not include a conviction for a Class C felony[, *including an*  
 16 *attempt or solicitation to commit a Class B felony,*] or a misdemeanor, unless the conviction was en-  
 17 tered within the 10-year period immediately preceding the date on which the current crime was  
 18 committed.

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

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

21 (B) Causes a serious and temporary disfigurement;

22 (C) Causes a protracted disfigurement; or

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

24 **SECTION 12.** ORS 147.433 is amended to read:

25 147.433. (1) To accord crime victims due dignity and respect, a victim in a criminal proceeding  
 26 described in subsection (2) of this section has, upon request to the district attorney before a judg-  
 27 ment of conviction is entered, the following rights:

28 (a) The right to be notified by the district attorney of the victims' rights described in this sec-  
 29 tion and ORS 138.627 and 144.750;

30 (b) The right to reasonable, accurate and timely notice from the Attorney General when an ap-  
 31 peal is taken in the criminal proceeding;

32 (c) The right to reasonable, accurate and timely notice from the counsel for the state when a  
 33 conviction in the criminal proceeding is the subject of a petition for post-conviction relief filed under  
 34 ORS 138.510 to 138.680;

35 (d) The right to attend any public hearing related to the criminal proceeding that is conducted  
 36 by an appellate court; and

37 (e) The right to be reasonably protected from the offender, if the offender is present, at any re-  
 38 lated appellate or post-conviction relief proceeding.

39 (2) The provisions of this section apply only to criminal proceedings involving a defendant  
 40 charged with or convicted of:

41 (a) A person felony, as that term is defined in the rules of the Oregon Criminal Justice Com-  
 42 mission;

43 (b) A person Class A misdemeanor, as that term is defined in the rules of the Oregon Criminal  
 44 Justice Commission;

45 (c) Burglary in the first degree under ORS 164.225;

1 (d) A sex crime as defined in ORS 181.594; or

2 (e) An attempt, conspiracy [or], solicitation **or aggravated solicitation** to commit a crime de-  
 3 scribed in paragraph (a) or (b) of this subsection.

4 (3) As used in this section, “victim” has the meaning given that term in ORS 131.007.

5 **SECTION 13.** ORS 419A.260 is amended to read:

6 419A.260. (1) As used in this section and ORS 419A.262:

7 (a) “Contact” means any instance in which a person’s act or behavior, or alleged act or behav-  
 8 ior, which could result in a juvenile court’s assumption of jurisdiction under ORS 419B.100 (1)(a) to  
 9 (c) and (f) or 419C.005 comes to the attention of an agency specified in paragraph (d) of this sub-  
 10 section.

11 (b) “Expunction” means:

12 (A) The removal and destruction or sealing of a judgment or order related to a contact and all  
 13 records and references; and

14 (B) Where a record is kept by the Department of Human Services or the Oregon Youth Au-  
 15 thority, either the sealing of such record by the department or the Oregon Youth Authority or, in  
 16 a multiperson file, the affixing to the front of the file, by the department or the youth authority, a  
 17 stamp or statement identifying the name of the individual, the date of expunction and instruction  
 18 that no further reference shall be made to the material that is subject to the expunction order ex-  
 19 cept upon an order of a court of competent jurisdiction.

20 (c) “Person” includes a person under 18 years of age.

21 (d) “Record” includes a fingerprint or photograph file, report, exhibit or other material which  
 22 contains information relating to a person’s contact with any law enforcement agency or juvenile  
 23 court or juvenile department and is kept manually, through the use of electronic data processing  
 24 equipment, or by any other means by a law enforcement or public investigative agency, a juvenile  
 25 court or juvenile department or an agency of the State of Oregon. “Record” does not include:

26 (A) A transcript of a student’s Youth Corrections Education Program academic record;

27 (B) Material on file with a public agency which is necessary for obtaining federal financial  
 28 participation regarding financial assistance or services on behalf of a person who has had a contact;

29 (C) Records kept or disseminated by the Department of Transportation, State Marine Board and  
 30 State Fish and Wildlife Commission pursuant to juvenile or adult order or recommendation;

31 (D) Police and court records related to an order of waiver where the matter is still pending in  
 32 the adult court or on appeal therefrom, or to any disposition as an adult pursuant to such order;

33 (E) Records related to a support obligation;

34 (F) Medical records;

