

Senate Bill 480

Sponsored by Senator GELSER, Representative PILUSO (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that person commits crime of endangering the welfare of a minor by exposing person under 18 years of age to unlawful activity involving controlled substances. Punishes by maximum of 364 days' imprisonment, \$6,250 fine, or both.

Increases mandatory minimum sentence to 300 months imprisonment, and expands term of post-prison supervision to rest of person's life, for person convicted of assault in the first degree against child under six years of age.

Expands definition of physical injury in Oregon Criminal Code to include certain physical conditions when injured person is 10 years of age or younger or 65 years of age or older.

Requires that sexually explicit material involving minor remain in control of law enforcement agency throughout criminal proceeding, provided that material is made reasonably available to defendant.

A BILL FOR AN ACT

1
2 Relating to crimes committed against vulnerable persons; creating new provisions; and amending
3 ORS 135.815, 135.825, 137.700, 144.103, 161.015, 163.505 and 163.575.

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

5 **SECTION 1.** ORS 163.505 is amended to read:

6 163.505. As used in ORS 163.505 to 163.575, unless the context requires otherwise:

7 (1) "Controlled substance" has the meaning given that term in ORS 475.005.

8 (2) "Descendant" includes persons related by descending lineal consanguinity, stepchildren and
9 lawfully adopted children.

10 (3) **"Exposes a person under 18 years of age to unlawful activity involving controlled
11 substances" includes, but is not limited to, circumstances in which the person under 18 years
12 of age:**

13 (a) **Has an opportunity to have unlawful contact with controlled substances by touch,
14 ingestion, inhalation or any other means that controlled substances come in contact with
15 or enter the body;**

16 (b) **Has an opportunity to have contact with fumes, vapors or other byproducts released
17 during the unlawful ingestion or preparation of controlled substances, or items used to un-
18 lawfully ingest or prepare controlled substances; or**

19 (c) **Witnesses or is in the immediate presence of a person unlawfully ingesting or pre-
20 paring controlled substances.**

21 [(3)] (4) "Precursor substance" has the meaning given that term in ORS 475.940.

22 [(4)] (5) "Support" includes, but is not limited to, necessary and proper shelter, food, clothing,
23 medical attention and education.

24 **SECTION 2.** ORS 163.575 is amended to read:

25 163.575. (1) A person commits the offense of endangering the welfare of a minor if the person
26 knowingly:

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 (a) Induces, causes or permits an unmarried person under 18 years of age to witness an act of
2 sexual conduct or sadomasochistic abuse as defined in ORS 167.060;

3 (b) *[Permits a person under 18 years of age to enter or remain in a place where unlawful activity*
4 *involving controlled substances or cannabis is maintained or conducted]* **Exposes a person under 18**
5 **years of age to unlawful activity involving controlled substances;**

6 (c) Induces, causes or permits a person under 18 years of age to participate in gambling as de-
7 fined in ORS 167.117; or

8 (d) Sells to a person under 18 years of age any device in which cannabis, cocaine or any con-
9 trolled substance, as defined in ORS 475.005, is burned and the principal design and use of which is
10 directly or indirectly to deliver cannabis smoke, cocaine smoke or smoke from any controlled sub-
11 stance into the human body, including but not limited to:

12 (A) Pipes, water pipes, hookahs, wooden pipes, carburetor pipes, electric pipes, air driven pipes,
13 corncob pipes, meerschaum pipes and ceramic pipes, with or without screens, permanent screens,
14 hashish heads or punctured metal bowls;

15 (B) Carburetion tubes and devices, including carburetion masks;

16 (C) Bongos;

17 (D) Chillums;

18 (E) Ice pipes or chillers;

19 (F) Rolling papers and rolling machines; and

20 (G) Cocaine free basing kits.

21 (2) Endangering the welfare of a minor is a Class A misdemeanor.

