

From the Desk of  
Senator Ted Ferritoli

# Senate Bill 789

Sponsored by Senator HANSELL (at the request of Dr. Andrew Clark)

## 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**.

Increases penalty for crime of strangulation. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both, or, in certain circumstances, by 10 years' imprisonment, \$250,000 fine, or both. Removes exception for religious practices.

Increases penalty for crime of menacing in certain circumstances. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both.

Requires law enforcement officer to perform lethality assessment after making mandatory arrest for domestic assault.

Requires court to consider completion of batterers' intervention program as mitigation when imposing sentence for domestic violence crime.

Authorizes person to consider past use of force by other person when using physical force against other person in self-defense or in defense of third person.

## A BILL FOR AN ACT

1  
2 Relating to crime; amending ORS 131.125, 133.055, 135.703, 137.090, 161.209, 163.187, 163.190 and  
3 166.470.

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

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

6 163.187. (1) A person commits the crime of strangulation if the person knowingly impedes the  
7 normal breathing or circulation of the blood of another person by:

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

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

10 (2) Subsection (1) of this section does not apply to legitimate medical or dental procedures [*or*  
11 *good faith practices of a religious belief*].

12 (3) Strangulation is a Class [*A misdemeanor*] **C felony**.

13 (4) Notwithstanding subsection (3) of this section, strangulation is a Class [C] **B felony** if:

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

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

18 (c) During the commission of the crime, the person used, attempted to use or threatened to use  
19 a dangerous or deadly weapon, as those terms are defined in ORS 161.015, unlawfully against an-  
20 other;

21 (d) The person has been previously convicted of violating this section or of committing an  
22 equivalent crime in another jurisdiction;

23 (e) The person has been previously convicted of violating ORS 163.160, 163.165, 163.175, 163.185  
24 or 163.190 or of committing an equivalent crime in another jurisdiction, and the victim in the pre-  
25 vious conviction is the same person who is the victim of the current crime; or

26 (f) The person has at least three previous convictions of any combination of ORS 163.160,

**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.

1 163.165, 163.175, 163.185 or 163.190 or of equivalent crimes in other jurisdictions.

2 (5) For purposes of subsection (4)(a) of this section, a strangulation is witnessed if the  
3 strangulation is seen or directly perceived in any other manner by the child.

4 **SECTION 2.** ORS 163.190 is amended to read:

5 163.190. (1) A person commits the crime of menacing if by word or conduct the person inten-  
6 tionally attempts to place another person in fear of imminent serious physical injury.

7 (2) Menacing is a Class A misdemeanor.

8 **(3) Notwithstanding subsection (2) of this section, menacing is a Class C felony if:**

9 **(a) The crime is committed in the immediate presence of, or is witnessed by, the person's**  
10 **or the victim's minor child or stepchild or a minor child residing within the household of the**  
11 **person or the victim;**

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

13 **(c) During the commission of the crime, the person used, attempted to use or threatened**  
14 **to use a dangerous or deadly weapon, as those terms are defined in ORS 161.015, unlawfully**  
15 **against another;**

16 **(d) The person has been previously convicted of violating this section or of committing**  
17 **an equivalent crime in another jurisdiction;**

18 **(e) The person has been previously convicted of violating ORS 163.160, 163.165, 163.175,**  
19 **163.185 or 163.187 or of committing an equivalent crime in another jurisdiction, and the vic-**  
20 **tim in the previous conviction is the same person who is the victim of the current crime;**  
21 **or**

22 **(f) The person has at least three previous convictions of any combination of ORS 163.160,**  
23 **163.165, 163.175, 163.185 or 163.187 or of equivalent crimes in other jurisdictions.**

24 **(4) For purposes of subsection (3)(a) of this section, a menacing is witnessed if the men-**  
25 **acing is seen or directly perceived in any other manner by the child.**

26 **SECTION 3.** ORS 133.055 is amended to read:

27 133.055. (1) A peace officer may issue a criminal citation to a person if the peace officer has  
28 probable cause to believe that the person has committed a misdemeanor or has committed any felony  
29 that is subject to misdemeanor treatment under ORS 161.705. The peace officer shall deliver a copy  
30 of the criminal citation to the person. The criminal citation shall require the person to appear at  
31 the court of the magistrate before whom the person would be taken pursuant to ORS 133.450 if the  
32 person were arrested for the offense.

