

# DRAFT

## SUMMARY

Defines “statutory counterpart” for purposes of Oregon Criminal Code and Oregon Vehicle Code.

Provides that for criminal statutes in which prior criminal conviction in other jurisdiction may be used as element of offense or to increase offense classification or sentence, statutory counterpart to Oregon crime qualifies as prior conviction.

## A BILL FOR AN ACT

Relating to statutory counterparts of Oregon crimes; creating new provisions; and amending ORS 137.690, 137.712, 137.717, 137.719, 137.725, 161.005, 161.015, 163.107, 163.160, 163.187, 163.465, 163.732, 163.750, 165.803 and 813.011.

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

**SECTION 1.** ORS 161.015 is amended to read:

161.015. As used in chapter 743, Oregon Laws 1971, and ORS 166.635, unless the context requires otherwise:

(1) “Dangerous weapon” means any weapon, device, instrument, material or substance which under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury.

(2) “Deadly weapon” means any instrument, article or substance specifically designed for and presently capable of causing death or serious physical injury.

(3) “Deadly physical force” means physical force that under the circumstances in which it is used is readily capable of causing death or serious

physical injury.

(4) "Peace officer" means:

(a) A member of the Oregon State Police;

(b) A sheriff, constable, marshal, municipal police officer or reserve officer as defined in ORS 133.005, or a police officer commissioned by a university under ORS 352.121 or 353.125;

(c) An investigator of the Criminal Justice Division of the Department of Justice or investigator of a district attorney's office;

(d) A humane special agent as defined in ORS 181A.345;

(e) A regulatory specialist exercising authority described in ORS 471.775 (2);

(f) An authorized tribal police officer as defined in ORS 181A.680; and

(g) Any other person designated by law as a peace officer.

(5) "Person" means a human being and, where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.

(6) "Physical force" includes, but is not limited to, the use of an electrical stun gun, tear gas or mace.

(7) "Physical injury" means impairment of physical condition or substantial pain.

(8) "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

(9) "Possess" means to have physical possession or otherwise to exercise dominion or control over property.

(10) "Public place" means a place to which the general public has access and includes, but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and premises used in connection with public passenger

transportation.

(11) “Statutory counterpart” means a statute establishing a crime in another jurisdiction that has the same use, role or characteristics as an identified Oregon statute, notwithstanding differences in substantive scope between the statutes. The other jurisdiction’s statute need not be the same or nearly the same as the identified Oregon statute to be considered a statutory counterpart.

SECTION 2. Section 3 of this 2021 Act is added to and made a part of the Oregon Vehicle Code.

SECTION 3. “Statutory counterpart” means a statute establishing an offense in another jurisdiction that has the same use, role or characteristics as an identified Oregon statute, notwithstanding differences in substantive scope between the statutes. The other jurisdiction’s statute need not be the same or nearly the same as the identified Oregon statute to be considered a statutory counterpart.

SECTION 4. ORS 137.690 is amended to read:

137.690. [a.] (1) Any person who is convicted of a major felony sex crime, who has one [(or more)] **or more** previous [conviction of] **convictions for** a major felony sex crime, shall be imprisoned for a mandatory minimum term of 25 years.

[b.] (2) **As used in this section:**

(a) “Major felony sex crime” means rape in the first degree [(ORS 163.375)] **under ORS 163.375**, sodomy in the first degree [(ORS 163.405)] **under ORS 163.405**, unlawful sexual penetration in the first degree [(ORS 163.411),] **under ORS 163.411** or using a child in a display of sexually explicit conduct [(ORS 163.670)] **under ORS 163.670**.

[c.] (b) “Previous conviction” includes a conviction for the statutory counterpart of a major felony sex crime in any jurisdiction, and includes a conviction in the same sentencing proceeding if the conviction is for a separate criminal episode as defined in ORS 131.505.

(c) “Statutory counterpart” has the meaning given that term in

**ORS 161.015.**

**SECTION 5.** ORS 137.712 is amended to read:

137.712. (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person is convicted of manslaughter in the second degree as defined in ORS 163.125, assault in the second degree as defined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225, rape in the second degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395, unlawful sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first degree as defined in ORS 163.427 (1)(a)(A) or robbery in the second degree as defined in ORS 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700 or 137.707 if the court, on the record at sentencing, makes the findings set forth in subsection (2) of this section and finds that a substantial and compelling reason under the rules of the Oregon Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under this subsection, the person is eligible for a reduction in the sentence as provided in ORS 421.121 and any other statute and is eligible for a hearing and conditional release under ORS 420A.203 and 420A.206.

(b) In order to make a dispositional departure under this section, the court must make the following additional findings on the record:

(A) There exists a substantial and compelling reason not relied upon in paragraph (a) of this subsection;

(B) A sentence of probation will be more effective than a prison term in reducing the risk of offender recidivism; and

(C) A sentence of probation will better serve to protect society.

(2) A conviction is subject to subsection (1) of this section only if the sentencing court finds on the record by a preponderance of the evidence:

(a) If the conviction is for manslaughter in the second degree:

(A) That the victim was a dependent person as defined in ORS 163.205 who was at least 18 years of age;

1 (B) That the defendant is the mother or father of the victim;

2 (C) That the death of the victim was the result of an injury or illness that  
3 was not caused by the defendant;

4 (D) That the defendant treated the injury or illness solely by spiritual  
5 treatment in accordance with the religious beliefs or practices of the de-  
6 fendant and based on a good faith belief that spiritual treatment would bring  
7 about the victim's recovery from the injury or illness;

8 (E) That no other person previously under the defendant's care has died  
9 or sustained significant physical injury as a result of or despite the use of  
10 spiritual treatment, regardless of whether the spiritual treatment was used  
11 alone or in conjunction with medical care; and

12 (F) That the defendant does not have a previous conviction for a crime  
13 listed in subsection (4) of this section or for criminal mistreatment in the  
14 second degree.

