

# B-Engrossed House Bill 2473

Ordered by the Senate May 27  
Including House Amendments dated April 16 and Senate Amendments  
dated May 27

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon District Attorneys Association)

## 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. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act changes some rules for criminal cases. The Act takes effect when the Governor signs it. (Flesch Readability Score: 78.7).

Modifies the requirements for providing verification for the purposes of authenticating records in response to criminal process.

Authorizes a prosecuting attorney to turn over grand jury recordings to the defense attorney as soon as a decision not to file a motion for a protective order has been made.

Repeals a manner of committing the crime of harassment.

Authorizes a phlebotomist to withdraw blood for a blood alcohol analysis to be used as evidence of driving while under the influence of intoxicants.

**Removes the time limit by which a prosecuting attorney must elect to treat a misdemeanor as a Class A violation or a specified felony as a Class A misdemeanor.**

Declares an emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to criminal procedures; creating new provisions; amending ORS 132.270, 136.583, 161.566,  
3 161.570, 166.065 and 813.160; and declaring an emergency.

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

5 **SECTION 1.** ORS 136.583 is amended to read:

6 136.583. (1) Notwithstanding ORS 136.557, 136.563, 136.565 or 136.567 and subject to ORS 136.580  
7 (2), criminal process authorizing or commanding the seizure or production of papers, documents,  
8 records or other things may be issued to a recipient, regardless of whether the recipient or the pa-  
9 pers, documents, records or things are located within this state, if:

10 (a) The criminal matter is triable in Oregon under ORS 131.205 to 131.235; and

11 (b) The exercise of jurisdiction over the recipient is not inconsistent with the Constitution of  
12 this state or the Constitution of the United States.

13 (2) Criminal process that authorizes or commands the seizure or production of papers, docu-  
14 ments, records or other things from a recipient may be served by:

15 (a) Delivering a copy to the recipient personally; or

16 (b) Sending a copy by:

17 (A) Certified or registered mail, return receipt requested;

18 (B) Express mail; or

19 (C) Facsimile or electronic transmission, if the copy is sent in a manner that provides proof of  
20 delivery.

21 (3) When criminal process is served under subsection (2) of this section, the recipient shall

**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 provide the applicant, or if the process is described in ORS 136.447 or 136.580 (2), the court, with  
2 all of the papers, documents, records or other things described in the criminal process within 20  
3 business days from the date the criminal process is received, unless:

4 (a) The court, for good cause shown, includes in the process a requirement for production within  
5 a period of time that is less than 20 business days;

6 (b) The court, for good cause shown, extends the time for production to a period of time that is  
7 more than 20 business days; or

8 (c) The applicant consents to a request from the recipient for additional time to comply with the  
9 process.

10 (4) A recipient who seeks to quash or otherwise challenge the criminal process must seek relief  
11 from the court that issued the process within the time required for production. The court shall hear  
12 and decide the issue as soon as practicable. The consent of the applicant to additional time to  
13 comply with the process under subsection (3)(c) of this section does not extend the date by which  
14 a recipient must seek relief under this subsection.

15 (5) Criminal process issued under this section must contain a notice on the first page of the  
16 document that indicates:

17 (a) That the process was issued under this section;

18 (b) The date before which the recipient must respond to the process; and

19 (c) That the deadline for seeking relief is not altered by the applicant's consent to additional  
20 time to respond to the process.

21 (6) Upon order of the court or the written request of the applicant, the recipient of the process  
22 shall verify the authenticity of the papers, documents, records or other things that the recipient  
23 produces in response to the criminal process by providing an affidavit, **statement of authenticity**  
24 or declaration that [*includes contact information for*] **identifies** the custodian or other qualified per-  
25 son completing the document and attests to the nature of the papers, documents, records or other  
26 things. An affidavit, **statement of authenticity** or declaration that complies with this subsection  
27 [*may fulfill*] **fulfills** the requirements of ORS 40.460 (6), 40.505 and 132.320.

