
MEMORANDUM

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To: Public Safety Subcommittee

From: Linda Gilbert, Legislative Fiscal Office
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Date: June 11, 2015

Subject: HB 2356-B – Relating to invasion of personal privacy
Work Session Recommendations

House Bill 2356-B modifies the Invasion of Privacy statute. It increases penalties for recidivists and those who make recordings of others, to a Class C felony. Currently the offenses are a Class A misdemeanor.

The measure previously had hearings in the House Judiciary Committee on February 18 and April 21, 2015, passing out on an 8-1-0 vote. It passed the House 60-0 on April 28, and Senate Judiciary May 20, on a 4-0-1 vote. The measure, staff measure summary, and the fiscal impact statement are included in this packet.

The fiscal impact of the bill is \$16,705 General Fund to the Department of Corrections in 2015-17 and \$72,409 in 2017-19. The Department is able to absorb this cost. The measure is anticipated to result in additional felony cases in circuit court; the fiscal impact of those cases, however, is expected to be minimal to the Judicial Department, Public Defense Services Commission, District Attorneys and Their Deputies, and the Department of Justice.

There is no amendment.

HB 2356-B Final Subcommittee Action:

The measure is recommended to be moved to the Joint Committee on Ways and Means.

Final Motion:

Move HB 2356-B to the Joint Committee on Ways and Means with a Do Pass recommendation.

Carriers:

Full _____

House _____

Senate _____

FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: HB 2356 – B

Seventy-Eighth Oregon Legislative Assembly – 2015 Regular Session
Legislative Fiscal Office

*Only Impacts on Original or Engrossed
Versions are Considered Official*

Prepared by: John Terpening
Reviewed by: Steve Bender, Linda Gilbert, Ken Rocco
Date: 5-21-2015

Measure Description:

Increases penalty for crime of invasion of personal privacy if defendant has certain prior convictions or person recorded is under 18 years of age.

Government Unit(s) Affected:

Counties, Department of Corrections, District Attorneys and their Deputies, Judicial Department, Oregon Criminal Justice Commission, Public Defense Services Commission

Summary of Expenditure Impact:

Agency – Fund Type	2015-2017 Biennium	2017-2019 Biennium
Department of Corrections – General Fund		
Prison Cost	\$6,547	\$20,754
Special Payments	\$10,158	\$51,655
Total Cost	\$16,705	\$72,409

This measure is anticipated to have a minimal fiscal impact to state agencies and does not require a referral to the Joint Ways and Means Committee. While this measure does not require an appropriation at this time, the cumulative effect of measures with a prison population impact may require further analysis and adjustment to state agency appropriations. The Legislative Fiscal Office provides in the table above and the narrative below the potential costs to state agencies in order to provide more context for the measure’s fiscal impact.

Local Government Mandate:

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

Analysis:

The measure modifies the crime of invasion of personal privacy to include both a second degree and a first degree level crime under circumstances. The second degree crime would be considered a Class A misdemeanor, and the first degree crime would be considered a Class C felony. The measure also allows the court to designate that a first degree crime is a sex crime for purposes of sex offender registration. Currently, the crime of invasion of personal privacy is a Class A misdemeanor.

The Criminal Justice Commission (CJC) utilized court case data of misdemeanor convictions for invasion of personal privacy where the defendant had prior convictions to estimate that the expansion of this crime may result in an additional 4 felony convictions per year. CJC assumes the felony sentencing patterns for this expanded level of invasion of personal privacy will remain similar to the current sentencing patterns of luring a minor. Using those current sentencing patterns, CJC estimates about 26% would result in a prison sentence within a Department of Corrections facility, 11% would be sentenced under local control, and the remainder or 62% would receive a probation sentence with an average length of 36 months.

The Department of Corrections (DOC) estimates a three-month lag between the effective date and the date first offenders may be received. Included in the cost estimates in the above table are funds that

would be distributed to the community corrections departments of counties for the costs of probation, post-prison supervision, and local control. The estimated length of stay is assumed to be approximately 18 months in a DOC facility at a marginal cost per day of \$23.41. The estimated length of stay in local control is about 1 month, with an estimated 36 months of probation. The cost per day estimate for local control and probation is \$10.72 per offender.

DOC assumes any incarcerated inmates will be distributed into existing housing facilities and there would be no additional costs for staffing or construction. Based on the Corrections Population Forecast projections from the Office of Economic Analysis, DOC estimates are based on utilizing 76 available emergency beds at the marginal cost per day, beginning December 1, 2015. If emergency bed capacity is exceeded by the cumulative effects of measures passed during the session, DOC may need to establish permanent beds at a cost per day of \$95.42.

