



OREGON COMMISSION ON HISPANIC AFFAIRS

2012 ANNUAL REPORT

**CELEBRATING 30TH YEARS OF SERVICE TO THE
STATE OF OREGON
1983 - 2013**

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Oregon

John A. Kitzhaber, Governor

Oregon Commission on Hispanic Affairs

"Advocating Equality and Diversity"

1819 SW 5th Ave., Portland, OR 97201

O 503.302.9725

Email: oaco.mail@state.or.us

Ocha.chair@gmail.com

Website: www.oregon.gov/Hispanic

February 15, 2013

Dear Office of the Governor and Supporters of the Commission,

Created by legislative statute in 1983, the Oregon Commission on Hispanic Affairs ("OCHA") is pleased to share the 2012 Annual Report of the commission's activities and achievements, and a forecast for its work in 2013.

In recognition of its 30th anniversary of service to the State of Oregon, OCHA's work has been prompted by a commitment for *presence, participation, and perspective* of the growing Hispanic, Latino, and Indigenous throughout the state. As these diverse communities collectively move towards one half million population, the stories and narratives of their contributions to the state continue to be shared in distinct ways in civil and government sectors.

This year was marked by increased political engagement of OCHA commissioners and their partners and allies in the working of the state, its agencies, legislators, and in critical policy development. Further collaborations were evident with and among the Oregon Advocacy Commissions, enabled by the OAC staff and members of the Governor's Cabinet.

The year of 2012 also essentially offered a new impetus of work, advocacy, and preparation for critical issues of import to the OCHA communities in 2013 Legislative Session. We are pleased to share our journey of 2012 and to invite you to accompany us in 2013.

¡Adelante!

Sincerely,

Andrea Cano, Chair

OR Commission on Hispanic Affairs

Chair:

Andrea Cano

Vice Chair:

Gilbert P. Carrasco

Commissioners:

John Haroldson

Lupita Maurer

Alberto Moreno

Judith Parker

Carlos Perez

Santiago Ventura

Legislative Liaisons:

Sen. Chip Shields

Rep. Chris Harker

Staff:

Lucy Baker, Administrator

Nancy Kramer, Executive Asst.

OCHA COMMISSIONERS



ANDREA CANO
CHAIR
PORTLAND



GIL CARRASCO
VICE CHAIR
PORTLAND



LUPITA MAURER
EXEC COMMITTEE
ALOHA



JOHN HAROLDSON
EXEC COMMITTEE
CORVALLIS



JUDITH PARKER
PORTLAND



CARLOS PEREZ
BEAVERTON



SANTIAGO VENTURA
GERVAIS



ALBERTO MORENO
PORTLAND



MARCELA MENDOZA
EUGENE



SEN. CHIP SHIELDS



REP. CHRIS HARKER

OVERVIEW OF THE COMMISSION

MISSION AND DUTIES OF THE COMMISSION

The mission of the Oregon Commission on Hispanic Affairs (“the Commission”) is to work toward economic, social, political and legal equality for Oregon’s diverse Hispanic/Latino population.

The Commission and all the Commissioners serve as advocates for Hispanic/Latino youth, children, and adults, with the goal of success in school, the receipt of equal health and social services, and fair and equitable treatment through the judicial system.

The Commission is authorized by Oregon Revised Statute 185.310 - 185.330 to:

1. Monitor existing programs and legislation designed to meet the needs of Oregon’s Hispanic population.
2. Identify and research problem areas and issues affecting the Hispanic community and recommend actions to the Governor and the Legislative Assembly, including recommendations on legislative programs.
3. Maintain a liaison between the Hispanic community and government entities.
4. Encourage Hispanic representation on state boards and commissions.
5. Hold meetings to conduct its business.

In addition, the Commission:

- Researches and collates data on issues pertinent to the Hispanic community.
- Focuses on a statewide context – from the rural, urban, suburban, and coastal regions – to identify current programs and determine what gaps exist in social services.
- Refers people to professionals—putting seekers of specific services together with the individual or organization most capable of meeting their needs.
- Monitors existing programs that affect the Latino community within state government and the private sector.
- Develops and monitors legislation that affects the Hispanic/Latino community in Oregon.

- Testifies before the Oregon Legislature on bills and measures deemed appropriate by the Commission and constituency.
- Encourages Oregon residents to resolve their own local issues in a positive, productive manner, with appropriate community stakeholders.
- Seeks and identifies emerging Hispanic leadership throughout the state.
- Promotes positive aspects of the Hispanic community.
- Works with its sister advocacy commissions, the Commissions on Women, Black, and Asian Affairs to foster greater community as well as the implementation and establishment of economic, social, legal and political equality for minorities in Oregon.

COMMISSION STRUCTURE

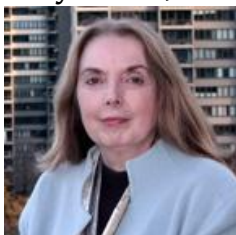
The Commission is comprised of eleven members, nine of whom are appointed by the governor and confirmed by the Oregon Senate for three-year terms. The President of the Oregon Senate and the Speaker of the Oregon House of Representatives each appoints one Legislative member for two-year terms. All Commission members abide by the Commission’s by-laws and the Oregon Code of Ethics set forth in ORS 244.050.

The Commission’s Standing Committees include an Executive Committee, a Program and Development Committee, and Legislative Committee. Other committees are called by the Chair as needed.

STAFFING

OCHA commissioners serve as volunteer citizen governance. The day to day business of OCHA, along with three other Oregon Advocacy Commissions, is managed by a full time staff of two:

Lucy Baker, Administrator



Lucy Baker joined the OACO as its Administrator in 2010. She has served as the Executive Director of the Oregon Business Leadership Network, a Portland based non-profit and named partner in the Oregon Business Plan in 2007 focused on growing cultures of inclusion within business. Lucy also has served as the Interim Director of the Planning and Special Projects Unit and Sr. Policy Analyst for Multnomah County Aging and Disability Services. Her career and passion has focused on building networks and partnerships that grow equity for underrepresented populations.

Nancy Kramer, Executive Assistant



Nancy Kramer has a history of working in the nonprofit field, in Portland and also in her hometown of New York City. She loves supporting all four Oregon Advocacy Commissions in the important work they do for their communities. Prior to working for the Commissions she has been a Stage Manager, Production Manager, Operations Manager and Event Coordinator.

PUBLIC MEETINGS OF THE OREGON COMMISSION ON HISPANIC AFFAIRS

The Commission holds regularly scheduled public meetings with stated agendas, with time included for public comment so that the general public take can part in the implementation and establishment of economic, social, legal and political equality for minorities in Oregon. The Commission also invites key organizational decision-makers, elected and public officials, and stake-holders to give brief presentations and updates that are of interest to the Hispanic/Latino community. In addition, Hispanic/Latinos are encouraged to speak on important and timely issues and offer queries the Commission can then bring before the Governor and state legislators. Meeting sites vary depending on agendas and community outreach efforts, or special invitations by local organizations.

2012 MEETINGS

January 4, 2012	Centro Latinoamericano, Eugene, Oregon
February 20, 2012	Oregon Civic Justice Center, Willamette University Capitol Building Conference Room, State Capitol, Salem
March 21, 2012	Oregon Advocacy Commissions Office, Portland
May 21, 2012	Capitol Building Conference Room, State Capitol, Salem
September 13, 2012	Capitol Building Conference Room, State Capitol, Salem



Anthony Veliz, Director of IZO marketing and the Annual Hispanic Heritage Month Breakfast, Salem; Commissioner Maurer, Commissioner Ventura, Commissioner Carrasco

PUBLIC POLICY INTERNSHIPS

In 2011-13 the OCHA hosted 3 public policy interns: at the master's level, one at the PhD level and one a law student. Each intern was hosted jointly with state partners at OHA, BOLI, and DOJ that provided access to data, literature reviews and case law.

The interns developed reports and data helpful to public policy work in OCHA's strategic priority areas including Health Access, Hate Crimes, and Education Gaps and also prepared presentations for OCHA and the other Advocacy Commissions.

The public policy internships provide an opportunity for emerging young leaders graduating with their master's degrees in health, education, political science, urban planning, law, public administration, and other fields to share their research with the Advocacy Commissioners, the OCHA and OCBA legislators who serve as mentors for the interns, community partners, state agency leadership, and the Governor's office.

OCHA's interns in 2011-13 were:

Health Access:



Rolando Cruz, MS candidate, Warner Pacific University, who researched the literature on health access for migrant workers in a joint internship between OCHA and the Oregon Office of Multicultural Health, now part of the Oregon Health Authority. His work was presented to OCHA in a meeting focused on health and environmental concerns and is the foundation for an internal committee within OHA addressing immigrant health. Rolando Cruz is a native of Mexico City and has lived in Portland, Oregon since 1996. Since 2008, Rolando has been District Executive for Hispanic Outreach and responsible for the Soccer and Scouting program at the Boy Scouts of America in Portland. He is now staff to Multnomah County Commissioner Deborah Kafoury.



Hate Crime Protections:

Wes Garcia, Law Student, Willamette University, who researched hate crime protections for hate crimes in Oregon including, civil and criminal remedies and free speech safeguards in Oregon and other states. His research was presented to the OCHA, the OCBA, Senator Shields and Rep. Lew Frederick who served as mentors on the internship and to DOJ's Civil Rights Division as support for legislation aimed at strengthening hate crime protections. Mr. Garcia's final report, *Oregon Hate Crime Laws, Internship Findings and Final Report*, is in the Appendix of this Annual Report. His findings are also at the OCHA and OCBA websites.

Education Gaps:

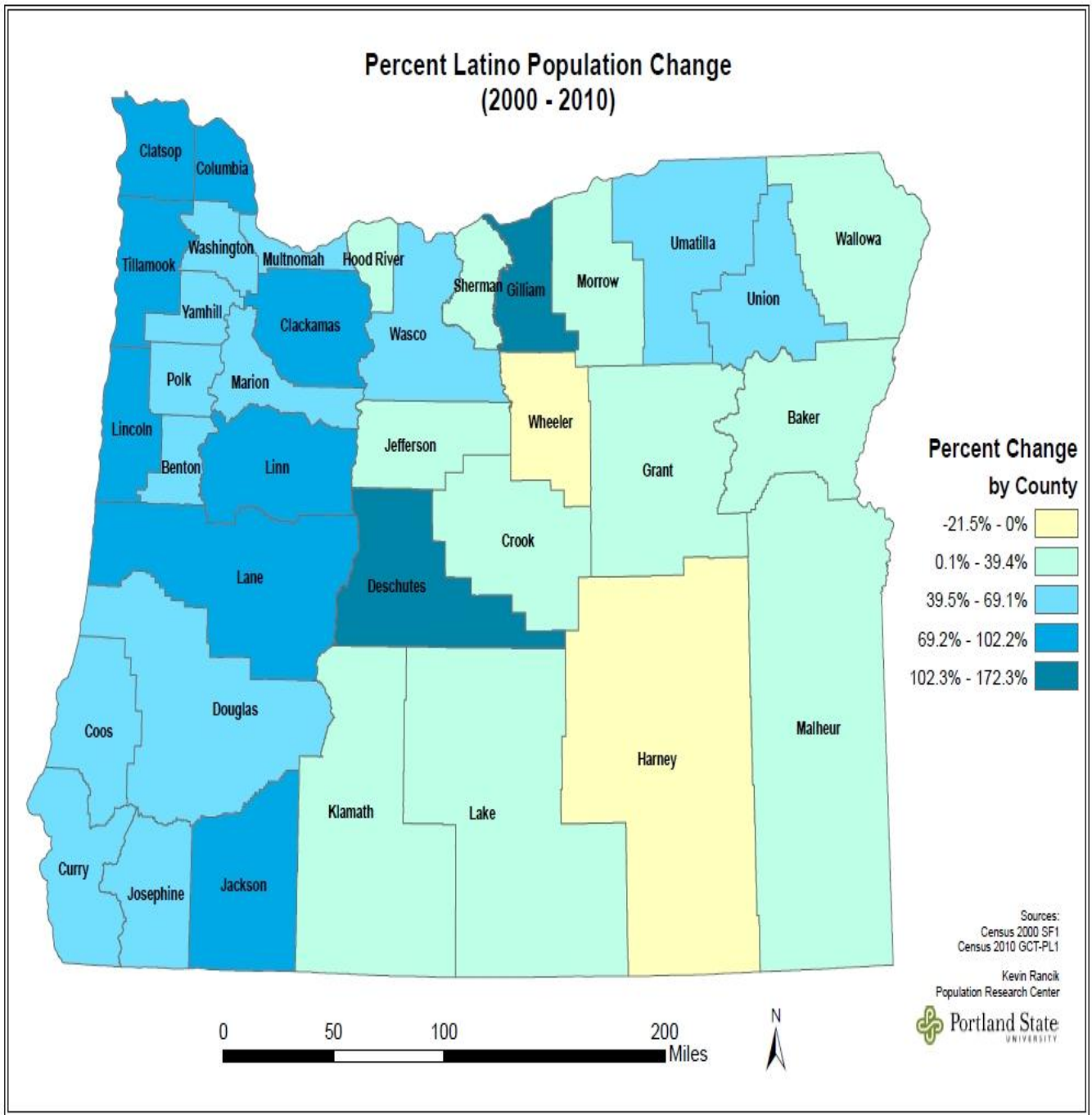
Johanna Blackford, PhD candidate, PSU Graduate School of Education, who is currently researching and developing policy briefs for the OEIB Equity Committee and the OCHA on significant areas of education gaps for students of color including disproportionate discipline, English Language Learners, and other key areas of policy development for education reform in Oregon. See her growing number of policy briefs at the OCHA website.

POPULATION AND DEMOGRAPHICS

The 2010 U.S. Census revealed clear statistics and numbers of our population growth and specifically where our communities reside.

