

B-Engrossed
Senate Bill 377

Ordered by the House May 11
Including Senate Amendments dated April 3 and House Amendments
dated May 11

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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.

Modifies crime of computer crime. Creates manner of committing crime by committing theft of intimate image. Adds certain definitions related to crime. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both.

Renumbers certain general conditions of probation.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to crime; amending ORS 137.540 and 164.377; and declaring an emergency.

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

4 **SECTION 1.** ORS 164.377 is amended to read:

5 164.377. (1) As used in this section:

6 (a) To "access" means to instruct, communicate with, store data in, retrieve data from or otherwise make use of any resources of a computer, computer system or computer network.

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8 (b) "Computer" means, but is not limited to, an electronic, magnetic, optical electrochemical or other high-speed data processing device that performs logical, arithmetic or memory functions by the manipulations of electronic, magnetic or optical signals or impulses, and includes the components of a computer and all input, output, processing, storage, software or communication facilities that are connected or related to such a device in a system or network.

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12 (c) "Computer network" means, but is not limited to, the interconnection of communication lines, including microwave or other means of electronic communication, with a computer through remote terminals or a complex consisting of two or more interconnected computers.

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16 (d) "Computer program" means, but is not limited to, a series of instructions or statements, in a form acceptable to a computer, which permits the functioning of a computer system in a manner designed to provide appropriate products from or usage of such computer system.

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19 (e) "Computer software" means, but is not limited to, computer programs, procedures and associated documentation concerned with the operation of a computer system.

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21 (f) "Computer system" means, but is not limited to, a set of related, connected or unconnected, computer equipment, devices and software. "Computer system" also includes any computer, device or software owned or operated by the Oregon State Lottery or rented, owned or operated by another person or entity under contract to or at the direction of the Oregon State Lottery.

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25 (g) "Data" means a representation of information, knowledge, facts, concepts, computer software,

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 computer programs or instructions. "Data" may be in any form, in storage media, or as stored in the
2 memory of the computer, or in transit, or presented on a display device. "Data" includes, but is not
3 limited to, computer or human readable forms of numbers, text, stored voice, graphics and images.

4 **(h) "Intimate image" means a photograph, film, video, recording, digital picture or other**
5 **visual reproduction of a person whose intimate parts are visible or who is engaged in sexual**
6 **conduct.**

7 **(i) "Intimate parts" means uncovered human genitals, pubic areas or female nipples.**

8 [(h)] **(j) "Property"** includes, but is not limited to, financial instruments, information, including
9 electronically produced data, and computer software and programs in either computer or human
10 readable form, intellectual property and any other tangible or intangible item of value.

11 [(i)] **(k) "Proprietary information"** includes any scientific, technical or commercial information
12 including any design, process, procedure, list of customers, list of suppliers, customers' records or
13 business code or improvement thereof that is known only to limited individuals within an organiza-
14 tion and is used in a business that the organization conducts. The information must have actual or
15 potential commercial value and give the user of the information an opportunity to obtain a business
16 advantage over competitors who do not know or use the information.

17 [(j)] **(L) "Services" [include] includes,** but [are] **is** not limited to, computer time, data processing
18 and storage functions.

19 **(m) "Sexual conduct" means sexual intercourse or deviate sexual intercourse, as those**
20 **terms are defined in ORS 163.305, or masturbation.**

21 (2) Any person commits computer crime who knowingly accesses, attempts to access or uses, or
22 attempts to use, any computer, computer system, computer network or any part thereof for the
23 purpose of:

24 (a) Devising or executing any scheme or artifice to defraud;

25 (b) Obtaining money, property or services by means of false or fraudulent pretenses, represen-
26 tations or promises; or

27 (c) Committing theft, including, but not limited to, theft of proprietary information **or theft of**
28 **an intimate image.**

29 (3) Any person who knowingly and without authorization alters, damages or destroys any com-
30 puter, computer system, computer network, or any computer software, program, documentation or
31 data contained in such computer, computer system or computer network, commits computer crime.

32 (4) Any person who knowingly and without authorization uses, accesses or attempts to access
33 any computer, computer system, computer network, or any computer software, program, documen-
34 tation or data contained in such computer, computer system or computer network, commits com-
35 puter crime.

36 (5)(a) A violation of the provisions of subsection (2) or (3) of this section shall be a Class C
37 felony. Except as provided in paragraph (b) of this subsection, a violation of the provisions of sub-
38 section (4) of this section shall be a Class A misdemeanor.

39 (b) Any violation of this section relating to a computer, computer network, computer program,
40 computer software, computer system or data owned or operated by the Oregon State Lottery or
41 rented, owned or operated by another person or entity under contract to or at the direction of the
42 Oregon State Lottery Commission shall be a Class C felony.