33 (2)(a) Notwithstanding the provisions of subsection (1) of this section, when a peace officer re-  
34 sponds to an incident of domestic disturbance and has probable cause to believe that an assault has  
35 occurred between family or household members, as defined in ORS 107.705, or to believe that one  
36 such person has placed the other in fear of imminent serious physical injury, the officer shall arrest  
37 and take into custody the alleged assailant or potential assailant.

38 (b) When the peace officer makes an arrest under paragraph (a) of this subsection, the peace  
39 officer is not required to arrest both persons.

40 (c) When a peace officer makes an arrest under paragraph (a) of this subsection, the peace of-  
41 ficer shall make every effort to determine who is the assailant or potential assailant by considering,  
42 among other factors:

43 (A) The comparative extent of the injuries inflicted or the seriousness of threats creating a fear  
44 of physical injury;

45 (B) If reasonably ascertainable, the history of domestic violence between the persons involved;

1 (C) Whether any alleged crime was committed in self-defense; and

2 (D) The potential for future assaults.

3 (d) **When a peace officer makes an arrest under paragraph (a) of this subsection, the**  
4 **officer shall conduct an evidence-based lethality assessment on the arrested person.**

5 [(d)] (e) As used in this subsection, "assault" includes conduct constituting strangulation under  
6 ORS 163.187.

7 (3) Whenever any peace officer has reason to believe that a family or household member, as  
8 defined in ORS 107.705, has been abused as defined in ORS 107.705 or that an elderly person or a  
9 person with a disability has been abused as defined in ORS 124.005, that officer shall use all rea-  
10 sonable means to prevent further abuse, including advising each person of the availability of a  
11 shelter or other services in the community and giving each person immediate notice of the legal  
12 rights and remedies available. The notice shall consist of handing each person a copy of the fol-  
13 lowing statement:

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IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE OR ABUSE, you can ask the district attorney to file a criminal complaint. You also have the right to go to the circuit court and file a petition requesting any of the following orders for relief: (a) An order restraining your attacker from abusing you; (b) an order directing your attacker to leave your household; (c) an order preventing your attacker from entering your residence, school, business or place of employment; (d) an order awarding you or the other parent custody of or parenting time with a minor child or children; (e) an order restraining your attacker from molesting or interfering with minor children in your custody; (f) an order awarding you other relief the court considers necessary to provide for your or your children's safety, including emergency monetary assistance. Such orders are enforceable in every state.

You may also request an order awarding support for minor children in your care or for your support if the other party has a legal obligation to support you or your children.

You also have the right to sue for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other out-of-pocket expenses for injuries sustained and damage to your property. This can be done without an attorney in the small claims department of a court if the total amount claimed is under \$10,000.

Similar relief may also be available in tribal courts.

For further information you may contact: \_\_\_\_\_

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**SECTION 4.** ORS 137.090 is amended to read:

137.090. (1) In determining aggravation or mitigation, the court shall consider:

(a) Any evidence received during the proceeding;

(b) The presentence report, where one is available; and

(c) Any other evidence relevant to aggravation or mitigation that the court finds trustworthy and reliable.

(2) In determining mitigation, the court may consider evidence regarding the defendant's status as a servicemember as defined in ORS 135.881.

(3) **In determining mitigation when imposing sentence for a crime constituting domestic violence as defined in ORS 135.230, the court shall consider evidence of the defendant's**

1 **completion of a batterers' intervention program.**

2 [(3)] (4) When a witness is so sick or infirm as to be unable to attend, the deposition of the  
 3 witness may be taken out of court at such time and place, and upon such notice to the adverse  
 4 party, and before such person authorized to take depositions, as the court directs.

