



## Oregon District Attorneys: Public Safety Agenda 2023 Legislative Session

### LC 2249 – Protecting Rights of Crime Victims

This bill makes necessary updates to the law that will provide clarity and ensure the State protects the rights of victims and survivors of crime in three key ways:

- **Including cleanup costs as qualifying expenses for Crime Victim Assistance funds:** When violent crimes take place outdoors and in public spaces, municipalities typically cover cleanup costs. But when violent crimes occur in homes or businesses, the cleanup is shouldered by the family, household members or others close to the person injured or killed. The Department of Justice already oversees and administers compensation for victims' expenses through the Crime Victim Assistance Program. Adding reasonable and necessary cleaning costs to the list of qualifying expenses will ensure victims can access these critical funds.
- **Holding offenders accountable for use of physical force in coercion cases:** A 2021 court ruling reduced the State's ability to prosecute the crime of coercion by finding that a defendant who threatens a victim to compel them to act involuntarily has committed coercion, but a defendant who actually physically assaults the victim for the same purpose cannot be charged with the same offense. This commonsense fix redefines what constitutes the crime of coercion to include when physical force is used to make someone move from one place to another or to prevent a person from moving from one place to another – restoring safety to crime victims and holding offenders accountable when they use threats as well as physical force to keep a victim from leaving when they want to.
- **Eliminating barriers for victims of financial fraud and property crimes when they are victimized in multiple counties:** Currently, when a victim has multiple crimes of fraud committed against them in multiple counties they often have to participate in multiple legal proceedings in all of those counties. This creates unnecessary hardship for crime victims in order to participate in the justice system. Under current law a separate case in each county would be necessary for the victim to receive justice. This bill would allow prosecutors in any one of those counties to present a unified case for all the frauds regardless of which county they occurred in. This means fewer trips to the courthouse for the victim and less confusion because they would only have to interact with one prosecutor and court system for their case. Additionally, this bill would update Oregon's venue statute to reflect the increasing number of frauds committed over the internet when it is difficult to establish just exactly where the fraud occurred because it occurred.



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### LC 2256 – Safe Streets – DUII Modernization

This bill makes two important changes to the Driving Under the Influence of Intoxicants statutes to bring Oregon in line with other states while accounting for the unique circumstances of Oregon's drug laws:

- **Close impairment law loophole:** Oregon has seen an increase in DUIIs involving multiple drugs; recent Oregon State Police counts showed that those charged in more than 45% of driving cases had three or more drugs in their system. Yet Oregon remains one of only a few states without a DUII law covering all impairing substances, instead limiting DUII statute to impairment caused by alcohol, inhalants, psilocybin, cannabis and controlled substances while overlooking medications and herbal or designer drugs like Kratom that may also impair a person's ability to drive. This fix would ensure that offenders can be held accountable when they endanger the community by driving while impaired, regardless of whether they have controlled, noncontrolled or a combination of substances in their system. Without closing this loophole, drivers who are impaired by both a controlled substance and a noncontrolled substance will continue to be able to avoid legal accountability for driving under the influence by making the argument that they were only impaired by the noncontrolled substance.
- **Provide consistency in DUII law:** Currently, under ORS 813.011, a defendant with two DUII convictions in 10 years will have any future DUIIs treated as felonies. However, a person convicted of a felony DUII and sentenced under a different statute, ORS 813.010(5), may have future DUII charges treated as misdemeanors, even if they have more than two prior DUII convictions. This technical fix would reconcile these two sections of law so a person convicted under felony DUII statutes is treated the same for any future DUII convictions.

#### Also look for LC 1299 – DUII Funding Bill

- **Dedicated funding for blood testing:** Unlike nearly every other state in the country, Oregon's forensic lab lacks the ability to test drugs in blood. This imposes enormous and unnecessary cost and time constraints on the State and impedes its ability to efficiently prosecute DUII cases, because all blood samples must be sent to out-of-state labs, and the witnesses who tested the blood at those testing labs must then be brought in to testify from out of state. As the State investigates and prosecutes DUII cases involving a growing range of substances, Oregon needs blood testing capabilities to keep up with the evolving climate and avoid unnecessary costs.
- **Funds for an e-warrant system:** Oregon needs but lacks a statewide e-warrant system allowing law enforcement access from their offices as well as in the field. Frequently, evidence dissipates with the passage of time, making Oregon's laws more difficult to enforce without prompt access to warrants. An online system will provide for timely requests for judicial review for all law enforcement, regardless of the size or location of their agency. Additionally, such a system would allow law enforcement to comply with Oregon's case law on the subject.



