

PRELIMINARY STAFF MEASURE SUMMARY**CARRIER:**

Senate Committee on Judiciary

REVENUE: No revenue impact**FISCAL: May have fiscal impact, statement not yet issued****SUBSEQUENT REFERRAL TO:****Action:****Vote:****Yeas:****Nays:****Exc.:****Prepared By:** Jeff Rhoades, Counsel**Meeting Dates:** 3/25, 4/9; 4/17

WHAT THE MEASURE DOES: Modifies and expands definition of “physical injury” in criminal code. Provides that person commits felony level strangulation if person commits strangulation knowing that victim is pregnant. States that, in case of crime where element of offense is crime committed in immediate presence of minor child, minor child qualifies as victim. Directs Oregon Criminal Justice Commission to classify violation of Family Abuse Prevention Act restraining order as Class A misdemeanor.

ISSUES DISCUSSED:

EFFECT OF COMMITTEE AMENDMENT: Proposed -2 amendment restricts expanded definition of “physical injury” to vulnerable persons. Removes all other substantive portions of the bill.

Proposed -4 amendment defines physical injury as “impairment of physical condition or substantial pain, and may include fractures, burns, bruises or other wounds that a reasonable person could conclude resulted in impairment of physical condition or caused substantial pain.” Removes all other substantive portions of the bill.

Proposed -5 amendment makes language changes to the definition.

BACKGROUND: Senate Bill 526 represents an omnibus bill aimed at combatting domestic violence. There are several provisions of the bill which have a significant impact on criminal law. Currently, ORS 161.015 defines “physical injury” as “impairment of physical condition or substantial pain.” In *State v. Higgins*, the court defined “impairment of physical condition” as “harm to the body that results in a reduction in one’s ability to use the body or a bodily organ for less than a protracted period of time.” Various court opinions have clarified the definition of “substantial pain,” included *State v. Hart*, *State v. Jones*, and most recently, *State v. Lewis*. The court has held that hair pulling which hurts for twenty four hours, bruises on a sixteen month old child’s buttocks that did not diminish bodily movement, and scratches and scrapes on a victim all do not qualify as “physical injury.” Senate Bill 526 changes this definition, to state that physical injury means physical trauma. The bill defines “physical trauma” as including, but not limited to, “fractures, cuts, punctures, bruises, burns or other wounds.” This definition is more expansive than the current court reading of “physical injury.”

Senate Bill 526 also expands upon the crime of strangulation. A person commits strangulation if they knowingly impede the normal breathing or circulation of the blood of another person by: 1) applying pressure on the throat or neck of the other person; or 2) blocking the nose or mouth of the other person. Strangulation is a Class A misdemeanor by default, however certain enhancing factors can raise the crime to a Class C felony. Senate Bill 526 adds to the list of enhancements, by providing that a person commits felony strangulation if they commit the crime knowing that the victim is pregnant.

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This summary has not been adopted or officially endorsed by action of the committee.

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Senate Bill 526 also makes changes to the definition of “victim” under the criminal code. Some crimes, such as Assault in the Fourth Degree, become felonies if they are committed in the presence of a minor child. Senate Bill 526 clarifies that these minors are to be considered victims under the code should a person be found guilty of such an offense. Lastly, Senate Bill 526 states that the Oregon Criminal Justice Commission shall classify restraining order violations as a Class A misdemeanor. Currently, such crimes are considered “contempt of court” and operate as unclassified misdemeanors. As such, defendants are not entitled to a jury trial on those crimes. Senate Bill 526 would have the effect of increasing the severity level of the crime, but also guaranteeing jury trial rights in such cases.