15 (b) If the conviction is for assault in the second degree:

16 (A) That the victim was not physically injured by means of a deadly  
17 weapon;

18 (B) That the victim did not suffer a significant physical injury; and

19 (C) That the defendant does not have a previous conviction for a crime  
20 listed in subsection (4) of this section.

21 (c) If the conviction is for kidnapping in the second degree:

22 (A) That the victim was at least 12 years of age at the time the crime  
23 was committed; and

24 (B) That the defendant does not have a previous conviction for a crime  
25 listed in subsection (4) of this section.

26 (d) If the conviction is for robbery in the second degree:

27 (A) That the victim did not suffer a significant physical injury;

28 (B) That, if the defendant represented by words or conduct that the de-  
29 fendant was armed with a dangerous weapon, the representation did not  
30 reasonably put the victim in fear of imminent significant physical injury;

31 (C) That, if the defendant represented by words or conduct that the de-

1 defendant was armed with a deadly weapon, the representation did not rea-  
2 sonably put the victim in fear of imminent physical injury; and

3 (D) That the defendant does not have a previous conviction for a crime  
4 listed in subsection (4) of this section.

5 (e) If the conviction is for rape in the second degree, sodomy in the second  
6 degree or sexual abuse in the first degree:

7 (A) That the victim was at least 12 years of age, but under 14 years of  
8 age, at the time of the offense;

9 (B) That the defendant does not have a prior conviction for a crime listed  
10 in subsection (4) of this section;

11 (C) That the defendant has not been previously found to be within the  
12 jurisdiction of a juvenile court for an act that would have been a felony  
13 sexual offense if the act had been committed by an adult;

14 (D) That the defendant was no more than five years older than the victim  
15 at the time of the offense;

16 (E) That the offense did not involve sexual contact with any minor other  
17 than the victim; and

18 (F) That the victim's lack of consent was due solely to incapacity to  
19 consent by reason of being under 18 years of age at the time of the offense.

20 (f) If the conviction is for unlawful sexual penetration in the second de-  
21 gree:

22 (A) That the victim was 12 years of age or older at the time of the offense;

23 (B) That the defendant does not have a prior conviction for a crime listed  
24 in subsection (4) of this section;

25 (C) That the defendant has not been previously found to be within the  
26 jurisdiction of a juvenile court for an act that would have been a felony  
27 sexual offense if the act had been committed by an adult;

28 (D) That the defendant was no more than five years older than the victim  
29 at the time of the offense;

30 (E) That the offense did not involve sexual contact with any minor other  
31 than the victim;

(F) That the victim's lack of consent was due solely to incapacity to consent by reason of being under 18 years of age at the time of the offense; and

(G) That the object used to commit the unlawful sexual penetration was the hand or any part thereof of the defendant.

(3) In making the findings required by subsections (1) and (2) of this section, the court may consider any evidence presented at trial and may receive and consider any additional relevant information offered by either party at sentencing.

(4) The crimes to which subsection (2)(a)(F), (b)(C), (c)(B), (d)(D), (e)(B) and (f)(B) of this section refer are:

- (a) A crime listed in ORS 137.700 (2) or 137.707 (4);
  - (b) Escape in the first degree, as defined in ORS 162.165;
  - (c) Aggravated murder, as defined in ORS 163.095;
  - (d) Criminally negligent homicide, as defined in ORS 163.145;
  - (e) Assault in the third degree, as defined in ORS 163.165;
  - (f) Criminal mistreatment in the first degree, as defined in ORS 163.205
- (1)(b)(A);
- (g) Rape in the third degree, as defined in ORS 163.355;
  - (h) Sodomy in the third degree, as defined in ORS 163.385;
  - (i) Sexual abuse in the second degree, as defined in ORS 163.425;
  - (j) Stalking, as defined in ORS 163.732;
  - (k) Burglary in the first degree, as defined in ORS 164.225, when it is classified as a person felony under the rules of the Oregon Criminal Justice Commission;
  - (L) Arson in the first degree, as defined in ORS 164.325;
  - (m) Robbery in the third degree, as defined in ORS 164.395;
  - (n) A bias crime in the first degree, as defined in ORS 166.165;
  - (o) Promoting prostitution, as defined in ORS 167.012; and
  - (p) An attempt or solicitation to commit any Class A or B felony listed in paragraphs (a) to (L) of this subsection.

(5) Notwithstanding ORS 137.545 (5)(b), if a person sentenced to probation under this section violates a condition of probation by committing a new crime, the court shall revoke the probation and impose the presumptive sentence of imprisonment under the rules of the Oregon Criminal Justice Commission.

(6) As used in this section:

(a) "Conviction" includes, but is not limited to:

(A) A juvenile court adjudication finding a person within the court's jurisdiction under ORS 419C.005, if the person was at least 15 years of age at the time the person committed the offense that brought the person within the jurisdiction of the juvenile court. "Conviction" does not include a juvenile court adjudication described in this subparagraph if the person successfully asserted the defense set forth in ORS 419C.522.

(B) A conviction [*in another jurisdiction for a crime that if committed in this state would constitute*] **for the statutory counterpart to** a crime listed in subsection (4) of this section **in another jurisdiction**.