28 (7) A party that intends to offer a paper, document, record or other thing into evidence under  
29 this section must file written notice of that intention with the court and must disclose the  
30 affidavit, **statement of authenticity** or declaration sufficiently in advance of offering the paper,  
31 document, record or other thing into evidence to provide the adverse party with an opportunity to  
32 challenge the affidavit, **statement of authenticity** or declaration and to have that challenge de-  
33 termined without prejudice to the ability of the moving party to produce the custodian or other  
34 qualified person at trial. **The written notice must include the contact information for the**  
35 **custodian or other qualified person who signed the document.** A motion opposing admission of  
36 the paper, document, record or other thing into evidence must be filed and determined by the court  
37 before trial and with sufficient time to allow the party offering the paper, document, record or other  
38 thing, if the motion is granted, to produce the custodian of the record or other qualified person at  
39 trial, without creating a hardship on the party or the custodian or other qualified person.

40 (8) Failure by a party that receives notice under subsection (7) of this section to timely file a  
41 motion opposing admission of the paper, document, record or other thing constitutes a waiver of  
42 objection to the admission of the evidence on the basis of the insufficiency of the affidavit, **state-**  
43 **ment of authenticity** or declaration unless the court finds good cause to grant relief from the  
44 waiver. If the court grants relief from the waiver, the court shall order the trial continued upon the  
45 request of the proponent of the evidence and allow the proponent sufficient time to arrange for the

1 necessary witness to appear.

2 (9) A recipient of criminal process under this section or any individual that responds to the  
3 process is immune from civil and criminal liability for complying with the process and for any failure  
4 to provide notice of any disclosure to a person who is the subject of, or identified in, the disclosure.

5 (10) Nothing in this section limits the authority of a court to issue criminal process under any  
6 other provision of law or prohibits a party from calling the custodian of the evidence or other  
7 qualified person to testify regarding the evidence.

8 (11) As used in this section:

9 (a) "Applicant" means:

10 (A) A police officer or district attorney who applies for a search warrant or other court order  
11 or seeks to issue a subpoena under this section; or

12 (B) A defense attorney who applies for a court order or seeks to issue a subpoena under this  
13 section.

14 **(b) "Contact information" means a mailing address, email address or phone number.**

15 [(b)] (c) "Criminal process" means a subpoena, search warrant or other court order.

16 [(c)] (d) "Declaration" means a declaration [*under penalty of perjury under ORCP 1 E or an*  
17 *unsworn declaration under ORS 194.800 to 194.835, if the declarant is physically outside the bounda-*  
18 *ries of the United States*] **under ORCP 1 E.**

19 [(d)] (e) "Defense attorney" means an attorney of record for a person charged with a crime who  
20 is seeking the issuance of criminal process for the defense of the criminal case.

21 [(e)] (f) "Recipient" means a business entity or nonprofit entity that has conducted business or  
22 engaged in transactions occurring at least in part in this state.

23 **(g) "Statement of authenticity" means a statement that attests to the authenticity,**  
24 **truthfulness or correctness of specific papers, documents, records or other things, that is**  
25 **signed by the custodian or other qualified person.**

26 **SECTION 2.** ORS 132.270 is amended to read:

27 132.270. (1) Audio recordings and the notes or report of a shorthand reporter produced pursuant  
28 to ORS 132.250 and 132.260 are confidential and may not be released except as described in this  
29 section.

30 (2) When an indictment resulting from grand jury proceedings is indorsed "a true bill," the audio  
31 recording or the notes or report of a shorthand reporter of the grand jury proceedings may be re-  
32 leased only in the following manner:

33 (a) The prosecuting attorney may access a copy of the audio recording or the notes or report  
34 of a shorthand reporter at any time.

35 (b) When the defendant has been arraigned on the indictment and is represented by an attorney,  
36 the [*district*] **prosecuting** attorney shall **make an expedited determination on whether to file a**  
37 **motion for a protective order under subsection (4)(a)(A) of this section, including whether**  
38 **to file an order on behalf of a victim or witness. If the prosecuting attorney decides not to**  
39 **file a motion for a protective order and the decision is made within 10 days after the**  
40 **arraignment on the indictment, the prosecuting attorney shall file a certification of the de-**  
41 **cision with the court and shall immediately provide a copy of the audio recordings, or the**  
42 **notes or report of a shorthand reporter, to the defense attorney. If the prosecuting attorney**  
43 **has not filed a certification under this paragraph within 10 days after the arraignment, or**  
44 **decides to file a motion for a protective order, the prosecuting attorney shall:**

45 (A) Provide a copy to the defense attorney of all audio recordings, or the notes or report of a

1 shorthand reporter, related to an indictment after 10 days have passed since the defendant's  
2 arraignment on the indictment, **if a** [and no] motion described in subsection (4) of this section has  
3 **not** been filed; or

4 (B) Provide a copy of the audio recordings, or the notes or report of a shorthand reporter, to  
5 the defense attorney in accordance with the court's ruling on the motion described in subsection (4)  
6 of this section, if a motion has been filed.