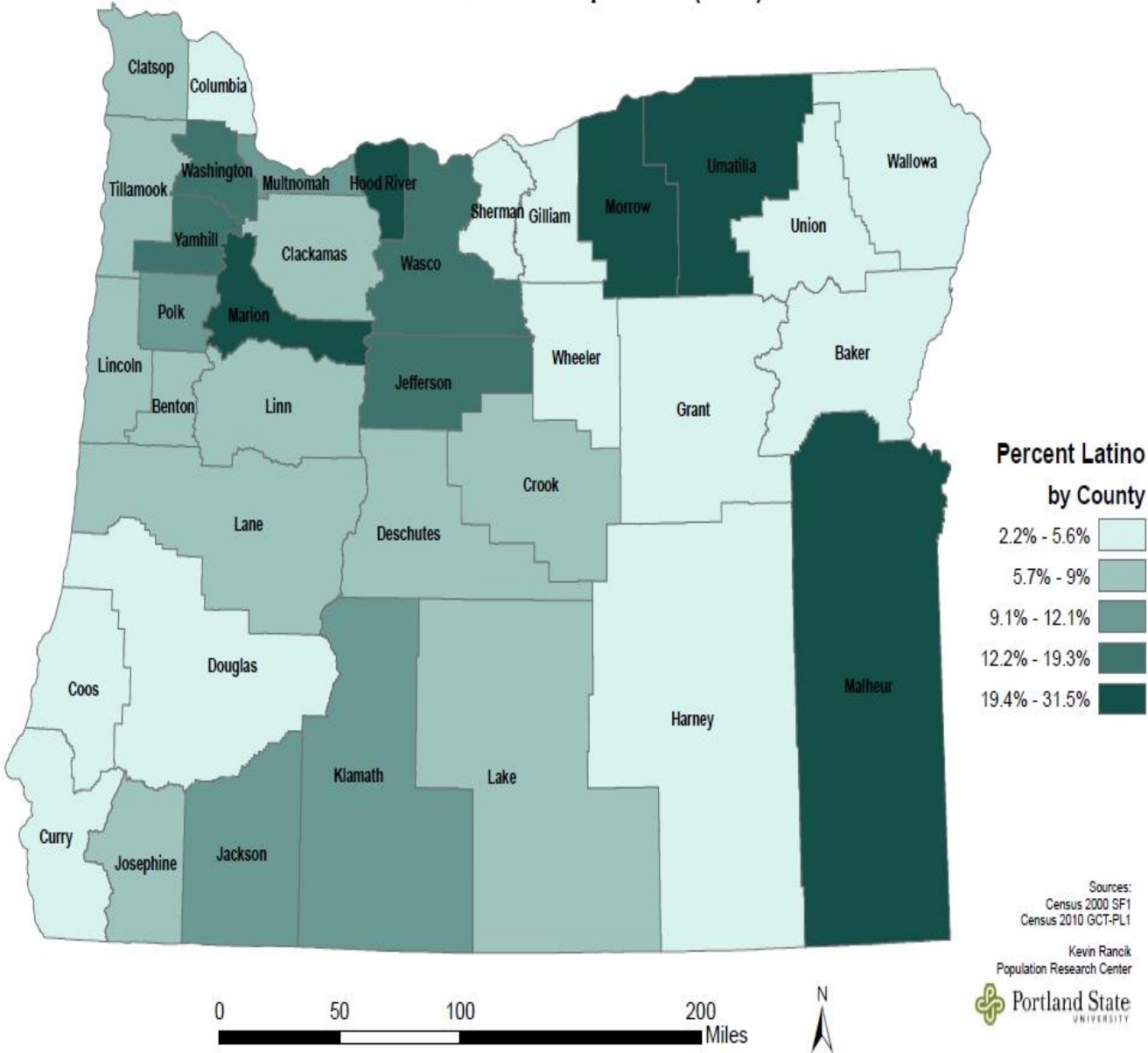
The two maps produced by the Portland State University Population Research Center offer 1) the increase of population during the last decade per county, and 2) the current Hispanic population density per county.

A Decade of Growth



¹Portland State University Population Research
http://www.pdx.edu/sites/www.pdx.edu.prc/files/FULLSIZE_LATINO_CHANGE.jpg

Percent Latino Population (2010)



2

² Portland State University Population Studies
http://www.pdx.edu/sites/www.pdx.edu.prc/files/FULL_SIZE_LATINO_BY_CO.jpg

COMMISSIONERS' BIOS



Chair Andrea Cano, Portland

Governor John Kitzhaber's signing ceremony in the State Capitol for the Proclamation for Hispanic Heritage Month and recognition of OCHA's 30th Anniversary of service to the State of Oregon, with Annabelle Jaramillo, the first Executive Director of OCHA and current Benton County Commissioner.

Appointed in 2010, this was Chair Cano's first year in this leadership role. With her

finely honed networking and interpersonal skills, her focus was seeking and engaging Hispanic/Latino/ Indígena leadership and organizations throughout the state into an expanding network of contacts and relationships. She traveled to southern Oregon, Pendleton, In 2012, Chair Cano continued to ensured the administrative, organizational, and operational aspects of the commission flow smoothly and efficiently, engaged in extensive budget meetings to comply with the Governor's mandate to reduce funding to agencies, met with staff of the Governor's Office, legislators, agency directors, attended meetings of the Oregon Advocacy Commission, and informed English and Spanish language media on the diversity of issues of the community. Given that 2012 was an election year, much activity was devoted to voter registration drives throughout the state, and the querying candidates as well as incumbent elected officials on the federal, state, and local levels, on perspectives of immigration reform, Tuition Equity, among other issues.

Vice Chair Professor Gilbert P. Carrasco

Professor Carrasco is an expert in civil rights law, immigration law and constitutional law. He is the author of three national casebooks on these subjects and numerous law review articles. He has taught as a visiting professor at Lewis & Clark, Oregon, San Diego, Seton Hall and Willamette. He also studied for extended periods at Oxford, Stanford, Hastings and George Washington. Professor Carrasco teaches Civil Rights, Constitutional Law and Employment Discrimination. In 2008, he joined the board of directors of the Oregon chapter of the American Constitution Society. In July 2009, he was appointed to the Oregon Commission on Hispanic Affairs by Gov. Ted Kulongoski, is a member of the OCHA Executive Committee. In 2012, Professor Carrasco continued to monitored the Legislative Session and Agenda, joined

Chair Cano on the Governor's Working Group on the Oregon Drivers License, served as the constitutional consultant on legal facets and helped draft versions of proposed legislation on the drivers license issue, met on a recurring basis with Attorney General of Oregon to discuss issues important to OCHA.

Lupita Maurer, Aloha

Lupita Maurer was born in Mexico City. She became a U.S. citizen in 1995. She graduated Magna Cum Laude with a Computer Science degree from Cal State East Bay. Commission Maurer has worked in the high tech field for 17 years. Commissioner Maurer served as the Chair of a political party in Washington County from 2004 to 2008, and now represents Oregon at the national level. Labor Commissioner Brad Avakian appointed her member of the Oregon Council for Civil Rights from 2009-2011. She was recently appointed to the Oregon Commission on Hispanic Affairs by Governor Kitzhaber. Commission Maurer enjoys talking to middle school girls to encourage them to study math and science. She has two children, one in college and one in middle school, and lives in Aloha, OR. This year Commission Maurer, attended OCHA meetings and Strategic planning meeting, joined phone conference calls with the White House Office of Public Engagement, met with Andrea Cañas and Joe Gallegos, Latino candidates for HD 30, with Congressman Blumenauer twice regarding DREAM act, Immigration Reform, and Latino voter outreach, attended Latino Cultural Festival - Hillsboro April 29th and the inauguration of Leadership Center in Woodburn (PCUN's), presented at Hot Topics Forum (25 people) about immigration reform and the Latino Electorate, registered people to vote September and met with Representative Joe Gallegos and Senator Steiner-Hayward regarding Driver permits and tuition equity

John Haroldson, Corvallis

The son of a Scandinavian father and a Mexican mother, Vice Chair John Haroldson was raised both in the Pacific Northwest and in Monterrey, Mexico, where he developed a rich bilingual and bicultural perspective. He holds the honor of serving as Oregon's first Mexican-American District Attorney in Benton County, Oregon. Vice Chair Haroldson has demonstrated a long-term commitment towards ensuring equal opportunity access for underrepresented individuals. He serves on the Advisory Board for the César Chávez Cultural Center at Oregon State University and as a Presenter for the Oregon State University CAMP and 4H Programs, where he works with monolingual Spanish speaking students. Vice Chair Haroldson resides in Corvallis with his wife Maria. He earned a Bachelor's Degree in Philosophy from Central Washington University and a Doctorate in Jurisprudence from the University of Oregon. He is a member of the Oregon and Washington State Bar Associations. In 2012, Commissioner Haroldson attended OCHA meetings, and met with AG Ellen Rosenblum, with Governor (education group), Governor (Latino issues in Oregon), with OCHA Anniversary celebration in Salem; presenter at Oregon Latino Agenda for Action Summit, at the University of Oregon, Willamette University; organized Oregon student delegation to attend the United States Hispanic Leadership Institute's National

Leadership Conference, organizer and presenter for the United States Hispanic Leadership Institute regional leadership conference, presenter on judicial reform in Central America and Mexico, proposed comprehensive hate crime reform for Oregon,



Judith A. Parker, Portland

2012 marks Commissioner Parker's third year on the Commission. She continues to be a proud and active voice for Latinos throughout the state, abiding by OCHA's mandate by the Governor. This year Commissioner Parker focused on Latinos in the law, the drivers' license task force, immigration issues, and voter registration. She attended OCHA meetings in January;

February; March; May; the OWCA meeting in July; and the June joint advocacy commission meeting.

A primary focus of the Commission is education and encouraging all students to be excited and a part of the system and discourage drop-outs. Commissioner Parker worked closely with Oregon Supreme Court Justice David Brewer to create a revolutionary educational event at Woodburn High School. This fall, Chief Justice of the Oregon Supreme Court Paul De Muniz, Chief Judge of the Oregon Court of Appeals Rick Haselton, and Court of Appeals Judge Darleen Ortega held three appellate arguments at Woodburn High School. It was the first time that there has been a plurality of Latinos on an Oregon appellate bench. Prior to the oral arguments, Commissioner Parker and Justice Brewer went to five high school civics classes to discuss the cases which the students would hear. Justice Brewer and Commissioner Parker explained to the students how the appellate system works and engaged the students. They also personally offered to be mentors to any students who wished to pursue the legal profession.

In May 2012, Secretary of State Kate Brown visited OCHA and requested it play a key part in the New American Voter Project. The NAVP visits each naturalization ceremony at the Portland USCIS office -- which happens generally four times a week -- and registers the newly naturalized citizens to vote. There are regularly 30 - 50 new citizens at each ceremony. Commissioner Parker pledged to honor the Secretary's request and made a personal commitment to NAVP. On behalf of OCHA, Commissioner Parker has been attending at least two or three ceremonies a week since May 2012. Since she began, Commissioner Parker has personally registered over 1,200 new citizens. She continues her association with NAVP and has presented this voter registration project to other advocacy commissions and visitors from across the country.

An active member of the Oregon State Bar, Commissioner Parker is on the board of directors of the Oregon Hispanic Bar Association (OHBA). She invited fellow Commissioner Haroldson to present the De Muniz award to the 2012 award recipient, Court of Appeals Judge Darleen Ortega, at the OHBA annual awards dinner in February. Chair Cano also attended the award dinner. Commissioner Parker

also attended the Hispanic Chamber of Commerce Scholarship Lunch and awarded a scholarship to a promising Latina from Salem who intends to pursue a career in the law.

This year, Commissioner Parker was unanimously elected by the board of directors to serve as the OHBA liaison to the Hispanic National Bar Association (HNBA), the country's largest legal association of Latinos. She attended several HNBA board meetings this year to represent the interests of Oregon's Latino legal professionals. The HNBA held its first scholarship fundraising lunch



in Portland, which Commissioner Parker attended. Commissioner Parker also participated in the HNBA Legislative Day in Washington DC and represented Oregon to speak with its Congressional delegation. Commissioner Parker, along with roughly fifty HNBA members, advocated on behalf of comprehensive immigration reform, the DREAM Act, continuation of the Violence Against Women Act, and the designation of a museum for Hispanic Affairs on the National Mall. She also attended a policy briefing at the White House.

Oregon proudly rejects the extreme policies adopted by Arizona in its SB 1070. When the Supreme Court handed down its decision of *Arizona v. United States*, 567 US ___ (2012), Commissioner Parker analyzed its holding at the request of the Governor's office.

Public safety continues to be an important focus for OHCA. To that end, OCHA provides substantial advice to the Governor on the subject of drivers' licenses. Commissioners Carrasco and Parker worked with the Governor's office on Drivers' License Task Force.

Commissioner Parker also worked closely with the Multnomah County Commission Chair Jeff Cogen's task force addressing the Multnomah County Sheriff's office's continued practice of honoring ICE detainees. In a closed door round table meeting, Commissioner Parker advocated on behalf of OCHA and the other advocacy commissions.

Diversity on the bench is an important priority for OCHA. Commissioner Parker worked closely with specialty bar organizations to nominate Multnomah County Circuit Judge Angel Lopez to the Oregon District Court. Judge Lopez is a past chair of OHCA. Commissioner Haroldson served on an independent selection panel at the request of Senator Wyden.

Finally, in close communication with the federal elected officials, Chair Cano and Commissioner Parker met with Senator Jeff Merkley's office to discuss issues relevant to Oregon's Latinos, including foreclosure relief and educational opportunities for Latinos across the country.³

³ http://www.oregonlive.com/argus/index.ssf/2012/11/washington_county_legislative_1.html



Carlos Perez, Beaverton

During the Oregon Latino Agenda for Action Statewide Summit plenary session on education, Carlos Perez, delineated the challenges and offered a slate of suggestions as the State of Oregon proceeds with the “Forty, Forty, Twenty Plan”

One of the newest Commissioners, Carlos Perez retired from the Hillsboro School

District in 2009 after 10 years as Deputy Superintendent and 31 years overall in the district. Prior to Hillsboro Commission Perez taught in Idaho for several years. Currently, Commissioner Perez is an education consultant focusing on the areas of educational equity and school climate. Commissioner Perez also has a history of leadership in social justice issues and Latino Leadership. He is a founding member and current president of the Oregon Association of Latino Administrators (OALA,) a founding member and former chair of the Human Rights Council of Washington County and former chair of the Latino Leadership Network of Washington County. He is also a dialogue facilitator with the Uniting to Understand Racism Foundation of Portland. In 2012, Commissioner Perez served as the adviser to design an OCHA internship to research best practices to address educational disparities throughout the state.

Santiago Ventura, Gervais

Commissioner Ventura represents the indigenous community in Marion County. He endured being wrongly imprisoned in a landmark legal case. Commissioner is a paralegal with the Oregon Law Center. He was appointed to the Board in the autumn of 2011. In his short tenure to date, he has participated in regional and state meetings, and offered presentation and information related to data collected by schools regarding students from indigenous backgrounds speaking languages other than Spanish.



OREGON LEGISLATIVE ASSEMBLY REPRESENTATIVES

Senator Chip Shields - D-Portland, District 22

Chip has served in the Oregon House and Senate since 2005 where he focuses on living-wage jobs, health care, schools and equality. In the 2009 session, as Co-Chair of the Public Safety Subcommittee of Ways & Means, he protected services for domestic violence survivors, funding for drug and alcohol treatment, and negotiated and passed a bill that invests \$1.5 million in pre-apprenticeship training for women and people of color.

