

B-Engrossed Senate Bill 1546

Ordered by the Senate March 3
Including Senate Amendments dated February 13 and March 3

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SUMMARY

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

Specifies procedures for providing notice to defendant in charging instrument and at arraignment when conviction would result in firearm prohibition. Specifies procedures for proving nature of relationship between defendant and alleged victim for certain crimes. Directs court to make determination concerning relationship and enter order prohibiting defendant from possessing firearms. Directs court to notify Department of State Police and county sheriff concerning prohibition order for entry into databases. **Appropriates moneys to department to fund entry of order into Law Enforcement Data System.**

Requires law enforcement agency to directly notify restraining order petitioner, instead of Department of Justice, when respondent requests return of firearm or ammunition.

Shifts duty to receive complaints alleging law enforcement profiling from Law Enforcement Contacts Policy and Data Review Committee to Oregon Criminal Justice Commission.

Exempts from definition of "commercial motor vehicle" emergency vehicles operated by police officers.

Creates exception to 28-day time limit for detention of youth if request for waiver hearing is pending.

Permits youth to waive 10-day detention review hearings. Extends frequency of detention review hearings to 30 days if request for waiver hearing is pending. Permits youth to waive individual 30-day detention review hearing.

Declares venue of juvenile proceeding subject to waiver hearing to be county where alleged act was committed. Prohibits venue transfer unless court determines case may not be waived or state stipulates it will not request waiver.

Authorizes certain youth offenders who are less than 20 years of age to be admitted to youth correction facility.

Authorizes law enforcement agency to employ person as law enforcement officer without getting second psychological screening in certain circumstances.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to public safety; creating new provisions; amending ORS 131.920, 131.925, 166.257, 181A.485, 419C.013, 419C.150, 419C.153, 420.011 and 801.208; repealing ORS 181A.287; and declaring an emergency.

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

FIREARM PROHIBITION PROCEDURES

SECTION 1. Upon charging a defendant with an offense described in ORS 166.255 (1)(b), the district attorney shall allege in the charging instrument one of the following relationships existing between the defendant and the person alleged to be the victim of the offense, at the time of the offense:

(1) The defendant is the current or former spouse of the victim;

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 **(2) The defendant is the parent or guardian of the victim;**
- 2 **(3) The defendant shares a minor child in common with the victim;**
- 3 **(4) The defendant is cohabiting with or has cohabited with the victim;**
- 4 **(5) The defendant and the victim are adults related by blood or marriage; or**
- 5 **(6) The defendant and the victim have been involved in a sexually intimate relationship.**

6 **SECTION 2. (1)(a) When a defendant is charged with an offense described in ORS 166.255**
7 **(1)(b), the district attorney shall, unless waived by the defendant or for good cause shown,**
8 **at arraignment or no later than 45 days prior to trial or entry of a guilty or no contest plea,**
9 **serve on the defendant and file with the court a notice stating that, due to the nature of the**
10 **relationship between the defendant and the alleged victim, the defendant will be prohibited**
11 **from possessing firearms and ammunition if convicted of the offense. The notice must spec-**
12 **ify a type of relationship listed in section 1 of this 2020 Act.**

13 **(b) When a defendant is charged with stalking under ORS 163.732, the district attorney**
14 **shall, unless waived by the defendant or for good cause shown, at arraignment or no later**
15 **than 45 days prior to trial or entry of a guilty or no contest plea, serve on the defendant and**
16 **file with the court a notice stating that, due to the nature of the offense, the defendant will**
17 **be prohibited from possessing firearms and ammunition if convicted of the offense.**

18 **(2) The Department of Justice, in consultation with the State Court Administrator, shall**
19 **develop a form to be used to provide a notice described in subsection (1) of this section. The**
20 **form must:**

21 **(a) Allow the district attorney, if applicable, to specify the relationship between the de-**
22 **fendant and the alleged victim, and whether the relationship between the defendant and the**
23 **alleged victim would cause the defendant to be prohibited from possessing firearms and am-**
24 **munition under Oregon law or under both Oregon and federal law; and**