7 (c) Unless the court orders otherwise for good cause shown, the prosecuting attorney and the  
8 defense attorney may not copy, disseminate or republish the audio recording, the notes or report  
9 of a shorthand reporter, or a transcript prepared from the audio recording, notes or report, released  
10 pursuant to this subsection, except to provide a copy to an agent of the prosecuting attorney or  
11 defense attorney for the limited purpose of case preparation. Unless a court orders otherwise for  
12 good cause shown, in consulting with the defendant the defense attorney may not disclose to the  
13 defendant:

14 (A) Any personal identifiers of a victim, witness or grand juror obtained from the audio re-  
15 cording, report, notes or transcript; or

16 (B) Any portion of the audio recording, report, notes or transcript that contains any personal  
17 identifiers of a victim, witness or grand juror.

18 (d) The defense attorney may not provide a copy of the audio recording, notes or report, or a  
19 transcript prepared from the audio recording, notes or report, to the defendant.

20 (e) When the defendant has been arraigned but is not represented by an attorney, the defendant  
21 may request by motion that the court issue an order allowing the defendant access to review the  
22 contents of the audio recording or the notes or report of the shorthand reporter. A copy of the  
23 motion must be provided to the prosecuting attorney. The prosecuting attorney may request a  
24 hearing on the motion within 10 days after receiving a copy. At the hearing, or in response to re-  
25 ceiving the motion, the court shall appoint counsel for the defendant for the limited purpose of re-  
26 viewing the audio recording, notes or report and may set reasonable conditions on the review of the  
27 audio recording, notes or report.

28 (3)(a) When a grand jury inquires into the conduct of a public servant as defined in ORS 162.005  
29 for acts occurring in the performance of the public servant's duties, and an indictment resulting  
30 from the grand jury proceedings is indorsed "not a true bill":

31 (A) The public servant or the prosecuting attorney may file a motion requesting a court order  
32 releasing all or a portion of a transcript of the grand jury proceedings. A copy of the motion must  
33 be served on the opposing party. In deciding whether to issue such an order, the court shall deter-  
34 mine whether the public interest in disclosure outweighs the interest in maintaining the secrecy of  
35 the grand jury proceedings. If the court orders disclosure, the court may set reasonable conditions  
36 on copying, disseminating or republishing the transcript.

37 (B) A member of the public may file a motion requesting a court order for production and re-  
38 lease of a transcript of the grand jury proceedings. A copy of the motion must be served on the  
39 prosecuting attorney and the public servant's attorney, or the public servant if the public servant  
40 is not represented by an attorney. The person filing the motion is responsible for the cost of  
41 producing the transcript and a court order for production and release of the transcript must be  
42 conditioned on receipt of payment. In deciding whether to issue such an order, the court shall de-  
43 termine whether the public interest in disclosure outweighs the interest in maintaining the secrecy  
44 of the grand jury proceedings. If the court orders disclosure, the court may set reasonable conditions  
45 on copying, disseminating or republishing the transcript.

1 (b) The release of any transcript under this subsection may not include:

2 (A) The release of any personal identifiers of a victim or witness; or

3 (B) The release of the name or any personal identifiers of a grand juror.

4 (4)(a) A motion for a protective order concerning an audio recording, the notes or report of a  
5 shorthand reporter or a transcript of grand jury proceedings may be filed as follows:

6 (A) **Except when the prosecuting attorney has filed a certification of the decision to not**  
7 **file a motion for a protective order under subsection (2)(b) of this section,** the prosecuting  
8 attorney may file a motion for a protective order within 10 days after the defendant's arraignment  
9 on the indictment. The motion may be filed on behalf of a victim or a witness. The prosecuting at-  
10 torney shall inform the victim of the ability to seek a protective order.