35 (G) Records of a proposed or adjudicated termination of parental rights and adoptions;

36 (H) Any law enforcement record of a person who currently does not qualify for expunction or  
 37 of current investigations or cases waived to the adult court;

38 (I) Records and case reports of the Oregon Supreme Court and the Oregon Court of Appeals;

39 (J) Any records in cases under ORS 419C.005 in which a juvenile court found a person to be  
 40 within the jurisdiction of the court based upon the person’s commission of an act which if done by  
 41 an adult would constitute one of the following offenses:

42 (i) Aggravated murder under ORS 163.095;

43 (ii) Murder under ORS 163.115;

44 (iii) Attempt, solicitation, **aggravated solicitation** or conspiracy to commit murder or aggra-  
 45 vated murder;

- 1 (iv) Manslaughter in the first degree under ORS 163.118;
- 2 (v) Manslaughter in the second degree under ORS 163.125;
- 3 (vi) Criminally negligent homicide under ORS 163.145;
- 4 (vii) Assault in the first degree under ORS 163.185;
- 5 (viii) Criminal mistreatment in the first degree under ORS 163.205;
- 6 (ix) Kidnapping in the first degree under ORS 163.235;
- 7 (x) Rape in the third degree under ORS 163.355;
- 8 (xi) Rape in the second degree under ORS 163.365;
- 9 (xii) Rape in the first degree under ORS 163.375;
- 10 (xiii) Sodomy in the third degree under ORS 163.385;
- 11 (xiv) Sodomy in the second degree under ORS 163.395;
- 12 (xv) Sodomy in the first degree under ORS 163.405;
- 13 (xvi) Unlawful sexual penetration in the second degree under ORS 163.408;
- 14 (xvii) Unlawful sexual penetration in the first degree under ORS 163.411;
- 15 (xviii) Sexual abuse in the third degree under ORS 163.415;
- 16 (xix) Sexual abuse in the second degree under ORS 163.425;
- 17 (xx) Sexual abuse in the first degree under ORS 163.427;
- 18 (xxi) Promoting prostitution under ORS 167.012;
- 19 (xxii) Compelling prostitution under ORS 167.017;
- 20 (xxiii) Aggravated driving while suspended or revoked under ORS 163.196;
- 21 (xxiv) Aggravated vehicular homicide under ORS 163.149; or
- 22 (xxv) An attempt to commit a crime listed in this subparagraph other than manslaughter in the
- 23 second degree and criminally negligent homicide;
- 24 (K) Blood samples, buccal samples and other physical evidence and identification information
- 25 obtained, stored or maintained by the Department of State Police under authority of ORS 137.076,
- 26 181.085 or 419C.473; or
- 27 (L) Records maintained in the Law Enforcement Data System under ORS 181.592.
- 28 (e) "Termination" means:
- 29 (A) For a person who is the subject of a record kept by a juvenile court or juvenile department,
- 30 the final disposition of a case by informal means, by a decision not to place the person on probation
- 31 or make the person a ward of the court after the person has been found to be within the court's
- 32 jurisdiction, or by a discontinuance of probation or of the court's wardship.
- 33 (B) For a person who is the subject of a record kept by a law enforcement or public investi-
- 34 gative agency, a juvenile court or juvenile department or an agency of the State of Oregon, the final
- 35 disposition of the person's most recent contact with a law enforcement agency.
- 36 (2) The juvenile court or juvenile department shall make reasonable effort to provide written
- 37 notice to a child who is within the court's jurisdiction under ORS 419B.100 (1)(a) to (c) and (f) or
- 38 to a youth who is within the court's jurisdiction under ORS 419C.005, and to the child's or youth's
- 39 parent, of the procedures for expunction of a record, the right to counsel under this chapter, the
- 40 legal effect of an expunction order and the procedures for seeking relief from the duty to report as
- 41 a sex offender provided under ORS 181.823, at the following times:
- 42 (a) At any dispositional hearing or at the time of entering into a formal accountability agree-
- 43 ment;
- 44 (b) At the time of termination;
- 45 (c) Upon notice to the subject of an expunction pending pursuant to application of a juvenile

1 department or motion on a juvenile court; and

2 (d) At the time of notice of execution of an expunction order.