25 **(b) Advise the defendant that the failure to allege any specified relationship between the**
26 **defendant and the victim, or the absence of a court determination or order under section 3**
27 **of this 2020 Act, does not affect the lawfulness of the defendant's.; possession of firearms or**
28 **ammunition under ORS 166.250 or 166.255, other Oregon law or federal law.**

29 **SECTION 3. (1) If a defendant has been charged with an offense described in ORS 166.255**
30 **(1)(b) on a charging instrument alleging that the relationship existing between the defendant**
31 **and the person alleged to be the victim of the offense, at the time of the offense, is a type**
32 **listed in section 1 of this 2020 Act, the specified relationship may be established as follows:**

33 **(a) At any time prior to entry of a plea of guilty or no contest, the defendant may stipu-**
34 **late, orally on the record or in writing, to the nature of the relationship. Upon the stipu-**
35 **lation, the court shall find that the relationship has been established and shall proceed under**
36 **subsection (2) of this section.**

37 **(b) If the defendant enters a plea of guilty or no contest to the offense described in ORS**
38 **166.255 (1)(b), but does not stipulate or admit to the nature of the relationship between the**
39 **defendant and the victim, the district attorney has the burden of proving the nature of the**
40 **relationship beyond a reasonable doubt. If the court finds that the burden of proof has been**
41 **met, the court shall proceed under subsection (2) of this section.**

42 **(c) If the defendant proceeds to trial on the offense described in ORS 166.255 (1)(b), the**
43 **district attorney has the burden of proving the nature of the relationship beyond a reason-**
44 **able doubt. The fact finder shall return a special verdict of "yes" or "no" on the issue of**
45 **whether the nature of the relationship between the defendant and victim is as alleged. If the**

1 fact finder returns a verdict of “yes,” the court shall proceed under subsection (2) of this
2 section.

3 (2) If the nature of the relationship between the defendant and the victim has been es-
4 tablished under subsection (1) of this section, upon conviction of the offense described in
5 ORS 166.255 (1)(b), the court shall:

6 (a) Make a written determination concerning the nature of the relationship;

7 (b) Enter an order prohibiting the defendant from possessing firearms and ammunition;
8 and

9 (c) Inform the defendant that the Department of State Police and the sheriff will be no-
10 tified concerning the order for purposes of entry into state and federal databases.

11 (3)(a) The court shall notify the Department of State Police and the county sheriff when
12 the court enters an order described in subsection (2) of this section.

13 (b) Upon receipt of the notification described in paragraph (a) of this subsection:

14 (A) The Department of State Police shall enter the information into any appropriate state
15 or national databases; and

16 (B) The sheriff shall enter the information into any appropriate state or national data-
17 bases.

18 (4)(a) Upon conviction of stalking under ORS 163.732, the court shall:

19 (A) Enter an order prohibiting the defendant from possessing firearms and ammunition;
20 and

21 (B) Inform the defendant that the Department of State Police and the sheriff will be
22 notified concerning the order for purposes of entry into state and federal databases.

23 (b) The court shall notify the Department of State Police and the county sheriff when the
24 court enters an order described in paragraph (a) of this subsection.

25 (c) Upon receipt of the notification described in paragraph (b) of this subsection:

26 (A) The Department of State Police shall enter the information into any appropriate state
27 or national databases; and

28 (B) The sheriff shall enter the information into any appropriate state or national data-
29 bases.

30 (5) The State Court Administrator shall develop a form to be used for the determination
31 and order described in subsection (2) of this section and the order described in subsection
32 (4)(a) of this section. The form must allow the court to designate the crime of conviction,
33 specify the relationship between the defendant and the victim, if applicable, and specify
34 whether the conviction or relationship causes the defendant to be prohibited from possessing
35 firearms and ammunition under Oregon law or under both Oregon and federal law.

36 (6) The absence of a court determination or order under this section does not affect the
37 lawfulness of the defendant’s possession of firearms or ammunition under ORS 166.250 or
38 166.255, other Oregon law or federal law.