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### LC 2269 – State v. Prophet/Owens – Mental State Fix

This bill addresses confusion in existing law by adding a single word, “conduct,” into the relevant statute, to clarify that a defendant’s mental state (i.e., whether they knowingly committed a crime) must be proven in relation to illegal conduct rather than every potential material factor in a case. This ambiguity began with the 2016 ruling in *State v. Simonov*, which imposed a new requirement for the State to not only prove a defendant knew they were stealing a car, but also that they knew the vehicle’s owner did not consent to its theft. The courts have lacked consistent interpretations of the rule, and instead have modified the standard on a case-by-case or crime-by-crime basis. This fix provides clear guidance for when a mental state is or is not necessary to prove a material element of a criminal charge, resolving this issue across all crimes rather than on a piecemeal basis, a process that could take years and create widespread confusion.



## Oregon District Attorneys: Public Safety Agenda 2023 Legislative Session

### LC 969 – Modernizing Courtrooms

This bill will make simple statutory updates enabling Oregon to move our criminal justice system into the 21<sup>st</sup> century while accounting for the practical challenges of virtual court proceedings by:

- **Updating Failure to Appear (FTA) definition:** Existing law neglects to define whether “personal appearance” may be virtual or digital. This fix would correct that omission so that someone who has been commanded by the court to appear virtually, but fails to do so, may be held accountable for that FTA.
- **Allowing for virtual testimony by video for the State and witnesses in probation violation proceedings:** Currently allowed for defendants, video testimony should be allowed for the State and witnesses as well.
- **Improving access to certified court records:** A technical fix will allow for certified court records to be downloaded from the centralized electronic record system managed by the Oregon Judicial Department rather than requiring the State and defense counsel to obtain certified records from every individual county of origin.



## Oregon District Attorneys: Public Safety Agenda 2023 Legislative Session

### LC 963 – Safe Neighborhoods – Responsible Drug Crime Reform

**Fix law to clarify drug possession with intent to sell is sufficient proof of attempted delivery:** For more than three decades, Oregon courts have adopted the definition of delivery of a controlled substance from *State v. Boyd*, which established the rule that possession of drugs with the intent to sell them was sufficient proof of this crime. A recent Oregon Court of Appeals decision upended this precedent and the prosecution of drug dealers in Oregon by requiring proof of an attempted person-to-person transfer in order to charge a defendant with delivery. For example, if a suspect is found in possession of 600 grams of cocaine, which is packaged into individual user-quantity bags, along with a scale and customer list, they can no longer be charged with delivery. This bill would restore the longstanding definition of delivery, which had been law for the previous 30 years.

**Modify law to reflect evolving use of fentanyl:** Fentanyl, a Schedule II controlled substance, is rampant in Oregon – often in the form of mass-produced, counterfeit pills that resemble pharmaceutical oxycodone. The prevalence and potency of these illicit pills have led to fentanyl becoming the leading cause of death for U.S. adults ages 18 to 45. In Oregon, fentanyl deaths skyrocketed by 932% from 2015 to 2021. Current law classifies fentanyl crimes only by weight, whereas it defines oxycodone crimes by the number of “pills, tablets, capsules or user units.” Because illegal fentanyl is now commonly taken in pill form, the law should mirror the language associated with oxycodone crimes.

**Establish Taylor’s Law on behalf of drug overdose victims and their families:** Taylor’s Law closes a gap in Oregon law when it comes to holding drug dealers accountable for their role in a person’s death. While federal law makes it a crime to deliver a controlled substance that results in someone’s death, Oregon has no law under which drug dealers can face proportionate consequences when they sell illegal drugs that cause someone’s death. This fix will make it a serious crime to sell a controlled substance when that delivery results in a death. It will not punish shared users, such as if a friend or partner shared a needle or pill, but it will rightfully hold accountable drug traffickers and dealers who profit from the addiction of others and provide justice for the families of their victims.