HB 3194 requires a 10-year estimate of the fiscal impact for measures with an effect on crimes and sentencing. Using the conviction rate assumptions listed above, DOC anticipates the costs for the 2019-21 biennium to be \$100,035 General Fund, \$102,921 General Fund in 2021-23, and \$102,978 General Fund in 2023-25.

The measure is anticipated to result in additional felony cases in circuit court; however the fiscal impact of those cases is anticipated to have a minimal impact to the Judicial Department, Public Defense Services Commission, District Attorney's and their deputies, and the Department of Justice.

The Legislative Fiscal Office (LFO) notes that these cost estimates could vary depending on the actual number of criminal cases, convictions, and length of sentences issued.

STAFF MEASURE SUMMARY

Joint Committee On Ways and Means

Fiscal: Fiscal impact issued

Revenue: No Revenue Impact

Action Date:

Action:

Meeting Dates:

Vote:

Prepared By: Linda Gilbert, Budget Analyst

WHAT THE MEASURE DOES:

Modifies Invasion of Privacy statute to include two degrees of offenses. Increases penalties for recidivists and those who make recordings of others to a Class C felony. Adds ORS 163.700 to the criminal code.

ISSUES DISCUSSED:

EFFECT OF COMMITTEE AMENDMENT:

No amendment.

BACKGROUND:

ORS 163.700 defines the crime of Invasion of Personal Privacy, which prohibits the nonconsensual recording or viewing of a person when that person is in a private place and nude. Currently, the offense is a Class A misdemeanor. In addition, House Bill 2596-B added a new provision to ORS 163.700 by eliminating a loophole and prohibiting “upskirting,” which is recording another person’s intimate parts.

House Bill 2356-B increases penalties for recidivists and for those who make recordings of others. Invasion of Privacy in the First Degree would be a Class C felony, with a crime category of 6 on the felony sentencing guidelines. Sex offender registration would be discretionary if the court finds it appropriate for public safety. It would apply to conduct prohibited by current ORS 163.700(1)(a) – those who knowingly record another person in a state of nudity without consent when that person has an expectation of privacy. Invasion of Privacy in the First Degree would also apply to those who, at the time of the offense, have a previous conviction for invasion of privacy, private indecency, public indecency, or a sex crime. Invasion of Privacy in the Second Degree would apply to all other conduct and remain a Class A misdemeanor.

B-Engrossed
House Bill 2356

Ordered by the Senate May 21
Including House Amendments dated April 23 and Senate Amendments
dated May 21

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

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.

Creates crime of invasion of personal privacy in the first degree. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both. Modifies crime of invasion of personal privacy and [*re-names*] **by renaming** crime invasion of personal privacy in the second degree.

Provides that court may designate invasion of personal privacy in the first degree as sex crime if circumstances of offense require defendant to register as sex offender.

Adds crimes of invasion of personal privacy in the first and second degrees to criminal code.

A BILL FOR AN ACT

1
2 Relating to invasion of personal privacy; creating new provisions; and amending ORS 131.125,
3 135.873, 161.005, 163.700, 163.702, 181.803, 181.805 and 443.004.

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

5 **SECTION 1.** ORS 163.700 is amended to read:

6 163.700. (1) Except as provided in ORS 163.702, a person commits the crime of invasion of per-
7 sonal privacy **in the second degree** if:

8 [(a)(A) *The person knowingly makes or records a photograph, motion picture, videotape or other*
9 *visual recording of another person in a state of nudity without the consent of the person being recorded;*
10 *and*]

11 [(B) *At the time the visual recording is made or recorded the person being recorded is in a place*
12 *and circumstances where the person has a reasonable expectation of personal privacy; or*]

13 [(b)(A) *For the purpose of arousing or gratifying the sexual desire of the person, the person is in*
14 *a location to observe another person in a state of nudity without the consent of the other person; and*]

15 [(B) *The other person is in a place and circumstances where the person has a reasonable expecta-*
16 *tion of personal privacy.*]

17 **(a) For the purpose of arousing or gratifying the sexual desire of the person, the person**
18 **is in a location to observe another person in a state of nudity without the consent of the**
19 **other person; and**

20 **(b) The other person is in a place and circumstances where the person has a reasonable**
21 **expectation of personal privacy.**

22 (2) As used in this section **and section 2 of this 2015 Act:**

23 (a) "Makes or records a photograph, motion picture, videotape or other visual recording" in-
24 cludes, but is not limited to, making or recording or employing, authorizing, permitting, compelling

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 or inducing another person to make or record a photograph, motion picture, videotape or other
2 visual recording.