22 **SECTION 3.** ORS 137.700 is amended to read:

23 137.700. (1) Notwithstanding ORS 161.605, when a person is convicted of one of the offenses
24 listed in subsection (2)(a) of this section and the offense was committed on or after April 1, 1995,
25 or of one of the offenses listed in subsection (2)(b) of this section and the offense was committed on
26 or after October 4, 1997, or of the offense described in subsection (2)(c) of this section and the of-
27 fense was committed on or after January 1, 2008, the court shall impose, and the person shall serve,
28 at least the entire term of imprisonment listed in subsection (2) of this section. The person is not,
29 during the service of the term of imprisonment, eligible for release on post-prison supervision or any
30 form of temporary leave from custody. The person is not eligible for any reduction in, or based on,
31 the minimum sentence for any reason whatsoever under ORS 421.121 or any other statute. The
32 court may impose a greater sentence if otherwise permitted by law, but may not impose a lower
33 sentence than the sentence specified in subsection (2) of this section.

34 (2) The offenses to which subsection (1) of this section applies and the applicable mandatory
35 minimum sentences are:

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- 36
37
38 (a)(A) Murder, as defined in
39 ORS 163.115.....300 months
40 (B) Attempt or conspiracy
41 to commit aggravated
42 murder, as defined
43 in ORS 163.095.....120 months
44 (C) Attempt or conspiracy
45 to commit murder, as

- 1 defined in ORS 163.115.90 months
- 2 (D) Manslaughter in the
- 3 first degree, as defined
- 4 in ORS 163.118.120 months
- 5 (E) Manslaughter in the
- 6 second degree, as defined
- 7 in ORS 163.125.75 months
- 8 (F) Assault in the first
- 9 degree, as defined in
- 10 ORS 163.185
- 11 **(1)(a), (c) or (d)**.90 months
- 12 (G) Assault in the second
- 13 degree, as defined in
- 14 ORS 163.175.70 months
- 15 (H) Except as provided in
- 16 paragraph (b)(G) of
- 17 this subsection,
- 18 kidnapping in the first
- 19 degree, as defined
- 20 in ORS 163.235.90 months
- 21 (I) Kidnapping in the second
- 22 degree, as defined in
- 23 ORS 163.225.70 months
- 24 (J) Rape in the first degree,
- 25 as defined in ORS 163.375
- 26 **(1)(a), (c) or (d)**.100 months
- 27 (K) Rape in the second degree,
- 28 as defined in ORS 163.365.75 months
- 29 (L) Sodomy in the first degree,
- 30 as defined in ORS 163.405
- 31 **(1)(a), (c) or (d)**.100 months
- 32 (M) Sodomy in the second
- 33 degree, as defined in
- 34 ORS 163.395.75 months
- 35 (N) Unlawful sexual penetration
- 36 in the first degree, as
- 37 defined in ORS 163.411
- 38 **(1)(a) or (c)**.100 months
- 39 (O) Unlawful sexual penetration
- 40 in the second degree, as
- 41 defined in ORS 163.408.75 months
- 42 (P) Sexual abuse in the first
- 43 degree, as defined in
- 44 ORS 163.427.75 months
- 45 (Q) Robbery in the first degree,

