

**PROPOSED AMENDMENTS TO
HOUSE BILL 2356**

1 On page 1 of the printed bill, line 2, after “privacy;” delete the rest of the
2 line and insert “creating new provisions; and amending ORS 131.125, 135.873,
3 163.700, 163.702, 181.803, 181.805 and 443.004.”.

4 Delete lines 4 through 29.

5 On page 2, delete lines 1 through 11 and insert:

6 **“SECTION 1.** ORS 163.700 is amended to read:

7 “163.700. (1) Except as provided in ORS 163.702, a person commits the
8 crime of invasion of personal privacy **in the second degree** if:

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

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

15 “[*(b)(A)*] **(a)(A)** For the purpose of arousing or gratifying the sexual de-
16 sire of the person, the person is in a location to observe another person in
17 a state of nudity without the consent of the other person; and

18 **“(B)** The other person is in a place and circumstances where the person
19 has a reasonable expectation of personal privacy[.]; **or**

20 **“(b)(A) The person knowingly makes or records a photograph, mo-**
21 **tion picture, videotape or other visual recording of another person’s**
22 **intimate area without the consent of the other person; and**

1 **“(B) The person being recorded has a reasonable expectation of**
2 **privacy concerning the intimate area.**

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

4 **“(a) ‘Intimate area’ means nudity, or undergarments that are being**
5 **worn by a person and are covered by clothing.**

6 “[(a)] **(b) ‘Makes or records a photograph, motion picture, videotape or**
7 **other visual recording’ includes, but is not limited to, making or recording**
8 **or employing, authorizing, permitting, compelling or inducing another person**
9 **to make or record a photograph, motion picture, videotape or other visual**
10 **recording.**

11 “[(b)] **(c) ‘Nudity’ means any part of the uncovered or less than opaquely**
12 **covered:**

13 “(A) Genitals;

14 “(B) Pubic area; or

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

16 “[(c)] **(d) ‘Places and circumstances where the person has a reasonable**
17 **expectation of personal privacy’ includes, but is not limited to, a bathroom,**
18 **dressing room, locker room that includes an enclosed area for dressing or**
19 **showering, tanning booth and any area where a person undresses in an en-**
20 **closed space that is not open to public view.**

21 “[(d)] **(e) ‘Public view’ means that an area can be readily seen and that**
22 **a person within the area can be distinguished by normal unaided vision when**
23 **viewed from a public place as defined in ORS 161.015.**

24 **“(f) ‘Reasonable expectation of privacy concerning the intimate**
25 **area’ means that the person intended to protect the intimate area**
26 **from being seen and has not exposed the intimate area to public view.**

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

29 **“SECTION 2. (1) Except as provided in ORS 163.702, a person com-**
30 **mits the crime of invasion of personal privacy in the first degree if:**

1 “(a)(A) The person knowingly makes or records a photograph, mo-
2 tion picture, videotape or other visual recording of another person in
3 a state of nudity without the consent of the other person; and

4 “(B) At the time the visual recording is made or recorded the per-
5 son being recorded is in a place and circumstances where the person
6 has a reasonable expectation of personal privacy; or

7 “(b) The person violates ORS 163.700 and, at the time of the offense,
8 has a prior conviction for:

9 “(A) Invasion of personal privacy in any degree, public indecency,
10 private indecency or a sex crime as defined in ORS 181.805; or

11 “(B) the statutory counterpart of an offense described in subpara-
12 graph (A) of this paragraph in another jurisdiction.

13 “(2)(a) Invasion of personal privacy in the first degree is a Class C
14 felony.

15 “(b) The Oregon Criminal Justice Commission shall classify inva-
16 sion of personal privacy in the first degree as crime category 6 of the
17 sentencing guidelines grid of the commission.

18 “(3) The court may designate invasion of personal privacy in the
19 first degree as a sex crime under ORS 181.805 if the court finds that
20 the circumstances of the offense require the defendant to register and
21 report as a sex offender for the safety of the community.”.

22 In line 12, delete “2” and insert “3”.

23 On page 3, delete lines 20 and 21 and insert:

24 “(w) Invasion of personal privacy in the first degree, if the court desig-
25 nates the offense as a sex crime pursuant to section 2 (3) of this 2015 Act.”.

26 In line 40, delete “3” and insert “4”.

27 On page 4, after line 17, insert:

28 “**SECTION 5.** ORS 131.125 is amended to read:

29 “131.125. (1) A prosecution for aggravated murder, murder, attempted
30 murder or aggravated murder, conspiracy or solicitation to commit aggra-

1 vated murder or murder or any degree of manslaughter may be commenced
2 at any time after the commission of the attempt, conspiracy or solicitation
3 to commit aggravated murder or murder, or the death of the person killed.

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

10 “(a) Strangulation under ORS 163.187 (4).

11 “(b) Criminal mistreatment in the first degree under ORS 163.205.

12 “(c) Rape in the third degree under ORS 163.355.

13 “(d) Rape in the second degree under ORS 163.365.

14 “(e) Rape in the first degree under ORS 163.375.

15 “(f) Sodomy in the third degree under ORS 163.385.

