

House Bill 2485

Sponsored by Representatives BROWN, JENSON, P SMITH (at the request of Rob Bovett and Oregon Narcotics Enforcement 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 **as introduced**.

Creates crime of criminal mistreatment in first degree. Punishes by maximum of 10 years' imprisonment, \$250,000 fine, or both. Reclassifies existing crimes of criminal mistreatment.

Creates crime of endangering welfare of minor in first degree. Punishes by maximum of 20 years' imprisonment, \$375,000 fine, or both.

Expands circumstances under which murder is aggravated murder.

Creates crime of dumping methamphetamine waste. Punishes by maximum of 20 years' imprisonment, \$375,000 fine, or both.

Creates crime of operating methamphetamine laboratory. Punishes by maximum of 20 years' imprisonment, \$375,000 fine, or both.

Creates crime of distribution of equipment, solvent, reagent or precursor substance with intent to facilitate manufacture of controlled substance. Punishes by maximum of 10 years' imprisonment, \$250,000 fine, or both.

Creates crime of unlawful possession of lithium metal or sodium metal. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.

Provides that person possesses controlled substance if person is under influence of controlled substance.

Expands crime of theft in first degree to include theft of precursor substance.

Deletes prohibition against unlawful distribution of ephedrine or phenylpropanolamine. Modifies crime of unlawful distribution of pseudoephedrine. Imposes requirements on sale or transfer of products containing pseudoephedrine. Requires pharmacies to retain records obtained in sale or transfer of products containing pseudoephedrine and to send copies of records to certain agencies. Punishes failure to do so by maximum of one year's imprisonment, \$6,250 fine, or both.

Modifies crime of unlawful possession of iodine in its elemental form to prohibit possession of any amount of iodine in its elemental form.

Expands recording requirements for sales or transfers of iodine in its elemental form and iodine matrix. Increases punishment for failure to comply with recording requirements to maximum of one year's imprisonment, \$6,250 fine, or both.

Creates crime of unlawful distribution of iodine in its elemental form. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.

Creates crime of unlawful distribution of iodine matrix. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.

Expands definitions of "abuse" and "public or private official" for purposes of child abuse reporting laws.

Requires health care providers to provide protected health information to law enforcement agencies and Department of Human Services under certain circumstances.

Expands list of places declared to be public nuisances subject to enjoinder and abatement.

A BILL FOR AN ACT

1
2 Relating to controlled substances; creating new provisions; and amending ORS 105.555, 124.105,
3 131.125, 137.225, 137.712, 163.095, 163.200, 163.205, 163.505, 163.575, 164.055, 342.143, 419A.260,
4 419B.005, 419B.050, 431.840, 453.882, 475.940, 475.950, 475.973, 475.975, 475.976, 475.978 and
5 475.992.

6 (1) Whereas the Legislative Assembly finds that:

7 (a) Methamphetamine use and addiction in Oregon have reached epidemic proportions;

8 (b) The nature and cycle of methamphetamine use and addiction have many negative and severe
9 impacts on the livability of communities throughout Oregon including, but not limited to:

10 (A) Endangering children exposed to a methamphetamine laboratory or methamphetamine house

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 environment;
- 2 (B) Increasing the rate of property crimes such as theft, identity theft and burglary;
- 3 (C) Increasing the rate of violent crimes such as homicide, robbery, assault and sexual abuse;
- 4 (D) Creation and dumping of toxic waste from methamphetamine laboratories; and
- 5 (E) Methamphetamine-induced mental illness, psychosis and death;
- 6 (c) Recent developments in methamphetamine manufacturing methods, purity levels and methods
- 7 of ingestion have substantially contributed to the extremely addictive nature and expanded use of
- 8 methamphetamine;
- 9 (d) An adequate response to the methamphetamine epidemic sweeping Oregon and many parts
- 10 of the nation will require a coordinated and significantly enhanced effort to effectively use scarce
- 11 prevention, enforcement and treatment resources;
- 12 (e) Prevention, enforcement and treatment providers in every community in Oregon need to
- 13 work together in an effort to raise community awareness about, and reduce the incidence of manu-
- 14 facturing, distribution and use of, methamphetamine; and
- 15 (f) Establishing the following priorities is critical to the effort to remedy the methamphetamine
- 16 epidemic:
- 17 (A) Prevention efforts including:
- 18 (i) Community education and awareness; and
- 19 (ii) Mobilization of community prevention coalitions;
- 20 (B) Enforcement efforts including:
- 21 (i) Enhanced and stabilized funding for law enforcement agencies;
- 22 (ii) Enhanced control of critical precursor substances;
- 23 (iii) Stabilized funding for cleanup of unlawful methamphetamine laboratories;
- 24 (iv) Establishment of effective programs to address the problems of drug-endangered children;
- 25 and
- 26 (v) Early intervention in and prosecution of all methamphetamine cases in order to encourage
- 27 early methamphetamine addiction treatment; and
- 28 (C) Treatment efforts including:
- 29 (i) Use of effective methamphetamine addiction treatment to improve public safety;
- 30 (ii) Enhanced and stabilized funding for methamphetamine addiction treatment resources;
- 31 (iii) Standardization of the best practices for methamphetamine addiction treatment; and
- 32 (iv) Enhanced and stabilized funding for secondary treatment services such as those provided to
- 33 the children and other family members of a person undergoing methamphetamine addiction treat-
- 34 ment; and
- 35 (2) Whereas law enforcement and social service agencies in Oregon should be encouraged to
- 36 develop and implement written protocols for taking appropriate action when a child is present in a
- 37 home where methamphetamine is manufactured, distributed or used, which protocols should reflect
- 38 that exposing a child to the manufacture, distribution or use of methamphetamine is criminal con-
- 39 duct and that a response coordinated by law enforcement and social service agencies is essential to
- 40 the health and welfare of the child; and
- 41 (3) Whereas the needs of a drug-endangered child are best served through written protocols
- 42 encouraging:
- 43 (a) The arrest of the person responsible for exposing the child to the drug endangering envi-
- 44 ronment;
- 45 (b) The provision of health and mental health services to the child; and

1 (c) The placement of the child in a safe and nurturing environment; and

2 (4) Whereas protocols that encourage a dependency investigation to occur at the same time as
3 a law enforcement investigation at a methamphetamine crime scene involving a child are consistent
4 with the child's best interest; and

5 (5) Whereas communities in Oregon should be encouraged to form multiagency and multijuris-
6 dictional groups that include law enforcement officers, prosecutors, public health professionals and
7 social workers to address the welfare of children endangered by parental methamphetamine manu-
8 facturing, distribution and use; and