(b) "Previous conviction" means a conviction that was entered prior to imposing sentence on the current crime provided that the prior conviction is based on a crime committed in a separate criminal episode. "Previous conviction" does not include a conviction for a Class C felony, including an attempt or solicitation to commit a Class B felony, or a misdemeanor, unless the conviction was entered within the 10-year period immediately preceding the date on which the current crime was committed.

(c) "Significant physical injury" means a physical injury that:

(A) Creates a risk of death that is not a remote risk;

(B) Causes a serious and temporary disfigurement;

(C) Causes a protracted disfigurement; or

(D) Causes a prolonged impairment of health or the function of any bodily organ.

(d) **"Statutory counterpart" has the meaning given that term in ORS 161.015.**



**SECTION 6.** ORS 137.717 is amended to read:

137.717. (1) When a court sentences a person convicted of:

(a) Aggravated theft in the first degree under ORS 164.057, burglary in the first degree under ORS 164.225 or aggravated identity theft under ORS 165.803, the presumptive sentence is 24 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, burglary in the first degree under ORS 164.225, robbery in the third degree under ORS 164.395, robbery in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415 or aggravated identity theft under ORS 165.803;

(B) Two or more previous convictions for any combination of the crimes listed in subsection (2) of this section; or

(C) A previous conviction for a crime listed in subsection (2) of this section, if the current crime of conviction was committed while the defendant was on supervision for the previous conviction or less than three years after the date the defendant completed the period of supervision for the previous conviction.

(b) Unauthorized use of a vehicle under ORS 164.135, mail theft or receipt of stolen mail under ORS 164.162, burglary in the second degree under ORS 164.215, criminal mischief in the first degree under ORS 164.365, computer crime under ORS 164.377, robbery in the third degree under ORS 164.395, forgery in the first degree under ORS 165.013, criminal possession of a forged instrument in the first degree under ORS 165.022, fraudulent use of a credit card under ORS 165.055 (4)(b), possession of a stolen vehicle under ORS 819.300 or trafficking in stolen vehicles under ORS 819.310, the presumptive sentence is 18 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

(A) A previous conviction for aggravated theft in the first degree under

1 ORS 164.057, unauthorized use of a vehicle under ORS 164.135, burglary in  
2 the first degree under ORS 164.225, robbery in the third degree under ORS  
3 164.395, robbery in the second degree under ORS 164.405, robbery in the first  
4 degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300,  
5 trafficking in stolen vehicles under ORS 819.310 or aggravated identity theft  
6 under ORS 165.803;

7 (B) Two or more previous convictions for any combination of the crimes  
8 listed in subsection (2) of this section; or

9 (C) A previous conviction for a crime listed in subsection (2) of this sec-  
10 tion, if the current crime of conviction was committed while the defendant  
11 was on supervision for the previous conviction or less than three years after  
12 the date the defendant completed the period of supervision for the previous  
13 conviction.

14 (c) Theft in the first degree under ORS 164.055 or identity theft under  
15 ORS 165.800, the presumptive sentence is 13 months of incarceration, unless  
16 the rules of the Oregon Criminal Justice Commission prescribe a longer  
17 presumptive sentence, if the person has:

18 (A) A previous conviction for aggravated theft in the first degree under  
19 ORS 164.057, unauthorized use of a vehicle under ORS 164.135, burglary in  
20 the first degree under ORS 164.225, robbery in the second degree under ORS  
21 164.405, robbery in the first degree under ORS 164.415, possession of a stolen  
22 vehicle under ORS 819.300, trafficking in stolen vehicles under ORS 819.310  
23 or aggravated identity theft under ORS 165.803; or

24 (B) Four or more previous convictions for any combination of crimes  
25 listed in subsection (2) of this section.

26 (2) The crimes to which subsection (1) of this section applies are:

27 (a) Theft in the second degree under ORS 164.045;

28 (b) Theft in the first degree under ORS 164.055;

29 (c) Aggravated theft in the first degree under ORS 164.057;

30 (d) Unauthorized use of a vehicle under ORS 164.135;

31 (e) Mail theft or receipt of stolen mail under ORS 164.162;

- (f) Burglary in the second degree under ORS 164.215;
  - (g) Burglary in the first degree under ORS 164.225;
  - (h) Criminal mischief in the second degree under ORS 164.354;
  - (i) Criminal mischief in the first degree under ORS 164.365;
  - (j) Computer crime under ORS 164.377;
  - (k) Forgery in the second degree under ORS 165.007;
  - (L) Forgery in the first degree under ORS 165.013;
  - (m) Criminal possession of a forged instrument in the second degree under ORS 165.017;
  - (n) Criminal possession of a forged instrument in the first degree under ORS 165.022;
  - (o) Fraudulent use of a credit card under ORS 165.055;
  - (p) Identity theft under ORS 165.800;
  - (q) Possession of a stolen vehicle under ORS 819.300;
  - (r) Trafficking in stolen vehicles under ORS 819.310; and
  - (s) Any attempt to commit a crime listed in this subsection.
- (3)(a) A presumptive sentence described in subsection (1)(a) or (b) of this section shall be increased by two months for each previous conviction the person has that:
- (A) Was for any of the crimes listed in subsection (1) or (2) of this section;
  - and
  - (B) Was not used as a predicate for the presumptive sentence described in subsection (1)(a) or (b) of this section.
- (b) Previous convictions may not increase a presumptive sentence described in subsection (1)(a) or (b) of this section by more than 12 months under this subsection.
- (4) The court may impose a sentence other than the sentence provided by subsection (1) or (3) of this section if the court imposes:
- (a) A longer term of incarceration that is otherwise required or authorized by law; or
  - (b) A departure sentence authorized by the rules of the Oregon Criminal

Justice Commission based upon findings of substantial and compelling reasons. Unless the law or the rules of the Oregon Criminal Justice Commission allow for imposition of a longer sentence, the maximum departure allowed for a person sentenced under this subsection is double the presumptive sentence provided in subsection (1) or (3) of this section.