**Update law to recognize illegal fentanyl possession as a misdemeanor in certain amounts:** Oregon currently lacks a law allowing for prosecution of illegal fentanyl possession as a misdemeanor charge. Possession of less than 50 grams is considered a class E violation, and possession of more than 50 grams a class C felony. Because fentanyl is more potent and equally prevalent to drugs such as heroin, this proposal would revise statute to treat fentanyl the same as heroin, making possession of 1 gram a misdemeanor, 3 grams a commercial drug factor and 5 grams a substantial quantity. It would also make corresponding changes in sentencing guidelines to include fentanyl alongside drugs such as heroin, cocaine and methamphetamine. Treating fentanyl the same as heroin will support law enforcement’s efforts to reduce dangerous, illicit drug use and provide offenders with access to court-mandated treatment and treatment-based court programs.



## Oregon District Attorneys: Public Safety Agenda 2023 Legislative Session

### LC 2107 – Protecting Vulnerable Victims in Sex Crimes

This bill addresses three gaps in the current sex crimes statutes to protect vulnerable victims of sex crimes by:

- **Amending statute to separately define oral and anal intercourse:** Existing law must be updated to correct a glaring omission that allows someone who makes a child lick his anus subject to a 75-month sentence, whereas someone who performs oral sex on a child or makes a child lick his penis is subject to 25 years.
- **Clarifying criminal behavior that qualifies for charges of Using a Child in a Display of Sexually Explicit Conduct:** A 2021 Court of Appeals decision resulted in the Using a Child in a Display of Sexually Explicit Conduct statute no longer applying to hidden cameras used to capture child pornography images, as the court found insufficient evidence that a defendant actively “permitted a child to participate or engage in sexually explicit conduct” because the hidden camera was passively recording, even though the images captured would constitute child pornography under relevant statutes. This statutory fix would fill the gap created by the recent case by prohibiting and criminalizing the “knowing creation” of sexually explicit images of a child.
- **Ensuring young and nonverbal victims of sexual assault are protected:** Current sexual offense statutes require the State to prove not only that a victim of sexual assault was penetrated, but also specifically how they were penetrated: either with an object (unlawful sexual penetration), or a penis (rape), or a mouth (sodomy). This means that, even if medical evidence shows penetration has occurred, the State cannot charge any crime if it’s unable to prove which specific type of penetration occurred, including in cases where the victims are young children or nonverbal. This fix would enable prosecutors to charge unlawful sexual penetration so long as they can prove penetration occurred, closing an unintentional and unjust gap for some of Oregon’s youngest and most vulnerable victims of sexual abuse.



## Oregon District Attorneys: Public Safety Investments 2023-25

**Oregon is at a pivotal moment for public safety, facing systemwide problems that require systemwide solutions.** Together, an accountable and well-functioning defense, prosecution and judiciary uphold the justice system. It's impossible to expand or reduce one arm of the system and maintain balance with the others. As demand for all public sector attorneys has grown, **Oregon has injected important funding into public defense services – but the State has not matched this spending with investments in its courts or prosecuting offices.**

Historically, State financial support for District Attorney services has declined. Since 2011, the State has stopped contributing toward salaries for Deputy DAs, stopped paying witness fees, and relied heavily on counties to supplement the office of the District Attorney to attract and retain skilled, highly qualified attorneys, victim advocates and support staff. **Today, counties fund a majority – about 75% – of District Attorney operations.** It's time to value public safety in Oregon by investing in all branches of the system.

### Proposed Legislative Concepts & Policy Option Packages (POPs):

#### **LC 937.H/POP 101 – Pay Equity Alignment for District Attorneys** (*\$1.49M General Fund*)

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Like judges and public defenders, DA compensation is determined by the State. However, unlike the judges and public defenders in their counties, DAs are paid on a two-tier system based on population size of the county they serve. This contributes to a \$21,000+ annual pay gap between DAs with similar qualifications, responsibilities and working conditions, which undervalues their work, places a disproportionate burden on rural counties, and exposes the State to a lawsuit under Oregon's Pay Equity Act. POP 101 eliminates the lower tier to pay all DAs a consistent salary. This simple and cost-effective solution also protects the State from a costly lawsuit while freeing stakeholders and legislators to focus on the broader crises affecting all levels of our criminal justice system.