11 (B) The prosecuting attorney may file a motion for a protective order within 10 days after re-  
12 ceiving a motion described in subsection (2)(e) of this section.

13 (C) The prosecuting attorney, the public servant who is the subject of an indictment indorsed  
14 "not a true bill" or the public servant's attorney may file a motion for a protective order within 10  
15 days of receiving a motion described in subsection (3)(a) of this section.

16 (b) If the motion for a protective order requests that a portion of the audio recording, notes,  
17 report or transcript be redacted, the motion must be accompanied by a specific description, includ-  
18 ing the date and time, of the portion of the audio recording, notes, report or transcript to be  
19 redacted.

20 (c) In response to a motion filed under this subsection, the court may order that the access of  
21 the person requesting release to a copy of the audio recording, notes, report or transcript be denied,  
22 restricted or deferred, or may make any other order, upon a finding of substantial and compelling  
23 circumstances. In deciding whether to grant the motion and enter a protective order under this  
24 paragraph, the court may consider the following:

25 (A) Protection of witnesses and others from physical harm, threats of harm, bribes, economic  
26 interference, reprisal and other forms of intimidation;

27 (B) Maintenance of secrecy regarding informants, as required for effective investigation of  
28 criminal activity;

29 (C) Confidential information recognized under law, including the protection of confidential re-  
30 lationships and privileges and the contents of confidential records unrelated to a crime alleged in  
31 the indictment; and

32 (D) Any other relevant considerations.

33 (d) The court may permit the evidence of substantial and compelling circumstances described in  
34 paragraph (c) of this subsection to be made in the form of a written statement to be inspected by  
35 the court only or by oral testimony given on the record.

36 (5)(a) Except as provided in paragraph (b) of this subsection, when grand jury proceedings do  
37 not result in an indictment indorsed as either "a true bill" or "not a true bill," the audio recording  
38 or notes or report of the shorthand reporter produced pursuant to ORS 132.250 and 132.260 may not  
39 be disclosed or released.

40 (b) When subsequent grand jury proceedings occur inquiring into the same criminal episode as  
41 the grand jury proceedings described in paragraph (a) of this subsection, and the subsequent pro-  
42 ceedings result in an indictment indorsed as "a true bill," the prosecuting attorney shall provide  
43 notice to the person charged in the indictment of the occurrence of the earlier grand jury pro-  
44 ceedings. After the person is arraigned on the indictment [*and the time period described in subsection*  
45 *(2)(b) of this section has passed*], the audio recording or the notes or report of the shorthand reporter

1 produced during the earlier grand jury proceedings may be obtained in the manner set forth in  
2 subsection (2) of this section.

3 (c) As used in this subsection, “criminal episode” has the meaning given that term in ORS  
4 131.505.

5 (6) The district attorney of each county may establish a fee for the cost of providing a copy of  
6 any audio recording, or the notes or report of a shorthand reporter, of a grand jury proceeding to  
7 a person requesting a copy under this section.

8 (7) An audio recording, the notes or report of a shorthand reporter or a transcript of a grand  
9 jury proceeding obtained pursuant to this section and ORS 132.250 and 132.260:

10 (a) May not be used as evidence in any subsequent proceeding, except as permitted under ORS  
11 40.375, 40.380, 40.450, 40.460 or 40.465.

12 (b) May not be used to challenge the indorsement of an indictment “a true bill” or the pro-  
13 ceedings that led to the indorsement.

14 (c) May be used as evidence in a prosecution for perjury or false swearing committed by a wit-  
15 ness while giving testimony during the grand jury proceeding or during trial.

16 (d) May be used as evidence in a proceeding for contempt of court against a person alleged to  
17 have violated the terms of a court order concerning the audio recording, notes, report or transcript.

18 (e) May be submitted to the court and used as evidence for a hearing on a protective order de-  
19 scribed in subsection (4) of this section.

20 (8) The release of audio recordings, shorthand reporter notes or reports or transcripts of grand  
21 jury proceedings under this section does not affect discovery obligations under ORS 135.805 to  
22 135.873.

