

House Bill 2314

Sponsored by Representatives GELSER, OLSON (at the request of John Haroldson) (Pre-session filed.)

SUMMARY

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

Modifies crimes of intimidation in first and second degree.

Prohibits court from setting aside conviction for intimidation in any degree.

Prohibits civil compromise of crime committed because of defendant's perception of another person's race, color, religion, sexual orientation, disability or national origin.

A BILL FOR AN ACT

1
2 Relating to intimidation; amending ORS 135.703, 137.225, 166.155 and 166.165.

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

4 **SECTION 1.** ORS 166.165 is amended to read:

5 166.165. (1) *[Two or more persons acting together commit]* **A person commits** the crime of in-
6 timidation in the first degree, if the *[persons]* **person:**

7 (a)(A) Intentionally, knowingly or recklessly *[cause]* **causes** physical injury to another person
8 because of the *[actors']* **person's** perception of *[that]* **the other** person's race, color, religion, sexual
9 orientation, disability or national origin; or

10 (B) With criminal negligence *[cause]* **causes** physical injury to another person by means of a
11 deadly weapon because of the *[actors']* **person's** perception of *[that]* **the other** person's race, color,
12 religion, sexual orientation, disability or national origin; **or**

13 (b) Intentionally, because of the *[actors']* **person's** perception of another person's race, color,
14 religion, sexual orientation, disability or national origin, *[place]* **places** another person in fear of
15 imminent serious physical injury. *[: or]*

16 *[(c) Commit such acts as would constitute the crime of intimidation in the second degree, if under-*
17 *taken by one person acting alone.]*

18 (2) Intimidation in the first degree is a Class C felony.

19 **SECTION 2.** ORS 166.155 is amended to read:

20 166.155. (1) A person commits the crime of intimidation in the second degree if the person:

21 (a) Tamper or interferes with property, having no right to do so nor reasonable ground to be-
22 lieve that the person has such right, with the intent to cause substantial inconvenience to another
23 **person, or to a community of persons,** because of the person's perception of the *[other's]* **other**
24 **person's, or the community's,** race, color, religion, sexual orientation, disability or national ori-
25 gin;

26 (b) Intentionally subjects another **person** to offensive physical contact because of the person's
27 perception of the *[other's]* **other person's** race, color, religion, sexual orientation, disability or na-
28 tional origin; or

29 (c) Intentionally, because of the person's perception of **the** race, color, religion, sexual orien-
30 tation, disability or national origin of another **person** or of a member of the *[other's]* **other person's**

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

1 family, subjects the other person to alarm by threatening[:]

2 [(A) *To inflict serious physical injury upon or to commit a felony affecting the other person, or a*
3 *member of the person's family; or]*

4 [(B)] to cause substantial damage to the property of the other person or of a member of the
5 other person's family.

6 (2) Intimidation in the second degree is a Class A misdemeanor.

7 (3) For purposes of this section, "property" means any tangible personal property or real prop-
8 erty.

9 **SECTION 3.** ORS 135.703 is amended to read:

10 135.703. (1) When a defendant is charged with a crime punishable as a misdemeanor for which
11 the person injured by the act constituting the crime has a remedy by a civil action, the crime may
12 be compromised, as provided in ORS 135.705, except when it was committed:

13 (a) By or upon a peace officer while in the execution of the duties of office;

14 (b) Riotously;

15 (c) With an intent to commit a crime punishable only as a felony; [or]

16 **(d) Because of the defendant's perception of another person's race, color, religion, sexual**
17 **orientation, disability or national origin; or**

18 [(d)] (e) By one family or household member upon another family or household member, as de-
19 fined in ORS 107.705, or by a person upon an elderly person or a person with a disability as defined
20 in ORS 124.005 and the crime was:

21 (A) Assault in the fourth degree under ORS 163.160;

22 (B) Assault in the third degree under ORS 163.165;

23 (C) Menacing under ORS 163.190;

24 (D) Recklessly endangering another person under ORS 163.195;

25 (E) Harassment under ORS 166.065; or

26 (F) Strangulation under ORS 163.187.

27 (2) Notwithstanding subsection (1) of this section, when a defendant is charged with violating
28 ORS 811.700, the crime may be compromised as provided in ORS 135.705.

29 **SECTION 4.** ORS 137.225, as amended by section 4, chapter 70, Oregon Laws 2012, is amended
30 to read:

31 137.225. (1)(a) At any time after the lapse of three years from the date of pronouncement of
32 judgment, any defendant who has fully complied with and performed the sentence of the court and
33 whose conviction is described in subsection (5) of this section by motion may apply to the court
34 where the conviction was entered for entry of an order setting aside the conviction; or

35 (b) At any time after the lapse of one year from the date of any arrest, if no accusatory in-
36 strument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested per-
37 son may apply to the court that would have jurisdiction over the crime for which the person was
38 arrested, for entry of an order setting aside the record of the arrest. For the purpose of computing
39 the one-year period, time during which the arrested person has secreted himself or herself within
40 or without this state is not included.