3 **SECTION 14.** ORS 419B.340 is amended to read:

4 419B.340. (1) If the court awards custody to the Department of Human Services, the court shall  
5 include in the disposition order a determination whether the department has made reasonable efforts  
6 or, if the Indian Child Welfare Act applies, active efforts to prevent or eliminate the need for re-  
7 moval of the ward from the home. If the ward has been removed prior to the entry of the order, the  
8 order shall also include a determination whether the department has made reasonable or active ef-  
9 forts to make it possible for the ward to safely return home. In making the determination under this  
10 subsection, the court shall consider the ward's health and safety the paramount concerns.

11 (2) In support of its determination whether reasonable or active efforts have been made by the  
12 department, the court shall enter a brief description of what preventive and reunification efforts  
13 were made and why further efforts could or could not have prevented or shortened the separation  
14 of the family.

15 (3) When the first contact with the family has occurred during an emergency in which the ward  
16 could not remain without jeopardy at home even with reasonable services being provided, the de-  
17 partment shall be considered to have made reasonable or active efforts to prevent or eliminate the  
18 need for removal.

19 (4) When the court finds that preventive or reunification efforts have not been reasonable or  
20 active, but further preventive or reunification efforts could not permit the ward to remain without  
21 jeopardy at home, the court may authorize or continue the removal of the ward.

22 (5) If a court determines that one of the following circumstances exist, the juvenile court may  
23 make a finding that the department is not required to make reasonable efforts to make it possible  
24 for the ward to safely return home:

25 (a) Aggravated circumstances including, but not limited to, the following:

26 (A) The parent by abuse or neglect has caused the death of any child;

27 (B) The parent has attempted, solicited or conspired, as described in ORS 161.405, 161.435 or  
28 161.450 or **section 1 of this 2012 Act** or under comparable laws of any jurisdiction, to cause the  
29 death of any child;

30 (C) The parent by abuse or neglect has caused serious physical injury to any child;

31 (D) The parent has subjected any child to rape, sodomy or sexual abuse;

32 (E) The parent has subjected any child to intentional starvation or torture;

33 (F) The parent has abandoned the ward as described in ORS 419B.100 (1)(e); or

34 (G) The parent has unlawfully caused the death of the other parent of the ward;

35 (b) The parent has been convicted in any jurisdiction of one of the following crimes:

36 (A) Murder of another child of the parent, which murder would have been an offense under 18  
37 U.S.C. 1111(a);

38 (B) Manslaughter in any degree of another child of the parent, which manslaughter would have  
39 been an offense under 18 U.S.C. 1112(a);

40 (C) Aiding, abetting, attempting, conspiring or soliciting to commit an offense described in sub-  
41 paragraph (A) or (B) of this paragraph; or

42 (D) Felony assault that results in serious physical injury to the ward or another child of the  
43 parent; or

44 (c) The parent's rights to another child have been terminated involuntarily.

45 (6) If, pursuant to a determination under subsection (5) of this section, the juvenile court makes



1 a finding that the department is not required to make reasonable efforts to prevent or eliminate the  
 2 need for removal of the ward from the home or to make it possible for the ward to safely return  
 3 home, and the department determines that it will not make such efforts, the court shall conduct a  
 4 permanency hearing as provided in ORS 419B.470 no later than 30 days after the judicial finding  
 5 under subsection (5) of this section.

6 (7) When an Indian child is involved, the department must satisfy the court that active efforts  
 7 have been made to provide remedial services and rehabilitative programs designed to prevent the  
 8 breakup of the Indian family and that these efforts have proven unsuccessful. Foster care placement  
 9 may not be ordered in a proceeding in the absence of a determination, supported by clear and con-  
 10 vincing evidence, including the testimony of expert witnesses, that the continued custody of the In-  
 11 dian child by the parent or Indian custodian is likely to result in serious emotional or physical  
 12 injury to the Indian child.

13 **SECTION 15.** ORS 419B.502 is amended to read:

14 419B.502. The rights of the parent or parents may be terminated as provided in ORS 419B.500  
 15 if the court finds that the parent or parents are unfit by reason of a single or recurrent incident  
 16 of extreme conduct toward any child. In such case, no efforts need to be made by available social  
 17 agencies to help the parent adjust the conduct in order to make it possible for the child or ward to  
 18 safely return home within a reasonable amount of time. In determining extreme conduct, the court  
 19 shall consider the following:

20 (1) Rape, sodomy or sex abuse of any child by the parent.