Representative Chris Harker - D-Portland, District 34

Chris was appointed to the Oregon House of Representatives in June of 2008, filling the seat left by the now-Senator Suzanne Bonamici. He represents House District 34 and using his experience in health care and as a small business owner to find solutions to the tough challenges ahead.

COMMISSION HIGHLIGHTS

This year the Commission worked closely with the legislature to move the state forward on important issues to stakeholders.

The Commission worked hard to ensure that the priorities it had set forth in 2011 for the year were fulfilled. It worked hard to ensure its legislative priorities were articulated and presented to the Oregon Assembly. The Commission met with state representatives and senators and introduced bills central to its focus.

The Commission also continued to educate the Hispanic/Latino community about OCHA and help the community become more aware of local, state, and federal issues.

Commissioners maintained its monitoring of criminal, juvenile, and environmental justice issues and reviewed the federal government's implementation of immigration enforcement practices.

In 2012, the Commission met with state agency leaders to advocate for effective representation of the Hispanic/Latino community.

It also strengthened its relationship with the new Governor and his staff.

The Commission invites the public to view its website at www.oregon.gov/Hispanic/index.shtml.

OCHA PRIORITIES for 2013

A Culture of Presence, Participation, Perspective

- Leadership - Identify, Develop, Involve
- Civic Engagement - Fed, State, Local
- Voter Registration & Education – We can make a difference
- Public Policy on ALL Issues – Our perspectives on a range of issues
- Diversity of Narratives – Who we are
- Relationships & Community Building – With cohorts and allies
- Strategic Legislative Activity & Advocacy – Before, during, after sessions

Relationships & Collaborations

STATEWIDE

- Oregon Latino Agenda for Action
- Oregon Hispanic Bar Association
- Society of Hispanic Professional Engineers
- Oregon Association of Latino Administrators
- Latino Health Coalition Network
- Oregon Latina Nurses Association
- Organización de Campesinos Indígenas de Oregon (OCIMO)
- Oregon Child Development Coalition
- Oregon Human Development Corp.
- OSU Extension Program 4-H Youth
- Rural Development Initiative
- Rural Organizing Project
- Latino Union Leadership Network

REGIONAL & LOCAL

- Hispanic Metropolitan Chamber of Commerce, Portland
- Latino Alliance of Willamette Valley, Marion County
- Hispanic Entrepreneurs, Rogue Valley
- Latino Network, Portland
- Centro Latinoamericano, Eugene
- Centro Cultural, Cornelius
- Latino Community Association, Bend
- Adelante Mujeres, Forest Grove
- Una Voz Unida, Rogue Valley
- PCUN, Woodburn
- CAUSA, Portland

- UNETE, Medford

FORECAST FOR 2013 LEGISLATIVE SESSION

- JOBS – Livable and family wages, jobs security, labor rights
 - ECONOMIC DEVELOPMENT – Small businesses, community enterprises
 - EDUCATION – Access, affordability, achievement
 - HEALTH – Access, equity, affordability
 - GENDER EQUITY – Employment, boards etc.
- STATE BUDGET – Services, social safety net, OR Advocacy Commissions



OACO JOINT COMMITTEE WORK

OCHA joins OAC in serving the people of Oregon, and in affirming the OAC's six Strategic Priority Areas: 1) Poverty/employment, income disparity, workers at/or more of poverty, unemployment, 2) Education/Careers, ready to learn initiatives, k-12 education, post-secondary, skills development , 3) Civic engagement/isolation, volunteering, voting and a feeling of community, 4) Health/health access, teen pregnancy, prenatal care, infant mortality, immunizations, HIV diagnosis, adult non-smokers, preventable death, perceived health status, affordable child care, available child care, 5) Justice/safety/policing, overall crime, juvenile arrests, students carrying weapons, adult and juvenile recidivism, and 6) Stable families ,poverty, health insurance, homelessness, child support, domestic violence, and hunger.

OACO includes OCHA, the Commission on Asian and Pacific Islander Affairs, Commission on Black Affairs, and the Commission on Women.

OREGON ADVOCACY COMMISSION OFFICE STAFF

LUCY BAKER
Administrator

NANCY KRAMER
Executive Assistant

Oregon Advocacy Commissions Office

1515 SW Fifth Ave., Suite 1050-S

Portland, OR 97201

503. 302.9725

Fax 503.473.8519

oaco.mail@das.state.or.us

RESOURCES

- Pew Hispanic Research Center <http://www.pewhispanic.org/>
- 150 years of Latino Contributions in Oregon
http://www.oregon.gov/Hispanic/pdfs/150_Years_of_Latino_Contributions_in_Oregon.pdf
- Immigration Policy Center – “New Americans in the Beaver State: the Political and Economic Power of Immigrants, Latinos, & Asians in Oregon”
http://www.oregon.gov/Hispanic/pdfs/New_Americans_in_the_Beaver_State_2010.pdf
- An Unsettling Profile – Communities of Color in Multnomah County
http://www.oregon.gov/Hispanic/pdfs/An_Unsettling_Profile-Communities_of_Color_in_Multnomah_County_2010.pdf
- Undocumented workers are Taxpayers too!
<http://www.ocpp.org/2012/01/25/iss20120120undocumented-workers-are-taxpayers-too/>
- Oregon Commission on Hispanic Affairs
http://www.oregon.gov/Hispanic/about_us.shtml

Resources:

Harvesting Opportunity: A Strategic Vision for Farm Worker Housing and Economic Opportunities in Washington County, Oregon, prepared by TIERRA Planning, June 2010

http://www.pdx.edu/sites/www.pdx.edu.usp/files/usp_2010_harvesting.pdf

“The availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including housing for farmworkers, is a matter of statewide concern.”

Oregon Revised Statutes 197.307

http://www.pdx.edu/sites/www.pdx.edu.prc/files/2010_PL94_county_MSA.pdf

<http://www.pewhispanic.org/>

<http://www.pewhispanic.org/2012/10/01/latinos-in-the-2012-election-oregon/>

US Hispanic Student Leadership Summit, Portland

<http://www.youtube.com/watch?v=RNGKOHOU4Es>

Pew Hispanic Research Center <http://www.pewhispanic.org/>

150 years of Latino Contributions in Oregon

http://www.oregon.gov/Hispanic/pdfs/150_Years_of_Latino_Contributions_in_Oregon.pdf

Immigration Policy Center – “New Americans in the Beaver State: the Political and Economic Power of Immigrants, Latinos, & Asians in Oregon”

http://www.oregon.gov/Hispanic/pdfs/New_Americans_in_the_Beaver_State_2010.pdf

An Unsettling Profile – Communities of Color in Multnomah County

http://www.oregon.gov/Hispanic/pdfs/An_Unsettling_Profile-Communities_of_Color_in_Multnomah_County_2010.pdf

Undocumented workers are Taxpayers too!

<http://www.ocpp.org/2012/01/25/iss20120120undocumented-workers-are-taxpayers-too/>

Oregon Commission on Hispanic Affairs

http://www.oregon.gov/Hispanic/about_us.shtml

PewResearch

Hispanic Center

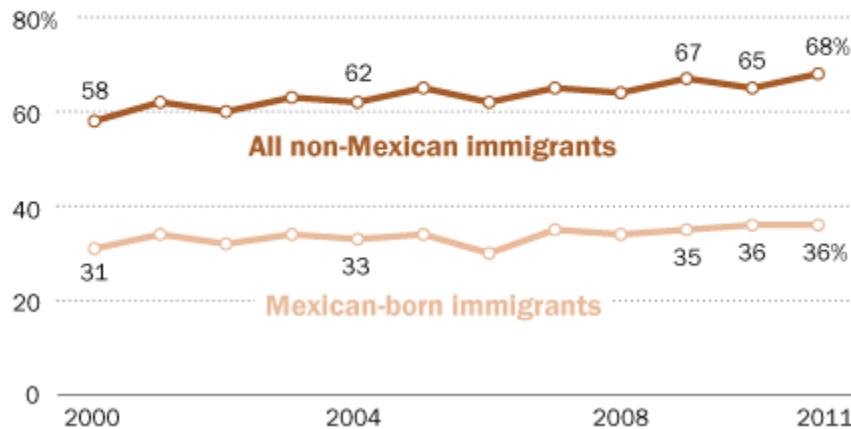
02.04.13

Two-thirds of Legal Mexican Immigrants are not U.S. Citizens

The Path Not Taken

Naturalization Rates Among Eligible Immigrants

Percent of all eligible immigrants of Mexican and non-Mexican origin who have naturalized



Nearly two-thirds of the 5.4 million legal immigrants from Mexico who are eligible to become citizens of the United States have not yet taken that step. Their naturalization rate—36%—is only half that of legal immigrants from all other countries combined, according to a Pew Hispanic Center analysis of federal government data. A nationwide survey of Hispanic immigrants by the Center finds that nearly all (93%) who have not yet naturalized say they would if they could. But barriers such as a lack of English proficiency and the financial cost of naturalization are identified as reasons why many legal immigrants have not yet done so.⁴

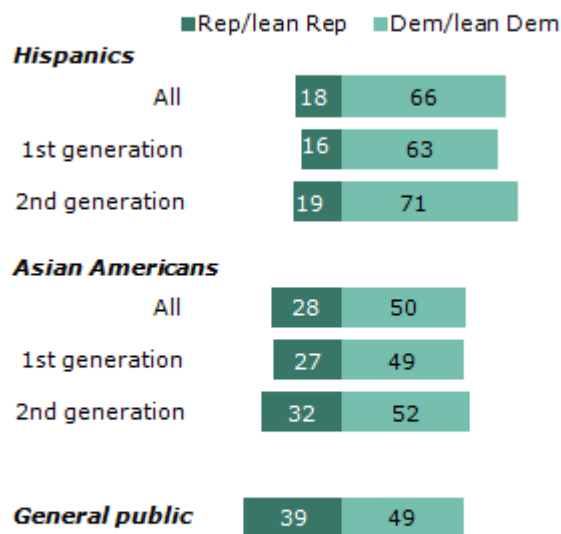
⁴ Pew Research Hispanic Center, <http://www.pewhispanic.org/>

FINDINGS FROM THE PEW RESEARCH HISPANIC CENTER⁵

- **Intermarriage.** About one-in-six (15%) married second-generation adults have a spouse of a different race or ethnicity from themselves, compared with 8% of all immigrants and 8% of all U.S. adults. Intermarriage rates are especially high for second-generation Hispanics (26%) and Asian Americans (23%).
- **Belief in Hard Work.** About three-quarters of second-generation Hispanics (78%) and Asian Americans (72%) say that most people can get ahead if they're willing to work hard. Similar shares of the immigrant generations of these groups agree. By contrast, 58% of the full U.S. population of adults feel the same way, while 40% say that hard work is no guarantee of success.

Political Party

% identifying with either political party



Notes: Based on all adults. Those who refuse to lean not shown.

Source: 2012 National Survey of Latinos Q61-62, 2012 Asian-American Survey PARTY-PARTYLN, Pew Research Center surveys 2012 average for general public

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- **Political and Social Values:** Second-generation Hispanics and Asian Americans, as well the first generation of each group, identify more with the Democratic Party than the Republican Party and characterize themselves as liberals at higher rates than the general public. About half or more of the second generation believe that abortion should be legal, and more than two-thirds say homosexuality should be accepted by society. The relative youth of the second generation contributes to, but does not fully explain, their liberal political leanings.
- **Nonmarital Childbearing:** In what some scholars have described as a pattern of negative assimilation, 41% of second-generation women who recently gave birth were unmarried, compared with 23% of immigrant women who recently gave birth. The higher share of nonmarital childbearing among the second generation has been driven mostly by second-generation Hispanic women (52% of these

⁵ <http://www.pewsocialtrends.org/2013/02/07/second-generation-americans/>

women with a recent birth were unmarried). Among the U.S. population as a whole, 36% of women who recently gave birth were not married.³

- **Language Usage:** About nine-in-ten second-generation Hispanic and Asian-American immigrants are proficient English speakers, substantially more than the immigrant generations of these groups. When it comes to retaining one’s ancestral language, there are sizable differences by race and ethnicity. Eight-in-ten second-generation Hispanics say they can speak Spanish at least pretty well; just four-in-ten second-generation Asian Americans say the same about their parents’ native tongue.

Projected Population Growth 2012-2050, by Generation and Age Group

in millions (unless otherwise noted)

	Generation			Total
	1st	2nd	3rd+	
Total population				
2012 population	40.0	35.7	233.1	308.8
2012 share	13%	12%	75%	100%
2050 population	81.3	80.6	276.3	438.2
2050 share	19%	18%	63%	100%
Projected growth	41.3	44.9	43.1	129.3
Rate of growth	103%	126%	19%	42%
Share of growth	32%	35%	33%	100%
Adults (ages 18+)				
2012 population	37.4	19.7	177.7	234.7
2012 share	16%	8%	76%	100%
2050 population	75.4	52.3	208.7	336.3
2050 share	22%	16%	62%	100%
Projected growth	38.0	32.6	31.0	101.6
Rate of growth	102%	166%	17%	43%
Share of growth	37%	32%	31%	100%
Working-age adults (Ages 18-64)				
2012 population	32.4	15.5	145.3	193.2
2012 share	17%	8%	75%	100%
2050 population	59.2	46.4	149.5	255.0
2050 share	23%	18%	59%	100%
Projected growth	26.8	30.8	4.2	61.8
Rate of growth	83%	198%	3%	32%
Share of growth	43%	50%	7%	100%

Notes: Total population includes children and adults.
Population does not add to total due to rounding.

Source: 2012 data from Pew Research Center analysis of Current Population surveys, Integrated Microdata Sample (IPUMS) files; Pew Hispanic Center projections from Passel and Cohn (2008)

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- **Perceptions of Generational Mobility.** By lopsided margins, most second-generation Hispanics (67%) and Asian Americans (75%) say their standard of

living is better than that of their parents at the same stage of life. Similar shares of the immigrant generations of both groups say the same. By contrast, 60% of the full U.S. population feel the same way. Looking ahead, two-thirds of second-generation Hispanics, but 41% of Asians, believe their own children will eventually surpass their current standard of living. Overall, 48% of American adults say the same.

- **Comparisons with Parents' Country of Origin:** Seven-in-ten second-generation Asian Americans and eight-in-ten (81%) second-generation Hispanics say that conditions for raising children are better in the U.S. than in their parents' country of origin. Like immigrants, they also rate the U.S. more favorably than their ancestral country in terms of treatment of the poor and the opportunity to get ahead. Less than half of both generations rate the U.S. as better than their ancestral country as a place to maintain strong family ties.