41 (2)(a) A copy of the motion and a full set of the defendant's fingerprints shall be served upon
42 the office of the prosecuting attorney who prosecuted the crime or violation, or who had authority
43 to prosecute the charge if there was no accusatory instrument filed, and opportunity shall be given
44 to contest the motion. The fingerprint card with the notation "motion for setting aside conviction,"
45 or "motion for setting aside arrest record" as the case may be, shall be forwarded to the Department

1 of State Police. Information resulting from the fingerprint search along with the fingerprint card
 2 shall be returned to the prosecuting attorney.

3 (b) When a prosecuting attorney is served with a copy of a motion to set aside a conviction
 4 under this section, the prosecuting attorney shall provide a copy of the motion and notice of the
 5 hearing date to the victim, if any, of the crime by mailing a copy of the motion and notice to the
 6 victim's last-known address.

7 (c) When a person makes a motion under subsection (1)(a) of this section, the person must pay
 8 a fee of \$80 to the Department of State Police. The person shall attach a certified check payable to
 9 the Department of State Police in the amount of \$80 to the fingerprint card that is served upon the
 10 prosecuting attorney. The office of the prosecuting attorney shall forward the check with the fin-
 11 gerprint card to the Department of State Police.

12 (d) In addition to the fee established under paragraph (c) of this subsection, when a person
 13 makes a motion under subsection (1)(a) of this section the person must pay the filing fee established
 14 under ORS 21.135.

15 (3) Upon hearing the motion, the court may require the filing of such affidavits and may require
 16 the taking of such proofs as the court deems proper. The court shall allow the victim to make a
 17 statement at the hearing. Except as otherwise provided in subsection (14) of this section, if the court
 18 determines that the circumstances and behavior of the applicant from the date of conviction, or from
 19 the date of arrest as the case may be, to the date of the hearing on the motion warrant setting aside
 20 the conviction, or the arrest record as the case may be, the court shall enter an appropriate order
 21 that shall state the original arrest charge and the conviction charge, if any and if different from the
 22 original, date of charge, submitting agency and disposition. The order shall further state that posi-
 23 tive identification has been established by the Department of State Police and further identified as
 24 to Department of State Police number or submitting agency number. Upon the entry of the order,
 25 the applicant for purposes of the law shall be deemed not to have been previously convicted, or ar-
 26 rested as the case may be, and the court shall issue an order sealing the record of conviction and
 27 other official records in the case, including the records of arrest whether or not the arrest resulted
 28 in a further criminal proceeding.

29 (4) The clerk of the court shall forward a certified copy of the order to such agencies as directed
 30 by the court. A certified copy must be sent to the Department of Corrections when the person has
 31 been in the custody of the Department of Corrections. Upon entry of the order, the conviction, ar-
 32 rest or other proceeding shall be deemed not to have occurred, and the applicant may answer ac-
 33 cordingly any questions relating to its occurrence.

34 (5) The provisions of subsection (1)(a) of this section apply to a conviction of:

35 (a) A Class B felony, except for a violation of ORS 166.429 or any crime classified as a person
 36 felony as that term is defined in the rules of the Oregon Criminal Justice Commission.

37 (b) A Class C felony, except for **a sex crime, intimidation in the first degree under ORS**
 38 **166.165** or criminal mistreatment in the first degree under ORS 163.205 when it would constitute
 39 child abuse as defined in ORS 419B.005 [*or any sex crime*].

40 (c) The crime of possession of the narcotic drug marijuana when that crime was punishable as
 41 a felony only.

42 (d) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, ex-
 43 cept for:

44 (A) [*Any*] A sex crime;

45 (B) **Intimidation in the first degree under ORS 166.165**; or

1 ~~[(B)]~~ (C) The following crimes when they would constitute child abuse as defined in ORS
 2 419B.005:

3 (i) Criminal mistreatment in the first degree under ORS 163.205; and

4 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

5 (e) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may
 6 be imposed, except for **a sex crime, intimidation in the second degree under ORS 166.155 or**
 7 endangering the welfare of a minor under ORS 163.575 (1)(a) when it would constitute child abuse
 8 as defined in ORS 419B.005 *[or any sex crime]*.

9 (f) A violation, whether under state law or local ordinance.

10 (g) An offense committed before January 1, 1972, that if committed after that date would be:

11 (A) A Class C felony, except for any sex crime or for the following crimes when they would
 12 constitute child abuse as defined in ORS 419B.005:

13 (i) Criminal mistreatment in the first degree under ORS 163.205; and

14 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

15 (B) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, ex-
 16 cept for any sex crime or for the following crimes when they would constitute child abuse as defined
 17 in ORS 419B.005:

18 (i) Criminal mistreatment in the first degree under ORS 163.205; and

19 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

20 (C) A misdemeanor, except for endangering the welfare of a minor under ORS 163.575 (1)(a)
 21 when it would constitute child abuse as defined in ORS 419B.005 or any sex crime.