- 1 as defined in ORS 164.415.....90 months
- 2 (R) Robbery in the second
- 3 degree, as defined in
- 4 ORS 164.405.....70 months
- 5 (b)(A) Arson in the first degree,
- 6 as defined in ORS 164.325,
- 7 when the offense represented
- 8 a threat of serious
- 9 physical injury.....90 months
- 10 (B) Using a child in a display
- 11 of sexually explicit
- 12 conduct, as defined in
- 13 ORS 163.670.....70 months
- 14 (C) Compelling prostitution,
- 15 as defined in ORS 167.017.....70 months
- 16 (D) Rape in the first degree,
- 17 as defined in
- 18 ORS 163.375 (1)(b).300 months
- 19 (E) Sodomy in the first degree,
- 20 as defined in
- 21 ORS 163.405 (1)(b).300 months
- 22 (F) Unlawful sexual penetration
- 23 in the first degree, as
- 24 defined in
- 25 ORS 163.411 (1)(b).300 months
- 26 (G) Kidnapping in the first
- 27 degree, as defined in
- 28 ORS 163.235, when the
- 29 offense is committed in
- 30 furtherance of the commission
- 31 or attempted commission of an
- 32 offense listed in subparagraph
- 33 (D), (E) or (F) of
- 34 this paragraph.....300 months
- 35 (H) **Assault in the first degree,**
- 36 **as defined in**
- 37 **ORS 163.185 (1)(b).....300 months**
- 38 (c) Aggravated vehicular
- 39 homicide, as defined in
- 40 ORS 163.149.....240 months

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43 **SECTION 4.** ORS 144.103 is amended to read:

44 144.103. (1) Except as otherwise provided in ORS 137.765 and subsection (2) of this section, any

45 person sentenced to a term of imprisonment for violating or attempting to violate ORS 163.365,

1 163.375, 163.395, 163.405, 163.408, 163.411, 163.425 or 163.427 shall serve a term of active post-prison
 2 supervision that continues until the term of the post-prison supervision, when added to the term of
 3 imprisonment served, equals the maximum statutory indeterminate sentence for the violation.

4 (2)(a) A person sentenced to a term of imprisonment for violating one of the offenses listed in
 5 paragraph (b) of this subsection shall serve a term of post-prison supervision that continues for the
 6 rest of the person’s life if the person was at least 18 years of age at the time the person committed
 7 the crime.

8 (b) The offenses to which paragraph (a) of this subsection applies are:

9 (A) ORS 163.375 (1)(b);

10 (B) ORS 163.405 (1)(b);

11 (C) ORS 163.411 (1)(b); and

12 (D) ORS 163.235 when the offense is committed in furtherance of the commission or attempted
 13 commission of rape in the first degree, sodomy in the first degree or unlawful sexual penetration in
 14 the first degree if the victim is under 12 years of age.

15 (c) When a person is sentenced to a term of post-prison supervision described in paragraph (a)
 16 of this subsection, the person must be actively supervised for at least the first 10 years of the
 17 post-prison supervision and actively tracked for the remainder of the term. Active tracking may be
 18 done by means of an electronic device attached to the person.

19 (3) A person sentenced to a term of imprisonment for violating ORS 163.185 (1)(b) shall serve a
 20 term of post-prison supervision that continues *[until the term of the post-prison supervision, when*
 21 *added to the term of imprisonment served, equals the maximum statutory indeterminate sentence for the*
 22 *violation]* **for the rest of the person’s life if the person was at least 18 years of age at the time**
 23 **the person committed the crime.**

24 (4) Any costs incurred as a result of this section shall be paid by increased post-prison super-
 25 vision fees under ORS 423.570.

26 **SECTION 5.** ORS 161.015 is amended to read:

27 161.015. As used in chapter 743, Oregon Laws 1971, and ORS 166.635, unless the context requires
 28 otherwise:

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

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

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

36 (4) “Peace officer” means:

37 (a) A member of the Oregon State Police;

38 (b) A sheriff, constable, marshal, municipal police officer or reserve officer as defined in ORS
 39 133.005, or a police officer commissioned by a university under ORS 352.121 or 353.125;

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

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

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

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

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

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

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

5 (7) "Physical injury" means:

6 (a) Impairment of physical condition; [or]

7 (b) Substantial pain; or

8 (c) **For a person 10 years of age or younger or 65 years of age or older, a fracture, burn,
9 cut, bruise or any other physical condition that would reasonably cause a person substantial
10 pain.**

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

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

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

21 **SECTION 6. Section 7 of this 2019 Act is added to and made a part of ORS 135.855 to
22 135.873.**