39 **SECTION 4.** The Department of State Police, when entering information received under
40 section 3 of this 2020 Act into a state or national database, shall ensure, and shall develop
41 a process if necessary to ensure, that the information specifies whether the defendant is
42 prohibited from possessing firearms and ammunition under Oregon law or under both Oregon
43 and federal law.

44 **SECTION 4a.** ORS 166.257 is amended to read:

45 166.257. (1) Upon receiving a request to return a firearm or ammunition relinquished to a law

1 enforcement agency pursuant to ORS 166.256, the law enforcement agency shall:

2 (a) Notify the [*Department of Justice of the return request for the purposes of notifying the*]
3 petitioner of the order **of the return request**; and

4 (b) Hold the firearm or ammunition for 72 hours after receiving the request.

5 (2) Prior to returning the firearm or ammunition, the law enforcement agency shall:

6 (a) Confirm that the person to whom the law enforcement agency will return the firearm or
7 ammunition is the lawful owner of the firearm or ammunition, or a person with a possessory right
8 to the firearm or ammunition; and

9 (b) Perform a criminal background check as defined in ORS 166.432 to confirm that the person
10 is not prohibited from possessing a firearm or ammunition under state or federal law.

11 **SECTION 5. ORS 181A.287 is repealed.**

12
13 **LAW ENFORCEMENT PROFILING COMPLAINTS**

14
15 **SECTION 6.** ORS 131.920 is amended to read:

16 131.920. (1) All law enforcement agencies shall have written policies and procedures prohibiting
17 profiling. The policies and procedures shall, at a minimum, include:

18 (a) A prohibition on profiling;

19 (b) Procedures allowing a complaint alleging profiling to be made to the agency:

20 (A) In person;

21 (B) In a writing signed by the complainant and delivered by hand, postal mail, facsimile or
22 electronic mail; or

23 (C) By telephone, anonymously or through a third party;

24 (c) The provision of appropriate forms to use for submitting complaints alleging profiling;

25 (d) Procedures for submitting a copy of each profiling complaint to the [*Law Enforcement Con-*]
26 [*tacts Policy and Data Review Committee*] **Oregon Criminal Justice Commission** and for receiving
27 profiling complaints forwarded from the [*committee*] **commission**; and

28 (e) Procedures for investigating all complaints alleging profiling.

29 (2) A law enforcement agency shall:

30 (a) Investigate all complaints alleging profiling that are received by the agency or forwarded
31 from the [*committee*] **commission**.

32 [*(b) Accept for investigation a complaint alleging profiling that is made to the agency within 180*]
33 [*days of the alleged profiling incident.*]

34 [*(c)*] (b) Respond to every complaint alleging profiling within a reasonable time after the con-
35 clusion of the investigation. The response must contain a statement of the final disposition of the
36 complaint.

37 **SECTION 7.** ORS 131.925 is amended to read:

38 131.925. (1)(a) A law enforcement agency shall provide to the [*Law Enforcement Contacts Policy*]
39 [*and Data Review Committee*] **Oregon Criminal Justice Commission** information concerning each
40 complaint the agency receives alleging profiling, and shall notify the [*committee*] **commission** of the
41 disposition of the complaint, in the manner described in this subsection.

42 (b) The law enforcement agency shall submit to the [*committee*] **commission** a profiling com-
43 plaint report form summarizing each profiling complaint and the disposition of the complaint, and
44 a copy of each profiling complaint, once each year no later than January 31.

45 (c) The law enforcement agency shall submit the form described in paragraph (b) of this sub-

1 section even if the agency has not received any profiling complaints.

2 (d) The profiling complaint report form and copies of profiling complaints submitted to the
3 [committee] **commission** may not include personal information concerning the complainant or a law
4 enforcement officer except as to any personal information recorded on the form as described in
5 subsection (4)(c) of this section.

6 (2)(a) A person may submit to the [committee] **commission** a complaint alleging profiling and the
7 [committee] **commission** shall receive the complaints.