43 **SECTION 2.** ORS 137.540 is amended to read:

44 137.540. (1) The court may sentence the defendant to probation subject to the following general
45 conditions unless specifically deleted by the court. The probationer shall:

- 1 (a) Pay supervision fees, fines, restitution or other fees ordered by the court.
- 2 (b) Not use or possess controlled substances except pursuant to a medical prescription.
- 3 (c) Submit to testing for controlled substance or alcohol use if the probationer has a history of
4 substance abuse or if there is a reasonable suspicion that the probationer has illegally used con-
5 trolled substances.
- 6 *[(d) Submit to a risk and needs assessment as directed by the supervising officer;]*
- 7 *[(e)]* (d) Participate in a substance abuse evaluation as directed by the supervising officer and
8 follow the recommendations of the evaluator if there are reasonable grounds to believe there is a
9 history of substance abuse.
- 10 *[(f)]* (e) Remain in the State of Oregon until written permission to leave is granted by the De-
11 partment of Corrections or a county community corrections agency.
- 12 *[(g)]* (f) If physically able, find and maintain gainful full-time employment, approved schooling,
13 or a full-time combination of both. Any waiver of this requirement must be based on a finding by the
14 court stating the reasons for the waiver.
- 15 *[(h)]* (g) Change neither employment nor residence without prior permission from the Depart-
16 ment of Corrections or a county community corrections agency.
- 17 *[(i)]* (h) Permit the parole and probation officer to visit the probationer or the probationer's
18 work site or residence and to conduct a walk-through of the common areas and of the rooms in the
19 residence occupied by or under the control of the probationer.
- 20 *[(j)]* (i) Consent to the search of person, vehicle or premises upon the request of a representative
21 of the supervising officer if the supervising officer has reasonable grounds to believe that evidence
22 of a violation will be found, and submit to fingerprinting or photographing, or both, when requested
23 by the Department of Corrections or a county community corrections agency for supervision pur-
24 poses.
- 25 *[(k)]* (j) Obey all laws, municipal, county, state and federal.
- 26 *[(L)]* (k) Promptly and truthfully answer all reasonable inquiries by the Department of Cor-
27 rections or a county community corrections agency.
- 28 *[(m)]* (L) Not possess weapons, firearms or dangerous animals.
- 29 **(m) Report as required and abide by the direction of the supervising officer.**
- 30 (n) If recommended by the supervising officer, successfully complete a sex offender treatment
31 program approved by the supervising officer and submit to polygraph examinations at the direction
32 of the supervising officer if the probationer:
- 33 (A) Is under supervision for a sex offense under ORS 163.305 to 163.467;
- 34 (B) Was previously convicted of a sex offense under ORS 163.305 to 163.467; or
- 35 (C) Was previously convicted in another jurisdiction of an offense that would constitute a sex
36 offense under ORS 163.305 to 163.467 if committed in this state.
- 37 (o) Participate in a mental health evaluation as directed by the supervising officer and follow
38 the recommendation of the evaluator.
- 39 *[(p) Report as required and abide by the direction of the supervising officer.]*
- 40 *[(q)]* (p) If required to report as a sex offender under ORS 181.807, report with the Department
41 of State Police, a city police department, a county sheriff's office or the supervising agency:
- 42 (A) When supervision begins;
- 43 (B) Within 10 days of a change in residence;
- 44 (C) Once each year within 10 days of the probationer's date of birth;
- 45 (D) Within 10 days of the first day the person works at, carries on a vocation at or attends an

1 institution of higher education; and

2 (E) Within 10 days of a change in work, vocation or attendance status at an institution of higher
3 education.

4 **(q) Submit to a risk and needs assessment as directed by the supervising officer.**

5 (2) In addition to the general conditions, the court may impose any special conditions of pro-
6 bation that are reasonably related to the crime of conviction or the needs of the probationer for the
7 protection of the public or reformation of the probationer, or both, including, but not limited to, that
8 the probationer shall:

9 (a) For crimes committed prior to November 1, 1989, and misdemeanors committed on or after
10 November 1, 1989, be confined to the county jail or be restricted to the probationer's own residence
11 or to the premises thereof, or be subject to any combination of such confinement and restriction,
12 such confinement or restriction or combination thereof to be for a period not to exceed one year
13 or one-half of the maximum period of confinement that could be imposed for the offense for which
14 the defendant is convicted, whichever is the lesser.

15 (b) For felonies committed on or after November 1, 1989:

16 (A) Be confined in the county jail, or be subject to other custodial sanctions under community
17 supervision, or both, as provided by rules of the Oregon Criminal Justice Commission; and

18 (B) Comply with any special conditions of probation that are imposed by the supervising officer
19 in accordance with subsection (8) of this section.

20 (c) For crimes committed on or after December 5, 1996, sell any assets of the probationer as
21 specifically ordered by the court in order to pay restitution.