16 “(g) Sodomy in the second degree under ORS 163.395.

17 “(h) Sodomy in the first degree under ORS 163.405.

18 “(i) Unlawful sexual penetration in the second degree under ORS 163.408.

19 “(j) Unlawful sexual penetration in the first degree under ORS 163.411.

20 “(k) Sexual abuse in the second degree under ORS 163.425.

21 “(L) Sexual abuse in the first degree under ORS 163.427.

22 “(m) Using a child in a display of sexual conduct under ORS 163.670.

23 “(n) Encouraging child sexual abuse in the first degree under ORS
24 163.684.

25 “(o) Incest under ORS 163.525.

26 “(p) Promoting prostitution under ORS 167.012.

27 “(q) Compelling prostitution under ORS 167.017.

28 “(r) Luring a minor under ORS 167.057.

29 “(3) A prosecution for any of the following misdemeanors may be com-
30 menced within four years after the commission of the crime or, if the victim

1 at the time of the crime was under 18 years of age, anytime before the victim
2 attains 22 years of age or within four years after the offense is reported to
3 a law enforcement agency or the Department of Human Services, whichever
4 occurs first:

5 “(a) Strangulation under ORS 163.187 (3).

6 “(b) Sexual abuse in the third degree under ORS 163.415.

7 “(c) Exhibiting an obscene performance to a minor under ORS 167.075.

8 “(d) Displaying obscene materials to minors under ORS 167.080.

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

15 “(5) A prosecution for arson in any degree may be commenced within six
16 years after the commission of the crime.

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

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

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

22 “(c) Theft by extortion under ORS 164.075.

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

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

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

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

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

28 “(i) Identity theft under ORS 165.800.

29 “(7) Except as provided in subsection (8) of this section or as otherwise
30 expressly provided by law, prosecutions for other offenses must be com-

1 menced within the following periods of limitations after their commission:

2 “(a) For any other felony, three years.

3 “(b) For any misdemeanor, two years.

4 “(c) For a violation, six months.

5 “(8) If the period prescribed in subsection (7) of this section has expired,
6 a prosecution nevertheless may be commenced as follows:

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

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

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

24 “(9) Notwithstanding subsection (2) of this section, if the defendant is
25 identified after the period described in subsection (2) of this section on the
26 basis of DNA (deoxyribonucleic acid) sample comparisons, a prosecution for:

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

30 “(b) Rape in the second degree, sodomy in the second degree or unlawful

1 sexual penetration in the second degree may be commenced within 25 years
2 after the commission of the crime.

3 “(10) Notwithstanding subsection (9) of this section, if a prosecution for
4 a felony listed in subsection (9) of this section would otherwise be barred
5 by subsection (2) of this section, the prosecution must be commenced within
6 two years of the DNA-based identification of the defendant.

7 **“SECTION 6.** ORS 135.873 is amended to read:

8 “135.873. (1) As used in this section:

9 “(a) ‘Local government’ has the meaning given that term in ORS 174.116.

10 “(b) ‘Sexual offense’ includes but is not limited to a sex crime as defined
11 in ORS 181.805.

12 “(c) ‘State government’ has the meaning given that term in ORS 174.111.

13 “(d) ‘Victim’ has the meaning given that term in ORS 131.007.

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

17 “(3) Upon request of any party, the court may permit a showing of good
18 cause for denial or regulation of disclosures, or portion of such showing, to
19 be made in camera. A record shall be made of such proceedings.

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

27 “(5) Upon the request of a district attorney or the victim, the court shall
28 enter a protective order prohibiting any party to or attorney in, or the agent
29 of a party to or attorney in, criminal proceedings involving a sexual offense,
30 an offense involving the visual or audio recording of sexual conduct by a

1 child or invasion of personal privacy under ORS 163.700 **or section 2 of this**
2 **2015 Act** from copying or disseminating any information of a sexually ex-
3 plicit nature including, but not limited to, photographs depicting a person
4 in a state of nudity, photographs of human genitalia, any information of the
5 prior sexual history of the victim and any visual or audio recording of the
6 sexual victimization.

7 “(6) Upon the request of a district attorney or the victim, unless the court
8 finds good cause to do otherwise, the court shall enter a protective order
9 prohibiting any party to or attorney in, or the agent of a party to or attorney
10 in, criminal proceedings involving a sexual offense, an offense involving the
11 visual or audio recording of sexual conduct by a child or invasion of personal
12 privacy under ORS 163.700 **or section 2 of this 2015 Act** from copying or
13 disseminating a visual or audio recording of the victim describing the
14 victim’s sexual victimization.

15 “(7) Notwithstanding a protective order entered under subsection (5) or
16 (6) of this section, information or materials described in subsections (5) and
17 (6) may be copied or disseminated for the purpose of:

18 “(a) Providing discovery;

19 “(b) Submitting evidence to a grand jury, a court, an agency of state
20 government, a local government or a federal agency for use in judicial or
21 administrative proceedings;

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

24 “(d) Providing copies of the information or materials to the parties’ at-
25 torneys or agents; or

26 “(e) Sharing the information or materials with an agency of state gov-
27 ernment for use in carrying out duties imposed on the agency by statute.