23 (9) As used in this section:

24 (a) “Personal identifiers” means:

25 (A) In relation to a witness or a grand juror, the person’s address, telephone number, driver li-  
26 cense, vehicle registration information, Social Security number, date of birth and the identifying  
27 number of the person’s depository account at a financial institution, as defined in ORS 706.008, or  
28 credit card account.

29 (B) In relation to a victim, the victim’s address, electronic mail address, telephone number,  
30 driver license, vehicle registration information, Social Security number, date of birth, any user  
31 names or other identifying information associated with the victim’s social media accounts and the  
32 identifying number of the victim’s depository account at a financial institution, as defined in ORS  
33 706.008, or credit card account.

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

35 **SECTION 3.** ORS 166.065 is amended to read:

36 166.065. (1) A person commits the crime of harassment if the person intentionally:

37 (a) Harasses or annoys another person by[:]

38 [(A)] subjecting such other person to offensive physical contact; [or]

39 [(B) *Publicly insulting such other person by abusive words or gestures in a manner intended and*  
40 *likely to provoke a violent response;*]

41 (b) Subjects another to alarm by conveying a false report, known by the conveyor to be false,  
42 concerning death or serious physical injury to a person, which report reasonably would be expected  
43 to cause alarm; or

44 (c) Subjects another to alarm by conveying a telephonic, electronic or written threat to inflict  
45 serious physical injury on that person or to commit a felony involving the person or property of that

1 person or any member of that person's family, which threat reasonably would be expected to cause  
2 alarm.

3 (2)(a) A person is criminally liable for harassment if the person knowingly permits any telephone  
4 or electronic device under the person's control to be used in violation of subsection (1) of this sec-  
5 tion.

6 (b) Harassment that is committed under the circumstances described in subsection (1)(c) of this  
7 section is committed in either the county in which the communication originated or the county in  
8 which the communication was received.

9 (3) Harassment is a Class B misdemeanor.

10 (4) Notwithstanding subsection (3) of this section, harassment is a Class A misdemeanor if a  
11 person violates:

12 (a) Subsection [(1)(a)(A)] (1)(a) of this section by subjecting another person to offensive physical  
13 contact and:

14 (A) The offensive physical contact consists of touching the sexual or other intimate parts of the  
15 other person; or

16 (B)(i) The victim of the offense is a family or household member of the person; and

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

20 (b) Subsection (1)(c) of this section and:

21 (A) The person has a previous conviction under subsection (1)(c) of this section and the victim  
22 of the current offense was the victim or a member of the family of the victim of the previous offense;

23 (B) At the time the offense was committed, the victim was protected by a stalking protective  
24 order, a restraining order as defined in ORS 24.190 or any other court order prohibiting the person  
25 from contacting the victim;

26 (C) At the time the offense was committed, the person reasonably believed the victim to be un-  
27 der 18 years of age and more than three years younger than the person; or

28 (D)(i) The person conveyed a threat to kill the other person or any member of the family of the  
29 other person;

30 (ii) The person expressed the intent to carry out the threat; and

31 (iii) A reasonable person would believe that the threat was likely to be followed by action.

32 (c) Subsection [(1)(a)(A)] (1)(a), (b) or (c) of this section by committing the crime of harassment  
33 against:

34 (A) An election worker who is performing the election worker's official duties at the time the  
35 harassment occurs; or

36 (B) An election worker because of an action taken or decision made by the election worker  
37 during the performance of the election worker's official duties.

38 (5) The Oregon Criminal Justice Commission shall classify harassment as described in subsection  
39 (4)(a)(B) of this section as a person Class A misdemeanor under the rules of the commission.

40 (6)(a) As used in this section:

41 (A) "Election worker" has the meaning given that term in ORS 247.965.

42 (B) "Electronic threat" means a threat conveyed by electronic mail, the Internet, a telephone  
43 text message or any other transmission of information by wire, radio, optical cable, cellular system,  
44 electromagnetic system or other similar means.

45 (C) "Family or household member" has the meaning given that term in ORS 135.230.

1 (b) For purposes of subsection (4) of this section, an offense is witnessed if the offense is seen  
2 or directly perceived in any other manner by the minor child.