3 (b) "Nudity" means any part of the uncovered or less than opaquely covered:

4 (A) Genitals;

5 (B) Pubic area; or

6 (C) Female breast below a point immediately above the top of the areola.

7 (c) "Places and circumstances where the person has a reasonable expectation of personal pri-
8 vacy" includes, but is not limited to, a bathroom, dressing room, locker room that includes an en-
9 closed area for dressing or showering, tanning booth and any area where a person undresses in an
10 enclosed space that is not open to public view.

11 (d) "Public view" means that an area can be readily seen and that a person within the area can
12 be distinguished by normal unaided vision when viewed from a public place as defined in ORS
13 161.015.

14 (3) Invasion of personal privacy **in the second degree** is a Class A misdemeanor.

15 **SECTION 2. (1) Except as provided in ORS 163.702, a person commits the crime of inva-**
16 **sion of personal privacy in the first degree if:**

17 (a)(A) **The person knowingly makes or records a photograph, motion picture, videotape**
18 **or other visual recording of another person in a state of nudity without the consent of the**
19 **other person; and**

20 (B) **At the time the visual recording is made or recorded the person being recorded is in**
21 **a place and circumstances where the person has a reasonable expectation of personal pri-**
22 **vacancy; or**

23 (b) **The person violates ORS 163.700 and, at the time of the offense, has a prior conviction**
24 **for:**

25 (A) **Invasion of personal privacy in any degree, public indecency, private indecency or a**
26 **sex crime as defined in ORS 181.805; or**

27 (B) **the statutory counterpart of an offense described in subparagraph (A) of this para-**
28 **graph in another jurisdiction.**

29 (2)(a) **Invasion of personal privacy in the first degree is a Class C felony.**

30 (b) **The Oregon Criminal Justice Commission shall classify invasion of personal privacy**
31 **in the first degree as crime category 6 of the sentencing guidelines grid of the commission.**

32 (3) **The court may designate invasion of personal privacy in the first degree as a sex**
33 **crime under ORS 181.805 if the court finds that the circumstances of the offense require the**
34 **defendant to register and report as a sex offender for the safety of the community.**

35 **SECTION 3.** ORS 181.805 is amended to read:

36 181.805. As used in ORS 181.800 to 181.845:

37 (1) "Another United States court" means a federal court, a military court, the tribal court of a
38 federally recognized Indian tribe or a court of:

39 (a) A state other than Oregon;

40 (b) The District of Columbia;

41 (c) The Commonwealth of Puerto Rico;

42 (d) Guam;

43 (e) American Samoa;

44 (f) The Commonwealth of the Northern Mariana Islands; or

45 (g) The United States Virgin Islands.

- 1 (2) "Attends" means is enrolled on a full-time or part-time basis.
- 2 (3)(a) "Correctional facility" means any place used for the confinement of persons:
- 3 (A) Charged with or convicted of a crime or otherwise confined under a court order.
- 4 (B) Found to be within the jurisdiction of the juvenile court for having committed an act that
- 5 if committed by an adult would constitute a crime.
- 6 (b) "Correctional facility" applies to a state hospital or a secure intensive community inpatient
- 7 facility only as to persons detained therein charged with or convicted of a crime, or detained therein
- 8 after being found guilty except for insanity under ORS 161.290 to 161.370 or responsible except for
- 9 insanity under ORS 419C.411.
- 10 (4) "Institution of higher education" means a public or private educational institution that pro-
- 11 vides a program of post-secondary education.
- 12 (5) "Sex crime" means:
- 13 (a) Rape in any degree;
- 14 (b) Sodomy in any degree;
- 15 (c) Unlawful sexual penetration in any degree;
- 16 (d) Sexual abuse in any degree;
- 17 (e) Incest with a child victim;
- 18 (f) Using a child in a display of sexually explicit conduct;
- 19 (g) Encouraging child sexual abuse in any degree;
- 20 (h) Transporting child pornography into the state;
- 21 (i) Paying for viewing a child's sexually explicit conduct;
- 22 (j) Compelling prostitution;
- 23 (k) Promoting prostitution;
- 24 (L) Kidnapping in the first degree if the victim was under 18 years of age;
- 25 (m) Contributing to the sexual delinquency of a minor;
- 26 (n) Sexual misconduct if the offender is at least 18 years of age;
- 27 (o) Possession of materials depicting sexually explicit conduct of a child in the first degree;
- 28 (p) Kidnapping in the second degree if the victim was under 18 years of age, except by a parent
- 29 or by a person found to be within the jurisdiction of the juvenile court;
- 30 (q) Online sexual corruption of a child in any degree if the offender reasonably believed the
- 31 child to be more than five years younger than the offender;
- 32 (r) Luring a minor, if:
- 33 (A) The offender reasonably believed the child to be more than five years younger than the
- 34 offender or under 16 years of age; and
- 35 (B) The court designates in the judgment that the offense is a sex crime;
- 36 (s) Sexual assault of an animal;
- 37 (t) Public indecency or private indecency, if the person has a prior conviction for a crime listed
- 38 in this subsection;
- 39 (u) Trafficking in persons as described in ORS 163.266 (1)(b) or (c);
- 40 (v) Purchasing sex with a minor if the court designates the offense as a sex crime pursuant to
- 41 ORS 163.413 (3)(d), or the offense is the defendant's second or subsequent conviction under ORS
- 42 163.413 (3)(b)(B);
- 43 **(w) Invasion of personal privacy in the first degree, if the court designates the offense**
- 44 **as a sex crime pursuant to section 2 (3) of this 2015 Act;**
- 45 [(w)] **(x)** Any attempt to commit any of the crimes listed in paragraphs (a) to [(s), (u) or (v)] **(w)**