(5) Notwithstanding subsection (4)(b) of this section, the court may not sentence a person under subsection (4) of this section to a term of incarceration that exceeds the period of time described in ORS 161.605.

(6) The court shall sentence a person under this section to at least the presumptive sentence described in subsection (1)(a) or (b) or (3) of this section, unless the parties stipulate otherwise or the court finds that:

(a) The person was not on probation, parole or post-prison supervision for a crime listed in subsection (1) of this section at the time of the commission of the current crime of conviction;

(b) The person has not previously received a downward departure from a presumptive sentence for a crime listed in subsection (1) of this section;

(c) The harm or loss caused by the crime is not greater than usual for that type of crime; and

(d) In consideration of the nature of the offense and the harm to the victim, a downward departure will:

(A) Increase public safety;

(B) Enhance the likelihood that the person will be rehabilitated; and

(C) Not unduly reduce the appropriate punishment.

(7) When the court imposes a sentence of probation for a conviction for theft in the first degree or identity theft or under subsection (6) of this section, the supervisory authority as defined in ORS 144.087 may require the person to receive a high level of supervision for at least 12 months, and may extend the period of high-level supervision for all or part of the remaining probationary term.

(8)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have occurred upon the pronouncement of sentence in open

court. However, when sentences are imposed for two or more convictions arising out of the same conduct or criminal episode, none of the convictions is considered to have occurred prior to any of the other convictions arising out of the same conduct or criminal episode.

(b) For a crime committed prior to November 1, 1989, a conviction is considered to have occurred upon the pronouncement in open court of a sentence or upon the pronouncement in open court of the suspended imposition of a sentence.

(9) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.

(10) As used in this section:

(a) "Downward departure" means a downward dispositional departure or a downward durational departure under the rules of the Oregon Criminal Justice Commission.

(b) "Previous conviction" includes:

(A) Convictions occurring before, on or after July 1, 2003; and

(B) Convictions entered in any other state or federal court for [*comparable offenses*] **the statutory counterpart to the applicable Oregon crime.**

(c) **"Statutory counterpart" has the meaning given that term in ORS 161.015.**

**SECTION 7.** ORS 137.717, as amended by section 7, chapter 649, Oregon Laws 2013, and section 6, chapter 673, Oregon Laws 2017, is amended to read:

137.717. (1) When a court sentences a person convicted of:

(a) Aggravated theft in the first degree under ORS 164.057, burglary in the first degree under ORS 164.225, robbery in the third degree under ORS 164.395 or aggravated identity theft under ORS 165.803, the presumptive sentence is 24 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, burglary in the first degree under ORS 164.225, robbery in the

1 third degree under ORS 164.395, robbery in the second degree under ORS  
2 164.405, robbery in the first degree under ORS 164.415 or aggravated identity  
3 theft under ORS 165.803;

4 (B) Two or more previous convictions for any combination of the crimes  
5 listed in subsection (2) of this section; or

6 (C) A previous conviction for a crime listed in subsection (2) of this sec-  
7 tion, if the current crime of conviction was committed while the defendant  
8 was on supervision for the previous conviction or less than three years after  
9 the date the defendant completed the period of supervision for the previous  
10 conviction.

11 (b) Unauthorized use of a vehicle under ORS 164.135, mail theft or receipt  
12 of stolen mail under ORS 164.162, burglary in the second degree under ORS  
13 164.215, criminal mischief in the first degree under ORS 164.365, computer  
14 crime under ORS 164.377, forgery in the first degree under ORS 165.013,  
15 criminal possession of a forged instrument in the first degree under ORS  
16 165.022, fraudulent use of a credit card under ORS 165.055 (4)(b), possession  
17 of a stolen vehicle under ORS 819.300 or trafficking in stolen vehicles under  
18 ORS 819.310, the presumptive sentence is 18 months of incarceration, unless  
19 the rules of the Oregon Criminal Justice Commission prescribe a longer  
20 presumptive sentence, if the person has:

21 (A) A previous conviction for aggravated theft in the first degree under  
22 ORS 164.057, unauthorized use of a vehicle under ORS 164.135, burglary in  
23 the first degree under ORS 164.225, robbery in the third degree under ORS  
24 164.395, robbery in the second degree under ORS 164.405, robbery in the first  
25 degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300,  
26 trafficking in stolen vehicles under ORS 819.310 or aggravated identity theft  
27 under ORS 165.803;

28 (B) Two or more previous convictions for any combination of the crimes  
29 listed in subsection (2) of this section; or

30 (C) A previous conviction for a crime listed in subsection (2) of this sec-  
31 tion, if the current crime of conviction was committed while the defendant

1 was on supervision for the previous conviction or less than three years after  
2 the date the defendant completed the period of supervision for the previous  
3 conviction.

4 (c) Theft in the first degree under ORS 164.055 or identity theft under  
5 ORS 165.800, the presumptive sentence is 13 months of incarceration, unless  
6 the rules of the Oregon Criminal Justice Commission prescribe a longer  
7 presumptive sentence, if the person has:

8 (A) A previous conviction for aggravated theft in the first degree under  
9 ORS 164.057, unauthorized use of a vehicle under ORS 164.135, burglary in  
10 the first degree under ORS 164.225, robbery in the second degree under ORS  
11 164.405, robbery in the first degree under ORS 164.415, possession of a stolen  
12 vehicle under ORS 819.300, trafficking in stolen vehicles under ORS 819.310  
13 or aggravated identity theft under ORS 165.803; or

14 (B) Four or more previous convictions for any combination of crimes  
15 listed in subsection (2) of this section.