9 (6) Whereas multiagency and multijurisdictional groups formed by communities should be en-
10 couraged to develop protocols addressing:

11 (a) Arrests for methamphetamine-related crimes;

12 (b) The immediate response of child protective social workers to a methamphetamine crime
13 scene involving a child;

14 (c) The assignment of child protective social workers to work with law enforcement agencies
15 charged with responding to methamphetamine crime scenes;

16 (d) Child dependency investigations involving methamphetamine laboratories;

17 (e) Forensic methamphetamine and toxic chemical exposure testing;

18 (f) Decontamination of children found in a methamphetamine laboratory setting;

19 (g) Medical examinations and developmental evaluations of children found in a methamphet-
20 amine laboratory setting;

21 (h) The creation of drug-endangered children awareness training; and

22 (i) Short-term and long-term medical, social and psychological follow-up for drug-endangered
23 children; now, therefore,

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

25 **SECTION 1. Section 2 of this 2005 Act is added to and made a part of ORS 163.160 to**
26 **163.208.**

27 **SECTION 2. (1) A person commits the crime of criminal mistreatment in the first degree**
28 **if the person intentionally or knowingly exposes a dependent person to any of the following**
29 **and the exposure results in physical injury to the dependent person:**

30 (a) **A controlled substance that was not prescribed by a licensed physician for use by the**
31 **dependent person.**

32 (b) **A precursor substance used or intended for use in the unlawful manufacture of a**
33 **controlled substance.**

34 (c) **A waste product resulting from the unlawful manufacture of a controlled substance.**

35 (d) **Paraphernalia used to ingest, inject or inhale a controlled substance.**

36 (2) **As used in this section:**

37 (a) **"Controlled substance" has the meaning given that term in ORS 475.005.**

38 (b) **"Dependent person" has the meaning given that term in ORS 163.205.**

39 (c) **"Precursor substance" has the meaning given that term in ORS 475.940.**

40 (3) **Criminal mistreatment in the first degree is a Class B felony.**

41 **SECTION 3. ORS 163.200 is amended to read:**

42 163.200. (1) A person commits the crime of criminal mistreatment in the [second] **third** degree
43 if, with criminal negligence and:

44 (a) In violation of a legal duty to provide care for another person, the person withholds neces-
45 sary and adequate food, physical care or medical attention from that person; or

1 (b) Having assumed the permanent or temporary care, custody or responsibility for the super-
 2 vision of another person, the person withholds necessary and adequate food, physical care or med-
 3 ical attention from that person.

4 (2) Criminal mistreatment in the [second] **third** degree is a Class A misdemeanor.

5 (3) As used in this section, “legal duty” includes but is not limited to a duty created by familial
 6 relationship, court order, contractual agreement or statutory or case law.

7 **SECTION 4.** ORS 163.205 is amended to read:

8 163.205. (1) A person commits the crime of criminal mistreatment in the [first] **second** degree if:

9 (a) The person, in violation of a legal duty to provide care for another person, or having as-
 10 sumed the permanent or temporary care, custody or responsibility for the supervision of another
 11 person, intentionally or knowingly withholds necessary and adequate food, physical care or medical
 12 attention from that other person; or

13 (b) The person, in violation of a legal duty to provide care for a dependent person or elderly
 14 person, or having assumed the permanent or temporary care, custody or responsibility for the
 15 supervision of a dependent person or elderly person, intentionally or knowingly:

16 (A) Causes physical injury or injuries to the dependent person or elderly person;

17 (B) Deserts the dependent person or elderly person in a place with the intent to abandon that
 18 person;

19 (C) Leaves the dependent person or elderly person unattended at a place for such a period of
 20 time as may be likely to endanger the health or welfare of that person;

21 (D) Hides the dependent person’s or elderly person’s money or property or takes the money or
 22 property for, or appropriates the money or property to, any use or purpose not in the due and lawful
 23 execution of the person’s responsibility; or

24 (E) Takes charge of a dependent or elderly person for the purpose of fraud.

25 (2) As used in this section:

26 (a) “Dependent person” means a person who because of either age or a physical or mental dis-
 27 ability is dependent upon another to provide for the person’s physical needs.

28 (b) “Elderly person” means a person 65 years of age or older.

29 (c) “Legal duty” includes but is not limited to a duty created by familial relationship, court or-
 30 der, contractual agreement or statutory or case law.

31 (3) Criminal mistreatment in the [first] **second** degree is a Class C felony.

32 **SECTION 5. Section 6 of this 2005 Act is added to and made a part of ORS 163.505 to**
 33 **163.575.**

34 **SECTION 6. (1) A person commits the crime of endangering the welfare of a minor in the**
 35 **first degree if the person knowingly:**

36 (a) **Permits a person under 18 years of age to enter or remain in a place where a chemical**
 37 **reaction involving one or more precursor substances is occurring for the purpose of unlaw-**
 38 **fully manufacturing a controlled substance or preparing a precursor substance for the un-**
 39 **lawful manufacture of a controlled substance; or**

40 (b) **Causes or permits a person under 18 years of age to participate in obtaining a pre-**
 41 **cursor substance for the purpose of unlawfully manufacturing a controlled substance or**
 42 **preparing a precursor substance for the unlawful manufacture of a controlled substance.**

43 (2) **Endangering the welfare of a minor in the first degree is a Class A felony.**

44 **SECTION 7.** ORS 163.575 is amended to read:

45 163.575. (1) A person commits the crime of endangering the welfare of a minor **in the second**

1 **degree** if the person knowingly:

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

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

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

8 (d) Distributes, sells, or causes to be sold, tobacco in any form to a person under 18 years of
9 age; or

10 (e) Sells to a person under 18 years of age any device in which tobacco, marijuana, cocaine or
11 any controlled substance[, *as defined in ORS 475.005,*] is burned and the principal design and use
12 of which is directly or indirectly to deliver tobacco smoke, marijuana smoke, cocaine smoke or
13 smoke from any controlled substance into the human body including but not limited to:

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

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

18 (C) Bongs;

19 (D) Chillums;

20 (E) Ice pipes or chillers;

21 (F) Cigarette rolling papers and rolling machines; and

22 (G) Cocaine free basing kits.

23 (2) Endangering the welfare of a minor **in the second degree** by violation of subsection (1)(a),
24 (b), (c) or (e) of this section, involving other than a device for smoking tobacco, is a Class A
25 misdemeanor.