1 of this subsection;

2 [(x)] (y) Burglary, when committed with intent to commit any of the offenses listed in paragraphs
3 (a) to [(v)] (w) of this subsection; or

4 [(y)] (z) Criminal conspiracy if the offender agrees with one or more persons to engage in or
5 cause the performance of an offense listed in paragraphs (a) to [(t)] (w) of this subsection.

6 (6) "Sex offender" means a person who:

7 (a) Has been convicted of a sex crime;

8 (b) Has been found guilty except for insanity of a sex crime;

9 (c) Has been convicted in another United States court of a crime:

10 (A) That would constitute a sex crime if committed in this state; or

11 (B) For which the person would have to register as a sex offender in that court's jurisdiction,
12 or as required under federal law, regardless of whether the crime would constitute a sex crime in
13 this state; or

14 (d) Is described in ORS 181.809 (1).

15 (7) "Works" or "carries on a vocation" means full-time or part-time employment for more than
16 14 days within one calendar year whether financially compensated, volunteered or for the purpose
17 of governmental or educational benefit.

18 **SECTION 4.** ORS 181.803 is amended to read:

19 181.803. Notwithstanding any other provision of law:

20 (1) A person required to report as a sex offender under ORS 181.806, 181.807 or 181.808 is clas-
21 sified as a level three sex offender under ORS 181.800 (3) unless:

22 (a) Following a risk assessment conducted under ORS 181.801, the person is classified as a level
23 two sex offender under ORS 181.800 (2) or as a level one sex offender under ORS 181.800 (1); or

24 (b) After filing a petition under ORS 181.821 (2), the person is reclassified as a level two sex
25 offender under ORS 181.800 (2) by the State Board of Parole and Post-Prison Supervision or the
26 Psychiatric Security Review Board.

27 (2) A person who is a sexually violent dangerous offender under ORS 137.765:

28 (a) Must be classified as a level three sex offender under ORS 181.800 (3); and

29 (b) Is not eligible for relief from the obligation to report as a sex offender or reclassification as
30 a level two sex offender under ORS 181.800 (2), pursuant to a petition filed under ORS 181.821.

31 (3) A person who has been convicted or found guilty except for insanity of one of the following
32 offenses is not eligible for relief from the obligation to report as a sex offender pursuant to a peti-
33 tion filed under ORS 181.821 (1):

34 (a) Rape in the first degree;

35 (b) Sodomy in the first degree;

36 (c) Unlawful sexual penetration in the first degree;

37 (d) Kidnapping in the first degree as described in ORS 163.235 (1)(e) or when the victim is under
38 18 years of age; or

39 (e) Burglary in the first degree when committed with the intent to commit any of the offenses
40 listed in ORS 181.805 (5)(a) to [(t)] (w).