22 (3) When a person who is a sex offender is released on probation, the court shall impose as a
23 special condition of probation that the person not reside in any dwelling in which another sex
24 offender who is on probation, parole or post-prison supervision resides, without the approval of the
25 person's supervising parole and probation officer, or in which more than one other sex offender who
26 is on probation, parole or post-prison supervision resides, without the approval of the director of the
27 probation agency that is supervising the person or of the county manager of the Department of
28 Corrections, or a designee of the director or manager. As soon as practicable, the supervising parole
29 and probation officer of a person subject to the requirements of this subsection shall review the
30 person's living arrangement with the person's sex offender treatment provider to ensure that the
31 arrangement supports the goals of offender rehabilitation and community safety. As used in this
32 subsection:

33 (a) "Dwelling" has the meaning given that term in ORS 469B.100.

34 (b) "Dwelling" does not include a residential treatment facility or a halfway house.

35 (c) "Halfway house" means a publicly or privately operated profit or nonprofit residential facil-
36 ity that provides rehabilitative care and treatment for sex offenders.

37 (d) "Sex offender" has the meaning given that term in ORS 181.805.

38 (4)(a) If the person is released on probation following conviction of a sex crime, as defined in
39 ORS 181.805, or an assault, as defined in ORS 163.175 or 163.185, and the victim was under 18 years
40 of age, the court, if requested by the victim, shall include as a special condition of the person's
41 probation that the person not reside within three miles of the victim unless:

42 (A) The victim resides in a county having a population of less than 130,000 and the person is
43 required to reside in that county;

44 (B) The person demonstrates to the court by a preponderance of the evidence that no mental
45 intimidation or pressure was brought to bear during the commission of the crime;

1 (C) The person demonstrates to the court by a preponderance of the evidence that imposition
2 of the condition will deprive the person of a residence that would be materially significant in aiding
3 in the rehabilitation of the person or in the success of the probation; or

4 (D) The person resides in a halfway house. As used in this subparagraph, “halfway house” means
5 a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative
6 care and treatment for sex offenders.

7 (b) A victim may request imposition of the special condition of probation described in this sub-
8 section at the time of sentencing in person or through the prosecuting attorney.

9 (c) If the court imposes the special condition of probation described in this subsection and if at
10 any time during the period of probation the victim moves to within three miles of the probationer’s
11 residence, the court may not require the probationer to change the probationer’s residence in order
12 to comply with the special condition of probation.

13 (5) When a person who is a sex offender, as defined in ORS 181.805, is released on probation,
14 the Department of Corrections or the county community corrections agency, whichever is appropri-
15 ate, shall notify the city police department, if the person is going to reside within a city, and the
16 county sheriff’s office of the county in which the person is going to reside of the person’s release
17 and the conditions of the person’s release.

18 (6) Failure to abide by all general and special conditions of probation may result in arrest,
19 modification of conditions, revocation of probation or imposition of structured, intermediate sanc-
20 tions in accordance with rules adopted under ORS 137.595.

21 (7) The court may order that probation be supervised by the court. If the court orders that
22 probation be supervised by the court, the defendant shall pay a fee of \$100 to the court. Fees im-
23 posed under this subsection in the circuit court shall be deposited by the clerk of the court in the
24 General Fund. Fees imposed in a justice court under this subsection shall be paid to the county
25 treasurer. Fees imposed in a municipal court under this subsection shall be paid to the city treas-
26 urer.

27 (8)(a) The court may at any time modify the conditions of probation.

28 (b) When the court orders a defendant placed under the supervision of the Department of Cor-
29 rections or a community corrections agency, the supervising officer may file with the court a pro-
30 posed modification to the special conditions of probation. The supervising officer shall provide a
31 copy of the proposed modification to the district attorney and the probationer. If the district attor-
32 ney:

33 (A) Files an objection to the proposed modification less than five judicial days after the proposed
34 modification was filed, the court shall schedule a hearing no later than 10 judicial days after the
35 proposed modification was filed, unless the court finds good cause to schedule a hearing at a later
36 time.

37 (B) Does not file an objection to the proposed modification less than five judicial days after the
38 proposed modification was filed, the proposed modification becomes effective five judicial days after
39 the proposed modification was filed.

40 (9) A court may not order revocation of probation as a result of the probationer’s failure to pay
41 restitution unless the court determines from the totality of the circumstances that the purposes of
42 the probation are not being served.

43 (10) It is not a cause for revocation of probation that the probationer failed to apply for or ac-
44 cept employment at any workplace where there is a labor dispute in progress. As used in this sub-
45 section, “labor dispute” has the meaning for that term provided in ORS 662.010.

1 (11) If the court determines that a defendant has violated the terms of probation, the court shall
2 collect a \$25 fee from the defendant. The fee becomes part of the judgment and may be collected in
3 the same manner as a fine. Fees collected under this subsection in the circuit court shall be depos-
4 ited by the clerk of the court in the General Fund. Fees collected in a justice court under this
5 subsection shall be paid to the county treasurer. Fees collected in a municipal court under this
6 subsection shall be paid to the city treasurer.

7 (12) As used in this section, “attends,” “institution of higher education,” “works” and “carries
8 on a vocation” have the meanings given those terms in ORS 181.805.

9 **SECTION 3. This 2015 Act being necessary for the immediate preservation of the public**
10 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
11 **on its passage.**

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