8 (b) The [committee] **commission** also shall receive complaints alleging profiling that are for-
9 warded from a law enforcement agency.

10 (c) The [committee] **commission** shall forward a copy of each profiling complaint the
11 [committee] **commission** receives to the law enforcement agency employing the officer that is the
12 subject of the complaint. The forwarded complaint must include the name of the complainant unless
13 the complainant requests to remain anonymous, in which case the complainant's name must be
14 redacted.

15 (3)(a) The [committee] **commission** may not release any personal information concerning a
16 complainant or a law enforcement officer who is the subject of a profiling complaint.

17 (b) The personal information of complainants and of law enforcement officers who are the sub-
18 ject of profiling complaints are exempt from public disclosure under ORS 192.355.

19 (4) The [Department of State Police] **commission** shall develop a standardized profiling complaint
20 report form. The form must provide for recording the following information:

21 (a) A summary of total complaints and a certification that a law enforcement agency's profiling
22 policy conforms to ORS 131.920;

23 (b) A summary of each complaint received by the law enforcement agency, including the date,
24 time and location of the incident and the disposition of the complaint; and

25 (c) To the extent known, the complainant's gender, gender identity, age, race, ethnicity, sexual
26 orientation, primary language, national origin, religion, political affiliation, homeless status and
27 disability status, recorded in a manner that does not identify the complainant.

28 (5) As used in this section, "personal information" has the meaning given that term in ORS
29 807.750.

30
31 **EMERGENCY VEHICLES**

32
33 **SECTION 8.** ORS 801.208 is amended to read:

34 801.208. (1) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles
35 and one or more vehicles that:

36 (a) Has a gross combination weight rating or gross combination weight of 26,001 pounds or
37 more, whichever is greater, inclusive of one or more towed units, with a gross vehicle weight rating
38 or gross vehicle weight of more than 10,000 pounds, whichever is greater;

39 (b) Has a gross vehicle weight rating or gross vehicle weight of 26,001 pounds or more;

40 (c) Is designed to transport 16 or more persons, including the driver; or

41 (d) Is of any size and is used in the transportation of hazardous materials.

42 (2) Notwithstanding subsection (1) of this section, the term "commercial motor vehicle" does not
43 include the following:

44 (a) An emergency fire vehicle being operated by firefighters as defined in ORS 652.050;

45 (b) Emergency vehicles being operated by qualified emergency service volunteers as defined in

1 ORS 401.358 **or police officers as defined in ORS 801.395;**

2 (c) A motor home used to transport or house, for nonbusiness purposes, the operator or the
3 operator's family members or personal possessions; or

4 (d) A recreational vehicle that is operated solely for personal use.

5
6 **DETENTION REVIEW HEARINGS**

7
8 **SECTION 9.** ORS 419C.150 is amended to read:

9 419C.150. (1) Except as **otherwise** provided in [*subsection (3) of*] this section, a youth may be
10 held in detention under this section and ORS 419C.145, 419C.153 and 419C.156 for a maximum of 28
11 days except for good cause shown prior to the expiration of the 28-day period. If good cause for
12 continued detention is shown, the period of detention may be extended for no more than an addi-
13 tional 28 days unless the adjudication is continued with the express consent of the youth.

14 (2) Subsection (1) of this section does not apply to a youth alleged to be within the jurisdiction
15 of the juvenile court for having committed an act that would be murder, attempted murder, con-
16 spiracy to commit murder or treason if committed by an adult and if proof of the act is evident or
17 the presumption strong that the youth committed the act. The juvenile court may conduct such
18 hearing as the court considers necessary to determine whether the proof is evident or the
19 presumption strong.

20 (3)(a) The time limits described in subsection (1) of this section do not apply if:

21 (A) The court has stayed the proceedings on the petition alleging jurisdiction under ORS
22 419C.005 pursuant to ORS 419C.378;

23 (B) The court has not entered an order determining the youth's fitness to proceed pursuant to
24 a motion made under ORS 419C.378 or the motion has not otherwise been resolved; and

25 (C) The court holds the review hearings required by ORS 419C.153 and determines that de-
26 tention of the youth under ORS 419C.145 should continue.