26 (3) Endangering the welfare of a minor **in the second degree** by violation of subsection (1)(d)
27 of this section or by violation of subsection (1)(e) of this section, involving a device for smoking
28 tobacco, is a Class A violation and the court shall impose a fine of not less than \$100.

29 **SECTION 8.** ORS 163.505 is amended to read:

30 163.505. As used in ORS 163.505 to 163.575, unless the context requires otherwise:

31 (1) **“Controlled substance” has the meaning given that term in ORS 475.005.**

32 [*1*] (2) “Descendant” includes persons related by descending lineal consanguinity, step-children
33 and lawfully adopted children.

34 (3) **“Precursor substance” has the meaning given that term in ORS 475.940.**

35 [*2*] (4) “Support” includes, but is not limited to, necessary and proper shelter, food, clothing,
36 medical attention and education.

37 **SECTION 9.** ORS 163.095 is amended to read:

38 163.095. As used in ORS 163.105 and this section, “aggravated murder” means murder as defined
39 in ORS 163.115 which is committed under, or accompanied by, any of the following circumstances:

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

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

44 (c) The defendant committed murder after having been convicted previously in any jurisdiction
45 of any homicide, the elements of which constitute the crime of murder as defined in ORS 163.115

1 or manslaughter in the first degree as defined in ORS 163.118.

2 (d) There was more than one murder victim in the same criminal episode as defined in ORS
3 131.505.

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

6 (f) The victim of the intentional homicide was a person under [*the age of*] 14 years of age.

7 **(g) The victim was a person under 14 years of age and the homicide occurred as the re-**
8 **sult of manufacturing, or attempting to manufacture, methamphetamine.**

9 (2)(a) The victim was one of the following and the murder was related to the performance of the
10 victim's official duties in the justice system:

11 (A) A police officer as defined in ORS 181.610;

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

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

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

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

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

18 (G) A member of the State Board of Parole and Post-Prison Supervision.

19 (b) The defendant was confined in a state, county or municipal penal or correctional facility or
20 was otherwise in custody when the murder occurred.

21 (c) The defendant committed murder by means of an explosive as defined in ORS 164.055.

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

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

26 (f) The murder was committed after the defendant had escaped from a state, county or municipal
27 penal or correctional facility and before the defendant had been returned to the custody of the fa-
28 cility.

29 **SECTION 10. Sections 11 to 15 of this 2005 Act are added to and made a part of ORS**
30 **475.940 to 475.999.**

31 **SECTION 11. (1) A person commits the crime of dumping methamphetamine waste if the**
32 **person knowingly deposits on any property a precursor substance, chemical waste or debris,**
33 **used in or resulting from the manufacture of methamphetamine or the preparation of a**
34 **precursor substance for the manufacture of methamphetamine.**

35 **(2) Subsection (1) of this section does not apply to the disposal of waste products:**

36 **(a) By a licensed pharmaceutical company in the normal course of business; or**

37 **(b) Pursuant to state or federal laws regulating the cleanup or disposal of waste products**
38 **from unlawful methamphetamine manufacturing.**

39 **(3) Dumping methamphetamine waste is a Class A felony.**

40 **SECTION 12. (1) A person commits the crime of operating a methamphetamine labora-**
41 **tory if the person knowingly causes a chemical reaction involving one or more precursor**
42 **substances for the purpose of manufacturing methamphetamine or preparing a precursor**
43 **substance for the manufacture of methamphetamine.**

44 **(2) Subsection (1) of this section does not apply to the manufacture of methamphetamine**
45 **by a licensed pharmaceutical company in the normal course of business.**

1 **(3) Operating a methamphetamine laboratory is a Class A felony.**

2 **SECTION 13. A person who reports the possession of a precursor substance or a trans-**
 3 **action involving a precursor substance to a law enforcement agency is immune from any civil**
 4 **or criminal liability that might otherwise be incurred or imposed with respect to the making**
 5 **or the content of the report if the person has reasonable grounds for suspecting the pos-**
 6 **session or transaction is prohibited under ORS 475.940 to 475.999.**

7 **SECTION 14. (1) A person commits the crime of distribution of equipment, a solvent, a**
 8 **reagent or a precursor substance with intent to facilitate the manufacture of a controlled**
 9 **substance if the person sells or otherwise transfers equipment, a solvent, a reagent or a**
 10 **precursor substance to another person with knowledge that the equipment, solvent, reagent**
 11 **or precursor substance is intended to be used to manufacture a controlled substance in vio-**
 12 **lation of ORS 475.992.**

13 **(2) Distribution of equipment, a solvent, a reagent or a precursor substance with intent**
 14 **to facilitate the manufacture of a controlled substance is a Class B felony.**

15 **SECTION 15. (1) Except as otherwise provided in subsection (2) of this section, a person**
 16 **commits the crime of unlawful possession of lithium metal or sodium metal if the person**
 17 **knowingly possesses lithium metal or sodium metal.**

18 **(2) Subsection (1) of this section does not apply to:**

19 **(a) A person who is conducting a lawful manufacturing operation that involves the use**
 20 **of lithium metal or sodium metal;**

21 **(b) A person who possesses lithium metal or sodium metal in conjunction with exper-**
 22 **iments conducted in a chemistry or chemistry related laboratory maintained by a:**

23 **(A) Regularly established public or private secondary school; or**

24 **(B) Public or private institution of higher education that is accredited by a regional or**
 25 **national accrediting agency recognized by the United States Department of Education;**

26 **(c) A retail distributor, wholesaler, manufacturer, warehouseman or common carrier, or**
 27 **an agent of any of these persons, who possesses lithium metal or sodium metal in the regular**
 28 **course of lawful business activities; or**

29 **(d) A person who possesses lithium metal or sodium metal as a component of a lawful**
 30 **product including, but not limited to, rechargeable batteries.**

31 **(3) Unlawful possession of lithium metal or sodium metal is a Class A misdemeanor.**

32 **SECTION 16. ORS 475.992 is amended to read:**

33 **475.992. (1) Except as authorized by ORS 475.005 to 475.285 and 475.940 to 475.999, it is unlawful**
 34 **for any person to manufacture or deliver a controlled substance. Any person who violates this sub-**
 35 **section with respect to:**

36 **(a) A controlled substance in Schedule I, is guilty of a Class A felony.**

37 **(b) A controlled substance in Schedule II, is guilty of a Class B felony.**

38 **(c) A controlled substance in Schedule III, is guilty of a Class C felony.**

39 **(d) A controlled substance in Schedule IV, is guilty of a Class B misdemeanor.**

40 **(e) A controlled substance in Schedule V, is guilty of a Class C misdemeanor.**

41 **(2) Notwithstanding the placement of marijuana in a schedule of controlled substances under**
 42 **ORS 475.005 to 475.285 and 475.940 to 475.999:**

43 **(a) Any person who delivers marijuana for consideration is guilty of a Class B felony.**

44 **(b) Any person who delivers, for no consideration, less than one avoirdupois ounce of the dried**
 45 **leaves, stems and flowers of the plant Cannabis family Moraceae is guilty of a Class A misdemeanor,**

1 except that any person who delivers, for no consideration, less than five grams of the dried leaves,
 2 stems and flowers of the plant Cannabis family Moraceae is guilty of a violation, punishable by a
 3 fine of not less than \$500 and not more than \$1,000. Fines collected under this paragraph shall be
 4 forwarded to the Department of Revenue for deposit in the Criminal Fine and Assessment Account
 5 established in ORS 137.300.