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

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

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

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

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

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

14 “(a) The person who makes or records the visual recording is the father,
15 mother, sibling, grandparent, aunt, uncle or first cousin, by blood, adoption
16 or marriage, of the person under 12 years of age; and

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

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

20 “443.004. (1) The Department of Human Services or the Oregon Health
21 Authority shall complete a criminal records check under ORS 181.534 on:

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

23 “(b) Any individual who is paid directly or indirectly with public funds
24 who has or will have contact with a recipient of support services or a resi-
25 dent of an adult foster home or a residential facility; and

26 “(c) A home care worker registering with the Home Care Commission or
27 renewing a registration with the Home Care Commission.

28 “(2)(a) A home health agency shall conduct a criminal background check
29 before hiring or contracting with an individual and before allowing an indi-
30 vidual to volunteer to provide services on behalf of the home health agency,

1 if the individual will have direct contact with a patient of the home health
2 agency.

3 “(b) An in-home care agency shall conduct a criminal background check
4 before hiring or contracting with an individual and before allowing an indi-
5 vidual to volunteer to provide services on behalf of the in-home care agency,
6 if the individual will have direct contact with a client of the in-home care
7 agency.

8 “(c) The authority shall prescribe by rule the process for conducting a
9 criminal background check.

10 “(3) Public funds may not be used to support, in whole or in part, the
11 employment in any capacity having contact with a recipient of support ser-
12 vices or a resident of a residential facility or an adult foster home, of an
13 individual, other than a mental health or substance abuse treatment pro-
14 vider, who has been convicted:

15 “(a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145,
16 163.149, 163.165, 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235,
17 163.263, 163.264, 163.266, 163.275, 163.465, 163.467, 163.535, 163.537, 163.547,
18 163.689, 163.700, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d), 164.215, 164.225,
19 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032, 165.800,
20 165.803, 167.012, 167.017, 167.057, 167.320 or 167.322 **or section 2 of this 2015**
21 **Act**;

22 “(b) Notwithstanding paragraph (a) of this subsection, of a crime de-
23 scribed in ORS 163.465, 163.467, 163.700, 164.055, 164.125 or 164.377 **or section**
24 **2 of this 2015 Act**, the date of conviction for which was within the five years
25 immediately preceding employment in any capacity of an individual, other
26 than a mental health or substance abuse treatment provider, having contact
27 with a recipient of support services, a resident of a residential facility or a
28 resident of an adult foster home, when the recipient or resident is 65 years
29 of age or older;

30 “(c) Of a crime listed in ORS 181.805;

1 “(d) In the last 10 years, of a crime involving the delivery or manufacture
2 of a controlled substance;

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

5 “(f) Of a crime in another jurisdiction that is substantially equivalent,
6 as defined by rule, to a crime described in paragraphs (a) to (e) of this sub-
7 section.

8 “(4) If the criminal background check conducted by a home health agency
9 or in-home care agency under subsection (2) of this section reveals that the
10 individual who is subject to the criminal background check has been con-
11 victed of any of the crimes described in subsection (3) of this section, the
12 home health agency or in-home care agency may not employ the individual.

13 “(5) Public funds may not be used to support, in whole or in part, the
14 employment, in any capacity having contact with a recipient of support ser-
15 vices or a resident of a residential facility or an adult foster home, of a
16 mental health or substance abuse treatment provider who has been convicted
17 of committing, or convicted of an attempt, conspiracy or solicitation to
18 commit, a crime described in ORS 163.095, 163.115, 163.375, 163.405, 163.411
19 or 163.427.

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

25 “(7) If the department or authority has a record of substantiated abuse
26 committed by an employee or potential employee of a home health agency,
27 in-home care agency, adult foster home or residential facility, regardless of
28 whether criminal charges were filed, the department or authority shall no-
29 tify, in writing, the employer and the employee or potential employee.

30 “(8) As used in this section:

1 “(a) ‘Adult foster home’ has the meaning given that term in ORS 443.705.

2 “(b) ‘Home care worker’ has the meaning given that term in ORS 410.600.

3 “(c) ‘Home health agency’ has the meaning given that term in ORS
4 443.005.

5 “(d) ‘In-home care agency’ has the meaning given that term in ORS
6 443.305.

7 “(e) ‘Mental health or substance abuse treatment provider’ means:

8 “(A) A peer support specialist;

9 “(B) An employee of a residential treatment facility or a residential
10 treatment home that is licensed under ORS 443.415 to provide treatment for
11 individuals with alcohol or drug dependence;

12 “(C) An individual who provides treatment or services for persons with
13 substance use disorders; or

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

15 “(f) ‘Peer support specialist’ means a person who:

16 “(A) Is providing peer support services as defined by the authority by
17 rule;

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

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

20 “(D) Is currently receiving or has formerly received mental health ser-
21 vices, or is in recovery from a substance use disorder and meets the
22 abstinence requirements for staff providing services in alcohol or other drug
23 treatment programs.

24 “(g) ‘Residential facility’ has the meaning given that term in ORS
25 443.400.”.

26