41 **SECTION 5.** ORS 131.125 is amended to read:

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

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

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

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

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

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

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

38 (6) A prosecution for any of the following felonies may be commenced within six years after the
39 commission of the crime if the victim at the time of the crime was 65 years of age or older:

- 40 (a) Theft in the first degree under ORS 164.055.
- 41 (b) Aggravated theft in the first degree under ORS 164.057.
- 42 (c) Theft by extortion under ORS 164.075.
- 43 (d) Robbery in the third degree under ORS 164.395.
- 44 (e) Robbery in the second degree under ORS 164.405.
- 45 (f) Robbery in the first degree under ORS 164.415.

1 (g) Forgery in the first degree under ORS 165.013.

2 (h) Fraudulent use of a credit card under ORS 165.055 (4)(b).

3 (i) Identity theft under ORS 165.800.

4 (7) Except as provided in subsection (8) of this section or as otherwise expressly provided by
5 law, prosecutions for other offenses must be commenced within the following periods of limitations
6 after their commission:

7 (a) For any other felony, three years.

8 (b) For any misdemeanor, two years.

9 (c) For a violation, six months.

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

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

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

21 (c) If the offense is an invasion of personal privacy under ORS 163.700 **or section 2 of this 2015**
22 **Act**, prosecution may be commenced within one year after discovery of the offense by the person
23 aggrieved by the offense, by a person who has a legal duty to represent the person aggrieved by the
24 offense or by a law enforcement agency, but in no case shall the period of limitation otherwise ap-
25 plicable be extended by more than three years.

26 (9) Notwithstanding subsection (2) of this section, if the defendant is identified after the period
27 described in subsection (2) of this section on the basis of DNA (deoxyribonucleic acid) sample com-
28 parisons, a prosecution for:

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

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

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

37 **SECTION 6.** ORS 135.873 is amended to read:

38 135.873. (1) As used in this section:

39 (a) "Local government" has the meaning given that term in ORS 174.116.

40 (b) "Sexual offense" includes but is not limited to a sex crime as defined in ORS 181.805.

41 (c) "State government" has the meaning given that term in ORS 174.111.

42 (d) "Victim" has the meaning given that term in ORS 131.007.

43 (2) Upon a showing of good cause, the court may at any time order that specified disclosures
44 be denied, restricted or deferred, or make such other order as is appropriate.

45 (3) Upon request of any party, the court may permit a showing of good cause for denial or reg-

1 ulation of disclosures, or portion of such showing, to be made in camera. A record shall be made
2 of such proceedings.

3 (4) If the court enters an order granting relief following a showing in camera, the entire record
4 of the showing shall be sealed and preserved in the records of the court, to be made available to the
5 appellate court in the event of an appeal. Except for information or materials subject to an order
6 that has been entered under subsection (5) or (6) of this section, the trial court, in its discretion,
7 may, after the case has been concluded, unseal matters previously sealed.

8 (5) Upon the request of a district attorney or the victim, the court shall enter a protective order
9 prohibiting any party to or attorney in, or the agent of a party to or attorney in, criminal pro-
10 ceedings involving a sexual offense, an offense involving the visual or audio recording of sexual
11 conduct by a child or invasion of personal privacy under ORS 163.700 **or section 2 of this 2015**
12 **Act** from copying or disseminating any information of a sexually explicit nature including, but not
13 limited to, photographs depicting a person in a state of nudity, photographs of human genitalia, any
14 information of the prior sexual history of the victim and any visual or audio recording of the sexual
15 victimization.

16 (6) Upon the request of a district attorney or the victim, unless the court finds good cause to
17 do otherwise, the court shall enter a protective order prohibiting any party to or attorney in, or the
18 agent of a party to or attorney in, criminal proceedings involving a sexual offense, an offense in-
19 volving the visual or audio recording of sexual conduct by a child or invasion of personal privacy
20 under ORS 163.700 **or section 2 of this 2015 Act** from copying or disseminating a visual or audio
21 recording of the victim describing the victim's sexual victimization.

22 (7) Notwithstanding a protective order entered under subsection (5) or (6) of this section, infor-
23 mation or materials described in subsections (5) and (6) may be copied or disseminated for the pur-
24 pose of:

25 (a) Providing discovery;

26 (b) Submitting evidence to a grand jury, a court, an agency of state government, a local gov-
27 ernment or a federal agency for use in judicial or administrative proceedings;

28 (c) Having the information or materials examined by an expert witness for the court, the state
29 or any party;

30 (d) Providing copies of the information or materials to the parties' attorneys or agents; or

31 (e) Sharing the information or materials with an agency of state government for use in carrying
32 out duties imposed on the agency by statute.