21 (2) Intentional starvation or torture of any child by the parent.

22 (3) Abuse or neglect by the parent of any child resulting in death or serious physical injury.

23 (4) Conduct by the parent to aid or abet another person who, by abuse or neglect, caused the  
 24 death of any child.

25 (5) Conduct by the parent to attempt, solicit or conspire, as described in ORS 161.405, 161.435  
 26 or 161.450 or **section 1 of this 2012 Act** or under comparable laws of any jurisdiction, to cause the  
 27 death of any child.

28 (6) Previous involuntary terminations of the parent's rights to another child if the conditions  
 29 giving rise to the previous action have not been ameliorated.

30 (7) Conduct by the parent that knowingly exposes any child of the parent to the storage or  
 31 production of methamphetamines from precursors. In determining whether extreme conduct exists  
 32 under this subsection, the court shall consider the extent of the child or ward's exposure and the  
 33 potential harm to the physical health of the child or ward.

34 **SECTION 16.** ORS 421.121 is amended to read:

35 421.121. (1) Except as provided in ORS 137.635, each inmate sentenced to the custody of the  
 36 Department of Corrections for felonies committed on or after November 1, 1989, is eligible for a  
 37 reduction in the term of incarceration for:

38 (a) Appropriate institutional behavior, as defined by rule of the Department of Corrections; and

39 (b)(A) Participation in the adult basic skills development program described in ORS 421.084; or

40 (B) Obtaining a high school diploma, a General Educational Development (GED) certificate, a  
 41 certificate or degree from a post-secondary education institution as defined in ORS 337.511 or a  
 42 journey level certification from a registered apprenticeship program as defined in ORS 660.010. The  
 43 reduction described in this subparagraph may not exceed a period of 60 days.

44 (2)(a) The maximum amount of time credits earned for appropriate institutional behavior, for  
 45 participation in the adult basic skills development program described in ORS 421.084 or for obtain-

1 ing a diploma, certificate or degree described in subsection (1)(b)(B) of this section may not exceed  
2 30 percent of the total term of incarceration in a Department of Corrections institution.

3 (b) Notwithstanding paragraph (a) of this subsection, the maximum amount of time credits  
4 earned under this section may not exceed 20 percent of the total term of incarceration in a De-  
5 partment of Corrections institution that is imposed in a criminal action described in subsection (3)  
6 of this section.

7 (3) Subsection (2)(b) of this section applies to the total term of incarceration that is imposed in  
8 a criminal action in which:

9 (a) The parties stipulate that the inmate is subject to subsection (2)(b) of this section;

10 (b) The inmate is convicted of an offense that was committed less than five years after the in-  
11 mate completed serving a sentence for:

12 (A) A person felony; or

13 (B) A crime described in paragraph (e) of this subsection;

14 (c) The inmate is convicted of a person felony;

15 (d) The inmate is convicted of an offense involving the use or threatened use of a firearm; or

16 (e) The inmate is convicted of any of the following crimes:

17 (A) Subjecting another person to involuntary servitude in the second degree under ORS 163.263;

18 (B) Subjecting another person to involuntary servitude in the first degree under ORS 163.264;

19 (C) Trafficking in persons under ORS 163.266;

20 (D) Coercion under ORS 163.275;

21 (E) Online sexual corruption of a child in the second degree under ORS 163.432;

22 (F) Online sexual corruption of a child in the first degree under ORS 163.433;

23 (G) Aggravated theft in the first degree under ORS 164.057, if:

24 (i) The victim of the theft was 65 years of age or older at the time of the commission of the  
25 offense; and

26 (ii) The value of the property stolen from the victim described in sub-subparagraph (i) of this  
27 subparagraph, in a single or aggregate transaction, is \$10,000 or more;

28 (H) Treason under ORS 166.005;

29 (I) Abuse of a corpse in the second degree under ORS 166.085;

30 (J) Racketeering activities under ORS 166.720;

31 (K) Luring a minor under ORS 167.057;

32 (L) Assaulting a law enforcement animal under ORS 167.339;

33 (M) A sex crime as defined in ORS 181.594;

34 (N) Causing another person to ingest a controlled substance under ORS 475.908;

35 (O) Applying a controlled substance to the body of another person under ORS 475.910;

36 (P) Driving while under the influence of intoxicants under ORS 813.010 (5); or

37 (Q) An attempt, conspiracy [*or*], solicitation **or aggravated solicitation** to commit an offense  
38 described in this paragraph or in paragraph (c) or (d) of this subsection.