22 (D) A violation.

23 (6) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section
 24 do not apply to:

25 (a) A conviction for a state or municipal traffic offense.

26 (b) A person convicted, within the 10-year period immediately preceding the filing of the motion
 27 pursuant to subsection (1) of this section, of any other offense, excluding motor vehicle violations,
 28 whether or not the other conviction is for conduct associated with the same criminal episode that
 29 caused the arrest or conviction that is sought to be set aside. Notwithstanding subsection (1) of this
 30 section, a conviction that has been set aside under this section shall be considered for the purpose
 31 of determining whether this paragraph is applicable.

32 (c) A person who at the time the motion authorized by subsection (1) of this section is pending
 33 before the court is under charge of commission of any crime.

34 (7) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this sec-
 35 tion do not apply to:

36 (a) Criminal mistreatment in the second degree under ORS 163.200 if the victim at the time of
 37 the crime was 65 years of age or older; and

38 (b) Criminal mistreatment in the first degree under ORS 163.205 if the victim at the time of the
 39 crime was 65 years of age or older.

40 (8) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this sec-
 41 tion do not apply to criminally negligent homicide under ORS 163.145, when that offense was
 42 punishable as a Class C felony.

43 (9) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this sec-
 44 tion apply to a conviction for a Class B felony described in subsection (5)(a) of this section only if:

45 (a) Twenty years or more have elapsed from the date of the conviction sought to be set aside

1 or of the release of the person from imprisonment for the conviction sought to be set aside, which-
 2 ever is later; and

3 (b) The person has not been convicted of or arrested for any other offense, excluding motor ve-
 4 hicle violations, after the date the person was convicted of the offense sought to be set aside.
 5 Notwithstanding subsection (1) of this section, a conviction or arrest that has been set aside under
 6 this section shall be considered for the purpose of determining whether this paragraph is applicable.

7 (10) The provisions of subsection (1)(b) of this section do not apply to:

8 (a) A person arrested within the three-year period immediately preceding the filing of the motion
 9 for any offense, excluding motor vehicle violations, and excluding arrests for conduct associated
 10 with the same criminal episode that caused the arrest that is sought to be set aside. An arrest that
 11 has been set aside under this section may not be considered for the purpose of determining whether
 12 this paragraph is applicable.

13 (b) An arrest for driving while under the influence of intoxicants if the charge is dismissed as
 14 a result of the person's successful completion of a diversion agreement described in ORS 813.200.

15 (11) The provisions of subsection (1) of this section apply to convictions and arrests that oc-
 16 curred before, as well as those that occurred after, September 9, 1971. There is no time limit for
 17 making an application.

18 (12) For purposes of any civil action in which truth is an element of a claim for relief or affir-
 19 mative defense, the provisions of subsection (3) of this section providing that the conviction, arrest
 20 or other proceeding be deemed not to have occurred do not apply and a party may apply to the
 21 court for an order requiring disclosure of the official records in the case as may be necessary in the
 22 interest of justice.

23 (13) Upon motion of any prosecutor or defendant in a case involving records sealed under this
 24 section, supported by affidavit showing good cause, the court with jurisdiction may order the reo-
 25 pening and disclosure of any records sealed under this section for the limited purpose of assisting
 26 the investigation of the movant. However, such an order has no other effect on the orders setting
 27 aside the conviction or the arrest record.

28 (14) Unless the court makes written findings by clear and convincing evidence that granting the
 29 motion would not be in the best interests of justice, the court shall grant the motion and enter an
 30 order as provided in subsection (3) of this section if the defendant has been convicted of one of the
 31 following crimes and is otherwise eligible for relief under this section:

- 32 (a) Abandonment of a child, ORS 163.535.
- 33 (b) Attempted assault in the second degree, ORS 163.175.
- 34 (c) Assault in the third degree, ORS 163.165.
- 35 (d) Coercion, ORS 163.275.
- 36 (e) Criminal mistreatment in the first degree, ORS 163.205.
- 37 (f) Attempted escape in the first degree, ORS 162.165.
- 38 (g) Incest, ORS 163.525, if the victim was at least 18 years of age.
- 39 (h) Intimidation in the first degree, ORS 166.165.
- 40 (i) Attempted kidnapping in the second degree, ORS 163.225.
- 41 (j) Attempted robbery in the second degree, ORS 164.405.
- 42 (k) Robbery in the third degree, ORS 164.395.
- 43 (L) Supplying contraband, ORS 162.185.
- 44 (m) Unlawful use of a weapon, ORS 166.220.

45 (15) As used in this section, "sex crime" has the meaning given that term in ORS 181.594.