6 (3) Except as authorized in ORS 475.005 to 475.285 and 475.940 to 475.999, it is unlawful for any
 7 person to create or deliver a counterfeit substance. Any person who violates this subsection with
 8 respect to:

- 9 (a) A counterfeit substance in Schedule I, is guilty of a Class A felony.
- 10 (b) A counterfeit substance in Schedule II, is guilty of a Class B felony.
- 11 (c) A counterfeit substance in Schedule III, is guilty of a Class C felony.
- 12 (d) A counterfeit substance in Schedule IV, is guilty of a Class B misdemeanor.
- 13 (e) A counterfeit substance in Schedule V, is guilty of a Class C misdemeanor.

14 (4) It is unlawful for any person knowingly or intentionally to possess a controlled substance
 15 unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a
 16 practitioner while acting in the course of professional practice, or except as otherwise authorized
 17 by ORS 475.005 to 475.285 and 475.940 to 475.999. Any person who violates this subsection with re-
 18 spect to:

- 19 (a) A controlled substance in Schedule I, is guilty of a Class B felony.
- 20 (b) A controlled substance in Schedule II, is guilty of a Class C felony.
- 21 (c) A controlled substance in Schedule III, is guilty of a Class A misdemeanor.
- 22 (d) A controlled substance in Schedule IV, is guilty of a Class C misdemeanor.
- 23 (e) A controlled substance in Schedule V, is guilty of a violation.

24 (f) Notwithstanding the placement of marijuana in a schedule of controlled substances under
 25 ORS 475.005 to 475.285 and 475.940 to 475.999, any person who knowingly or intentionally is in un-
 26 lawful possession of less than one avoirdupois ounce of the dried leaves, stems and flowers of the
 27 plant Cannabis family Moraceae is guilty of a violation, punishable by a fine of not less than \$500
 28 and not more than \$1,000. Fines collected under this paragraph shall be forwarded to the Depart-
 29 ment of Revenue for deposit in the Criminal Fine and Assessment Account established under ORS
 30 137.300.

31 (5) In any prosecution under this section for manufacture, possession or delivery of that plant
 32 of the genus Lophophora commonly known as peyote, it is an affirmative defense that the peyote is
 33 being used or is intended for use:

- 34 (a) In connection with the good faith practice of a religious belief;
- 35 (b) As directly associated with a religious practice; and
- 36 (c) In a manner that is not dangerous to the health of the user or others who are in the prox-
 37 imity of the user.

38 (6) The affirmative defense created in subsection (5) of this section is not available to any person
 39 who has possessed or delivered the peyote while incarcerated in a correctional facility in this state.

40 **(7) As used in this section, “possess” means:**

41 **(a) To have physical possession of or otherwise to exercise dominion or control over**
 42 **something.**

43 **(b) To be under the influence of something.**

44 **SECTION 17.** ORS 164.055 is amended to read:

45 164.055. (1) A person commits the crime of theft in the first degree if, by other than extortion,

1 the person commits theft as defined in ORS 164.015 and:

2 (a) The total value of the property in a single or aggregate transaction is \$200 or more in a case
3 of theft by receiving, and \$750 or more in any other case; *[or]*

4 (b) The theft is committed during a riot, fire, explosion, catastrophe or other emergency in an
5 area affected *[thereby; or]* **by the riot, fire, explosion, catastrophe or other emergency;**

6 (c) The theft is theft by receiving committed by buying, selling, borrowing or lending on the
7 security of the property; *[or]*

8 (d) The subject of the theft is a firearm or explosive; *[or]*

9 (e) The subject of the theft is a livestock animal, a companion animal or a wild animal removed
10 from habitat or born of a wild animal removed from habitat, pursuant to ORS 497.308 (2)(c); **or**

11 **(f) The subject of the theft is a precursor substance.**

12 (2) As used in this section:

13 (a) "Companion animal" means a dog or cat possessed by a person, business or other entity for
14 purposes of companionship, security, hunting, herding or providing assistance in relation to a phys-
15 ical disability.

16 (b) "Explosive" means a chemical compound, mixture or device that is commonly used or in-
17 tended for the purpose of producing a chemical reaction resulting in a substantially instantaneous
18 release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin,
19 blasting caps and nitrojelly, but excluding fireworks as defined in ORS 480.110 (1), black powder,
20 smokeless powder, small arms ammunition and small arms ammunition primers.

21 (c) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile
22 by the action of black powder or smokeless powder and which is readily capable of use as a weapon.

23 (d) "Livestock animal" means a ratite, psittacine, horse, gelding, mare, stallion, colt, mule, ass,
24 jenny, bull, steer, cow, calf, goat, sheep, lamb, llama, pig or hog.

25 **(e) "Precursor substance" has the meaning given that term in ORS 475.940.**

26 (3) Theft in the first degree is a Class C felony.

27 **SECTION 18.** ORS 475.973 is amended to read:

28 475.973. (1)(a) Except as otherwise provided in paragraphs (b) *[and (c)]* **to (d)** of this subsection,
29 a person commits the crime of unlawful possession of ephedrine, pseudoephedrine or
30 phenylpropanolamine if the person knowingly possesses more than nine grams of ephedrine,
31 pseudoephedrine or phenylpropanolamine, the salts, isomers or salts of isomers of ephedrine,
32 pseudoephedrine or phenylpropanolamine or a combination of any of these substances.

33 (b) Paragraph (a) of this subsection does not apply to a veterinarian, physician, pharmacist, re-
34 tail distributor, wholesaler, manufacturer, warehouseman or common carrier or an agent of any of
35 these persons if the possession is in the regular course of lawful business activities.