39 (4) The time credits may not be used to shorten the term of actual prison confinement to less  
40 than six months.

41 (5) The department shall adopt rules pursuant to the rulemaking provisions of ORS chapter 183  
42 to establish a process for granting, retracting and restoring the time credits earned by the offender  
43 as allowed in subsections (1) to (4) of this section.

44 (6) As used in this section:

45 (a) "Completed serving a sentence" includes the completion of any term of probation, parole or

1 post-prison supervision.

2 (b) "Person felony" has the meaning given that term in the rules of the Oregon Criminal Justice  
3 Commission.

4 **SECTION 17.** ORS 443.004 is amended to read:

5 443.004. (1) The Department of Human Services or the Oregon Health Authority shall complete  
6 a criminal records check under ORS 181.534 on:

7 (a) An employee of a residential facility or an adult foster home;

8 (b) Any individual who is paid directly or indirectly with public funds who has or will have  
9 contact with a recipient of support services or a resident of an adult foster home or a residential  
10 facility; and

11 (c) A home care worker registering with the Home Care Commission or renewing a registration  
12 with the Home Care Commission.

13 (2)(a) A home health agency shall conduct a criminal background check before hiring or con-  
14 tracting with an individual and before allowing an individual to volunteer to provide services on  
15 behalf of the home health agency, if the individual will have direct contact with a patient of the  
16 home health agency.

17 (b) An in-home care agency shall conduct a criminal background check before hiring or con-  
18 tracting with an individual and before allowing an individual to volunteer to provide services on  
19 behalf of the in-home care agency, if the individual will have direct contact with a client of the in-  
20 home care agency.

21 (c) The authority shall prescribe by rule the process for conducting a criminal background  
22 check.

23 (3) Public funds may not be used to support, in whole or in part, the employment in any capacity  
24 having contact with a recipient of support services or a resident of a residential facility or an adult  
25 foster home, of an individual, other than a mental health or substance abuse treatment provider,  
26 who has been convicted:

27 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,  
28 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,  
29 163.467, 163.535, 163.537, 163.689, 163.700, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d), 164.215,  
30 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.022, 165.032, 165.800, 165.803, 167.012, 167.017  
31 or 167.057;

32 (b) Of a crime listed in ORS 181.594;

33 (c) In the last 10 years, of a crime involving the delivery or manufacture of a controlled sub-  
34 stance;

35 (d) Of an attempt, conspiracy [or], solicitation **or aggravated solicitation** to commit a crime  
36 described in paragraphs (a) to (c) of this subsection; or

37 (e) Of a crime in another jurisdiction that is substantially equivalent, as defined by rule, to a  
38 crime described in paragraphs (a) to (d) of this subsection.

39 (4) If the criminal background check conducted by a home health agency or in-home care agency  
40 under subsection (2) of this section reveals that the individual who is subject to the criminal back-  
41 ground check has been convicted of any of the crimes described in subsection (3) of this section, the  
42 home health agency or in-home care agency may not employ the individual.

43 (5) Public funds may not be used to support, in whole or in part, the employment, in any ca-  
44 pacity having contact with a recipient of support services or a resident of a residential facility or  
45 an adult foster home, of a mental health or substance abuse treatment provider who has been con-

1 victed of committing, or convicted of an attempt, conspiracy [*or*], solicitation **or aggravated solici-**  
 2 **itation** to commit, a crime described in ORS 163.095, 163.115, 163.375, 163.405, 163.411 or 163.427.

3 (6) Upon the request of a mental health or substance abuse treatment provider, the department  
 4 or authority shall maintain a record of the results of any fitness determination made under ORS  
 5 181.534 (11) and (12). The department or authority may disclose the record only to a person the  
 6 provider specifically authorizes, by a written release, to receive the information.

7 (7) If the department or authority has a record of substantiated abuse committed by an employee  
 8 or potential employee of a home health agency, in-home care agency, adult foster home or residen-  
 9 tial facility, regardless of whether criminal charges were filed, the department or authority shall  
 10 notify, in writing, the employer and the employee or potential employee.