5 **SECTION 5.** ORS 161.209 is amended to read:

6 161.209. (1) Except as provided in ORS 161.215 and 161.219[.];

7 (a) A person is justified in using physical force upon another person for self-defense or to defend  
 8 a third person from what the person reasonably believes to be the use or imminent use of unlawful  
 9 physical force[, and the person may use a degree of force which the person reasonably believes to be  
 10 necessary for the purpose].

11 (b) A person is justified in using physical force upon another person for self-defense or  
 12 to defend a third person from what the person reasonably believes to be the future use of  
 13 unlawful physical force by the other person when the other person has used physical force  
 14 against the person on a prior occasion.

15 (2) A person acting pursuant to subsection (1) of this section may use only the degree  
 16 of force which the person reasonably believes to be necessary for the purpose.

17 **SECTION 6.** ORS 131.125 is amended to read:

18 131.125. (1) A prosecution for aggravated murder, murder, attempted murder or aggravated  
 19 murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of  
 20 manslaughter may be commenced at any time after the commission of the attempt, conspiracy or  
 21 solicitation to commit aggravated murder or murder, or the death of the person killed.

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

- 26 (a) Strangulation under ORS 163.187 [(4)].
- 27 (b) Criminal mistreatment in the first degree under ORS 163.205.
- 28 (c) Rape in the third degree under ORS 163.355.
- 29 (d) Rape in the second degree under ORS 163.365.
- 30 (e) Rape in the first degree under ORS 163.375.
- 31 (f) Sodomy in the third degree under ORS 163.385.
- 32 (g) Sodomy in the second degree under ORS 163.395.
- 33 (h) Sodomy in the first degree under ORS 163.405.
- 34 (i) Unlawful sexual penetration in the second degree under ORS 163.408.
- 35 (j) Unlawful sexual penetration in the first degree under ORS 163.411.
- 36 (k) Sexual abuse in the second degree under ORS 163.425.
- 37 (L) Sexual abuse in the first degree under ORS 163.427.
- 38 (m) Using a child in a display of sexual conduct under ORS 163.670.
- 39 (n) Encouraging child sexual abuse in the first degree under ORS 163.684.
- 40 (o) Incest under ORS 163.525.
- 41 (p) Promoting prostitution under ORS 167.012.
- 42 (q) Compelling prostitution under ORS 167.017.
- 43 (r) Luring a minor under ORS 167.057.

44 (3) A prosecution for any of the following misdemeanors may be commenced within four years  
 45 after the commission of the crime or, if the victim at the time of the crime was under 18 years of

1 age, anytime before the victim attains 22 years of age or within four years after the offense is re-  
 2 ported to a law enforcement agency or the Department of Human Services, whichever occurs first:

3 [(a) *Strangulation under ORS 163.187 (3).*]

4 [(b)] (a) Sexual abuse in the third degree under ORS 163.415.

5 [(c)] (b) Exhibiting an obscene performance to a minor under ORS 167.075.

6 [(d)] (c) Displaying obscene materials to minors under ORS 167.080.

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

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

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

16 (a) Theft in the first degree under ORS 164.055.

17 (b) Aggravated theft in the first degree under ORS 164.057.

18 (c) Theft by extortion under ORS 164.075.

19 (d) Robbery in the third degree under ORS 164.395.

20 (e) Robbery in the second degree under ORS 164.405.

21 (f) Robbery in the first degree under ORS 164.415.

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

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

24 (i) Identity theft under ORS 165.800.

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

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

29 (b) For any misdemeanor, two years.

30 (c) For a violation, six months.

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

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

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

42 (c) If the offense is an invasion of personal privacy under ORS 163.700, prosecution may be  
 43 commenced within one year after discovery of the offense by the person aggrieved by the offense,  
 44 by a person who has a legal duty to represent the person aggrieved by the offense or by a law  
 45 enforcement agency, but in no case shall the period of limitation otherwise applicable be extended

1 by more than three years.