#### **LC 935.H/POP 102 – Salary Adjustment for District Attorneys** (*\$3.48M General Fund*)

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District Attorneys protect crime victims' rights, promote a balanced approach to justice including treatment and crime reduction strategies, collaborate with community and public safety partners, and advocate for justice. Many also serve as a county's primary law enforcement officer, attending crime scenes, writing search warrants and trying cases ranging from misdemeanors to felonies, from assault and domestic violence to murder trials. Compensation should be commensurate with their roles, but State pay for DAs is often less than lawyers make in the private sector and in other public positions requiring comparable experience. Inadequate compensation harms counties' abilities to attract and retain qualified DAs. POP 102 follows the example of states that have established pay standards tying elected prosecutor salaries to those of other elected officials in the judicial system. It sets State salaries for elected DAs at 100% of what a Circuit Court judge earns so their salaries are comparable to those of other experienced public servants in Oregon courts.

#### **LC 1479.H/LC 2289.S/POP 103 – Including DAs and DDAs in Police/Fire PERS** (*\$490,753 General Fund*)

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Oregon's DAs and Deputy District Attorneys prosecute the most serious criminal cases, from child sex abuse, domestic violence, to gang violence and fraud. Stalking, threats, and risk of physical and psychological harm by those they prosecute is not uncommon. They respond to homicides in the middle of the night, during the



workday, and on weekends and work side by side with other law enforcement to build cases from the ground up. Their jobs are difficult, traumatic, and require exceptional personal sacrifice. Today, many prosecutors are leaving the profession altogether in favor of more competitive, less stressful private sector jobs with better benefits. It's long overdue for career prosecutor benefits to reflect career prosecutor workloads by adding them to the Police and Fire PERS designation. DAs and DDAs are frequently statutorily defined as "law enforcement" throughout Oregon's legal codes. Along with police officers, parole officers, prison guards, firefighters, and 9-1-1 dispatchers, prosecutors are strike prohibited under Oregon law, because a general strike would represent such a profound threat to public safety. Yet they are the only one in that category not included in the Police Fire PERS designation.

#### **LC 933.H/POP 104 – Digital DA Investment/Body Cameras (\$14.4M General Fund)**

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District Attorney offices are facing rising demands to process and review law enforcement body camera footage tied to cases. Even the simplest case can result in hours of recorded footage that requiring review and processing, and these demands are poised to grow even further as more and more law enforcement agencies begin using body cameras. The State can help prioritize and incentivize the use of body-worn cameras by investing in body-camera-specific deputy DA positions and support staff. POP 104 allocates \$200,000 to each county to fund positions needed to review and process body camera footage.

#### **LC 932.H/POP 105 – Strengthen DA Services to Crime Victims (\$25.4M General Fund)**

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Crime victim advocates in DA offices provide a core function of the DAs office, supporting a crime victim through the criminal justice system. They are key partners with community-based partners who support these victims beyond the engagement with the courts. As such, significant investment is needed to support both of these vital efforts. Today, many DA victim advocate positions rely on funding from federal Victims of Crimes Act grants, which have declined annually since 2018. States are now bracing for additional cuts despite an increased need for services resulting from the COVID-19 pandemic, especially for BIPOC and other marginalized communities. Without consistent funding, the State must backfill through emergency measures, force counties to absorb the costs or risk losing these programs entirely. Victim advocates in DA offices need dedicated State funding to ensure these lifesaving services continue and are as accessible, seamless and efficient as possible. POP 105 provides funding for one crime victim advocate in DA offices with a single prosecutor and an advocate for every four deputy DAs in offices with more than one prosecutor. It is crucial to note that this funding does not replace allocations for other, community-based advocacy services, that provide additional support for victims and survivors of crimes. Investments are needed in both.

#### **LC 970.H/POP 106 – County Costs Related to Indigent Defendants (\$6M General Fund)**

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The State must continue to cover the discovery expenses for indigent defendants. These funds were previously distributed to the Office of Public Defense Services (OPDS); however, since 2021, OPDS has opposed routing these funds through the agency. Whether OPDS or another entity administers these funds, the State must ensure they reach counties and the discovery costs for indigent defendants are covered. POP 106 provides permanent funding for direct allocation by each county to District Attorneys to allow these services to continue to be reimbursed/offered free of charge to indigent defendants.

#### **POP 107 – Grand Jury Recordation (\$384,000 General Fund)**

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The 2017 Legislature required counties record all grand jury proceedings. POP 107 supports the continuation of grand jury recordation, providing the necessary funding for ongoing trainings, equipment maintenance, secure long-term cloud storage and transcription costs.

**TOTAL DA Public Safety Investment 2023-25: Approximately \$52M**