36 (c) Paragraph (a) of this subsection does not apply to a person in possession of less than 24
37 grams of ephedrine, pseudoephedrine or phenylpropanolamine, or the salts, isomers or salts of
38 isomers of ephedrine, pseudoephedrine or phenylpropanolamine, in the home or residence of the
39 person under circumstances that are consistent with typical medicinal or household use, as indicated
40 by factors that include but are not limited to storage location, purchase date, possession of the
41 products in a variety of strengths, brands, types or purposes and expiration date. The exception
42 under this paragraph does not apply if the substances, in excess of nine grams, were all purchased
43 within a period of seven consecutive days.

44 **(d) Paragraph (a) of this subsection does not apply to a person in possession of**
45 **pseudoephedrine pursuant to a prescription issued by a licensed veterinarian or physician.**

1 [(2)(a) A person commits the crime of unlawful distribution of ephedrine, pseudoephedrine or
 2 phenylpropanolamine if the person sells or otherwise transfers more than nine grams of ephedrine,
 3 pseudoephedrine or phenylpropanolamine, the salts, isomers or salts of isomers of ephedrine,
 4 pseudoephedrine or phenylpropanolamine or a combination of any of these substances to a person other
 5 than a veterinarian, physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman
 6 or common carrier or an agent of any of these persons in the regular course of lawful business activ-
 7 ities.]

8 [(b) Paragraph (a) of this subsection does not apply to pediatric products primarily intended for
 9 administration, according to label instructions, to children under 12 years of age, either:]

10 [(A) In solid dosage form when individual dosage units do not exceed 15 milligrams of ephedrine,
 11 pseudoephedrine or phenylpropanolamine; or]

12 [(B) In liquid form when recommended dosage units, according to label instructions, do not exceed
 13 15 milligrams of ephedrine, pseudoephedrine or phenylpropanolamine per five milliliters of liquid
 14 product.]

15 [(c) Paragraph (a) of this subsection does not apply to pediatric products in liquid form that are
 16 primarily intended for administration to children under two years of age for whom the recommended
 17 dosage does not exceed two milliliters and that have a total package content of not more than one fluid
 18 ounce.]

19 **(2)(a) When a person sells or otherwise transfers a product containing pseudoephedrine
 20 or the salts, isomers or salts of isomers of pseudoephedrine, the person:**

21 **(A) Shall make the sale or transfer from the prescription area of a licensed pharmacy;**

22 **(B) May not sell or transfer products containing more than nine grams of
 23 pseudoephedrine or the salts, isomers or salts of isomers of pseudoephedrine to the same
 24 transferee within a 30-day period;**

25 **(C) Shall require the transferee to provide photographic identification showing the
 26 transferee's date of birth; and**

27 **(D) Shall require the transferee to sign a document or instrument, approved by the De-
 28 partment of State Police, showing the date of the transaction, the name of the transferee,
 29 the type and number of the identification provided under subparagraph (C) of this paragraph,
 30 the name, amount and cost of the product and the method of payment.**

31 **(b) A person commits the crime of unlawful distribution of pseudoephedrine if the person
 32 fails to comply with paragraph (a) of this subsection.**

33 **(c) Paragraph (a) of this subsection does not apply to sales or transfers to a veterinarian,
 34 physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman or com-
 35 mon carrier or an agent of any of these persons in the regular course of lawful business
 36 activities.**

37 **(d) Paragraph (a) of this subsection does not apply to the sale or transfer of a product:**

38 **(A) That is in liquid, liquid capsule or gel capsule form;**

39 **(B) In which pseudoephedrine is not the only active ingredient; and**

40 **(C) That may be lawfully sold or transferred without a prescription.**

41 **(3) A pharmacy that obtains records under subsection (2)(a)(D) of this section shall retain
 42 the records for at least three years. The pharmacy shall make the records available for in-
 43 spection by the State Board of Pharmacy and any law enforcement agency. If requested by
 44 the State Board of Pharmacy or the Department of State Police, the pharmacy shall send
 45 copies of the records to the state board or department.**

1 **(4) If the State Board of Pharmacy implements a program to collect and track informa-**
 2 **tion obtained under subsection (2)(a)(D) of this section and to share the information among**
 3 **pharmacies, the nine gram limitation established in subsection (2)(a)(B) of this section is the**
 4 **total amount that can be sold or transferred collectively from all pharmacies that have ac-**
 5 **cess to the information.**

6 [(3)] (5) This section does not apply to products that the State Board of Pharmacy, upon appli-
 7 cation of a manufacturer, exempts by rule because the product is formulated to effectively prevent
 8 conversion of the active ingredient into methamphetamine or its salts or precursors. Upon notifica-
 9 tion from the Department of State Police that the department has probable cause to believe that a
 10 product exempted under this subsection does not effectively prevent conversion of the active ingre-
 11 dient into methamphetamine or its salts or precursors, the State Board of Pharmacy may issue an
 12 emergency rule revoking the exemption for the product pending a full hearing.

13 [(4)] (6) This section does not apply to dietary supplements, herbs or natural products, including
 14 concentrates or extracts, that are not otherwise prohibited by law and that contain naturally oc-
 15 ccurring ephedrine alkaloids in a matrix of organic material such that the substances do not exceed
 16 15 percent of the total weight of the dietary supplement, herb or natural product.

17 [(5)(a)] (7)(a) Unlawful possession of ephedrine, pseudoephedrine or phenylpropanolamine is a
 18 Class A misdemeanor.

19 (b) Unlawful distribution of [*ephedrine,*] pseudoephedrine [*or phenylpropanolamine*] is a Class A
 20 misdemeanor.

21 **(c) Failure to retain a record, or send a copy of a record, as required by subsection (3)**
 22 **of this section is a Class A misdemeanor.**

23 **SECTION 19.** ORS 475.975 is amended to read:

24 475.975. (1) Except as otherwise provided in subsection (2) of this section, a person commits the
 25 crime of unlawful possession of iodine in its elemental form if the person knowingly possesses [*more*
 26 *than two ounces of*] iodine in its elemental form.