27 (b)(A) Except as provided in subparagraph (B) of this paragraph, the detention of the youth
28 whose detention has been continued under subsection (3)(a) of this section may be extended for no
29 more than 28 days upon entry of an order determining the youth's fitness to proceed pursuant to a
30 motion made under ORS 419C.378 or upon other resolution of the motion, and if the court holds the
31 review hearings required by ORS 419C.153 and determines that detention of the youth under ORS
32 419C.145 should continue.

33 (B) The detention of the youth may be extended for more than 28 days under this paragraph if
34 expressly agreed to by the youth, and if the court holds the review hearings required by ORS
35 419C.153 and determines that detention of the youth under ORS 419C.145 should continue.

36 **(4)(a) The time limits described in subsection (1) of this section do not apply if:**

37 **(A) The state has filed a motion requesting waiver under ORS 419C.349;**

38 **(B) The motion has not been resolved; and**

39 **(C) The court holds the review hearings required by ORS 419C.153 and determines that**
40 **detention of the youth should continue.**

41 **(b)(A) Except as provided in subparagraph (B) of this paragraph, the detention of youth**
42 **whose detention has been continued under paragraph (a) of this subsection may be extended**
43 **for no more than 28 days upon entry of an order denying a motion for waiver hearing or an**
44 **order denying waiver, and if the court holds the review hearings required by ORS 419C.153**
45 **and determines that detention of the youth should continue.**

1 **was committed and may not be transferred under ORS 419C.050, 419C.053 or 419C.056 unless:**

2 **(A) The court determines that the case may not be waived under ORS 419C.349; or**

3 **(B) The state stipulates that it will not file a motion requesting waiver under ORS**
4 **419C.349 (1).**

5 (2) Notwithstanding the provisions of ORS 34.320, an application for a writ of habeas corpus
6 brought by or on behalf of a person who has been committed or placed in a youth correction facility
7 which attacks the validity of the order of commitment shall be brought in the county in which the
8 court that entered the order of commitment is located.

9
10 **YOUTH CORRECTION FACILITIES**

11
12 **SECTION 12.** ORS 420.011 is amended to read:

13 420.011. (1) Except as provided in subsections (2), [and] (3) **and (4)** of this section, admissions
14 to the youth correction facilities are limited to youth offenders who are at least 12 but less than
15 [19] **20** years of age, found by the juvenile court to have committed an act that if committed by an
16 adult would constitute aggravated murder, murder, a felony or a Class A misdemeanor and placed
17 in the legal custody of the Oregon Youth Authority. A youth offender admitted to a youth correction
18 facility may not be transferred by administrative process to any penal or correctional institution.

19 (2)(a) In addition to the persons placed in the legal custody of the youth authority under ORS
20 419C.478 (1) or 419C.481, and with the concurrence of the Director of the Oregon Youth Authority
21 or the director's designee, persons who are committed to the Department of Corrections under ORS
22 137.124 and meet the requirements of ORS 137.124 (5) may be temporarily assigned to a youth cor-
23 rection facility as provided by ORS 137.124 (5). A person assigned on such a temporary basis remains
24 within the legal custody of the Department of Corrections and such reassignment is subject to ter-
25 mination by the Director of the Oregon Youth Authority by referring the person back to the De-
26 partment of Corrections as provided in paragraph (b) of this subsection.

27 (b) After a person is transferred to the physical custody of the youth authority under ORS
28 137.124 (5), the Director of the Oregon Youth Authority may refer the person back to the Depart-
29 ment of Corrections for physical custody and placement if the director, after consulting with the
30 Department of Corrections, determines that the person is at least 18 years of age and:

31 (A) Poses a substantial danger to youth authority staff or persons in the custody of the youth
32 authority; or

33 (B) Is not likely, in the foreseeable future, to benefit from the rehabilitation and treatment pro-
34 grams administered by the youth authority and is appropriate for placement in a Department of
35 Corrections institution.