- **Population Projections.** Immigrants tend to have higher birth rates than do native-born Americans.⁴ If current immigration flows and birth rates continue, then by 2050, an estimated 37% of the U.S. population—highest in modern history—will be immigrants or the children of immigrants, according to a 2008 Pew Research population projection. That projection also shows that, because of the aging of the Baby Boomer generation, as much as 93% of the growth of the working-age population between now and then will be accounted for by immigrants (43%) or their U.S.-born children (50%).



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Everything Oregon

Washington County legislative races point to Latinos' growing political participation



By [George Rede, The Oregonian](#)

on November 05, 2012 at 11:09 AM, updated November 05, 2012 at 12:43 PM

Washington County has attracted lots of attention this fall as an election-year battleground where three of the state's most competitive legislative races are being contested.

What's received less attention is the fact that two of those races involve Latino candidates -- one Republican, one Democrat. Along with a third Latina candidate in Multnomah County, the emergence of these major-party nominees points to a significant step forward in the political process for Oregon's largest minority group.

Win or lose, the candidacies of Manuel Castaneda in House District 28 (Aloha-Reedville) and Joe Gallegos in House District 30 (Hillsboro-North Plains) -- along with Jessica Vega Pederson in House District 47 (outer Southeast Portland) -- reflect a new level of involvement by Latinos and growing attention paid to a key demographic group.

Castaneda is a Beaverton businessman, running on the Republican ticket against a veteran Democrat seeking his sixth term. Gallegos, a Hillsboro Democrat, is a retired professor challenging a Republican incumbent elected two years ago. Pederson, also a Democrat, is a computer consultant and project manager taking on a first-time GOP candidate. All three are of Mexican heritage and making their run at elective office.

"At first glance, it seems unusual," Karen Packer, chair of the Washington County Democratic Party, says of the two Washington County nominees, one representing each party. "But when you look at the makeup of this area and the 1st Congressional District, it actually has the highest concentration of registered Latino voters in the state, particularly in the Hillsboro and Cornelius areas. What it shows is that both major parties are paying attention to that major demographic. They are becoming a large slice of registered voters in our county."

Washington County is on pace to become Oregon's most populous county by the mid-2030s -- and already is more diverse than Multnomah County with minorities accounting for slightly more than 30

percent of the population. Latinos make up the biggest group at 16 percent, nearly double the number of Asians (8.7 percent).

Packer said Democrats made a concerted effort in Washington County to get voters registered by attending "virtually every Latino celebration or festival" in the area. The party also has a Latino outreach committee, including several Spanish speakers, that meets monthly to plan strategies, and sent a delegation to the national convention in Charlotte, N.C., that reflected that diversity, she said.

"That sends a message to the Latino population that the Democratic Party is welcoming the Latino population to our fold," Packer said.

Asked what the Republican Party has done to reach out to Latinos, Rachel Lucas, the Washington County Republican chairwoman, did not answer directly.

"My personal observation is that Republicans, as a rule, tend to look for what we have in common as Oregonians and as Americans, not what differentiates us," she said in an email. "Voters choose the best person to represent them: regardless of gender, race, culture or creed. Great candidates and their families can come from any culture..."

Few Latinos have served in the Oregon Legislature. Rep. Sal Esquivel, a Medford Republican, is the only one currently serving and seeks a fifth term in the House. Raul Soto-Seelig, a Portland attorney and native of Cuba, was appointed to a Senate seat in the late 1970s, but was defeated in the Democratic primary. Rocky Barilla of Salem was the first Latino elected to the House in 1986 but lost a re-election bid. Susan Castillo, of Eugene, was the first Latina to serve in the Senate, from 1997 to 2003, and went on to become the state superintendent of public instruction.

Lupita Maurer, a former Washington County party chair who is on the Democratic National Committee, feels strongly that this is a critical year for Latinos, nationally as well as in Oregon. She said President Barack Obama's executive order that removed the threat of deportation for many young people who entered the U.S. illegally as children was "a game changer for Latinos" in getting people interested in politics. She also noted that both parties made sure that Latinos were among the featured speakers at their national conventions this year.

"I think we're breaking through the prejudices," said Maurer, a software design engineer who lives in Aloha. Both Castaneda and Gallegos go against the stereotype of the poor, agricultural worker. In that respect, their candidacies are important because of the visibility they bring to Latino professionals with strong business and educational backgrounds.

Jim Moore, a political science professor at Pacific University in Forest Grove, agrees. Historically, he noted, it takes a generation or two for immigrant groups to become politically involved. Yet there are some people within those groups who succeed individually in the broader society and who step forward to run for office.

Castaneda is a classic example on the business side and Gallegos on the academic side of ethnic trailblazers, Moore said.

"When you think of Washington County, it's basically been a county of white candidates. It was a big deal 30 to 40 years ago when the first women were running. So (with Castaneda and Gallegos), it's a big deal to the electorate in terms of visibility."

It would be a way bigger deal if either of the men became the first Washington County Latino elected to the Legislature. Regardless, more work lies ahead. It's one thing to register voters, another thing to get them to actually vote.

The challenge with young Latinos, as with the general population, is getting them to registered to vote as they turn 18 years old. Older Latinos, however, may have come to the United States from other countries where they may not be used to voting or their vote doesn't count. Both groups need to be shown their vote matters on issues affecting their everyday lives.

Likewise, Latinos' political participation won't grow without more Castanedas and Gallegoses.

That means building a cadre of future legislative candidates through people willing to run first for city council and school board. Indeed, Adriana Cañas, a member of the Hillsboro School Board, initially was the Democratic nominee in House District 30. Gallegos won the party's nomination after she dropped out in June for personal reasons.

Interestingly, neither Castaneda nor Gallegos is running on a "Latino agenda" but rather as candidates who share common concerns with their prospective constituents about the economy and education. And although neither won the editorial backing of *The Argus*, both men exhibited integrity and a strong sense of public service during their endorsement interviews.

As citizens, we should congratulate both for making the personal sacrifice that comes with running for the Oregon Legislature. I suspect history will show that they helped energize their political parties and raised the visibility of the state's largest minority group in the process.

George Rede is editor of the Argus Opinion section.

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Top Issues for Hispanic Voters in 2012

For Hispanic voters, according to the national exit poll, 60% identified the economy as the most important issue (of four listed) facing the country today, virtually the same as the share (59%) of the general electorate that identified the economy as the nation's most important issue. On the other three issues asked about, for Hispanic voters, the economy was followed by health care (18%), the federal budget deficit (11%) and foreign policy (6%).

Throughout this election cycle, the issue of immigration has been an important issue for Hispanics. In the national exit poll, voters were asked about what should happen to unauthorized immigrants working in the U.S. According to the national exit poll, 77% of Hispanic voters said these immigrants should be

offered a chance to apply for legal status while 18% said these immigrants should be deported. Among all voters, fewer than two-thirds (65%) said these immigrants should be offered a chance to apply for legal status while 28% say they should be deported.⁶

Latinos Barely Represented On Elected Bodies

Northwest News Network | Sept. 24, 2012 3:28 p.m.

WOODBURN, Ore. - Across the Northwest, Latinos make up nearly 12 percent of the population. Yet our research estimates only two percent of the region's elected officials are Hispanic. It's a disparity that voters like Jose Ramirez want to change.

"If someone can vote and doesn't, well, that doesn't do any good," he says. "You're allowing others to vote in your place, to make different laws than you might like."

The question is, why does the region's largest minority group have so little clout in the political arena? Our research finds that the number of Latino elected officials in the Northwest is especially low compared to the growing Hispanic population in all three states. In the first part of our series, we look at some of the reasons for that gap.

We combed through the names of more than 8,000 elected officials in Oregon, Washington and Idaho. These included members of Congress, state legislatures, county commissions, city councils and school boards. What did we find? Just a shade over two percent of all of the people holding those offices are Latino.

Just two percent of the politicians share the same ethnicity as 12 percent of the population.

Take Woodburn, Oregon. More than half of the people who live in this Willamette Valley town are Hispanic. But hardly any have ever been elected to public office. And currently, at the Woodburn City Council, you don't hear any Latino names during roll call votes.

Woodburn Mayor Kathy Figley says she knows it's not ideal.

"You don't always need for an elected body or a committee or something to be reflective of the entire community, but if you're not getting the voices of people somewhere in the conversation, you're losing out."

⁶ <http://www.pewhispanic.org/2012/11/07/latino-voters-in-the-2012-election/>

Figley says the City does try to recruit Latinos to serve on volunteer commissions and advisory committees. But actually running for elected office?

"Getting people to take the next step so far has been a challenge," she says.

Woodburn isn't the only example of a Northwest city with a high Latino population and few, if any, Latino elected officials. Nampa, Idaho is more than 25 percent Hispanic and there are no Latinos on city council. The same is true in Mt. Vernon, Washington, where more than a third of the population is Hispanic.

If you want to find out what's going on in Woodburn's Latino community, stop in at Luis' Taqueria. Barack Obama checked out the downtown eatery during a campaign swing through Oregon four years ago. Anthony Veliz remembers that day well.

"I was sitting there about to order. Somebody taps me on the shoulder. I turn around and it's Barack Obama," Veliz says. "And it was me and him. We were standing right there. And he goes 'What's good here?' And I'm just like 'What?'"

Obama may not have realized it, but he was talking to one of the few Latinos who have ever held elected office in Woodburn. Veliz has served on both the school board and city council, and now runs a marketing agency that specializes in reaching Latinos. He says a lack of Hispanic elected officials is self-perpetuating.

"Having no one in your network who's ever run a campaign or knows about that, that can be a barrier. And I think in the back of people's minds too, will a city, county, state elect a Latino?"

And there's another challenge: registering Latino voters. The fact is, a sizeable number of Hispanics in the Northwest can't vote because they are not U.S. citizens. In Oregon and Washington, the Pew Hispanic Center estimates that Latinos comprise just 5 percent of eligible voters.

"That really kind of sets up this lack of formal participation within political institutions," says Gerardo Sandoval, a public policy professor at the University of Oregon. He's written about Latino civic engagement. He says beyond just voting, lack of citizenship even keeps some Hispanics from showing up at City Council or school board meetings.

"So even though these venues have nothing to do with their immigration status, depending on their immigration status they might be pretty intimidated by interacting with these formal institutions."

But Sandoval says the Northwest is on the cusp of a major change. In Oregon, for example, more than one in five public school students is Latino. That percentage has more than doubled in the past 15 years. And those kids are growing up.

"They're mostly going to be citizens," Sandoval says. "And they're going to want to definitely take a proactive political stance in what's happening in the state."

But Andrea Cano, who chairs the Oregon Commission on Hispanic Affairs, hopes that transformation doesn't take too long.

"We are really going to be much more intentional about identifying those candidates that can be supported by everybody else, so that it's not just our votes being courted for someone else, but that we essentially start to support our own candidates."

Cano says the next step in that process could be a political action committee that would focus specifically on funding the campaigns of Latinos running for office. But she adds something else: Latino candidates at all levels aren't running just on the basis of their ethnicity.

"We want to be able to be seen as candidates who happen to be Hispanic or Latino," Cano says. "Because I think if we signal we are Latino candidates, that's where people start to shut down."

Cano says Northwest voters should expect to see more Latino names on their ballots in the years to come.

On the Web:

[Map: Northwest Latino Elected Official Database by State](#)

[Map: Northwest Latino Elected Official Database By County](#)

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[Oregon Latino Agenda for Action](#)

In Oregon, Latinos represent almost 12 percent of the population, accounting for the fastest-growing and youngest segment of the state's population.

That is why issues such as education equity, health equity, greater participation in civic life, and tuition equity and access to higher education opportunities were among the top issues tackled at the biennial Oregon Latino Agenda for Action (OLAA) Summit. The event brought together almost 200 of the community's Who's Who: educators, students, business owners, public employees, and community leaders who gathered at Concordia University to talk about issues of concern to the diverse Latino community.

Addressing disparities and creating access for Latino students took centerstage at the conference. One in 5 students in Oregon K-12 schools are Latino. Yet, Latino students face numerous disadvantages: 61% live in poverty, and more than 1/3 are English Language Learners. In order for Latinos to create a path out of poverty, access to quality education is of utmost importance. A panel moderated by Carmen Rubio, Latino Network's executive director, discussed the importance of parent engagement, investing in economically disadvantaged schools, and strengthening the pipeline of Latino administrators and teachers.

Oregon Gov. John Kitzhaber talked about prioritizing education initiatives that would help close the achievement gap between Latino and white students. He lauded OLAA organizers for bringing together Latino community leadership to discuss strategies to address social inequities.



Arturo Vargas, Executive Director of the National Association of Latino Elected and Appointed Officials (NALEO), a national membership organization of Latino policymakers and their supporters,

served as keynote speaker. Vargas talked about the power of the Latino vote in shaping the outcomes of elections throughout the country. In California, the NALEO Educational Fund's programmatic activities include U.S. citizenship outreach and assistance, civic participation and integration, voter engagement, technical assistance to elected and appointed Latino officials, research on Latino demographic and electoral trends, and policy analysis and advocacy on access to the democratic process.

Big thanks to OLAA Chair Consuelo Saragoza for the opportunity to document the event and listen in to important community conversations. Looking forward to participating in future OLAA events.

Posted 22nd October 2012 by [Maileen Hamto, Editor](#)



[Hispanic Heritage Month: Governor's Proclamation](#)

Congratulations to Andrea Cano, chairwoman, and member commissioners of the Oregon Commission on Hispanic Affairs for a milestone moment. On Sept. 13, Governor John Kitzhaber signed the 2012 Hispanic Heritage Month proclamation, recognizing the contributions of Latino Americans to the State.

Read the full text of the proclamation in [English](#), and in [Spanish](#).

More than 100 people attended the signing ceremony, including [Oregon Secretary of State Kate Brown](#), [Attorney General Ellen F. Rosenblum](#), and [State Supreme Court Justice Paul de Muniz](#). The event also recognized 30 years of service by the Oregon Commission on Hispanic Affairs (OCHA). Throughout the years, many community leaders have stepped up to represent the evolving needs of the growing Latino community in Oregon, from small business ownership, access to quality education, health care, among other issues. View the list of [2012-13 OCHA Commissioners](#).

OCHA was created 30 years ago by the State Legislature and charged to "work toward economic, social, political and legal equality for Oregon's Hispanic population." The Commission is authorized to monitor existing programs and legislation designed to meet the needs of Oregon's Hispanic population, as well as to identify and research problem areas and issues affecting the Hispanic community and recommend actions to the Governor and the Legislative Assembly, including recommendations on legislative programs. Commissioners that hail from across Oregon -- a growing network of individuals, organizations, civil sectors, and allies -- all contribute to identifying and prioritizing community issues.

