

D R A F T

SUMMARY

Increases penalty for crime of strangulation when committed knowing victim was pregnant. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both.

Expands types of previous convictions that elevate crime of assault in the fourth degree to Class C felony in certain circumstances to include other degrees of assault, strangulation and menacing.

Provides that child who witnesses assault or strangulation is victim for purposes of determining separately punishable offenses.

Provides that release decision for defendant charged with sex crime or crime constituting domestic violence must include order prohibiting attempted contact with victim and third-party contact with victim while defendant is in custody.

Modifies definition of "physical injury" for purposes of Oregon Criminal Code.

Provides that for two or more domestic violence or abuse offenses between same victim and defendant, trial may take place in any county in which one offense was committed.

Adds threatening to cause physical injury to animal to induce other person to engage in conduct as manner of committing crime of coercion.

Directs Oregon Criminal Justice Commission to classify certain retraining order violations as person Class A misdemeanors for purposes of sentencing guidelines.

Provides that certain translated witness statements in criminal matter are not hearsay. Specifies process to challenge competency of translation.

Appropriates moneys from General Fund to _____ for expenses related to domestic violence.

A BILL FOR AN ACT

1
2 Relating to crime; creating new provisions; and amending ORS 40.450,
3 131.315, 135.247, 161.015, 163.160, 163.187 and 163.275.

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

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

2 163.187. (1) A person commits the crime of strangulation if the person
3 knowingly impedes the normal breathing or circulation of the blood of an-
4 other person by:

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

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

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

9 (3) Strangulation is a Class A misdemeanor.

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

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

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

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

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

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

25 *[(f)]* **(e)** The person has at least three previous convictions *[of any com-*
26 *bination of]* **for violating this section or** ORS 163.160, 163.165, 163.175,
27 163.185 or 163.190 or *[of]* **for committing an** equivalent *[crimes in other ju-*
28 *risdictions.]* **crime in another jurisdiction, in any combination; or**

29 **(f) The person commits the strangulation knowing that the victim**
30 **is pregnant.**

31 (5) For purposes of subsection (4)(a) of this section, a strangulation is

1 witnessed if the strangulation is seen or directly perceived in any other
2 manner by the child.

3 **(6) A child who witnesses a strangulation or in whose immediate**
4 **presence a strangulation is committed as described in subsection (4)(a)**
5 **of this section is a victim for the purposes of determining separately**
6 **punishable offenses under ORS 161.067 (2).**

7 **SECTION 2.** ORS 163.160 is amended to read:

8 163.160. (1) A person commits the crime of assault in the fourth degree if
9 the person:

10 (a) Intentionally, knowingly or recklessly causes physical injury to an-
11 other; or

12 (b) With criminal negligence causes physical injury to another by means
13 of a deadly weapon.

14 (2) Assault in the fourth degree is a Class A misdemeanor.

15 (3) Notwithstanding subsection (2) of this section, assault in the fourth
16 degree is a Class C felony if the person commits the crime of assault in the
17 fourth degree and:

18 *[(a) The person has previously been convicted of assaulting the same*
19 *victim;]*

20 *[(b) The person has previously been convicted at least three times under this*
21 *section or under equivalent laws of another jurisdiction and all of the assaults*
22 *involved domestic violence, as defined in ORS 135.230;]*

23 *[(c)]* (a) The assault is committed in the immediate presence of, or is
24 witnessed by, the person's or the victim's minor child or stepchild or a minor
25 child residing within the household of the person or victim; *[or]*

26 (b) **The person has been previously convicted of violating this sec-**
27 **tion or ORS 163.165, 163.175, 163.185, 163.187 or 163.190, or of committing**
28 **an equivalent crime in another jurisdiction, and the victim in the**
29 **previous conviction is the same person who is the victim of the cur-**
30 **rent crime;**

31 (c) **The person has at least three previous convictions for violating**

1 **this section or ORS 163.165, 163.175, 163.185, 163.187 or 163.190 or for**
2 **committing an equivalent crime in another jurisdiction, in any com-**
3 **bination; or**

4 (d) The person commits the assault knowing that the victim is pregnant.

5 (4) For the purposes of subsection (3) of this section, an assault is wit-
6 nessed if the assault is seen or directly perceived in any other manner by the
7 child.