27 (2) Subsection (1) of this section does not apply to:

28 (a) A physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman or
 29 common carrier or an agent of any of these persons who possesses iodine in its elemental form in
 30 the regular course of lawful business activities;

31 (b) A person who possesses iodine in its elemental form in conjunction with experiments con-
 32 ducted in a chemistry or chemistry related laboratory maintained by a:

33 (A) Regularly established public or private secondary school;

34 (B) Public or private institution of higher education that is accredited by a regional or national
 35 accrediting agency recognized by the United States Department of Education; or

36 (C) Manufacturing, government agency or research facility in the course of lawful business ac-
 37 tivities;

38 (c) A licensed veterinarian; [*or*]

39 (d) A person working in a general hospital who possesses iodine in its elemental form in the
 40 regular course of employment at the hospital; **or**

41 **(e) A person who possesses iodine in its elemental form as a prescription drug, pursuant**
 42 **to a prescription issued by a licensed veterinarian or physician.**

43 (3) **Except as otherwise provided in subsection (4) of this section,** a person who sells or
 44 otherwise transfers iodine in its elemental form to [*a physician, pharmacist, retail distributor,*
 45 *wholesaler, manufacturer, warehouseman, common carrier, chemistry laboratory, licensed veterinarian*

1 *or general hospital or an agent of any of these persons or entities*] **another person** shall make a re-
 2 cord of each sale or transfer. The record must be made on a form provided by the Department of
 3 State Police, **must be completed pursuant to instructions provided by the department** and must
 4 be retained by the person for at least three years **or sent to the department if directed to do so**
 5 **by the department**. Failure to make, [*or*] retain **or send** a record required under this subsection
 6 is a Class A [*violation*] **misdemeanor**.

7 **(4) A licensed veterinarian is not required to make a record of a sale or transfer of iodine**
 8 **in its elemental form under subsection (3) of this section if the veterinarian makes a record**
 9 **of the sale or transfer under other applicable laws or rules regarding the prescribing and**
 10 **dispensing of regulated or controlled substances by veterinarians.**

11 **(5) A person commits the crime of unlawful distribution of iodine in its elemental form**
 12 **if the person knowingly sells or otherwise transfers iodine in its elemental form to a person**
 13 **not listed in subsection (2) of this section.**

14 [(4)] (6) Unlawful possession of iodine in its elemental form is a Class A misdemeanor.

15 **(7) Unlawful distribution of iodine in its elemental form in a Class A misdemeanor.**

16 **SECTION 20.** ORS 475.976 is amended to read:

17 475.976. (1) Except as otherwise provided in subsection (2) of this section, a person commits the
 18 crime of unlawful possession of an iodine matrix if the person knowingly possesses an iodine matrix.

19 (2) Subsection (1) of this section does not apply to:

20 (a) A person who possesses an iodine matrix as a prescription drug, pursuant to a prescription
 21 issued by a licensed veterinarian or physician;

22 (b) A person who is actively engaged in the practice of animal husbandry of livestock as defined
 23 in ORS 609.125;

24 (c) A person who possesses an iodine matrix in conjunction with experiments conducted in a
 25 chemistry or chemistry related laboratory maintained by a:

26 (A) Regularly established public or private secondary school;

27 (B) Public or private institution of higher education that is accredited by a regional or national
 28 accrediting agency recognized by the United States Department of Education; or

29 (C) Manufacturing, government agency or research facility in the course of lawful business ac-
 30 tivities;

31 (d) A veterinarian, physician, pharmacist, retail distributor, wholesaler, manufacturer,
 32 warehouseman or common carrier or an agent of any of these persons who possesses an iodine ma-
 33 trix in the regular course of lawful business activities; or

34 (e) A person working in a general hospital who possesses an iodine matrix in the regular course
 35 of employment at the hospital.

36 **(3) Except as otherwise provided in subsection (4) of this section,** a person who sells or
 37 otherwise transfers an iodine matrix to [*a person pursuant to a prescription issued by a licensed*
 38 *veterinarian or physician, to a person engaged in the practice of animal husbandry of livestock, to a*
 39 *chemistry or chemistry related laboratory, to a general hospital or to a veterinarian, physician,*
 40 *pharmacist, retail distributor, wholesaler, manufacturer, warehouseman or common carrier or an agent*
 41 *of any of these persons or entities,*] **another person** shall make a record of each sale or transfer. The
 42 record must be made on a form provided by the Department of State Police, **must be completed**
 43 **pursuant to instructions provided by the department** and must be retained by the person for at
 44 least three years **or sent to the department if directed to do so by the department**. Failure to
 45 make, [*or*] retain **or send** a record required under this subsection is a Class A [*violation*]

1 **misdemeanor.**

2 (4) **A licensed veterinarian is not required to make a record of a sale or transfer of an**
 3 **iodine matrix under subsection (3) of this section if the veterinarian makes a record of the**
 4 **sale or transfer under other applicable laws or rules regarding the prescribing and dispensing**
 5 **of regulated or controlled substances by veterinarians.**

6 (5) **A person commits the crime of unlawful distribution of an iodine matrix if the person**
 7 **knowingly sells or otherwise transfers an iodine matrix to a person not listed in subsection**
 8 **(2) of this section.**

9 [(4)] (6) Unlawful possession of an iodine matrix is a Class A misdemeanor.

10 (7) **Unlawful distribution of an iodine matrix is a Class A misdemeanor.**

11 **SECTION 21.** ORS 475.978 is amended to read:

12 475.978. (1) A person who sells or otherwise transfers more than the amount permitted by ad-
 13 ministrative rule adopted by the Department of State Police of methyl sulfonyl methane to a person
 14 other than a physician, pharmacist, veterinarian, retail distributor, wholesaler, manufacturer,
 15 warehouseman or common carrier or an agent of any of these persons shall make a record of each
 16 such sale or transfer. The record must be made on a form provided by the department, **must be**
 17 **completed pursuant to instructions provided by the department** and must be retained by the
 18 person for at least three years. Failure to make or retain a record required under this subsection
 19 is a Class A violation.

20 (2) The department shall adopt a rule establishing the minimum amount of methyl sulfonyl
 21 methane the sale or transfer of which requires a report under subsection (1) of this section. In es-
 22 tablishing the minimum amount, the department shall determine an amount that is reasonably de-
 23 signed not to infringe upon legitimate uses of methyl sulfonyl methane but that discourages the use
 24 of methyl sulfonyl methane in the illicit production and distribution of methamphetamine.

25 (3) This section applies to the sale or transfer of bulk methyl sulfonyl methane in its powder
 26 form only, and does not apply to the sale or transfer of products containing methyl sulfonyl methane
 27 in other forms including, but not limited to, liquids, tablets, capsules not containing methyl sulfonyl
 28 methane in pure powder form, ointments, creams, cosmetics, foods and beverages.