Chairwoman Andrea Cano shared her remarks from the Sept. 13 proclamation signing:

Created by legislative statute in 1983, OCHA will also be inaugurating a year-long schedule of activities in recognizing the many historic and current Latino leaders, organizations, and supporters, including you, who have made significant contributions to Oregon's history and development. We will also monitor proposed measures, bills during the upcoming Legislative Session, track, and evaluate public policies.

Among our priorities this session, are new measures to strengthen protection against hate crimes, oversight on civil rights violations and wage theft, diminishing disparities and assuring equity in education, health, housing, and economic development. We are also partnering with the Governor's Office and state agencies on key initiatives related to public safety, voter registration, and human rights related to the evolving demographics of our community.

OCHA meetings are open to the public, and will resume in the fall. Bookmark the [OCHA webpage](#) for announcements about future events, and how to get involved. Also ["like" OCHA on FaceBook](#) to stay connected with OCHA happenings.

Posted 17th September 2012 by [Maileen Hamto, Editor](#)

APPENDIX

Oregon Hate Crime Laws

Internship Findings and Final Report

Wes García

Introduction and Overview

This internship was created in a joint venture by the Oregon Commission on Hispanic Affairs, Oregon Commission on Black Affairs, Oregon Commission on Asian Affairs, the Oregon Department of Justice, Oregon Advocacy Commission, and supervised by Professor Carrasco. The purpose of this position was to look at Oregon hate crime laws and compare them to other states' laws and federal statutes for possible improvements. The position started in the middle of May 2012 and ended August 2nd, 2012. Over that time it has become my opinion that the areas of research and recommendations divide largely into two parts, law and policy. While most of the focus has been on legal comparisons and investigation for Oregon-specific laws, some policy recommendations are also made. Finally, at the end of this report are suggestions for future research and study that would be beneficial for the prevention of hate crimes, and what a possible legislative amendment could look like based on this research.

Background

Almost all states have some legislation regarding hate crimes or bias-motivated crimes. One of the general features of a hate crime law is that it prohibits certain actions by one person motivated by bias against another based on the other's characteristics. Generally speaking that characteristic is immutable but states do have the ability under a rational relation basis to create other categories for protection. Most states have provisions for categories such as race, color, religion, and national origin; ancestry ethnicity sex, gender, or gender identity, sexual orientation, and disability. However, some states have created provisions for such characteristics as age,⁷ creed,⁸ political affiliation,⁹ alienage,¹⁰ and membership in an organization.¹¹

Generally, there are three ways states punish bias-motivated crimes. The first is to create a new independent crime, which outlines specific conduct that is being regulated and list punishments. The second enhances the penalty for committing a parallel crime if the offense was motivated by bias. Third, there are statutes that give the court discretion to increase the punishment of the individual if they find their actions were motivated by bias, usually by adding more time or increasing the level of offense.

Oregon's Criminal Statutes and Constitutional challenges

Oregon's two main criminal statutes are the first type of bias-crime statutory construction.¹² Intimidation in the first degree requires two or more people acting together and covers physical injuries and threats. Intimidation in the second degree only requires one person and covers damages to property, offensive physical contact, threats to the target individual, and threats to individual's family. There is also a civil provision that allows someone to sue civilly for a violation of either of the first two.¹³ In the

⁷ See, e.g., D.C. Code Ann. § 22-4001; Fla. Stat. Ann. § 775.085; Iowa Code Ann. § 729A.1; La. Rev. Stat. Ann. § 14:107.2; Minn. Stat. Ann. §§ 609.2231, subd. 4, § 609.595, subd. 1(a) and 2, 609.749, subd. 3(1); Neb. Rev. Stat. § 28-111; N.Y. Penal Law §§ 240.30, 240.31, and 485.05; Vt. Stat. Ann. tit. 13, § 1455.

⁸ See, e.g., 720 Ill. Comp. Stat. Ann. § 5/12-7.1 and 730 Ill. Comp. Stat. Ann. § 5/5-5-3.2(a)(10); La. Rev. Stat. Ann. § 14:107.2; Mont. Code Ann. §§ 45-5-221 and 45-5-222; N.H. Rev. Stat. Ann. § 651:6.I(g).

⁹ See, e.g., Iowa Code Ann. § 729A.1; S.C. Code Ann. § 16-17-560; W. Va. Code § 61-6-21.

¹⁰ See, e.g., Conn. Gen. Stat. Ann. § 46a-58; R.I. Gen. Laws § 11-53-3 (repealed, eff. July 2, 1998).

¹¹ See, e.g., La. Rev. Stat. Ann. § 14:107.2.A

¹² ORS 166.165, 166.155. Intimidation in the first and second degree, respectively.

¹³ ORS 30.198.

past there have been challenges to the statutes that help describe their boundaries and how they provide protections. The following is a discussion of the major cases challenging the constitutionality of Oregon's intimidation statutes.

State v. Plowman held that ORS 166.165 is not void under either the Oregon Constitution or United States Constitution for vagueness or violations of free expression.¹⁴ The appeals court below affirmed the defendant's conviction per curiam only citing State v. Hendrix 107 Or. App. 734 (1991) decided that same day.¹⁵

Plowman and three codefendants attacked two Mexican men at a convenience store while shouting "white power," calling them wetbacks, and demanding the victims speak English.¹⁶ A jury found Plowman and two friends guilty of violating ORS 166.165, among other charges.¹⁷ Plowman argued that the statute's phrasing "because of their perception of [the victim's] race, color, religion, national origin or sexual orientation" was unconstitutionally vague under both the Oregon and Federal Constitution due process clauses and allowed for prosecution whenever one of the categories was involved.¹⁸ The Court rejected the argument under both constitutions saying the statute is sufficiently clear and explicit about what conduct is forbidden and the phrase "because of their perception" simply means their perception does not have to be accurate.¹⁹ Further, the term "because of" does not allow prosecution whenever races of the parties differ; rather it requires the state to show a causal connection between perception and conduct.²⁰

Plowman also argued that the statute restrains his right to free expression of his opinion and his right to speak under both the Oregon and Federal Constitution because, "a violation of it 'must necessarily be proved by the content of his speech or associations.'"²¹ The Court rejected this under both constitutions saying the statute is prohibiting effects, not expressions of opinions or target conduct on basis of expressive content respectively.²²

Finally, Plowman reiterated the principles stated in State v. Robertson, 293 Or. 402, (1982), categorizing laws possibly violating Or. Const. art. I, § 8 into one of three types: (1) laws directed at speech **per se**; (2) laws directed at speech-caused harm; and (3) laws directed at harm per se **and** do not refer to speech.²³ Plowman held that the statute falls into the third category because it does not refer to speech and, "Persons can commit that crime without speaking a word, and holding no opinion other than their perception of the victim's characteristics."²⁴ The Court upheld the trial court's verdict.²⁵ Plowman is followed by 18 other courts and distinguished in three concurring and dissents only.²⁶

State v. Hendrix held ORS 166.165 does not violate the free expression provisions under the Oregon or US Constitution, nor is it unconstitutionally vague under either constitution's due process

¹⁴ 314 Or. 157 (1992)(en banc), certiorari denied 508 U.S. 974 (1993).

¹⁵ Plowman, 107 Or. App. 782 (1991).

¹⁶ 314 Or. at 160.

¹⁷ Id. at 159.

¹⁸ Id. at 161

¹⁹ Id.

²⁰ Id. at 162.

²¹ Id. at 163.

²² Id. at 163-64.

²³ Id. at 164 (citing State v. Robertson, 293 Or. 402 (1982)).

²⁴ 314 Or. at 165.

²⁵ Id. at 169.

²⁶ LEXIS, 05-16-2012; See: City of Eugene v. Miller, 318 Or. 480, 494 (1994); State v. Maynard, 138 Or. App. 647, 660 (1996) *vacated*, 327 Or. 582 (1998) and *adhered to on reconsideration*, 168 Or. App. 118 (2000); State v. Stoneman, 132 Or. App. 137 (1994) *rev'd*, 323 Or. 536 (1996).

clauses.²⁷ Hendrix arises out of the same event as Plowman, beating two Mexican men at a convenience store while shouting racial insults.²⁸ Hendrix differs from Plowman because the defendant claimed he himself never made any statement about race or national origin during the beatings.²⁹ A jury found Hendrix and two friends guilty of violating ORS 166.165, among other charges.³⁰ On appeal, the court found that even though Hendrix himself did not shout racial epithets, a jury could infer his motive by his actions, which includes participating in the beating after his friends attacked and shouted at the victims.³¹

Hendrix also claimed the statute was unconstitutional under the free expression provisions of both the Oregon and US Constitution because it punishes belief.³² The court rejected this argument saying the statute regulates physical attacks that are the results of the opinions, not the opinions of subjects of communication themselves.³³

Hendrix further claimed, the statutory phrase “because of their perception of” is vague, lacks certainty, and therefore violates the privileges and immunities clause in the Oregon and US Constitution.³⁴ The court said the statute was not so vague because “a person of common intelligence can understand from its language the conduct that is prohibited.”³⁵ Also, the statute is, “sufficiently explicit to provide notice of what conduct is forbidden” under the due process clause of the US Constitution Fourteenth Amendment.³⁶ The court affirmed Hendrix’s conviction.³⁷ Hendrix is followed by two other courts.³⁸

Hendrix was appealed to the Supreme Court of Oregon but on evidentiary issues, not constitutional ones.³⁹ The Oregon Supreme Court upheld the conviction saying that even though Hendrix never himself shouted racial insults, a jury could still infer his intent by his participation in the beatings while his codefendants shouted the racial insults.⁴⁰

State v. Beebe held that ORS 166.155 does not deny equal protection under the Oregon or US Constitution and it is constitutionally permissible under a rational basis to enhance punishment for conduct motivated by racial animus.⁴¹ Beebe was charged with violating ORS 166.155 by throwing a man to the ground intent to harass, annoy, and alarm because of the victim’s race.⁴²

Beebe claimed the statute denied equal protection under both the Oregon and US Constitution because, “ . . . it gives greater protection to a victim who is assaulted because of his race, color, religion or national origin than to another person who is assaulted for some other reason.”⁴³ The court denied

²⁷ State v. Hendrix, 107 Or. App. 734 (1991)(en banc), aff’d 314 Or. 170, certiorari denied 508 U.S. 974.

²⁸ Id. at 737-38.

²⁹ Hendrix at 738.

³⁰ Id. at 736.

³¹ Id. at 738.

³² Id. at 739.

³³ Id. at 739-740.

³⁴ Id. at 740.

³⁵ Id. at 740-741.

³⁶ Id. at 741.

³⁷ Id. at 742.

³⁸ LEXIS, 05-16-2012.

³⁹ State v. Hendrix, 314 Or. 170 (1992)(en banc).

⁴⁰ Id. at 174.

⁴¹ 67 Or. App. 738 (1984).

⁴² Id. at 740.

⁴³ Id. at 741.

Beebe’s claim because, “[a]nyone may be a victim of bigotry” and, “[t]he statute distinguishes between acts of harassment which are motivated by racial . . . animus and [those] which are not. . . .”⁴⁴

Beebe held that it is constitutionally permissible under a rational basis to enhance punishment for conduct motivated by racial animus if there is a rational basis for the distinction.⁴⁵ The court found there was a rational basis because of legislative concern for social harm where, “[s]uch confrontations therefore readily—and commonly do—escalate from individual conflicts to mass disturbances.”⁴⁶ Furthermore, Beebe said previous enhancements based on conduct or intent, such as and murder of a police officer or kidnapping for ransom, have been upheld as valid.⁴⁷ The appeals court reversed and remanded the trial court’s sustaining of Beebe’s demurrer.⁴⁸

Simpson v. Burrows held that an award of punitive tort damages for “true threats” under the intimidation statutes was not barred by Oregon Constitution Article I, § 8 general prohibition of punitive damages based solely on expressive conduct.⁴⁹ Simpson owned a town lodge in Christmas Valley Oregon and alleged that Burrows circulated and mailed letters to town residents that were hostile to Simpson because she was a lesbian.⁵⁰ Among other claims, Simpson sued under ORS 30.190 (later renumbered 30.198) for the tort of intimidation under ORS 166.155.⁵¹

Burrows argued punitive damages under ORS 30.190(2)(b) are barred by Or.Const. Art. I, § 8, which prevents punitive damages for actions based solely on expressive conduct, because his intimidation via letters was solely expressive conduct.⁵² However, Simpson said “true threats” are not protected expression under the Oregon Constitution and plaintiffs can be awarded punitive damages for true threats.⁵³ The court said, “The proper inquiry is ‘whether a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of intent to harm or assault.’”⁵⁴ Based on the nature and content of Burrow’s letters, the court found they were true threats and not entitled to constitutional prevention of punitive damages.⁵⁵

In conclusion, courts have found the intimidation statutes ORS 166.165, 166.155, and 30.198 constitutional because they regulate conduct, not the speech or content. Further, the provisions are not unconstitutionally vague or overbroad because they clearly outline what conduct is prohibited. Also, the statutes do not afford more protection to people who are assaulted due to their category because anyone may be a victim of bigotry. Finally, punitive damages are allowed for intimidation tort claims if they are a “true threats” because “true threats” don’t have Constitutional expression protections.

Provisions not included in Oregon’s laws

When comparing Oregon hate crime provisions to other states and federal statutes there are two

⁴⁴ Id.

⁴⁵ Id. at 742

⁴⁶ Id.

⁴⁷ Id. at 741-742.

⁴⁸ Id. at 742.

⁴⁹ 90 F. Supp. 2d 1108 (2000).

⁵⁰ Id. at 1113.

⁵¹ Id.

⁵² Id. at 1129, (citing Hall v. The May Dep’t Stores, 292 Or. 131, 146–47 (1981) (award of punitive damages for intentional infliction of emotional distress accomplished by speech runs afoul of speech protections of Art. I, § 8 of Oregon Constitution); Wheeler v. Green, 286 Or. 99, 119 (1979) (punitive damages not recoverable when tort liability based on the content of speech)).

⁵³ Id.

⁵⁴ Id. at 1129-30 (quoting Lovell v. Poway Unified Sch. Dist., 90 F.3d 367, 372 (9th Cir.1996)).

⁵⁵ Id. at 1130.

main areas where additions could be made. The first is in the category of classifications not covered, the second area is conduct not covered. Categories include age, gender, ancestry, homelessness, and ethnicity. Conduct includes interfering with exercise of civil rights, and disturbing religious meetings at their meeting places.