11 (8) As used in this section:

12 (a) "Adult foster home" has the meaning given that term in ORS 443.705.

13 (b) "Home care worker" has the meaning given that term in ORS 410.600.

14 (c) "Home health agency" has the meaning given that term in ORS 443.005.

15 (d) "In-home care agency" has the meaning given that term in ORS 443.305.

16 (e) "Mental health or substance abuse treatment provider" means:

17 (A) A peer support specialist;

18 (B) An employee of a residential treatment facility or a residential treatment home that is li-  
 19 censed under ORS 443.415 to provide treatment for individuals with alcohol or drug dependence;

20 (C) An individual who provides treatment or services for persons with substance use disorders;

21 or

22 (D) An individual who provides mental health treatment or services.

23 (f) "Peer support specialist" means a person who:

24 (A) Is providing peer support services as defined by the authority by rule;

25 (B) Is under the supervision of a qualified clinical supervisor;

26 (C) Has completed training required by the authority; and

27 (D) Is currently receiving or has formerly received mental health services, or is in recovery from  
 28 a substance use disorder and meets the abstinence requirements for staff providing services in al-  
 29cohol or other drug treatment programs.

30 (g) "Residential facility" has the meaning given that term in ORS 443.400.

31 **SECTION 18.** ORS 135.737 is amended to read:

32 135.737. In an accusatory instrument for perjury, attempted perjury, solicitation of perjury, **ag-**  
 33 **gravated solicitation of perjury** or conspiracy to commit perjury it is sufficient to set forth the  
 34 substance of the controversy or matter in respect to which the crime was committed, in what court  
 35 or before whom the oath alleged to be false was taken and that the court or person before whom  
 36 it was taken had authority to administer it, with proper allegations of the falsity of the matter on  
 37 which the perjury is assigned; but the accusatory instrument need set forth neither the pleadings,  
 38 record or proceedings with which the oath is connected nor the commission or authority of the court  
 39 or person before whom the perjury was committed.

40 **SECTION 19.** ORS 131.125 is amended to read:

41 131.125. (1) A prosecution for aggravated murder, murder, attempted murder or aggravated  
 42 murder, conspiracy [*or*], solicitation **or aggravated solicitation** to commit aggravated murder or  
 43 murder or any degree of manslaughter may be commenced at any time after the commission of the  
 44 attempt, conspiracy [*or*], solicitation **or aggravated solicitation** to commit aggravated murder or  
 45 murder, or the death of the person killed.

1 (2) A prosecution for any of the following felonies may be commenced within six years after the  
2 commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime  
3 before the victim attains 30 years of age or within 12 years after the offense is reported to a law  
4 enforcement agency or the Department of Human Services, whichever occurs first:

- 5 (a) Strangulation under ORS 163.187 (4).
- 6 (b) Criminal mistreatment in the first degree under ORS 163.205.
- 7 (c) Rape in the third degree under ORS 163.355.
- 8 (d) Rape in the second degree under ORS 163.365.
- 9 (e) Rape in the first degree under ORS 163.375.
- 10 (f) Sodomy in the third degree under ORS 163.385.
- 11 (g) Sodomy in the second degree under ORS 163.395.
- 12 (h) Sodomy in the first degree under ORS 163.405.
- 13 (i) Unlawful sexual penetration in the second degree under ORS 163.408.
- 14 (j) Unlawful sexual penetration in the first degree under ORS 163.411.
- 15 (k) Sexual abuse in the second degree under ORS 163.425.
- 16 (L) Sexual abuse in the first degree under ORS 163.427.
- 17 (m) Using a child in a display of sexual conduct under ORS 163.670.
- 18 (n) Encouraging child sexual abuse in the first degree under ORS 163.684.
- 19 (o) Incest under ORS 163.525.
- 20 (p) Promoting prostitution under ORS 167.012.
- 21 (q) Compelling prostitution under ORS 167.017.
- 22 (r) Luring a minor under ORS 167.057.