33 (8) Upon the request of the victim, the court may order that the victim be provided with a copy
34 of information or materials described in subsections (5) and (6) of this section.

35 **SECTION 7.** ORS 163.702 is amended to read:

36 163.702. (1) The provisions of ORS 163.700 **and section 2 of this 2015 Act** do not apply to:

37 (a) Any legitimate medical procedure performed by or under the direction of a person licensed
38 to provide medical service for the purpose of medical diagnosis, treatment, education or research,
39 including, but not limited to, the recording of medical procedures; and

40 (b) Any activity undertaken in the course of bona fide law enforcement or corrections activity
41 or necessary to the proper functioning of the criminal justice system, including but not limited to
42 the operation and management of jails, prisons and other youth and adult corrections facilities.

43 (2) The provisions of [ORS 163.700 (1)(a)] **section 2 (1)(a) of this 2015 Act** do not apply to a
44 visual recording of a person under 12 years of age if:

45 (a) The person who makes or records the visual recording is the father, mother, sibling,

1 grandparent, aunt, uncle or first cousin, by blood, adoption or marriage, of the person under 12 years
2 of age; and

3 (b) The visual recording is made or recorded for a purpose other than arousing or gratifying the
4 sexual desire of the person or another person.

5 **SECTION 8.** ORS 443.004 is amended to read:

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

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

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

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

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

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

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

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

28 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,
29 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,
30 163.467, 163.535, 163.537, 163.547, 163.689, 163.700, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d),
31 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032, 165.800, 165.803,
32 167.012, 167.017, 167.057, 167.320 or 167.322 **or section 2 of this 2015 Act**;

33 (b) Notwithstanding paragraph (a) of this subsection, of a crime described in ORS 163.465,
34 163.467, 163.700, 164.055, 164.125 or 164.377 **or section 2 of this 2015 Act**, the date of conviction for
35 which was within the five years immediately preceding employment in any capacity of an individual,
36 other than a mental health or substance abuse treatment provider, having contact with a recipient
37 of support services, a resident of a residential facility or a resident of an adult foster home, when
38 the recipient or resident is 65 years of age or older;

39 (c) Of a crime listed in ORS 181.805;

40 (d) In the last 10 years, of a crime involving the delivery or manufacture of a controlled sub-
41 stance;

42 (e) Of an attempt, conspiracy or solicitation to commit a crime described in paragraphs (a) to
43 (d) of this subsection; or

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

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

5 (5) Public funds may not be used to support, in whole or in part, the employment, in any ca-
6 pacity having contact with a recipient of support services or a resident of a residential facility or
7 an adult foster home, of a mental health or substance abuse treatment provider who has been con-
8 victed of committing, or convicted of an attempt, conspiracy or solicitation to commit, a crime de-
9 scribed in ORS 163.095, 163.115, 163.375, 163.405, 163.411 or 163.427.

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

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

18 (8) As used in this section:

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

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

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

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

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

24 (A) A peer support specialist;

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

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

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

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

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

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

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

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

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

38 **SECTION 9.** ORS 161.005 is amended to read:

39 161.005. ORS 161.005 to 161.055, 161.085 to 161.125, 161.150 to 161.175, 161.190 to 161.275, 161.290
40 to 161.370, 161.405 to 161.485, 161.505 to 161.585, 161.605, 161.615 to 161.685, 161.705 to 161.737,
41 162.005, 162.015 to 162.035, 162.055 to 162.115, 162.135 to 162.205, 162.225 to 162.375, 162.405 to
42 162.425, 162.465, 163.005, 163.115, 163.125 to 163.145, 163.149, 163.160 to 163.208, 163.196, 163.215 to
43 163.257, 163.261, 163.263, 163.264, 163.266, 163.275, 163.285, 163.305 to 163.467, 163.432, 163.433,
44 163.505 to 163.575, 163.665 to 163.693, **163.700**, 164.005, 164.015 to 164.135, 164.138, 164.140, 164.205
45 to 164.270, 164.305 to 164.377, 164.395 to 164.415, 164.805, 164.857, 164.886, 165.002 to 165.102, 165.109,

1 165.118, 165.805, 166.005 to 166.095, 166.350, 166.382, 166.384, 166.660, 167.002 to 167.027, 167.057,
2 167.060 to 167.100, 167.117, 167.122 to 167.162, 167.203 to 167.252, 167.310 to 167.340 and 167.350,
3 167.810 and 167.820 **and section 2 of this 2015 Act** shall be known and may be cited as Oregon
4 Criminal Code of 1971.

5