29 **SECTION 22.** ORS 475.940 is amended to read:

30 475.940. As used in ORS 475.940 to 475.999:

31 (1) "Iodine matrix" means iodine at a concentration greater than two percent by weight in a
 32 matrix or solution.

33 (2) "Matrix" means something, as a substance, in which something else originates, develops, or
 34 is contained.

35 (3) "Precursor substance" means:

- 36 (a) Phenyl-2-propanone.
- 37 (b) Methylamine.
- 38 (c) D-lysergic acid.
- 39 (d) Ergotamine.
- 40 (e) Diethyl Malonate.
- 41 (f) Malonic acid.
- 42 (g) Ethyl Malonate.
- 43 (h) Barbituric acid.
- 44 (i) Piperidine.
- 45 (j) N-acetylanthranilic acid.

- 1 (k) Ethylamine.
- 2 (L) Pyrrolidine.
- 3 (m) Phenylacetic acid.
- 4 (n) Anthranilic acid.
- 5 (o) Morpholine.
- 6 (p) Ephedrine.
- 7 (q) Pseudoephedrine.
- 8 (r) Norpseudoephedrine.
- 9 (s) Phenylpropanolamine.
- 10 (t) Benzyl cyanide.
- 11 (u) Ergonovine.
- 12 (v) 3,4-Methylenedioxyphenyl-2-propanone.
- 13 (w) Propionic anhydride.
- 14 (x) Insosafrole (Isosafrole).
- 15 (y) Safrole.
- 16 (z) Piperonal.
- 17 (aa) N-methylephedrine.
- 18 (bb) N-ethylephedrine.
- 19 (cc) N-methylpseudoephedrine.
- 20 (dd) N-ethylpseudoephedrine.
- 21 (ee) Hydriotic acid.
- 22 (ff) Gamma butyrolactone (GBL), including butyrolactone, 1,2-butanolide, 2-oxanol-one,
- 23 tetrahydro-2-furanone, dihydro-2(3H)-furanone and tetramethylene glycol, but not including gamma
- 24 aminobutyric acid (GABA).
- 25 (gg) 1,4-butanediol.
- 26 (hh) Any salt, isomer or salt of an isomer of the chemicals listed in paragraphs (a) to (gg) of this
- 27 subsection.
- 28 (ii) Iodine in its elemental form.
- 29 (jj) Iodine matrix.
- 30 (kk) Red phosphorus, white phosphorus, yellow phosphorus or hypophosphorus acid and its salts.
- 31 (LL) Anhydrous ammonia.
- 32 **(mm) Lithium metal.**
- 33 **(nn) Sodium metal.**
- 34 [(mm)] **(oo)** Any substance established as a precursor substance by rule under authority granted
- 35 in ORS 475.945.
- 36 **SECTION 23.** ORS 475.950 is amended to read:
- 37 475.950. (1) A person commits the offense of failure to report a precursor substances transaction
- 38 if the person does any of the following:
- 39 (a) Sells, transfers or otherwise furnishes any precursor substance described in ORS 475.940
- 40 (3)(a) to (hh) and [(mm)] **(oo)** and does not, at least three days before delivery of the substance,
- 41 submit to the Department of State Police a report that meets the reporting requirements established
- 42 by rule under ORS 475.945.
- 43 (b) Receives any precursor substance described in ORS 475.940 (3)(a) to (hh) and [(mm)] **(oo)** and
- 44 does not, within 10 days after receipt of the substance, submit to the Department of State Police a
- 45 report that meets the reporting requirements established by rule under ORS 475.945.

1 (2) This section does not apply to any of the following:

2 (a) Any pharmacist or other authorized person who sells or furnishes a precursor substance
3 upon the prescription of a physician, dentist, podiatric physician and surgeon or veterinarian.

4 (b) Any practitioner, as defined in ORS 475.005, who administers or furnishes a precursor sub-
5 stance to patients upon prescription.

6 (c) Any person licensed by the State Board of Pharmacy who sells, transfers or otherwise fur-
7 nishes a precursor substance to a licensed pharmacy, physician, dentist, podiatric physician and
8 surgeon or veterinarian for distribution to patients upon prescription.

9 (d) Any person who is authorized by rule under ORS 475.945 to report in an alternate manner
10 if the person complies with the alternate reporting requirements.

11 (e) Any patient of a practitioner, as defined in ORS 475.005, who obtains a precursor substance
12 from a licensed pharmacist, physician, dentist, podiatric physician and surgeon or veterinarian pur-
13 suant to a prescription.

14 (f) Any person who sells or transfers [*ephedrine*,] pseudoephedrine [*or phenylpropanolamine*] in
15 compliance with ORS 475.973.

16 (g) Any practitioner, as defined in ORS 475.005, who dispenses a precursor substance to a person
17 with whom the practitioner has a doctor-patient or doctor-client relationship.

18 (h) Any person who obtains a precursor substance from a practitioner, as defined in ORS
19 475.005, with whom the person has a doctor-patient or doctor-client relationship.

20 (3) Penalties related to providing false information on a report required under this section are
21 provided under ORS 475.965.

22 (4) The Department of State Police and any law enforcement agency may inspect **and remove**
23 the sales records of any retail or wholesale distributor of methyl sulfonyl methane or a precursor
24 substance during the normal business hours of the retail or wholesale distributor. **Instead of re-**
25 **moving records under this subsection, the department or law enforcement agency may re-**
26 **quire the distributor to provide copies of the records.**

27 (5) [*The offense described in this section,*] Failure to report a precursor substances transaction,
28 is a Class A misdemeanor.

29 **SECTION 24.** ORS 419B.005 is amended to read:

30 419B.005. As used in ORS 418.747, 418.748, 418.749 and 419B.005 to 419B.050, unless the context
31 requires otherwise:

32 (1)(a) "Abuse" means:

33 (A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child
34 which has been caused by other than accidental means, including any injury which appears to be
35 at variance with the explanation given of the injury.

36 (B) Any mental injury to a child, which shall include only observable and substantial impairment
37 of the child's mental or psychological ability to function caused by cruelty to the child, with due
38 regard to the culture of the child.

39 (C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual pene-
40 tration and incest, as those acts are defined in ORS chapter 163.

41 (D) Sexual abuse, as defined in ORS chapter 163.

42 (E) Sexual exploitation, including but not limited to:

43 (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any
44 other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage
45 in the performing for people to observe or the photographing, filming, tape recording or other ex-

1 hibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or
2 described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-
3 cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or
4 which is designed to serve educational or other legitimate purposes; and

5 (ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution, as defined in
6 ORS chapter 167.