23 (3) A prosecution for any of the following misdemeanors may be commenced within four years  
24 after the commission of the crime or, if the victim at the time of the crime was under 18 years of  
25 age, anytime before the victim attains 22 years of age or within four years after the offense is re-  
26 ported to a law enforcement agency or the Department of Human Services, whichever occurs first:

- 27 (a) Strangulation under ORS 163.187 (3).
- 28 (b) Sexual abuse in the third degree under ORS 163.415.
- 29 (c) Exhibiting an obscene performance to a minor under ORS 167.075.
- 30 (d) Displaying obscene materials to minors under ORS 167.080.

31 (4) In the case of crimes described in subsection (2)(m) of this section, the victim is the child  
32 engaged in sexual conduct. In the case of the crime described in subsection (2)(o) of this section,  
33 the victim is the party to the incest other than the party being prosecuted. In the case of crimes  
34 described in subsection (2)(p) and (q) of this section, the victim is the child whose acts of  
35 prostitution are promoted or compelled.

36 (5) A prosecution for arson in any degree may be commenced within six years after the com-  
37 mission of the crime.

38 (6) Except as provided in subsection (7) of this section or as otherwise expressly provided by  
39 law, prosecutions for other offenses must be commenced within the following periods of limitations  
40 after their commission:

- 41 (a) For any other felony, three years.
- 42 (b) For any misdemeanor, two years.
- 43 (c) For a violation, six months.

44 (7) If the period prescribed in subsection (6) of this section has expired, a prosecution never-  
45 theless may be commenced as follows:

1 (a) If the offense has as a material element either fraud or the breach of a fiduciary obligation,  
 2 prosecution may be commenced within one year after discovery of the offense by an aggrieved party  
 3 or by a person who has a legal duty to represent an aggrieved party and who is not a party to the  
 4 offense, but in no case shall the period of limitation otherwise applicable be extended by more than  
 5 three years;

6 (b) If the offense is based upon misconduct in office by a public officer or employee, prosecution  
 7 may be commenced at any time while the defendant is in public office or employment or within two  
 8 years thereafter, but in no case shall the period of limitation otherwise applicable be extended by  
 9 more than three years; or

10 (c) If the offense is an invasion of personal privacy under ORS 163.700, prosecution may be  
 11 commenced within one year after discovery of the offense by the person aggrieved by the offense,  
 12 by a person who has a legal duty to represent the person aggrieved by the offense or by a law  
 13 enforcement agency, but in no case shall the period of limitation otherwise applicable be extended  
 14 by more than three years.

15 (8) Notwithstanding subsection (2) of this section, if the defendant is identified after the period  
 16 described in subsection (2) of this section on the basis of DNA (deoxyribonucleic acid) sample com-  
 17 parisons, a prosecution for:

18 (a) Rape in the first degree, sodomy in the first degree, unlawful sexual penetration in the first  
 19 degree or sexual abuse in the first degree may be commenced at any time after the commission of  
 20 the crime.

21 (b) Rape in the second degree, sodomy in the second degree or unlawful sexual penetration in  
 22 the second degree may be commenced within 25 years after the commission of the crime.

23 (9) Notwithstanding subsection (8) of this section, if a prosecution for a felony listed in sub-  
 24 section (8) of this section would otherwise be barred by subsection (2) of this section, the prose-  
 25 cution must be commenced within two years of the DNA-based identification of the defendant.

26 **SECTION 20.** ORS 167.164 is amended to read:

27 167.164. (1) On and after December 1, 1991, a person commits the crime of possession of a gray  
 28 machine if the person manufactures, sells, leases, transports, places, possesses or services a gray  
 29 machine or conducts or negotiates a transaction affecting or designed to affect the ownership, cus-  
 30 tody or use of a gray machine.

31 (2) Possession of a gray machine is a Class C felony.

32 (3) Violation of, solicitation to violate, **aggravated solicitation to violate**, attempt to violate  
 33 or conspiracy to violate subsection (1) of this section constitutes prohibited conduct for purposes  
 34 of ORS chapter 131A, and shall give rise to civil in rem forfeiture as provided in ORS chapter 131A.  
 35 A judgment providing for forfeiture may direct that the machine be destroyed.

36 (4) It is a defense to a charge of possession of a gray machine if the machine that caused the  
 37 charge to be brought was manufactured prior to 1958 and was not operated for purposes of unlawful  
 38 gambling.

39 **SECTION 21.** This 2012 Act takes effect on the 91st day after the date on which the 2012  
 40 regular session of the Seventy-sixth Legislative Assembly adjourns sine die.