23 **SECTION 7. (1) In any criminal proceeding, material that constitutes a visual depiction
24 of a child engaged in sexually explicit conduct must remain in the care, custody and control
25 of a law enforcement agency or a forensic laboratory operated by a law enforcement agency.**

26 (2) **In any criminal proceeding, the court shall deny a request by the defendant to copy,
27 photograph, duplicate or otherwise reproduce any material that constitutes a visual depiction
28 of a child engaged in sexually explicit conduct, so long as the material is made reasonably
29 available to the defendant.**

30 (3) **As used in this section:**

31 (a) **"Child" has the meaning given that term in ORS 163.665.**

32 (b) **"Law enforcement agency" means a county sheriff's office, a municipal police de-
33 partment, a police department established by a university under ORS 352.121 or 353.125, the
34 Oregon State Police or a federal agency that employs federal officers as defined in ORS
35 133.005.**

36 (c) **"Reasonably available" means that the state has provided the defendant, the
37 defendant's attorney and any individual the defendant may seek to qualify to furnish expert
38 testimony at trial, ample opportunity to inspect, view and examine the property or material
39 at a law enforcement facility, a forensic laboratory operated by a law enforcement agency
40 or another facility agreed upon by the prosecuting attorney and the defendant.**

41 (d) **"Sexually explicit conduct" has the meaning given that term in ORS 163.665.**

42 (e) **"Visual depiction" has the meaning given that term in ORS 163.665.**

43 **SECTION 8. ORS 135.815 is amended to read:**

44 135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873 and section 7 of this 2019
45 Act, the district attorney shall disclose to a represented defendant the following material and in-

1 formation within the possession or control of the district attorney:

2 (a) The names and addresses of persons whom the district attorney intends to call as witnesses
3 at any stage of the trial, together with their relevant written or recorded statements or memoranda
4 of any oral statements of such persons.

5 (b) Any written or recorded statements or memoranda of any oral statements made by the de-
6 fendant, or made by a codefendant if the trial is to be a joint one.

7 (c) Any reports or statements of experts, made in connection with the particular case, including
8 results of physical or mental examinations and of scientific tests, experiments or comparisons which
9 the district attorney intends to offer in evidence at the trial.

10 (d) Any books, papers, documents, photographs or tangible objects:

11 (A) Which the district attorney intends to offer in evidence at the trial; or

12 (B) Which were obtained from or belong to the defendant.

13 (e) If actually known to the district attorney, any record of prior criminal convictions of persons
14 whom the district attorney intends to call as witnesses at the trial; and the district attorney shall
15 make a good faith effort to determine if such convictions have occurred.

16 (f) All prior convictions of the defendant known to the state that would affect the determination
17 of the defendant's criminal history for sentencing under rules of the Oregon Criminal Justice Com-
18 mission.

19 (g) Any material or information that tends to:

20 (A) Exculpate the defendant;

21 (B) Negate or mitigate the defendant's guilt or punishment; or

22 (C) Impeach a person the district attorney intends to call as a witness at the trial.

23 (2)(a) The disclosure required by subsection (1)(g) of this section shall occur without delay after
24 arraignment and prior to the entry of any guilty plea pursuant to an agreement with the state. If
25 the existence of the material or information is not known at that time, the disclosure shall be made
26 upon discovery without regard to whether the represented defendant has entered or agreed to enter
27 a guilty plea.

28 (b) Nothing in subsection (1)(g) of this section:

29 (A) Expands any obligation under a statutory provision or the Oregon or United States Consti-
30 tution to disclose, or right to disclosure of, personnel or internal affairs files of law enforcement
31 officers.

32 (B) Imposes any obligation on the district attorney to provide material or information beyond
33 the obligation imposed by the Oregon and United States Constitutions.