3 **SECTION 4.** ORS 813.160 is amended to read:

4 813.160. (1) A chemical analysis is valid under ORS 813.300 if:

5 (a) It is an analysis of a person's blood for alcohol content and is performed in:

6 (A) A laboratory certified or accredited under 42 C.F.R. part 493 and approved for toxicology  
7 testing;

8 (B) A laboratory licensed under ORS 438.110 and approved for toxicology testing; or

9 (C) A forensic laboratory established by the Department of State Police under ORS 181A.150  
10 that is accredited by a national forensic accrediting organization.

11 (b) It is an analysis of a person's breath and is performed by an individual possessing a valid  
12 permit to perform chemical analyses issued by the Department of State Police and is performed ac-  
13 cording to methods approved by the Department of State Police. For purposes of this paragraph,  
14 the Department of State Police shall do all of the following:

15 (A) Approve methods of performing chemical analyses of a person's breath.

16 (B) Prepare manuals and conduct courses throughout the state for the training of police officers  
17 in chemical analyses of a person's breath, which courses shall include, but are not limited to, ap-  
18 proved methods of chemical analyses, use of approved equipment and interpretation of test results  
19 together with a written examination on these subjects.

20 (C) Test and certify the accuracy of equipment to be used by police officers for chemical ana-  
21 lyses of a person's breath before regular use of the equipment and periodically thereafter at inter-  
22 vals of not more than 90 days. Tests and certification required by this subparagraph must be  
23 conducted by trained technicians. Certification under this subparagraph does not require a signed  
24 document.

25 (D) Ascertain the qualifications and competence of individuals to conduct chemical analyses in  
26 accordance with one or more methods approved by the department.

27 (E) Issue permits to individuals according to their qualifications. Permits may be issued to police  
28 officers only upon satisfactory completion of the prescribed training course and written examination.  
29 A permit must state the methods and equipment that the police officer is qualified to use. Permits  
30 are subject to termination or revocation at the discretion of the Department of State Police.

31 (2) In conducting a chemical test of the blood, only a duly licensed physician, **a phlebotomist**  
32 or a person acting under the direction or control of a duly licensed physician may withdraw blood  
33 or pierce human tissue. A licensed physician, **a phlebotomist** or a qualified person acting under the  
34 direction or control of a duly licensed physician, is not civilly liable for withdrawing any bodily  
35 substance, in a medically acceptable manner, at the request of a peace officer.

36 (3) An individual who performs a chemical analysis of breath or blood under ORS 813.100 or  
37 813.140 shall prepare and sign a written report of the findings of the test that must include the  
38 identification of the police officer upon whose request the test was administered.

39 (4) Any individual having custody of the report mentioned in subsection (3) of this section shall,  
40 upon request of the person tested, furnish that person or that person's attorney, a copy of the report.

41 (5) The expense of conducting a chemical test as provided by ORS 813.100 or 813.140 must be  
42 paid by the governmental unit on whose equipment the test is conducted or by the governmental  
43 unit upon whose request the test was administered if no governmental unit's equipment is used to  
44 conduct the test.

45 **(6) As used in this section, "phlebotomist" means a person who has been trained in**



1 **phlebotomy by an academic or medical institution.**

2 **SECTION 5.** ORS 161.566 is amended to read:

3 161.566. (1) Except as provided in subsection (4) of this section, a prosecuting attorney may elect  
4 to treat any misdemeanor as a Class A violation. The election must be made by the prosecuting at-  
5 torney orally [*at the time of the first appearance of the defendant*] or in writing [*filed on or before the*  
6 *time scheduled for the first appearance of the defendant*]. If no election is made [*within the time al-*  
7 *lowed*], the case shall proceed as a misdemeanor.

8 (2) If a prosecuting attorney elects to treat a misdemeanor as a Class A violation under this  
9 section, the court shall amend the accusatory instrument to reflect the charged offense as a Class  
10 A violation and clearly denominate the offense as a Class A violation in any judgment entered in  
11 the matter. Notwithstanding ORS 153.021, the fine that a court may impose upon conviction of a  
12 violation under this section may not:

13 (a) Be less than the presumptive fine established by ORS 153.019 for a Class A violation; or

14 (b) Exceed the maximum fine established by ORS 153.018 for a Class A violation.