Categories

The category of age contextually deals mostly with the elderly and is often based on the actual or perceived vulnerability of the elderly.⁵⁶ According to the US Department of justice, “The prevailing stereotype of elderly fraud victims is that they are poorly informed, socially isolated individuals -- potentially suffering from mental deterioration--who cling to old-fashioned ideas of politeness and manners that interfere with their ability to detect fraud.”⁵⁷ The American Association of Retired Persons and U.S. Senate Special Committee on Aging also discuss the victimization of elderly people as an issue mostly in regards to fraud.⁵⁸ While fraud itself is not an action covered by the current or suggested amendments to the Oregon intimidation statutes, the concern helps show the need in affording protections to the classification of age. Furthermore, “[c]ompared with violent crime victims in other age groups, elderly victims of non-lethal violence are less likely to use self-protective measures, such as arguing with the offender, running away, calling for help, or attacking the offender.”⁵⁹

The category of gender is arguably the biggest gap for classification coverage given American history regarding gender discrimination, women’s suffrage, and feminism. In fact, many states already include provisions for gender or sex.⁶⁰ While it may be self evident, Weisburd and Levin note:

While the forms of gender-related crime vary, the message is constant; and it is a message of domination, power, and control. Socially constructed gender roles, predominantly characterized by male domination and female subordination, are enforced by various means along a coercive continuum. Moreover, the weak societal response in opposition reinforces the message that women are legitimate victims, appropriate targets for rage or outlets for anger.⁶¹

Furthermore, “[r]ecognition of a gender category would properly place gender-motivated deprivations of civil rights on equal legal footing with other analogous deprivations based on race, national origin, religion, and sexual orientation.”⁶² Legitimizing gender as a protected class would “It also would send a clear message that gender-motivated crime is not merely a “private” or “family” matter, but instead a

⁵⁶ Dylan Fallik, Incomplete Protection: The Inadequacy of Current Penalty Enhancement Provisions in Deterring Fraud Schemes Targeting the Elderly, 18 Elder L.J. 335, 338 (2011)

⁵⁷ Id. at 338- 339.

⁵⁸ Id.

⁵⁹ Helia Garrido Hull, The Not-So-Golden Years: Why Hate Crime Legislation Is Failing A Vulnerable Aging Population, 2009 Mich. St. L. Rev. 387, 392 (2009).

⁶⁰ **See, e.g.**, Ariz. Rev. Stat. Ann. § 13-702.C.14; See, e.g., Cal. Penal Code §§ 422.6, 422.7, 422.75, and 1170.75; D.C. Code Ann. § 22-4001; 720 Ill. Comp. Stat. Ann. § 5/12-7.1(a); Iowa Code Ann. § 729A.1; La. Rev. Stat. Ann. § 14:107.2; Me. Rev. Stat. Ann. tit. 5, § 4684-A; Mich. Comp. Laws Ann. § 750.147b; Minn. Stat. Ann. §§ 609.2231, subd. 4, § 609.595, subd. 1(a) and 2, 609.749, subd. 3(1); Miss. Code Ann. § 99-19-301; Mo. Ann. Stat. § 557.035; Neb. Rev. Stat. § 28-111; N.H. Rev. Stat. Ann. § 651:6.I(g); N.J. Stat. Ann. §§ 2C:12-1.e, 2C:33-4.d, and 2C:44-3.e; N.Y. Penal Law §§ 240.30, 240.31, and 485.05; N.D. Cent. Code § 12.1-14-04; R.I. Gen. Laws § 12-19-38; R.I. Gen. Laws § 11-5-13 (repealed, eff. July 12, 1998); Vt. Stat. Ann. tit. 13, § 1455; W. Va. Code § 61-6-21; Wash. Rev. Code Ann. § 9A.36.080(1). Hawaii Revised Statutes § 846-51.

⁶¹ Steven Bennett Weisburd & Brian Levin, "on the Basis of Sex": Recognizing Gender-Based Bias Crimes, 5 Stan. L. & Pol'y Rev. 21, 27 (1994)

⁶² Id. at 42

status-based civil rights violation that has the effect of denying an entire class of citizens of their rights.”⁶³

Many states also include the category of ancestry.⁶⁴ “Ancestry may be defined as ‘family descent or lineage.’”⁶⁵ The term “ancestry” can help to cover categories of individuals that don’t quite fit in categories such as race, but are often still subject to bias based on their category. For example, often “race” is used interchangeably with “ethnicity,” “ancestry,” “culture,” “color,” “national origin,” and even “religion.”⁶⁶ However, “...individuals who share skin color often have very different ancestry, as is the case for sub-Saharan Africans, New Guinea highlanders, and Australian aborigines...”⁶⁷ Furthermore, “‘national origin’ does not extend to many other circumstances in which the country of one’s origin is not at issue. For example, light skinned individuals who have an African-American ancestor or atheists who have Jewish ancestry are not covered by the ‘national origin’ concept.”⁶⁸ Ancestry would be an important inclusion to Oregon’s intimidation statutes because it would provide protection to people who don’t easily fit in one of the existing categories.

Homelessness as a protectable category might be debatable since it is not an immutable characteristic that one is born into.⁶⁹ It’s only recently that states have been adding homelessness as a protected category under hate crimes.⁷⁰ Maine was the first to do so.⁷¹ However, if the reason for not including a classification as a protected class is because the individual was not born into it, this would leave many people with disabilities without protection. The same could be said for religion.

Furthermore, “homeless people have been recognized as a class in court in order to bring suit against city policies that adversely affected or discriminated against them as a group because they were homeless.”⁷² For example, in Pottinger v. City of Miami the court called homelessness an involuntary status.⁷³ Pottinger held that Miami’s practice of arresting homeless persons for performing such activities as sleeping, standing, and congregating in public places violated Eighth Amendment and right to travel.⁷⁴ Also, state ordinances under which homeless persons were arrested were unconstitutionally overbroad, the homeless individuals rights to privacy were not violated, and the seizure of their personal belongings violated the Fourth Amendment.⁷⁵ Homeless people are a vulnerable population because “Children, families, the mentally ill, veterans, victims of domestic abuse, people with disabilities, and

⁶³ Id. at 42-43

⁶⁴ *See, e.g.*, Cal. Penal Code §§ 422.6, 422.7, 422.75, and 1170.75; Colo. Rev. Stat. § 16-11-103(5)(n), 18-9-111(2), and 18-9-121; Del. Code Ann. tit. 11, § 1304(a)(2) and § 4209(e)(1)(v); Fla. Stat. Ann. § 775.085; Idaho Code § 18-7902; 720 Ill. Comp. Stat. Ann. § 5/12-7.1 and 730 Ill. Comp. Stat. Ann. § 5/5-5-3.2(a)(10); Iowa Code Ann. § 729A.1; Me. Rev. Stat. Ann. tit. 5, § 4684-A; Miss. Code Ann. § 99-19-301; Neb. Rev. Stat. § 28-111; N.Y. Penal Law §§ 240.30, 240.31, and 485.05; Okla. Stat. Ann. tit. 21, § 850; R.I. Gen. Laws § 12-19-38; Tenn. Code Ann. § 39-17-309; Vt. Stat. Ann. tit. 13, § 1455; Wash. Rev. Code § 9A.36.080(1); W. Va. Code § 61-6-21; Wis. Stat. § 939.645(1)(b).

⁶⁵ Juan F. Perea, Ethnicity and Prejudice: Reevaluating "National Origin" Discrimination Under Title VII, 35 Wm. & Mary L. Rev. 805, 832 (1994).

⁶⁶ Sharona Hoffman, Is There A Place for "Race" As A Legal Concept?, 36 Ariz. St. L.J. 1093, 1096-97 (2004)

⁶⁷ Id. at 1118.

⁶⁸ Id. at 1147.

⁶⁹ *See*, Kate Davidson, Debating Homeless Hate Crimes, NPR, Oct. 18, 2009, available at <http://www.npr.org/templates/story/story.php?storyId=113916951>.

⁷⁰ Jeff McDonald, Should "Bum-Bashing" Be A Hate Crime?, 15 Pub. Int. L. Rep. 115, 116 (2010)

⁷¹ *See*, Me. Rev. Stat. tit. 17-A, § 1151(8)(B) (West, Current with emergency legislation through Chapter 702 of the 2011 Second Regular Session of the 125th Legislature)

⁷² Raegan Joern, Mean Streets: Violence Against the Homeless and the Makings of A Hate Crime, 6 Hastings Race & Poverty L. J. 305, 325 (2009)

⁷³ 810 F. Supp. 1551, 1562-65, 1992 WL 414704 (S.D. Fla. 1992)

⁷⁴ Id. at 1569.

⁷⁵ Id. at 1575, 1573.

people of color make up the fabric of the homeless population.”⁷⁶ Also, homeless people, lacking the resources for adequate living conditions, would not likely be able to seek legal protections or remedies. If anything, “In many communities, the homeless have a tenuous relationship with law enforcement and fail to report acts of violence because of a perception that the police do not care what happens to the homeless.”⁷⁷ Implementing homelessness as a categorical protection would help deliver the message that bias-motivated violence against one of the more helpless groups of people in society is unacceptable.

Finally, the category of ethnicity is also not in Oregon’s intimidation statutes, but is included in other states.⁷⁸ The category of ethnicity is a bit broader than the others in that it, “consists of a set of ethnic traits that may include, but are not limited to: race, national origin, ancestry, language, religion, shared history, traditions, values, and symbols, all of which contribute to a sense of distinctiveness among members of the group.”⁷⁹ While similar to ancestry, it is not as reliant on family lineage. One of the best example areas it comes up in is the distinction between “Latinos” and “Hispanics” living in the United States.⁸⁰ Sandrino-Glasser discusses the difficulties the US Census Bureau has had with trying to categorize American citizens and immigrants who were from a wide variety of Central and South American origin, but still didn’t identify with the categories of “Spanish” or “Hispanic.”⁸¹ Still, these people are likely to be perceived as belonging to a minority group and associated with the status, which has caused problems with issues of equal protection and other rights.⁸² For this reason, Oregon would benefit by the addition of ethnicity to the intimidation statutes because it would provide protection to people who don’t easily fit in one of the existing categories.

Conduct

Compared to Oregon, some states have statutes that reference or are similar to federal criminal civil rights laws.⁸³ Generally, they make it a hate crime if the offender, because of bias-motivation, interferes with the exercise of rights under the US Constitution, State Constitution, or laws of the United States.⁸⁴ For example, Cal. Penal Code §§ 422.6 and 422.7 are very similar to 18 U.S.C.A. § 242. It is because of this that the court in People v. Lashley noted several rights protected by California or federal law might have been involved in the defendant’s shooting of a black person.⁸⁵ One of those rights

⁷⁶ Sarah Finnane Hanafin, Legal Shelter: A Case for Homelessness As A Protected Status Under Hate Crime Law and Enhanced Equal Protection Scrutiny, 40 Stetson L. Rev. 435, 439 (2011)

⁷⁷ Id. at 458.

⁷⁸ *See, e.g.*, Ala. Code § 13A-5-13; Conn. Gen. Stat. Ann. § 53a-181b (repealed, 2000); 2000 Conn. Acts 00-72, §§ 1 to 3 (Reg. Sess.); Fla. Stat. Ann. § 775.085; Miss. Code Ann. § 99-19-301.

⁷⁹ Perea, *supra* at 833.

⁸⁰ Gloria Sandrino-Glasser, Los Confundidos: De-Conflating Latinos/as' Race and Ethnicity, 19 Chicano-Latino L. Rev. 69, 123 (1998)

⁸¹ Id. at 130.

⁸² Id. at 150.

⁸³ *See* 18 U.S.C.A. §§ 241, 242, 245, and 42 U.S.C.A. § 3631. Cal. Penal Code §§ 422.6 and 422.7; Mass. Gen. Laws Ann. ch. 265, § 37. *See also* People v. Lashley, 1 Cal. App. 4th 938, 2 Cal. Rptr. 2d 629, 634–35 (2d Dist. 1991), construction approved of and adopted in In re M.S., 10 Cal. 4th 698, 42 Cal. Rptr. 2d 355, 896 P.2d 1365, 1373 n.5 (1995); In re Joshua H., 13 Cal. App. 4th 1734, 17 Cal. Rptr. 2d 291 (6th Dist. 1993); Com. v. Stephens, 25 Mass. App. Ct. 117, 515 N.E.2d 606, 608–09 (1987).

⁸⁴ *See, e.g.*, Alaska Stat. § 11.76.110; Cal. Penal Code §§ 422.6 and 422.7; Conn. Gen. Stat. Ann. § 46a-58; Del. Code Ann. tit. 11, § 1304(a)(1); Iowa Code Ann. § 729.5.1; Me. Rev. Stat. Ann. tit. 17, § 2931; Mass. Gen. Laws. Ann. ch. 265, § 37; N.Y. Civ. Rights Law § 40-c; N.D. Cent. Code §§ 12.1-14-04 and 12.1-14-05; Tenn. Code Ann. § 39-17-309; Utah Code Ann. § 76-3-203.3; W. Va. Code § 61-6-21(b) and (c). *See also*, Kan. Stat. Ann. § 44-1027; Neb. Rev. Stat. § 20-344; Okla. Stat. Ann., tit. 25, § 1506.9.

⁸⁵ 2 Cal. Rptr. 2d 629, 635–36 (2d Dist. 1991).

included the constitutional right to privacy.⁸⁶ Another state whose bias law is similar to 18 U.S.C.A. § 242 is Massachusetts.⁸⁷ In Com. v. Stephens, some Cambodian people were attacked near their home.⁸⁸ Among other things the court said the victims had the state constitutional right to be safe and secure and to use one's property peacefully and the right to use public streets and sidewalks free from discrimination or restriction on account of race, color, or national origin.⁸⁹ If similar provisions were included in the Oregon Intimidation statutes, it could likely cover conduct that isn't proscribed through ORS 166.165 or 166.155.

Some states passed statutes proscribing conduct that disturbs religious meetings or assemblies.⁹⁰ Others include any meeting that has a lawful purpose.⁹¹ Challenges to such statutes have arisen under vagueness of the word "disturb" and conduct prohibited but have been unsuccessful.⁹² Further, some challenges have been made saying that some of the proscribed conduct of interference might include protected speech.⁹³ This might be an issue with Oregon given the extra protection the state gives to freedom of expression, which is why part of this area is recommended for further evaluation. Still, the court in Riley held that the defendant's speech or views were not the target of the statute, but rather the manner which it was conveyed.⁹⁴

Finally, there is a small addition to the Oregon statutes that could be made in regards to State civil actions, ORS 30.200. This is the inclusion of the Attorney General to the list of State officials who can pursue a civil claim for relief. The addition of the State Attorney General is not uncommon, as other states have already done so.⁹⁵ In 2009, The Oregon Attorney General John Kroger appointed Portland lawyer Diane Schwartz Sykes to lead the Oregon Department of Justice Civil Rights program, which had been eliminated during the recession of the 1980s.⁹⁶ In personal interviews and conversations with Sykes, she expressed interest for her division to also be able to pursue civil actions for hate crimes, which might also lighten the load on the local District Attorney.⁹⁷ In instances where the DA cannot meet the burden of proof for a criminal charge, a civil remedy can serve to ensure that the victim still

⁸⁶ Id. at 636 (citing Cal. Const. art. I, § 1).