34 (3) Except as otherwise provided in ORS 135.855 and 135.873, in prosecutions for violation of
35 ORS 813.010 in which an instrument was used to test a person's breath, blood or urine to determine
36 the alcoholic content of the person's blood the district attorney shall disclose to a represented de-
37 fendant at least the following material and information within the possession or control of the dis-
38 trict attorney:

39 (a) Any report prepared by a police officer relating to field tests, interviews, observations and
40 other information relating to the charged offense;

41 (b) Any report relating to the test results;

42 (c) A copy of the form provided to the defendant under ORS 813.100 (3)(b); and

43 (d) Any checklist prepared by the operator of the instrument for the test.

44 (4)(a) If a defendant is not represented by a lawyer, the district attorney shall disclose to the
45 defendant all of the information described in subsections (1) and (3) of this section except for the

1 personal identifiers of the victim and any witnesses.

2 (b) Notwithstanding paragraph (a) of this subsection, the district attorney shall disclose the
 3 personal identifiers of the victim and any witnesses if the trial court orders the disclosure. A trial
 4 court shall order the district attorney to disclose the personal identifiers of the victim and any
 5 witnesses if the trial court finds that:

6 (A) The defendant has requested the information; and

7 (B)(i) The victim or witness is a business or institution and disclosure of the information would
 8 not represent a risk of harm to the victim or witness; or

9 (ii) The need for the information cannot reasonably be met by other means.

10 (5)(a) Unless authorized by the trial court to disclose the information, a lawyer representing a
 11 defendant, or a representative of the lawyer, may not disclose to the defendant personal identifiers
 12 of a victim or witness obtained under subsections (1) and (3) of this section.

13 (b) The trial court shall order the lawyer, or representative of the lawyer, to disclose to the
 14 defendant the personal identifiers of a victim or witness if the court finds that:

15 (A) The defendant’s lawyer has requested the district attorney to disclose the information to the
 16 defendant;

17 (B) The district attorney has refused to disclose the information to the defendant; and

18 (C) The need for the information cannot reasonably be met by other means.

19 (6) As used in this section:

20 (a) “Personal identifiers” means:

21 (A) In relation to a witness, the witness’s address, telephone number, Social Security number
 22 and date of birth and the identifying number of the witness’s depository account at a financial in-
 23 stitution, as defined in ORS 706.008, or credit card account.

24 (B) In relation to a victim, the victim’s address, electronic mail address, telephone number, So-
 25 cial Security number, date of birth, any user names or other identifying information associated with
 26 the victim’s social media accounts and the identifying number of the victim’s depository account at
 27 a financial institution, as defined in ORS 706.008, or credit card account.

28 (b) “Representative of the lawyer” has the meaning given that term in ORS 40.225.

29 (c) “Represented defendant” means a defendant who is represented by a lawyer in a criminal
 30 action.

31 (d) “Social media” has the meaning given that term in ORS 659A.330.

32 **SECTION 9.** ORS 135.825 is amended to read:

33 135.825. Except as otherwise provided in ORS 135.855 and 135.873 **and section 7 of this 2019**
 34 **Act**, the district attorney shall disclose to the defense:

35 (1) The occurrence of a search or seizure; and

36 (2) Upon written request by the defense, any relevant material or information obtained thereby,
 37 the circumstances of the search or seizure, and the circumstances of the acquisition of any specified
 38 statements from the defendant.

39 **SECTION 10.** (1) **The amendments to ORS 163.505 and 163.575 by sections 1 and 2 of this**
 40 **2019 Act apply to conduct occurring on or after the effective date of this 2019 Act.**

41 (2) **The amendments to ORS 137.700 and 144.103 by sections 3 and 4 of this 2019 Act apply**
 42 **to convictions for crimes committed on or after the effective date of this 2019 Act.**

43 (3) **The amendments to ORS 137.700 by section 3 of this 2019 Act apply only to persons**
 44 **who were at least 18 years of age at the time of the offense described in ORS 137.700**
 45 **(2)(b)(H).**