15 (3) If a prosecuting attorney elects to treat a misdemeanor as a Class A violation under this  
16 section, and the defendant fails to make any required appearance in the matter, the court may enter  
17 a default judgment against the defendant in the manner provided by ORS 153.102. Notwithstanding  
18 ORS 153.021, the fine that the court may impose under a default judgment entered pursuant to ORS  
19 153.102 may not:

20 (a) Be less than the presumptive fine established by ORS 153.019 for a Class A violation; or

21 (b) Exceed the maximum fine established by ORS 153.018 for a Class A violation.

22 (4) A prosecuting attorney may not elect to treat misdemeanors created under ORS 811.540 or  
23 813.010 as violations under the provisions of this section.

24 (5) The election provided for in this section may be made by a city attorney acting as prose-  
25 cuting attorney in the case of municipal ordinance offenses, a county counsel acting as prosecuting  
26 attorney under a county charter in the case of county ordinance offenses, and the Attorney General  
27 acting as prosecuting attorney in those criminal actions or proceedings within the jurisdiction of the  
28 Attorney General.

29 **SECTION 6.** ORS 161.570 is amended to read:

30 161.570. (1) As used in this section, “nonperson felony” has the meaning given that term in the  
31 rules of the Oregon Criminal Justice Commission.

32 (2) A district attorney may elect to treat a Class C nonperson felony or a violation of ORS  
33 475.752 (7)(b), 475.854 (2)(c) or 475.874 (2)(c) as a Class A misdemeanor. The election must be made  
34 by the district attorney orally or in writing [*at the time of the first appearance of the defendant*]. If  
35 a district attorney elects to treat a Class C felony or a violation of ORS 475.752 (7)(b), 475.854 (2)(c)  
36 or 475.874 (2)(c) as a Class A misdemeanor under this subsection, the court shall amend the  
37 accusatory instrument to reflect the charged offense as a Class A misdemeanor.

38 [(3) *If, at some time after the first appearance of a defendant charged with a Class C nonperson*  
39 *felony or a violation of ORS 475.752 (7)(b), 475.854 (2)(c) or 475.874 (2)(c), the district attorney and the*  
40 *defendant agree to treat the charged offense as a Class A misdemeanor, the court may allow the offense*  
41 *to be treated as a Class A misdemeanor by stipulation of the parties.*]

42 [(4)] (3) If a Class C felony or a violation of ORS 475.752 (7)(b), 475.854 (2)(c) or 475.874 (2)(c)  
43 is treated as a Class A misdemeanor under this section, the court shall clearly denominate the of-  
44 fense as a Class A misdemeanor in any judgment entered in the matter.

45 [(5)] (4) If no election [*or stipulation*] is made under this section, the case proceeds as a felony.

1        [(6)] (5) Before a district attorney may make an election under subsection (2) of this section, the  
2 district attorney shall adopt written guidelines for determining when and under what circumstances  
3 the election may be made. The district attorney shall apply the guidelines uniformly.

4        [(7)] (6) Notwithstanding ORS 161.635, the fine that a court may impose upon conviction of a  
5 misdemeanor under this section may not:

6            (a) Be less than the minimum fine established by ORS 137.286 for a felony; or

7            (b) Exceed the amount provided in ORS 161.625 for the class of felony receiving Class A  
8 misdemeanor treatment.

9        **SECTION 7. (1) The amendments to ORS 132.270, 166.065 and 813.160 by sections 2 to 4**  
10 **of this 2025 Act become operative on January 1, 2026.**

11        **(2) The amendments to ORS 132.270 by section 2 of this 2025 Act apply to criminal pro-**  
12 **ceedings based on conduct occurring on or after January 1, 2026.**

13        **(3) The amendments to ORS 161.566 and 161.570 by sections 5 and 6 of this 2025 Act apply**  
14 **to prosecutions commenced on or after the effective date of this 2025 Act.**

15        **SECTION 8. This 2025 Act being necessary for the immediate preservation of the public**  
16 **peace, health and safety, an emergency is declared to exist, and this 2025 Act takes effect**  
17 **on its passage.**

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