8 **(5) A child who witnesses an assault or in whose immediate pres-**
9 **ence an assault is committed as described in subsection (3)(a) of this**
10 **section is a victim for the purposes of determining separately**
11 **punishable offenses under ORS 161.067 (2).**

12 **SECTION 3.** ORS 135.247 is amended to read:

13 135.247. (1) When a release assistance officer or a release assistance dep-
14 uty makes a release decision under ORS 135.235 involving a defendant
15 charged with a sex crime or a crime constituting domestic violence, the re-
16 lease assistance officer or deputy shall include in the decision an order that
17 the defendant be prohibited from contacting **or attempting to contact** the
18 victim, **either directly or through a third party**, while the defendant is
19 in custody. The release assistance officer or deputy shall provide the de-
20 fendant with a written copy of the order.

21 (2) When a defendant who is charged with a sex crime or a crime that
22 constitutes domestic violence is arraigned, the court shall enter an order
23 continuing an order issued under subsection (1) of this section or, if no such
24 order has been entered, enter an order prohibiting the defendant from con-
25 tacting **or attempting to contact** the victim, **either directly or through**
26 **a third party**, while the defendant is in custody.

27 (3) Except as provided in subsection (4) of this section, an order described
28 in subsection (1) or (2) of this section:

29 (a) Shall apply at any time during which the defendant is held in custody
30 on the charge; and

31 (b) Shall remain valid until the defendant is sentenced for the crime, the

1 charge is dismissed or the defendant is acquitted of the crime.

2 (4) Upon petition of the victim, the court may enter an order terminating
3 an order entered under subsection (1) or (2) of this section if the court finds,
4 after a hearing on the petition, that terminating the order is in the best in-
5 terests of the parties and the community.

6 (5) As used in this section:

7 (a) "Domestic violence" has the meaning given that term in ORS 135.230.

8 (b) "Sex crime" has the meaning given that term in ORS 181.805.

9 **SECTION 4.** ORS 161.015 is amended to read:

10 161.015. As used in chapter 743, Oregon Laws 1971, and ORS 166.635, un-
11 less the context requires otherwise:

12 (1) "Dangerous weapon" means any weapon, device, instrument, material
13 or substance which under the circumstances in which it is used, attempted
14 to be used or threatened to be used, is readily capable of causing death or
15 serious physical injury.

16 (2) "Deadly weapon" means any instrument, article or substance specif-
17 ically designed for and presently capable of causing death or serious physical
18 injury.

19 (3) "Deadly physical force" means physical force that under the circum-
20 stances in which it is used is readily capable of causing death or serious
21 physical injury.

22 (4) "Peace officer" means:

23 (a) A member of the Oregon State Police;

24 (b) A sheriff, constable, marshal, municipal police officer or reserve offi-
25 cer as defined in ORS 133.005, or a police officer commissioned by a univer-
26 sity under ORS 352.383 or 353.125;

27 (c) An investigator of the Criminal Justice Division of the Department
28 of Justice or investigator of a district attorney's office;

29 (d) A humane special agent as defined in ORS 181.435;

30 (e) A liquor enforcement inspector exercising authority described in ORS
31 471.775 (2);

1 (f) An authorized tribal police officer as defined in section 1, chapter 644,
2 Oregon Laws 2011; and

3 (g) Any other person designated by law as a peace officer.

4 (5) “Person” means a human being and, where appropriate, a public or
5 private corporation, an unincorporated association, a partnership, a govern-
6 ment or a governmental instrumentality.

7 (6) “Physical force” includes, but is not limited to, the use of an electrical
8 stun gun, tear gas or mace.

9 (7) “Physical injury” means **physical trauma**, impairment of physical
10 condition or substantial pain.

11 **(8) “Physical trauma” includes but is not limited to fractures, cuts,**
12 **punctures, bruises, discoloration, burns, swelling and other wounds,**
13 **that a reasonable person could conclude cause impairment of physical**
14 **condition or substantial pain.**

15 [(8)] (9) “Serious physical injury” means physical injury which creates a
16 substantial risk of death or which causes serious and protracted
17 disfigurement, protracted impairment of health or protracted loss or impair-
18 ment of the function of any bodily organ.

19 [(9)] (10) “Possess” means to have physical possession or otherwise to
20 exercise dominion or control over property.

21 [(10)] (11) “Public place” means a place to which the general public has
22 access and includes, but is not limited to, hallways, lobbies and other parts
23 of apartment houses and hotels not constituting rooms or apartments de-
24 signed for actual residence, and highways, streets, schools, places of
25 amusement, parks, playgrounds and premises used in connection with public
26 passenger transportation.

27 **SECTION 5.** ORS 161.015, as amended by section 46, chapter 644, Oregon
28 Laws 2011, section 17, chapter 54, Oregon Laws 2012, section 10, chapter 67,
29 Oregon Laws 2012, and section 24, chapter 180, Oregon Laws 2013, is
30 amended to read:

31 161.015. As used in chapter 743, Oregon Laws 1971, and ORS 166.635, un-

1 less the context requires otherwise:

2 (1) “Dangerous weapon” means any weapon, device, instrument, material
3 or substance which under the circumstances in which it is used, attempted
4 to be used or threatened to be used, is readily capable of causing death or
5 serious physical injury.