36 (3) Any person under 18 years of age at the time of committing the crime and under 20 years
37 of age at the time of sentencing and commitment who, after waiver under ORS 419C.349 (1)(b),
38 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712, is
39 sentenced to a term of imprisonment in the custody of the Department of Corrections, and any per-
40 son under 16 years of age who after waiver under ORS 419C.349 (1)(b), 419C.352, 419C.364 or
41 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712 is sentenced to a term of
42 imprisonment in the county jail, shall be temporarily assigned to a youth correction facility by the
43 Department of Corrections, or by the sheriff to whose custody the person has been committed, pur-
44 suant to ORS 137.124 (6). The director shall designate the appropriate youth correction facility or
45 schools for such assignment. A person assigned to a youth correction facility under ORS 137.124 (6)

1 and this subsection remains within the legal custody of the Department of Corrections or sheriff to
2 whose custody the person was committed. The assignment of such a person to the youth correction
3 facility is subject, when the person is 18 years of age or older, to termination by the director by
4 referring the person back to the Department of Corrections or the sheriff to serve the balance of
5 the person's sentence. Assignment to a youth correction facility pursuant to ORS 137.124 (6) and this
6 subsection, if not terminated earlier by the director, shall terminate upon the person's attaining the
7 age specified in ORS 420A.010 (5) setting the age limits for which the Oregon Youth Authority may
8 retain legal and physical custody of the person, and the person shall be referred to the Department
9 of Corrections or the sheriff having legal custody of the person to serve the balance of the person's
10 sentence.

11 **(4)(a) Admission to youth correction facilities for youth offenders who have been previ-**
12 **ously adjudicated, but who have not been previously placed in custody of a youth correction**
13 **facility as a result of the adjudication, is limited to youth offenders under 19 years of age.**

14 **(b) Notwithstanding paragraph (a) of this subsection, admission to youth correction fa-**
15 **cilities for youth offenders who have been previously adjudicated for an act that, if commit-**
16 **ted by an adult, would constitute a crime listed in ORS 137.707 (4), but who have not been**
17 **previously placed in custody of a youth correction facility as a result of the adjudication, is**
18 **limited to youth offenders under 20 years of age.**

19 [(4)] (5) Whenever a person committed to the custody of the Department of Corrections is tem-
20 porarily assigned to a youth correction facility pursuant to this section, the youth authority may
21 provide programs and treatment for the person, and may adopt rules relating to conditions of con-
22 finement at the youth correction facility, as the youth authority determines are appropriate. How-
23 ever, the person remains subject to laws and rules of the State Board of Parole and Post-Prison
24 Supervision relating to parole.

25 [(5)] (6) For the purposes of determining the person's age at the time of committing an offense
26 under this section:

27 (a) If the person is convicted of two or more offenses occurring on different days, the person's
28 age shall be calculated using the earliest date.

29 (b) If the person is convicted of an offense occurring within a range of dates, the person's age
30 shall be calculated using the date at the beginning of the range.

31
32 **LAW ENFORCEMENT PSYCHOLOGICAL SCREENINGS**

33
34 **SECTION 13.** ORS 181A.485 is amended to read:

35 181A.485. (1) As used in this section:

36 (a) "Law enforcement agency" means a public body, as defined in ORS 174.109, that employs law
37 enforcement officers to enforce criminal laws.

38 (b) "Law enforcement officer" means a police officer, reserve officer or certified reserve officer,
39 as those terms are defined in ORS 181A.355.

40 (2) A law enforcement agency may not employ a person as a law enforcement officer unless the
41 person has completed a psychological screening to determine the person's fitness to serve as a law
42 enforcement officer.

43 (3) The psychological screening required by subsection (2) of this section must be conducted by
44 a licensed mental health professional who meets the qualifications and training requirements estab-
45 lished by the Board on Public Safety Standards and Training by rule.