16 (2) The crimes to which subsection (1) of this section applies are:

17 (a) Theft in the second degree under ORS 164.045;

18 (b) Theft in the first degree under ORS 164.055;

19 (c) Aggravated theft in the first degree under ORS 164.057;

20 (d) Unauthorized use of a vehicle under ORS 164.135;

21 (e) Mail theft or receipt of stolen mail under ORS 164.162;

22 (f) Burglary in the second degree under ORS 164.215;

23 (g) Burglary in the first degree under ORS 164.225;

24 (h) Criminal mischief in the second degree under ORS 164.354;

25 (i) Criminal mischief in the first degree under ORS 164.365;

26 (j) Computer crime under ORS 164.377;

27 (k) Forgery in the second degree under ORS 165.007;

28 (L) Forgery in the first degree under ORS 165.013;

29 (m) Criminal possession of a forged instrument in the second degree under  
30 ORS 165.017;

31 (n) Criminal possession of a forged instrument in the first degree under

1 ORS 165.022;

2 (o) Fraudulent use of a credit card under ORS 165.055;

3 (p) Identity theft under ORS 165.800;

4 (q) Possession of a stolen vehicle under ORS 819.300;

5 (r) Trafficking in stolen vehicles under ORS 819.310; and

6 (s) Any attempt to commit a crime listed in this subsection.

7 (3)(a) A presumptive sentence described in subsection (1)(a) or (b) of this  
8 section shall be increased by two months for each previous conviction the  
9 person has that:

10 (A) Was for any of the crimes listed in subsection (1) or (2) of this section;  
11 and

12 (B) Was not used as a predicate for the presumptive sentence described  
13 in subsection (1)(a) or (b) of this section.

14 (b) Previous convictions may not increase a presumptive sentence de-  
15 scribed in subsection (1)(a) or (b) of this section by more than 12 months  
16 under this subsection.

17 (4) The court may impose a sentence other than the sentence provided by  
18 subsection (1) or (3) of this section if the court imposes:

19 (a) A longer term of incarceration that is otherwise required or author-  
20 ized by law; or

21 (b) A departure sentence authorized by the rules of the Oregon Criminal  
22 Justice Commission based upon findings of substantial and compelling rea-  
23 sons. Unless the law or the rules of the Oregon Criminal Justice Commission  
24 allow for imposition of a longer sentence, the maximum departure allowed  
25 for a person sentenced under this subsection is double the presumptive sen-  
26 tence provided in subsection (1) or (3) of this section.

27 (5) Notwithstanding subsection (4)(b) of this section, the court may not  
28 sentence a person under subsection (4) of this section to a term of incarcer-  
29 ation that exceeds the period of time described in ORS 161.605.

30 (6) The court shall sentence a person under this section to at least the  
31 presumptive sentence described in subsection (1)(a) or (b) or (3) of this sec-



tion, unless the parties stipulate otherwise or the court finds that:

(a) The person was not on probation, parole or post-prison supervision for a crime listed in subsection (1) of this section at the time of the commission of the current crime of conviction;

(b) The person has not previously received a downward departure from a presumptive sentence for a crime listed in subsection (1) of this section;

(c) The harm or loss caused by the crime is not greater than usual for that type of crime; and

(d) In consideration of the nature of the offense and the harm to the victim, a downward departure will:

(A) Increase public safety;

(B) Enhance the likelihood that the person will be rehabilitated; and

(C) Not unduly reduce the appropriate punishment.

(7) When the court imposes a sentence of probation for a conviction for theft in the first degree or identity theft or under subsection (6) of this section, the supervisory authority as defined in ORS 144.087 may require the person to receive a high level of supervision for at least 12 months, and may extend the period of high-level supervision for all or part of the remaining probationary term.

(8)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have occurred upon the pronouncement of sentence in open court. However, when sentences are imposed for two or more convictions arising out of the same conduct or criminal episode, none of the convictions is considered to have occurred prior to any of the other convictions arising out of the same conduct or criminal episode.

(b) For a crime committed prior to November 1, 1989, a conviction is considered to have occurred upon the pronouncement in open court of a sentence or upon the pronouncement in open court of the suspended imposition of a sentence.

(9) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.

(10) As used in this section:

(a) “Downward departure” means a downward dispositional departure or a downward durational departure under the rules of the Oregon Criminal Justice Commission.

(b) “Previous conviction” includes:

(A) Convictions occurring before, on or after July 1, 2003; and

(B) Convictions entered in any other state or federal court for [*comparable offenses*] **the statutory counterpart to the applicable Oregon crime.**

(c) “Statutory counterpart” has the meaning given that term in **ORS 161.015.**

**SECTION 8.** ORS 137.719 is amended to read:

137.719. (1) The presumptive sentence for a sex crime that is a felony is life imprisonment without the possibility of release or parole if the defendant has been sentenced for sex crimes that are felonies at least two times prior to the current sentence.

(2) The court may impose a sentence other than the presumptive sentence provided by subsection (1) of this section if the court imposes a departure sentence authorized by the rules of the Oregon Criminal Justice Commission based upon findings of substantial and compelling reasons.