6 (2) “Deadly weapon” means any instrument, article or substance specif-
7 ically designed for and presently capable of causing death or serious physical
8 injury.

9 (3) “Deadly physical force” means physical force that under the circum-
10 stances in which it is used is readily capable of causing death or serious
11 physical injury.

12 (4) “Peace officer” means:

13 (a) A member of the Oregon State Police;

14 (b) A sheriff, constable, marshal, municipal police officer or reserve offi-
15 cer as defined in ORS 133.005, or a police officer commissioned by a univer-
16 sity under ORS 352.383 or 353.125;

17 (c) An investigator of the Criminal Justice Division of the Department
18 of Justice or investigator of a district attorney’s office;

19 (d) A humane special agent as defined in ORS 181.435;

20 (e) A liquor enforcement inspector exercising authority described in ORS
21 471.775 (2); and

22 (f) Any other person designated by law as a peace officer.

23 (5) “Person” means a human being and, where appropriate, a public or
24 private corporation, an unincorporated association, a partnership, a govern-
25 ment or a governmental instrumentality.

26 (6) “Physical force” includes, but is not limited to, the use of an electrical
27 stun gun, tear gas or mace.

28 (7) “Physical injury” means **physical trauma**, impairment of physical
29 condition or substantial pain.

30 (8) “**Physical trauma**” includes but is not limited to **fractures, cuts,**
31 **punctures, bruises, discoloration, burns, swelling and other wounds,**

1 **that a reasonable person could conclude cause impairment of physical**
2 **condition or substantial pain.**

3 [(8)] (9) “Serious physical injury” means physical injury which creates a
4 substantial risk of death or which causes serious and protracted
5 disfigurement, protracted impairment of health or protracted loss or impair-
6 ment of the function of any bodily organ.

7 [(9)] (10) “Possess” means to have physical possession or otherwise to
8 exercise dominion or control over property.

9 [(10)] (11) “Public place” means a place to which the general public has
10 access and includes, but is not limited to, hallways, lobbies and other parts
11 of apartment houses and hotels not constituting rooms or apartments de-
12 signed for actual residence, and highways, streets, schools, places of
13 amusement, parks, playgrounds and premises used in connection with public
14 passenger transportation.

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

16 131.315. (1) If conduct constituting elements of an offense or results con-
17 stituting elements of an offense occur in two or more counties, trial of the
18 offense may be held in any of the counties concerned.

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

22 (3) If the commission of an offense commenced outside this state is con-
23 summated within this state, trial of the offense shall be held in the county
24 in which the offense is consummated or the interest protected by the crimi-
25 nal statute in question is impaired.

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

30 (5) If an offense is committed in or upon any railroad car, vehicle, air-
31 craft, boat or other conveyance in transit and it cannot readily be deter-

1 mined in which county the offense was committed, trial of the offense may
2 be held in any county through or over which the conveyance passed.

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

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

9 (8) If the offense is an attempt or solicitation to commit a crime, trial of
10 the offense may be held in any county in which any act that is an element
11 of the offense is committed.

12 (9) If the offense is criminal conspiracy, trial of the offense may be held
13 in any county in which any act or agreement that is an element of the of-
14 fense occurs.

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

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

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

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

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

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

31 (14) When a prosecution under ORS 165.692 and 165.990 or 411.675 and

1 411.990 (2) and (3) involves Medicaid funds, the trial of the offense may be
2 held in the county in which the claim was submitted for payment or in the
3 county in which the claim was paid.

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

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

11 **(16) If there are two or more offenses involving domestic violence**
12 **as defined in ORS 135.230, abuse as defined in ORS 107.705 or 419B.005**
13 **or abuse of an elderly person as those terms are defined in ORS**
14 **124.050, and each offense is alleged to have occurred between the same**
15 **defendant and victim and could otherwise be properly joined under**
16 **ORS 132.560, trial of the offenses may be held in any county in which**
17 **one of the offenses was committed.**

18 **SECTION 7.** ORS 163.275 is amended to read:

19 163.275. (1) A person commits the crime of coercion when the person
20 compels or induces another person to engage in conduct from which the
21 other person has a legal right to abstain, or to abstain from engaging in
22 conduct in which the other person has a legal right to engage, by means of
23 instilling in the other person a fear that, if the other person refrains from
24 the conduct compelled or induced or engages in conduct contrary to the
25 compulsion or inducement, the actor or another will:

26 (a) Unlawfully cause physical injury to some person;

27 **(b) Unlawfully cause physical injury to some animal;**

28 [(b)] (c) Unlawfully cause damage to property;

29 [(c)] (d) Engage in conduct constituting a crime;

30 [(d)] (e) Falsely accuse some person of a crime or cause criminal charges
31 to be instituted against the person;

1 [(e)] (f) Cause or continue a strike, boycott or other collective action
2 injurious to some person's business, except that such a threat is not deemed
3 coercive when the act or omission compelled is for the benefit of the group
4 in whose interest the actor purports to act;

5 [(f)] (g) Testify falsely or provide false information or withhold testimony
6 or information with respect to another's legal claim or defense; or

7 [(g)] (h) Unlawfully use or abuse the person's position as a public servant
8 by performing some act within or related to official duties, or by failing or
9 refusing to perform an official duty, in such manner as to affect some person
10 adversely.

11 (2) Coercion is a Class C felony.

12 **SECTION 8. The Oregon Criminal Justice Commission shall classify**
13 **contempt of court for violating a restraining order issued under ORS**
14 **107.700 to 107.735 that was proven beyond a reasonable doubt as a per-**
15 **son Class A misdemeanor under the rules of the commission.**

16 **SECTION 9.** ORS 40.450 is amended to read:

17 40.450. As used in ORS 40.450 to 40.475, unless the context requires oth-
18 erwise:

19 (1) A "statement" is:

20 (a) An oral or written assertion; or

21 (b) Nonverbal conduct of a person, if intended as an assertion.

22 (2) A "declarant" is a person who makes a statement.

23 (3) "Hearsay" is a statement, other than one made by the declarant while
24 testifying at the trial or hearing, offered in evidence to prove the truth of
25 the matter asserted.

26 (4) A statement is not hearsay if:

27 (a) The declarant testifies at the trial or hearing and is subject to cross-
28 examination concerning the statement, and the statement is:

29 (A) Inconsistent with the testimony of the witness and was given under
30 oath subject to the penalty of perjury at a trial, hearing or other proceeding,
31 or in a deposition;

1 (B) Consistent with the testimony of the witness and is offered to rebut
2 an inconsistent statement or an express or implied charge against the wit-
3 ness of recent fabrication or improper influence or motive; or

4 (C) One of identification of a person made after perceiving the person.

5 (b) The statement is offered against a party and is:

6 (A) That party's own statement, in either an individual or a represen-
7 tative capacity;

8 (B) A statement of which the party has manifested the party's adoption
9 or belief in its truth;

10 (C) A statement by a person authorized by the party to make a statement
11 concerning the subject;

12 (D) A statement by the party's agent or servant concerning a matter
13 within the scope of the agency or employment, made during the existence of
14 the relationship; or

15 (E) A statement by a coconspirator of a party during the course and in
16 furtherance of the conspiracy.

17 (c) The statement is made in a deposition taken in the same proceeding
18 pursuant to ORCP 39 I.

19 **(d) The statement is an English translation of another statement**
20 **in a foreign language made by a witness in a criminal matter and the**
21 **declarant is an interpreter, provided that the original foreign language**
22 **statement is otherwise admissible.**

23 **SECTION 10. Section 11 of this 2015 Act is added to and made a part**
24 **of ORS 40.450 to 40.475.**

25 **SECTION 11. (1) A defendant in a criminal proceeding may file**
26 **written notice challenging the competency of the English translation**
27 **of an original foreign language statement that is otherwise admissible**
28 **under ORS 40.450 (4)(d) at least 15 days before trial. The defendant**
29 **shall serve a copy of the notice on the district attorney.**

30 **(2) Upon receiving the written notice described in subsection (1) of**
31 **this section, the court shall hold a hearing prior to the trial on the**

1 **issue of the competency of the translation of the original foreign lan-**
2 **guage statement. If the translated statement is an audio recording or**
3 **in writing, the court shall determine competency without requiring**
4 **the attendance of the interpreter at the hearing.**

5 **(3) If the court finds, at a hearing under this section, that the**
6 **translation of the original foreign language statement is competent,**
7 **the translated statement is authenticated for the purposes of ORS**
8 **40.505.**

9 **SECTION 12. In addition to and not in lieu of any other appropri-**
10 **ation, there is appropriated to _____, for the biennium beginning July**
11 **1, 2015, out of the General Fund, the amount of \$_____, which shall**
12 **be used for the purposes of funding services for victims of domestic**
13 **violence, enforcing laws related to domestic violence and providing**
14 **training on domestic violence issues.**

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