⁸⁷ See Mass. Gen. Laws Ann. ch. 265, § 37 (West 2012).

⁸⁸ 25 Mass. App. Ct. 117, 117-120 (1987).

⁸⁹ Id. at 124 (citing Mass. Declaration of Rights, art. 1 and Mass. Gen. Laws ch. 272, §§ 92A and 98).

⁹⁰ See, e.g., Cal. Penal Code § 302; D.C. Code Ann. § 22-1114; Fla. Stat. Ann. §§ 871.01; Idaho Code § 18-6201 (repealed, eff. July 1, 1994); Mass. Gen. Laws Ann. ch. 272, § 38; Mich. Comp. Laws Ann. § 752.525; Miss. Code Ann. § 97-35-17; Nev. Rev. Stat. Ann. § 201.270; N.M. Stat. Ann. § 30-13-1; N.Y. Penal Law § 240.21; N.C. Gen. Stat. § 14-288.4(a)(7); Okla. Stat. Ann. tit. 21, § 915; R.I. Gen. Laws § 11-11-1; S.C. Code Ann. § 16-17-520; Va. Code Ann. § 18.2-415; W. Va. Code § 61-6-13.

⁹¹ See, e.g., Fla. Stat. Ann. § 871.01; Mo. Ann. Stat. § 79.450.2; N.M. Stat. Ann. § 30-13-1; R.I. Gen. Laws § 11-11-1; Va. Code Ann. § 18.2-415.

⁹² See, e.g., Riley v. District of Columbia, 283 A.2d at 819; Weidner v. State, 380 So. 2d at 1286; S.H.B. v. State, 355 So. 2d at 1176. See also, State v. Orzen, 493 P.2d at 768; D.L.B. v. State, 707 So. 2d 844 (Fla. Dist. Ct. App. 2d Dist. 1998), decision approved, 720 So. 2d 202 (Fla. 1998).

⁹³ See, e.g., Riley, 283 A.2d at 819; Weidner, 380 A.2d at 1286; S.H.B., 355 So. 2d at 1176; People v. Morrissey, 161 Misc. 2d 295, 614 N.Y.S.2d 686 (City Crim. Ct. 1994), aff'd as modified, 172 Misc. 2d 854, 661 N.Y.S.2d 904 (App. Term 1997).

⁹⁴ Riley, 283 A.2d at 824.

⁹⁵ See, e.g., Cal. Civil Code §§ 52(c) and 52.1(a); Mass. Gen. Laws Ann. ch. 12, § 11H; Minn. Stat. Ann. § 307.082; N.H. Rev. Stat. Ann. §§ 354-B:1 et seq.; N.J. Stat. Ann. § 2A:53A-21.c; N.C. Gen. Stat. § 99D-1(b); 42 Pa. Cons. Stat. Ann. § 8309(b); Vt. Stat. Ann. tit. 13, § 1458; W. Va. Code Ann. § 5-11-20(b).

⁹⁶ <http://www.doj.state.or.us/releases/2009/re1100509.shtml> accessed July 30th, 2012.

⁹⁷ Interview with Diane Schwartz Sykes, Senior Assistant Attorney General, Civil Rights Unit Oregon Department of Justice, Portland, Or. (Jul. 13, 2012).

receives compensation for his or her injuries and injunctive relief to prevent the reoccurrence of hate crimes by a perpetrator.⁹⁸

Provisions not likely includable

One of the areas I was asked to research was the constitutionality a “fighting words” doctrine with bias motivation in mind, and the Oregon harassment statute ORS 166.065. The idea was that some states have statutes that proscribe verbal harassment and it wasn’t readily apparent if Oregon did. My research showed that the harassment statute does have a sort of “fighting words” provision but it was held unconstitutional in 2008. Further research suggests that the OR Constitution would not support a fighting words doctrine since OR does not allow a balancing test for suppression of speech. Also, it is not a historical exception under Robertson. This leaves the clear cutoff at actual threats,⁹⁹ which is already covered.¹⁰⁰

The case finding part of the harassment statute unconstitutional is State v. Johnson.¹⁰¹ Here, Defendant was charged for making racist, obscene, and homophobic insults over an amplified system to two women, one White one African American, during a traffic stop for about five minutes.¹⁰² The basis for finding that the statute was unconstitutional under Oregon's constitution was that the phrasing “abusive words or gestures, in a manner intended and likely to provoke a violent response” was facially overbroad because it “extend[s] to political, social, and economic confrontations that range from union picket lines to the protagonists on a host of divisive issues, and thus include a wide range of protected speech.”¹⁰³ I'm doubtful that it could be amended to cure the constitutional defect for a few reasons.

First, the Court said the statute may, “protect a hearer or viewer from exposure to a reasonable fear of immediate harm due to certain types of expression, but it cannot criminally punish all harassing or annoying expression.”¹⁰⁴ However, once it does cross the line of reasonable fear of immediate harm it is already covered by ORS 166.165(1)(b) or 166.155(1)(c). Further, the Court said statutes, “whose real focus is on some underlying harm or offense may survive the adoption of Article I, section 8, while those that focus on protecting the hearer from the message do not.”¹⁰⁵ Also, “The harm that the statute seeks to prevent—harassment or annoyance—generally is one against which the Oregon Constitution does not permit the criminal law to shield individuals when that harm is caused by another's speech.”¹⁰⁶

Second, I don't think a “fighting words” provision would survive constitutionality either. Fighting words are an exception to free expression under Chaplinsky v. New Hampshire.¹⁰⁷ However, Chaplinsky uses a balancing test and the Oregon constitution forbids balancing tests for suppression of speech.¹⁰⁸ Further, the Court in Johnson said that the constitutional issues only applied to criminal provisions, and made no comment on civil actions.¹⁰⁹

⁹⁸ Id.

⁹⁹ Burrows, supra n. 46.

¹⁰⁰ ORS 166.165(1)(b), 166.155(1)(c)

¹⁰¹ 345 Or. 190 (2008).

¹⁰² Id. at 192

¹⁰³ Id. at 196.

¹⁰⁴ Id. at 197.

¹⁰⁵ Id.

¹⁰⁶ Id.

¹⁰⁷ 315 US 568 (1942)

¹⁰⁸ State v. Stoneman, 323 Or 536, 542, (1996).

¹⁰⁹ Johnson at 197 n.5.

Other underlying harm for proscribing speech

However, if there were some other verbal or expressive harm caused to the person the speech was directed at, especially one with bias-motivation, it might be able to survive a constitutional challenge. Research was then directed at seeing if there are any tort standards that could be used as a basis for criminal proscription. After examining Oregon's tort laws the best fit seems to be the intentional infliction of emotional distress (IIED). The question then became: under Oregon law, is it possible to include intentional infliction of emotional distress as a criminal offense addition to the intimidation statutes? The answer is likely not for a few reasons. Emotional distress is historically a damages claim, which is already included in the civil intimidation provision. Results of criminalizing intentional infliction of emotional distress (IIED) could prove unwieldy and ineffective. Oregon law for IIED generally requires some physical injury or contract. Of the few exceptions allowed, few involve bias elements. Of those, the bias aspect is limited to being a factor in consideration with other actions by the defendant, and cannot stand alone. Further, the durational requirements for IIED generally go beyond a single instance. The following cases outline IIED claims.

Generally speaking, emotional distress claims are not allowed without a physical impact or injury, but there can be exceptions to this rule.¹¹⁰ The exceptions come from intentional torts, including IIED.¹¹¹ In order to succeed in a claim for IIED a plaintiff must show: "(1) Defendants intended to inflict severe emotional distress on plaintiff; (2) The acts did cause severe emotional distress and; (3) The defendant's acts consisted of 'some extraordinary transgression of the bounds of socially tolerable conduct'" or exceeded "any reasonable limit of social toleration."¹¹² According to McFarty v. Staudenraus no special relationship between the parties for the level of intent necessary, just that the defendant intended to inflict the emotional distress and that it was substantially certain to happen.¹¹³

The following cases outline applicability of a bias motivated IIED provision. In Brewer v. Erwin the court said that insults, ill temper, and offensive jokes are not actionable conduct, and that that people are expected to endure these under contemporary standards of behavior.¹¹⁴ Arguably, a bias motivated IIED tort might be distinguishable because it involves a level of animosity and harm that goes beyond harsh or inappropriate behavior common in day-to-day life. For example, the court in State v. Beebe said the legislature's rational basis interest for the Intimidation statute ORS 166.155 was valid because bias motivated conduct causes social harm, and wanting to prevent retaliation by the offended group was a legitimate state interest.¹¹⁵ This could be bolstered by the case MacCrone v. Edwards Center, Inc. which states that even a single incident may be actionable.¹¹⁶ Furthermore, courts examine extreme and outrageous behavior as a fact-specific inquiry "on a case-by-case basis, considering the totality of the circumstances."¹¹⁷ Also, "[D]epending on the circumstances, insults or harassment directed to individuals on the basis of historically disfavored personal characteristics more readily transgress

¹¹⁰ See Hammond v. Central Lane Communications Center, 312 Or. 17, 22–23 (1991); Chouinard v. Health Ventures, 179 Or. App. 507, 513–514 (2002).

¹¹¹ Hammond, 312 Or. at 22.

¹¹² Patton v. J.C. Penney Co., Inc., 301 Or. 117, 122 (1986) (quoting Hall v. May Dept. Stores Co., 292 Or. 131, 135, 137 (1981)); Schiele v. Montes, 231 Or. App. 43, 48 (2009).

¹¹³ 321 Or. 532, 543-551 (1995).

¹¹⁴ 287 Or 435, 457 (1979).

¹¹⁵ 67 Or. App. 738, 742 (1984)

¹¹⁶ 160 Or App 91, 100–101 (1999), See also Babick v. Oregon Arena Corp., 333 Or 401, 412–413 (2002) (defendant employer exposed plaintiff security guard to physical attack by concertgoers whom plaintiff had detained earlier).

¹¹⁷ Lathrope-Olson v. Oregon Dept. of Transp., 128 Or App 405, 408 (1994).

contemporary social bounds than do other forms of antagonistic behavior.”¹¹⁸ So, bias-based insults or harassment differ in kind from other insults and are potentially offensive in the extreme, satisfying the third element of the tort¹¹⁹

In Lathrope-Olson, a Native American highway crew woman claimed her supervisor constantly called her “squaw,” made sexist remarks, threatened to push her into traffic, and repeatedly locked her out of the crew van when it was raining or snowing and no other shelter was near.¹²⁰ The appeals court said that “acts of racism and sexual harassment are not simply rude and boorish, but are more properly characterized as the kind of conduct that a jury could find was intended to inflict deep, stigmatizing and psychic wounds on another person.”¹²¹ Further, the court said based on the totality of the circumstances, it was a question for the jury and overturned the trial courts grant of summary judgment to the defendant.¹²²

However, in Clemente v. State, plaintiff brought action against her employer for gender discrimination, retaliation for making a gender discrimination complaint, and IIED.¹²³ The trial court dismissed the claims based on issue preclusion.¹²⁴ The appeals court reversed the trial court’s ruling on issue preclusion but said the court did not err in dismissing the IIED claim.¹²⁵ The court said the plaintiff, “was not exposed to violence, nor was she repeatedly and viciously ridiculed. At most, she was subjected to an insensitive, mean-spirited supervisor who might have engaged in gender-based, discriminatory treatment. . . .”¹²⁶

Thus, considering that IIED claims must be examined in the totality of the circumstances, it appears that bias-motivated speech or expression would only be a factor in a situation and is accompanied with other affronts to the individual. Unfortunately, this would likely make criminalizing bias-motivated IIED not very functional for trying to proscribe harassing speech or conduct.

Policy findings and comparisons

The other segment of this internship deals in part with policy findings in relation to hate crimes and some of the approaches other states have taken to help ameliorate the problem. As mentioned earlier, the scope of the internship focused mostly on legal aspects of Oregon hate crime laws. Later in this report are recommendations for future research, particularly in regards to Oregon-specific policies that could be enacted. The following is a general overview of ideas suggested and implemented by other states and organizations. Of these, there are three main areas that policies tend to focus on. They are school education, police training and policies, and some alternative division of government working with local hate crime policies.

Education

¹¹⁸ Williams v. Tri-County Metropolitan Transp. Dist. of Oregon, 153 Or App 686, 690 (1998)

¹¹⁹ See also Hofsheier v. Farmers Ins. Exchange, 154 Or App 538, 543 (1998) (“in Oregon, [racial] discrimination may form the basis for common law claims for intentional infliction of emotional distress”).

¹²⁰ Lathrope-Olson, at 407.

¹²¹ Id. at 408.

¹²² Id.

¹²³ Clemente v. State, 227 Or App 434, 436 (2009).

¹²⁴ Id.

¹²⁵ Id. at 442.

¹²⁶ Id. at 443.

Education of children through public schools is an approach that aims to nip bias-motivated action in the bud, hopefully before it even becomes a problem for the individual later in life. For example, California enacted legislation for schools to “Adopt policies directed toward creating a school environment in kindergarten and grades 1 to 12, inclusive, that is free from discriminatory attitudes and practices and acts of hate violence.”¹²⁷ In part, the statute requires schools to, “Prepare guidelines for the design and implementation of local programs and instructional curricula that promote understanding, awareness, and appreciation of the contributions of people with diverse backgrounds and of harmonious relations in a diverse society.”¹²⁸ The education is not only for the students but is also for teachers and administrators for learning how to recognize bias-motivated conduct and address it.¹²⁹ In furtherance of this, California requires their education department to provide training for school personnel on hate crime issues.¹³⁰ Schools and the children attending them are not immune to incidents of hate crimes.¹³¹ Policies that educate school personnel and students about hate crime and diversity also help protect the children from possible bias-motivated harassment and violence in the school.¹³²

The importance of youth education is also recognized by the federal government. For example, the Office of Juvenile Justice and Delinquency Prevention “provided a \$50,000 grant for the development of a school-based curriculum to address prevention and treatment of hate crimes by juveniles” and the “Education Development Center Inc. (EDC) developed a curriculum and pilot tested it in schools in Massachusetts, New York, and Florida. EDC in fiscal year 1996 worked to provide the curriculum and related training to school districts and juvenile justice agencies.”¹³³

Police

Public policy with state police is one of the bigger areas of policy concern. Despite all the hate crime legislation that could be passed and written in books, arguably “...bias crimes do not legally exist until the police say they do.”¹³⁴ Bell describes police as “‘street-level bureaucrats’”¹³⁵ and most hate crime legislation enforcement is based on the discretion of the police.¹³⁶ Often times a bias-motivated crime can go un-charged because of the officer’s lack of training, social norm of not considering an action bias-motivated, or not caring about bias-motivated crimes at all.¹³⁷ Some states, including Oregon, have statutes requiring training of law enforcement officers in identifying, addressing, reporting, and recording hate crimes.¹³⁸ Still, the effectiveness of such programs and legislation would

¹²⁷ Cal. Educ. Code § 233(a)(1) (West 2012)

¹²⁸ Cal. Educ. Code § 233(b)(1) (West 2012)

¹²⁹ Cal. Educ. Code § 233(a)(4)-(7) (West 2012)

¹³⁰ See Cal. Educ. Code § 233.8 (West 2012)

¹³¹ Daniel R. Clark, Chapter 955: California's Response to Rising Hate Crimes Among California's Youth, 32 McGeorge L. Rev. 517, 518 (2001).