(3) For purposes of this section:

(a) Sentences for two or more convictions that are imposed in the same sentencing proceeding are considered to be one sentence; and

(b) A prior sentence includes:

(A) Sentences imposed before, on or after July 31, 2001; and

(B) Sentences imposed by any other state or federal court for [*comparable offenses*] **a statutory counterpart to a sex crime.**

(4) As used in this section[,]:

(a) “Sex crime” has the meaning given that term in ORS 163A.005.

(b) “Statutory counterpart” has the meaning given that term in **ORS 161.015.**

**SECTION 9.** ORS 137.725 is amended to read:

137.725. (1) The presumptive sentence for a crime described in subsection (3) of this section is life imprisonment without the possibility of release or parole if, at the time of the offense, the defendant has a prior conviction for a crime described in subsection (4) of this section.

(2) The court may impose a sentence other than the presumptive sentence provided by subsection (1) of this section if the court imposes a departure sentence authorized by the rules of the Oregon Criminal Justice Commission based upon findings of substantial and compelling reasons.

(3) The crimes to which the sentence described in subsection (1) of this section applies are:

- (a) Rape in the first degree under ORS 163.375;
- (b) Sodomy in the first degree under ORS 163.405; and
- (c) Unlawful sexual penetration in the first degree under ORS 163.411.

(4) The prior convictions that give rise to a sentence described in subsection (1) of this section are:

- (a) Rape in the first degree under ORS 163.375;
- (b) Sodomy in the first degree under ORS 163.405;
- (c) Unlawful sexual penetration in the first degree under ORS 163.411;

**and**

*[(d) An equivalent federal offense; and]*

*[(e) An equivalent offense in another state.]*

**(d) The statutory counterpart to a crime listed in paragraphs (a) to (c) of this subsection in another jurisdiction.**

**(5) As used in this section, “statutory counterpart” has the meaning give that term in ORS 161.015.**

**SECTION 10.** ORS 163.107 is amended to read:

163.107. (1) “Murder in the first degree” means murder in the second degree as defined in ORS 163.115 which is committed under, or accompanied by, any of the following circumstances:

- (a) The defendant committed the murder pursuant to an agreement that the defendant receive money or other thing of value for committing the

1 murder.

2 (b) The defendant solicited another to commit the murder and paid or  
3 agreed to pay the person money or other thing of value for committing the  
4 murder.

5 (c) The defendant committed murder after having been convicted previ-  
6 ously in any jurisdiction of [*any homicide, the elements of which constitute*]  
7 **the statutory counterpart** to the crime of aggravated murder as defined in  
8 ORS 163.095, murder in the first degree under this section, murder in the  
9 second degree as defined in ORS 163.115 or manslaughter in the first degree  
10 as defined in ORS 163.118.

11 (d) There was more than one murder victim in the same criminal episode  
12 as defined in ORS 131.505.

13 (e) The homicide occurred in the course of or as a result of intentional  
14 maiming or torture of the victim.

15 (f) The victim of the intentional homicide was a person under the age of  
16 14 years.

17 (g) The victim was one of the following and the murder was related to the  
18 performance of the victim's official duties in the justice system:

19 (A) A police officer as defined in ORS 181A.355;

20 (B) A correctional, parole and probation officer or other person charged  
21 with the duty of custody, control or supervision of convicted persons;

22 (C) A member of the Oregon State Police;

23 (D) A judicial officer as defined in ORS 1.210;

24 (E) A juror or witness in a criminal proceeding;

25 (F) An employee or officer of a court of justice;

26 (G) A member of the State Board of Parole and Post-Prison Supervision;

27 or

28 (H) A regulatory specialist.

29 (h) The defendant was confined in a state, county or municipal penal or  
30 correctional facility or was otherwise in custody when the murder occurred.

31 (i) The defendant committed murder by means of an explosive as defined

in ORS 164.055.

(j) Notwithstanding ORS 163.115 (1)(b), the defendant personally and intentionally committed the homicide under the circumstances set forth in ORS 163.115 (1)(b).

(k) The murder was committed in an effort to conceal the commission of a crime, or to conceal the identity of the perpetrator of a crime.

(L) The murder was committed after the defendant had escaped from a state, county or municipal penal or correctional facility and before the defendant had been returned to the custody of the facility.

(2)(a) Except as otherwise provided in ORS 163.155 and paragraph (b) of this subsection, the court shall sentence a person convicted of murder in the first degree, who was at least 15 years of age at the time of committing the murder, to life imprisonment. The court shall order that the defendant be confined for a minimum of 30 years without possibility of parole or release to post-prison supervision except as provided in ORS 144.397, and without the possibility of release on work release or any form of temporary leave or employment at a forest or work camp.

(b) The court may sentence the person to life imprisonment without the possibility of parole if the person was at least 18 years of age at the time of committing the murder. The court shall state on the record the reasons for imposing the sentence. A person sentenced to life imprisonment without the possibility of release or parole under this paragraph shall not have that sentence suspended, deferred or commuted by any judicial officer, and the State Board of Parole and Post-Prison Supervision may not parole the prisoner nor reduce the period of confinement in any manner whatsoever. The Department of Corrections or any executive official may not permit the prisoner to participate in any sort of release or furlough program.

(3)(a) For a person sentenced to life imprisonment, at any time after completion of the minimum period of confinement described in subsection (2)(a) of this section, the State Board of Parole and Post-Prison Supervision, upon the petition of a prisoner so confined, shall hold a hearing to determine

1 if the prisoner is likely to be rehabilitated within a reasonable period of  
2 time. The sole issue is whether the prisoner is likely to be rehabilitated  
3 within a reasonable period of time. At the hearing the prisoner has:

4 (A) The burden of proving by a preponderance of the evidence the likeli-  
5 hood of rehabilitation within a reasonable period of time;

6 (B) The right, if the prisoner is without sufficient funds to employ an  
7 attorney, to be represented by legal counsel, appointed by the board, at board  
8 expense; and

9 (C) The right to a subpoena upon a showing of the general relevance and  
10 reasonable scope of the evidence sought, provided that any subpoena issued  
11 on behalf of the prisoner must be issued by the State Board of Parole and  
12 Post-Prison Supervision pursuant to rules adopted by the board.