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

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

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

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

13 **SECTION 7.** ORS 135.703 is amended to read:

14 135.703. (1) When a defendant is charged with a crime punishable as a misdemeanor for which  
15 the person injured by the act constituting the crime has a remedy by a civil action, the crime may  
16 be compromised, as provided in ORS 135.705, except when it was committed:

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

18 (b) Riotously;

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

20 (d) By one family or household member upon another family or household member, as defined  
21 in ORS 107.705, or by a person upon an elderly person or a person with a disability as defined in  
22 ORS 124.005 and the crime was:

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

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

25 (C) Menacing under ORS 163.190;

26 (D) Recklessly endangering another person under ORS 163.195; or

27 (E) Harassment under ORS 166.065[; or]

28 [(F) Strangulation under ORS 163.187].

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

31 **SECTION 8.** ORS 166.470 is amended to read:

32 166.470. (1) Unless relief has been granted under ORS 166.274 or section 5, chapter 826, Oregon  
33 Laws 2009, or 18 U.S.C. 925(c) or the expunction laws of this state or an equivalent law of another  
34 jurisdiction, a person may not intentionally sell, deliver or otherwise transfer any firearm when the  
35 transferor knows or reasonably should know that the recipient:

36 (a) Is under 18 years of age;

37 (b) Has been convicted of a felony;

38 (c) Has any outstanding felony warrants for arrest;

39 (d) Is free on any form of pretrial release for a felony;

40 (e) Was committed to the Oregon Health Authority under ORS 426.130;

41 (f) After January 1, 1990, was found to be a person with mental illness and subject to an order  
42 under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result  
43 of that mental illness;

44 (g) Has been convicted of a misdemeanor involving violence or found guilty except for insanity  
45 under ORS 161.295 of a misdemeanor involving violence within the previous four years. As used in

1 this paragraph, "misdemeanor involving violence" means a misdemeanor described in ORS 163.160,  
2 [163.187,] 163.190, 163.195 or 166.155 (1)(b); or

3 (h) Has been found guilty except for insanity under ORS 161.295 of a felony.

4 (2) A person may not sell, deliver or otherwise transfer any firearm that the person knows or  
5 reasonably should know is stolen.

6 (3) Subsection (1)(a) of this section does not prohibit:

7 (a) The parent or guardian, or another person with the consent of the parent or guardian, of a  
8 minor from transferring to the minor a firearm, other than a handgun; or

9 (b) The temporary transfer of any firearm to a minor for hunting, target practice or any other  
10 lawful purpose.

11 (4) Violation of this section is a Class A misdemeanor.

12 **SECTION 9.** ORS 166.470, as amended by section 11, chapter 826, Oregon Laws 2009, and sec-  
13 tion 11, chapter 360, Oregon Laws 2013, is amended to read:

14 166.470. (1) Unless relief has been granted under ORS 166.274 or 18 U.S.C. 925(c) or the  
15 expunction laws of this state or an equivalent law of another jurisdiction, a person may not inten-  
16 tionally sell, deliver or otherwise transfer any firearm when the transferor knows or reasonably  
17 should know that the recipient:

18 (a) Is under 18 years of age;

19 (b) Has been convicted of a felony;

20 (c) Has any outstanding felony warrants for arrest;

21 (d) Is free on any form of pretrial release for a felony;

22 (e) Was committed to the Oregon Health Authority under ORS 426.130;

23 (f) After January 1, 1990, was found to be a person with mental illness and subject to an order  
24 under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result  
25 of that mental illness;

26 (g) Has been convicted of a misdemeanor involving violence or found guilty except for insanity  
27 under ORS 161.295 of a misdemeanor involving violence within the previous four years. As used in  
28 this paragraph, "misdemeanor involving violence" means a misdemeanor described in ORS 163.160,  
29 [163.187,] 163.190, 163.195 or 166.155 (1)(b); or

30 (h) Has been found guilty except for insanity under ORS 161.295 of a felony.

31 (2) A person may not sell, deliver or otherwise transfer any firearm that the person knows or  
32 reasonably should know is stolen.

33 (3) Subsection (1)(a) of this section does not prohibit:

34 (a) The parent or guardian, or another person with the consent of the parent or guardian, of a  
35 minor from transferring to the minor a firearm, other than a handgun; or

36 (b) The temporary transfer of any firearm to a minor for hunting, target practice or any other  
37 lawful purpose.

38 (4) Violation of this section is a Class A misdemeanor.

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