¹³² Justin Wieland, Peer-on-Peer Hate Crime and Hate-Motivated Incidents Involving Children in California's Public Schools: Contemporary Issues in Prevalence, Response and Prevention, 11 U.C. Davis J. Juv. L. & Pol'y 235, 247 (2007)

¹³³ Bureau of Justice Assistance, A Policymaker's Guide to Hate Crimes. U.S. Dept. of Justice Office of Justice Programs, p. 36. (Mar. 1997), retrieved Jul. 17, 2012 from www.ncjrs.gov/pdffiles1/bja/162304.pdf.

¹³⁴ Jeannine Bell, Policing Hatred: Police Bias Units and the Construction of Hate Crime, 2 Mich. J. Race & L. 421, 423 (1997)

¹³⁵ Id. at 448 (quoting Michael Lipsky, *Street-Level Bureaucracy* at xi (1980)).

¹³⁶ Id. at 454.

¹³⁷ Id. at 451-456.

¹³⁸ See, e.g., 20 Ill. Comp. Stat. Ann. § 2605/55a(A)31; Mass. Gen. Laws Ann. ch. 6, § 116B; Minn. Stat. Ann. § 8.34 (requiring training for prosecuting attorneys); Or. Rev. Stat. Ann. § 181.642; Pa. Stat. Ann. tit. 71, § 251(a.1).

likely be bolstered by placing extra emphasis on recognizing hate crimes and doing follow-up training afterwards.¹³⁹

From personal experience, Oregon might benefit from having a more publically accessible and better catalogued hate crime report. Oregon Annual Uniform Crime Reports are available as annual compilations on the Oregon State Police's website for years going back to 1995.¹⁴⁰ Part of these reports includes bias-motivated crimes using the FBI's categorical definitions and lists some of the characteristics of the incidents including categories and crimes.¹⁴¹ However, they do not show the specific correlation between the categories, i.e. what type of offender committed what time of crime against what type of victim.¹⁴² Still, this type of reporting would be possible since the forms used in submitting incidents to the Law Enforcement Data System would allow for this.¹⁴³

In regards to what gets reported, one report outlines various reasons why some people don't report hate incidents. These include but are not limited to: lack of knowledge about hate crimes and how the laws are applied, fear of retaliation for reporting, fear of again being victimized by law enforcement or a belief that law enforcement does not want to address hate crimes, lack of proficiency in the English language and of knowing how to report hate crimes, and fear of being identified as an undocumented immigrant and being deported.¹⁴⁴ In order to address some of these issues, California created a pamphlet in multiple languages that officers can hand out to people they've identified as victims of hate incidents.¹⁴⁵ The pamphlet seeks to educate people about hate crimes in general, their options if they are a victim, and whom they can get in touch with.¹⁴⁶ One example of outreach I was able to find was Oregon's DOJ website which has a multi-lingual page where people can report hate crimes.¹⁴⁷ This was also one of the suggestions in the California Attorney General's report.¹⁴⁸

The National Crime Prevention Council (NCPC) suggests a related strategy of placing "a substation within or close to immigrant neighborhoods. Employing bilingual community service officers, distributing bilingual crime prevention materials, and being open to developing a greater cultural sensitivity can help law enforcement improve relationships, gain the trust of the community, and better help them address local crime problems."¹⁴⁹ As a success story of such a strategy, the NCPC talks about the WINGS program in Iowa dealt with a local Vietnamese gang terrorizing the ethnic community by hiring a special police officer, training him in key Vietnamese phrases and cultural sensitivity training.¹⁵⁰ Because of this, the local community developed a working relationship with the officer and was not afraid to report incidents for investigation.¹⁵¹

Alternative division of government

Finally some organizations advocate the creation of an independent governmental body to deal

¹³⁹ Bell at 459-60.

¹⁴⁰ http://www.oregon.gov/OSP/CJIS/annual_reports.shtml retrieved Jun. 18, 2012

¹⁴¹ Id.

¹⁴² Id.

¹⁴³ www.oregon.gov/OSP/CJIS/docs/BIAS_FORM.pdf retrieved Jun. 18, 2012

¹⁴⁴ Reporting Hate Crimes, The California Attorney General's Civil Rights, Commission on Hate Crimes,

<http://caag.state.ca.us/publications/civilrights/reportingHC.pdf> at p. 11.

¹⁴⁵ <http://oag.ca.gov/civil/content/hatecrimes>, retrieved Jul. 16, 2012.

¹⁴⁶ Id.

¹⁴⁷ http://www.doj.state.or.us/help/explain_report_a_crime.shtml retrieved Jul. 16, 2012

¹⁴⁸ <http://caag.state.ca.us/publications/civilrights/reportingHC.pdf> at p. 23.

¹⁴⁹ <http://www.ncpc.org/topics/hate-crime/strategies/strategy-raising-cultural-awareness> retrieved Jul. 16, 2012.

¹⁵⁰ Id.

¹⁵¹ Id.

with these specific issues. For example, the California Attorney General's report suggests creating a human relation commissions to sponsor hate violence prevention and response networks and providing it with financial support.¹⁵² This commission would train network participants, develop a standardized directory of services for victims of hate crimes and hate incidents, and include other community organizations and religious institutions in the network that represent the diversity of the population in the area to be served.¹⁵³ This would also serve to be a non-uniformed face that individuals could reach out to if they come from a background where they fear law enforcement or military officials.

The commission could also be used for community outreach via different mediums and methods. The NCPC talks about possible means of media outreach that could be accomplished such as television, newspapers, “community events focusing on reducing prejudice and cover the events for the community... festivals, documentaries, and PSAs”¹⁵⁴ It could serve to educate communities not only about diversity issues, but provide them with information about hate crimes and their options, similar to the pamphlet that California’s police hand out.

Areas for future research

While the findings of this research do address some issues, there are still other areas that would be beneficial to look into. Dividing again into two main areas are legal suggestions and policy suggestions. This is not to say future research should be limited to these areas, but they would be great for continuing in this line of work and probably lead to further investigations.

One suggestion is to look into the necessity of “color of law” provisions for government officials and police officers who could possibly be offenders of hate crimes, and their possible state immunity. Government and law enforcement individuals are valued as gatekeepers and guardians for the community. However, to deny that they are human and ignore the shortcomings being human would hinder justice for possible victims of hate crimes by these officials. I am not entirely sure such a provision would be necessary or if there are already related statutes. Still, it would be good to research either way.

Another suggestion is to see about aiding and abating provisions for hate crimes. One of the concerns for hate crimes comes from hate groups and gangs recruiting youth and others for commission of hate crimes. This would be a useful tool in preventing and punishing hate groups that get others to do their bidding, while remaining largely untouched. This would also send a message to the community that groups that advocate and recruit others for hate violence are not tolerated.

Along those lines, some suggestions have been in regards to speech conduct, specifically inciting others to riot. As mentioned before, this might be protected speech under the Oregon constitution but it is still another facet that would better define the boundary of proscribable speech in regards to bias motivation.

Finally, there is the possibility of having anti-cross burning statutes and proscribing other hate symbols. Some states have passed legislation regulating such actions if they are narrowly tailored as threats, on private property, with a certain mens rea requirement.¹⁵⁵

¹⁵² Reporting Hate Crimes, supra at p. 24.

¹⁵³ Id.

¹⁵⁴ <http://www.ncpc.org/topics/hate-crime/strategies/strategy-media-campaigns-about-community-standards-for-tolerance> retrieved Jul. 16, 2012.

¹⁵⁵ See, e.g., Cal. Penal Code § 11411; Del. Code Ann. tit. 11, § 805; Fla. Stat. Ann. § 876.17, § 876.18 (survived First Amendment challenge in State v. T.B.D., 656 So. 2d 479 (Fla. 1995)), § 876.20; Md. Ann. Code art. 27, § 10

As far as policy research suggestions go, they generally also focus on the three areas of education, police, and governmental commissions. Broadly speaking, it would help to look into Oregon's education policies. One of the other concerns brought up which was unable to be investigated is what happens to all the hate crime charges after arrest? Are they plea-bargained out? Are they dropped? How many are actually followed through.

In regards to Oregon police training it would be helpful to know the specific instructions and curriculum given to police officers. What are they being taught? What does it encompass? Are they required to have follow-up training or testing years later? If so what is the frequency?

Finally, it would be helpful to know if Oregon is specifically doing anything about diversity educations and bias-motivation education in secondary schools and colleges. Similar to the educational policies mentioned earlier, it would be worthwhile to see if such policies exist and if not, would Oregon benefit from having them? Again, these suggestions are in no way meant to be limiting, but are guidance for any future investigations that I feel would be helpful with addressing the issue of hate crimes in Oregon.

Possible Legislative Amendment

Below is an outline of what a possible amendment proposal could look like for the Oregon intimidation statutes based on the findings of this research. It's worth noting that there are similarities between this and the proposed 2011 Oregon Senate Bill No 44 from the Oregon Seventy-Sixth Legislative Assembly, which never made it out of committee. In many ways, the suggestions of SB 44 reflect the findings of my research and make some pretty straight-forward suggestions, like renaming "crime of intimidation" to "hate crime." This outline is in no way definitive but could be helpful in guidance for future proposals. The wording in strikethrough signifies deletions, the wording in blue highlights signify additions.

ORS 166.165 could be amended to read:

- 166.165. (1) Two or more persons acting together commit the ~~crime of intimidation~~ **a hate crime** in the first degree, if the persons:
- (a)(A) Intentionally, knowingly or recklessly cause physical injury to another person because of the actors' perception of that person's race, color, religion, **national origin, age, ancestry, ethnicity, gender, homelessness**, disability or sexual orientation or ~~national origin~~; or
 - (B) With criminal negligence cause physical injury to another person by means of a deadly weapon because of the actors' perception of that person's race, color, religion, national origin, ethnicity, gender, disability or sexual orientation or national origin;
 - (b) Intentionally, because of the actors' perception of another person's race, color, religion, **national origin, age, ancestry, ethnicity, gender, homelessness**, disability or sexual orientation or ~~national origin~~, place another person in fear of imminent serious physical injury; or
 - (c) Commit such acts as would constitute the crime of ~~intimidation~~ **a hate crime** in the second degree, if undertaken by one person acting alone.

(unconstitutional in State v. Sheldon, 332 Md. 45, 629 A.2d 753 (1993)); N.C. Gen. Stat. § 14-12.12(a); S.C. Code Ann. § 16-7-120 (unconstitutional in State v. Ramsey, 311 S.C. 555, 430 S.E.2d 511 (1993)).

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

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

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

(2) (3) ~~Intimidation~~ A hate crime in the first degree is a Class C felony.

ORS 166.155 could be amended to read:

166.155. (1) A person commits the ~~crime of intimidation~~ a hate crime in the second degree if the person:

(a) Tamper or interferes with property, having no right to do so nor reasonable ground to believe that the person has such right, with the intent to cause substantial inconvenience to another because of the person's perception of the other's race, color, religion, national origin, age, ancestry, ethnicity, gender, homelessness, disability or sexual orientation or ~~national origin~~;

(b) Intentionally subjects another to offensive physical contact because of the person's perception of the other's race, color, religion, national origin, age, ancestry, ethnicity, gender, homelessness, disability or sexual orientation or ~~national origin~~; or

(c) Intentionally, because of the person's perception of race, color, religion, national origin, age, ancestry, ethnicity, gender, homelessness, disability or sexual orientation or ~~national origin~~ of another or of a member of the other's family, subjects the other person to alarm by threatening:
(A) To inflict serious physical injury upon or to commit a felony affecting the other person, or a member of the person's family; or
(B) To cause substantial damage to the property of the other person or of a member of the other person's family.

(d) Intentionally, because of the person's perception of race, color, religion, national origin, age, ancestry, ethnicity, gender, homelessness, disability or sexual orientation of the other interferes with the exercise or enjoyment of rights secured by the United States Constitution or the laws of the United States or of rights secured by the Constitution of Oregon.

(e) Intentionally creates a disturbance of religious meeting or any public meeting that has a lawful purpose. The acts of disturbance of must be such that a reasonable person would expect them to be disruptive. Finally, the acts must, in fact, significantly disturb the assembly.

(2) ~~Intimidation~~ A hate crime in the second degree is a Class A misdemeanor.

(3) For purposes of this section, 'property' means any tangible personal property or real property.

ORS 30.200 could be amended to read:

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

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

(b) May make any additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, of which the person was deprived as a result of the violation.

(c) May impose a penalty of not more than \$250,000.

(d) Shall award reasonable attorney fees, expert witness fees and investigative costs to the Attorney General or district attorney if the Attorney General or district attorney prevails in the action.

(e) May award reasonable attorney fees and expert witness fees to a defendant who prevails in an action under this section if the court determines that the Attorney General or district attorney had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

(2) A temporary restraining order may be granted without prior notice to the person or group if the court finds there is a threat of immediate harm to the public health, safety or welfare. Such a temporary restraining order shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the person restrained consents that it may be extended for a longer period.

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

ORS 30.198 should be amended to read:

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

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

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

(b) Punitive damages.

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

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

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

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

ORS 181.550 could be amended to read:

181.550. (1) All law enforcement agencies shall report to the Department of State Police statistics concerning crimes:

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

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

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

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

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

⇒ (3) The Department of State Police shall prepare:

(a) Quarterly and annual reports for the use of agencies reporting under subsection (1) of this

section, and others having an interest therein;

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

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

(d) Special reports as directed by the Governor.

Correlating Oregon statutes that reference ORS 166.165, 166.155, 30.198, 30.200, and 181.550 for categorical, offense provisions, and punishment references should also be amended to reflect proposed changes. For efficiency and to save space they are not included in their entirety but are as follows: ORS 131.602, 90.396, 163.707, 166.715, 137.225, 137.712.