13 (b) If, upon hearing all of the evidence, the board, upon a unanimous vote  
14 of three board members or, if the chairperson requires all voting members  
15 to participate, a unanimous vote of all voting members, finds that the pris-  
16 oner is capable of rehabilitation and that the terms of the prisoner's con-  
17 finement should be changed to life imprisonment with the possibility of  
18 parole, release to post-prison supervision or work release, it shall enter an  
19 order to that effect and the order shall convert the terms of the prisoner's  
20 confinement to life imprisonment with the possibility of parole, release to  
21 post-prison supervision or work release and may set a release date. Other-  
22 wise, the board shall deny the relief sought in the petition.

23 (c) If the board denies the relief sought in the petition, the board shall  
24 determine the date of the subsequent hearing, and the prisoner may petition  
25 for an interim hearing, in accordance with ORS 144.285.

26 (d) The board's final order shall be accompanied by findings of fact and  
27 conclusions of law. The findings of fact shall consist of a concise statement  
28 of the underlying facts supporting the findings as to each contested issue of  
29 fact and as to each ultimate fact required to support the board's order.

30 **SECTION 11.** ORS 163.160 is amended to read:

31 163.160. (1) A person commits the crime of assault in the fourth degree if

the person:

(a) Intentionally, knowingly or recklessly causes physical injury to another;

(b) With criminal negligence causes physical injury to another by means of a deadly weapon; or

(c) With criminal negligence causes serious physical injury to another who is a vulnerable user of a public way, as defined in ORS 801.608, by means of a motor vehicle.

(2) Assault in the fourth degree is a Class A misdemeanor.

(3) Notwithstanding subsection (2) of this section, assault in the fourth degree under subsection (1)(a) or (b) of this section is a Class C felony if the person commits the crime of assault in the fourth degree and:

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

(b) The person has been previously convicted of violating this section or ORS 163.165, 163.175, 163.185, 163.187 or 163.190, or [*of committing an equivalent crime*] **their statutory counterparts** in another jurisdiction, and the victim in the previous conviction is the same person who is the victim of the current crime;

(c) The person has at least three previous convictions for violating this section or ORS 163.165, 163.175, 163.185, 163.187 or 163.190, or [*for committing an equivalent crime*] **their statutory counterparts** in another jurisdiction, in any combination; or

(d) The person commits the assault knowing that the victim is pregnant.

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

**SECTION 12.** ORS 163.187 is amended to read:

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

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

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

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

(3) Strangulation is a Class A misdemeanor.

(4) Notwithstanding subsection (3) of this section, strangulation is a Class C felony if:

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

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

(c) The victim is a family or household member, as defined in ORS 135.230, of the person;

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

(e) The person has been previously convicted of violating this section or ORS 163.160, 163.165, 163.175, 163.185 or 163.190, or [*of committing an equivalent crime*] **their statutory counterparts** in another jurisdiction, and the victim in the previous conviction is the same person who is the victim of the current crime;

(f) The person has at least three previous convictions for violating this section or ORS 163.160, 163.165, 163.175, 163.185 or 163.190, or [*for committing an equivalent crime*] **their statutory counterparts** in another jurisdiction, in any combination; or

(g) The person commits the strangulation knowing that the victim is pregnant.

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



(6) The Oregon Criminal Justice Commission shall classify strangulation committed under the circumstances described in subsection (4)(c) of this section as crime category 5 of the sentencing guidelines grid of the commission.

**SECTION 13.** ORS 163.465 is amended to read:

163.465. (1) A person commits the crime of public indecency if while in, or in view of, a public place the person performs:

(a) An act of sexual intercourse;

(b) An act of oral or anal sexual intercourse;

(c) Masturbation; or

(d) An act of exposing the genitals of the person with the intent of arousing the sexual desire of the person or another person.

(2)(a) Public indecency is a Class A misdemeanor.

(b) Notwithstanding paragraph (a) of this subsection, public indecency is a Class C felony if the person has a prior conviction for public indecency or a crime described in ORS 163.355 to 163.445, or *[for a crime]* **their statutory counterparts** in another jurisdiction *[that, if committed in this state, would constitute public indecency or a crime described in ORS 163.355 to 163.445]*.

**SECTION 14.** ORS 163.732 is amended to read:

163.732. (1) A person commits the crime of stalking if:

(a) The person knowingly alarms or coerces another person or a member of that person's immediate family or household by engaging in repeated and unwanted contact with the other person;

(b) It is objectively reasonable for a person in the victim's situation to have been alarmed or coerced by the contact; and

(c) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim's immediate family or household.

(2)(a) Stalking is a Class A misdemeanor.

(b) Notwithstanding paragraph (a) of this subsection, stalking is a Class

C felony if the person has a prior conviction for[:] **stalking under this section or violating a court’s stalking protective order under ORS 163.750, or their statutory counterparts in any jurisdiction.**

[(A) *Stalking*; or]

[(B) *Violating a court’s stalking protective order.*]

(c) When stalking is a Class C felony pursuant to paragraph (b) of this subsection, stalking shall be classified as a person felony and as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

**(3) As used in this section, “statutory counterpart” has the meaning given that term in ORS 161.015.**

**SECTION 15.** ORS 163.750 is amended to read:

163.750. (1) A person commits the crime of violating a court’s stalking protective order [*when*] **if:**

(a) The person has been served with a court’s stalking protective order as provided in ORS 30.866 or 163.738, or [*if further*] service was waived under ORS 163.741 because the person appeared before the court;

(b) The person, subsequent to the service of the order **or waiver of service**, has engaged intentionally, knowingly or recklessly in conduct prohibited by the order; and

(c) If the conduct is prohibited contact as defined in ORS 163.730 (3)(d), (e), (f), (h) or (i), the subsequent conduct has created reasonable apprehension regarding the personal safety of a person protected by the order.

(2)(a) Violating a court’s stalking protective order is a Class A misdemeanor.

(b) Notwithstanding paragraph (a) of this subsection, violating a court’s stalking protective order is a Class C felony if the person has a prior conviction for[:] **violating a court’s stalking protective order under this section or stalking under ORS 163.732, or their statutory counterparts in any jurisdiction.**

[(A) *Stalking*; or]

1 [(B) Violating a court's stalking protective order.]

2 (c) When violating a court's stalking protective order is a Class C felony  
3 pursuant to paragraph (b) of this subsection, violating a court's stalking  
4 protective order shall be classified as a person felony and as crime category  
5 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commis-  
6 sion.

7 **(3) As used in this section, "statutory counterpart" has the meaning**  
8 **given that term in ORS 161.015.**

9 **SECTION 16.** ORS 165.803 is amended to read:

10 165.803. (1) A person commits the crime of aggravated identity theft if:

11 (a) The person violates ORS 165.800 in 10 or more separate incidents  
12 within a 180-day period;

13 (b) The person violates ORS 165.800 and the person has a previous con-  
14 viction for aggravated identity theft;

15 (c) The person violates ORS 165.800 and the losses incurred in a single  
16 or aggregate transaction are \$10,000 or more within a 180-day period; or

17 (d) The person violates ORS 165.800 and has in the person's custody,  
18 possession or control 10 or more pieces of personal identification from 10 or  
19 more different persons.

20 (2) Aggravated identity theft is a Class B felony.

21 (3) As used in this section[,]:

22 (a) "Previous conviction" includes:

23 [(a)] (A) Convictions occurring before, on or after January 1, 2008; and

24 [(b)] (B) Convictions entered in any other state or federal court for  
25 [comparable offenses] **the statutory counterpart to this section.**

26 **(b) "Statutory counterpart" has the meaning given that term in**  
27 **ORS 161.015.**

28 (4) The state shall plead in the accusatory instrument and prove beyond  
29 a reasonable doubt, as an element of the offense, the previous conviction for  
30 aggravated identity theft.

31 **SECTION 17.** ORS 813.011 is amended to read:

813.011. (1) Driving under the influence of intoxicants under ORS 813.010 shall be a Class C felony if **at least two times in the 10 years prior to the date of the current offense** the defendant has been convicted of [*driving under the influence of intoxicants in violation of ORS 813.010, or its statutory counterpart in another jurisdiction, at least two times in the 10 years prior to the date of the current offense.*] **the following offenses in any combination:**

**(a) Driving under the influence of intoxicants in violation of ORS 813.010.**

**(b) The statutory counterpart, as defined in section 3 of this 2021 Act, to ORS 813.010 in another jurisdiction.**

(2) Once a person has been sentenced for a Class C felony under this section, the 10-year time limitation is eliminated and any subsequent episode of driving under the influence of intoxicants shall be a Class C felony regardless of the amount of time which intervenes.

(3) Upon conviction for a Class C felony under this section, the person shall be sentenced to a mandatory minimum term of incarceration of 90 days, without reduction for any reason.

**SECTION 18.** ORS 161.005 is amended to read:

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 to 161.373, 161.405 to 161.485, 161.505 to 161.585, 161.605, 161.615 to 161.685, 161.705 to 161.737, 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 162.425, 162.465, 163.005, 163.095, 163.107, 163.115, **163.118**, 163.125 to 163.145, 163.149, 163.160 to 163.208, 163.196, 163.215 to 163.257, 163.261, 163.263, 163.264, 163.266, 163.275, 163.285, 163.305 to 163.467, 163.432, 163.433, 163.472, 163.505 to 163.575, 163.665 to 163.693, 163.700, 163.701, 163.715, 164.005, 164.015 to 164.135, 164.138, 164.140, 164.205 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, 165.118, 165.805, 165.815, 166.005 to 166.095, 166.350, 166.382, 166.384, 166.660, 167.002 to 167.027, 167.057, 167.060 to 167.100, 167.117, 167.122 to 167.162, 167.203 to 167.252, 167.310 to 167.340,

1 167.350, 167.810 and 167.820 shall be known and may be cited as Oregon  
2 Criminal Code of 1971.

3 **SECTION 19. Sections 2 and 3 of this 2021 Act and the amendments**  
4 **to ORS 137.690, 137.712, 137.717, 137.719, 137.725, 161.005, 161.015, 163.107,**  
5 **163.160, 163.187, 163.465, 163.732, 163.750, 165.803 and 813.011 by sections**  
6 **1 and 4 to 18 of this 2021 Act apply to:**

7 (1) Conduct alleged to constitute an offense under Oregon law oc-  
8 ccurring on or after the effective date of this 2021 Act.

9 (2) Convictions for statutory counterparts to Oregon crimes in  
10 other jurisdictions occurring before, on or after the effective date of  
11 this 2021 Act.

12 \_\_\_\_\_