7 (F) Negligent treatment or maltreatment of a child, including but not limited to the failure to
8 provide adequate food, clothing, shelter or medical care that is likely to endanger the health or
9 welfare of the child.

10 (G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm
11 to the child's health or welfare.

12 (H) Buying or selling a person under 18 years of age as described in ORS 163.537.

13 (I) Permitting a person under 18 years of age to enter or remain in a place where methamphet-
14 amines are being manufactured.

15 **(J) Prenatal exposure to a controlled substance, as defined in ORS 475.005, that results**
16 **in a newborn child being a drug-affected child.**

17 (b) "Abuse" does not include reasonable discipline unless the discipline results in one of the
18 conditions described in paragraph (a) of this subsection.

19 (2) "Child" means an unmarried person who is under 18 years of age.

20 (3) "Public or private official" means:

21 (a) Physician, including any intern or resident.

22 (b) Dentist.

23 (c) School employee.

24 (d) Licensed practical nurse or registered nurse.

25 (e) Employee of the Department of Human Services, State Commission on Children and Families,
26 Child Care Division of the Employment Department, the Oregon Youth Authority, a county health
27 department, a community mental health and developmental disabilities program, a county juvenile
28 department, a licensed child-caring agency or an alcohol and drug treatment program.

29 (f) Peace officer.

30 (g) Psychologist.

31 (h) Member of the clergy.

32 (i) Licensed clinical social worker.

33 (j) Optometrist.

34 (k) Chiropractor.

35 (L) Certified provider of foster care, or an employee thereof.

36 (m) Attorney.

37 (n) Naturopathic physician.

38 (o) Licensed professional counselor.

39 (p) Licensed marriage and family therapist.

40 (q) Firefighter or emergency medical technician.

41 (r) A court appointed special advocate, as defined in ORS 419A.004.

42 (s) A child care provider registered or certified under ORS 657A.030 and 657A.250 to 657A.450.

43 (t) Member of the Legislative Assembly.

44 **(u) Direct entry midwife licensed under ORS 687.405 to 687.495.**

45 (4) "Law enforcement agency" means:

- 1 (a) Any city or municipal police department.
- 2 (b) Any county sheriff's office.
- 3 (c) The Oregon State Police.
- 4 (d) A county juvenile department.

5 **SECTION 25.** ORS 419B.050 is amended to read:

6 419B.050. (1) Upon notice by either a law enforcement agency or the Department of Human
 7 Services that a child abuse investigation is being conducted under ORS 419B.020, a health care
 8 provider:

9 (a) May permit the law enforcement agency or the department to inspect and copy [*medical re-*
 10 *records, including, but not limited to, prenatal and birth records,*] **protected health information** of the
 11 child involved in the investigation without the consent of the child, or the parent or guardian of the
 12 child.

13 (b) **Shall permit the law enforcement agency or the department to inspect and copy pro-**
 14 **ected health information of the child involved in the investigation without the consent of**
 15 **the child, or the parent or guardian of the child, if the abuse being investigated consists of**
 16 **the child having been present in a location where methamphetamine was being manufactured**
 17 **or used.**

18 (2) A health care provider who in good faith [*disclosed medical records*] **discloses protected**
 19 **health information** under this section is not civilly or criminally liable for the disclosure.

20 [(2)(a)] (3) As used in this section, "health care provider" and "**protected health**
 21 **information**" **have the meanings given those terms in ORS 192.519.** [*means a person licensed by*
 22 *one of the following agencies, or any employee of a person licensed by one of the following agencies:*]

23 [(A) *State Board of Examiners for Speech-Language Pathology and Audiology;*]

24 [(B) *State Board of Chiropractic Examiners;*]

25 [(C) *State Board of Clinical Social Workers;*]

26 [(D) *Oregon Board of Licensed Professional Counselors and Therapists;*]

27 [(E) *Oregon Board of Dentistry;*]

28 [(F) *State Board of Denture Technology;*]

29 [(G) *Board of Examiners of Licensed Dietitians;*]

30 [(H) *State Board of Massage Therapists;*]

31 [(I) *State Mortuary and Cemetery Board;*]

32 [(J) *Board of Naturopathic Examiners;*]

33 [(K) *Oregon State Board of Nursing;*]

34 [(L) *Board of Examiners of Nursing Home Administrators;*]

35 [(M) *Oregon Board of Optometry;*]

36 [(N) *State Board of Pharmacy;*]

37 [(O) *Board of Medical Examiners;*]

38 [(P) *Occupational Therapy Licensing Board;*]

39 [(Q) *Physical Therapist Licensing Board;*]

40 [(R) *State Board of Psychologist Examiners; or*]

41 [(S) *Board of Radiologic Technology.*]

42 [(b) *For the purposes of this section, "health care provider" includes a health care facility as de-*
 43 *defined in ORS 442.015 and emergency medical technicians certified by the Department of Human Ser-*
 44 *vices.*]

45 **SECTION 26.** ORS 105.555 is amended to read:

1 105.555. (1) The following are declared to be nuisances and shall be enjoined and abated as
 2 provided in ORS 105.550 to 105.600:

3 (a) Any place that, as a regular course of business, is used for the purpose of prostitution and
 4 any place where acts of prostitution occur;

5 (b) Any place which is used and maintained for profit and for the purpose of gambling or a lot-
 6 tery, as defined in ORS 167.117, by any person, partnership or corporation organized for profit and
 7 wherein take place any of the acts or wherein are kept, stored or located any of the games, devices
 8 or things which are forbidden by or made punishable by ORS 167.108 to 167.164; *[and]*

9 **(c) Any place that has been determined to be not fit for use under ORS 453.876 and that**
 10 **has not been decontaminated and certified as fit for use under ORS 453.885 within 180 days**
 11 **after the determination under ORS 453.876; and**

12 *[(c)]* (d) Any place where activity involving the unauthorized delivery, manufacture or possession
 13 of a controlled substance, as defined in ORS 475.005, occurs or any place wherein are kept, stored
 14 or located any of the devices, equipment, things or substances used for unauthorized delivery, man-
 15 ufacture or possession of a controlled substance. As used in this *[subsection]* **paragraph**, “devices,
 16 equipment and things” does not include hypodermic syringes or needles. This *[subsection shall]*
 17 **paragraph does** not apply to acts which constitute violations under ORS 475.992 (2)(b) and (4)(f).

18 (2) Nothing in ORS 105.550 to 105.600, 166.715 and 167.158 applies to property to the extent that
 19 the devices, equipment, things or substances that are used for delivery, manufacture or possession
 20 of a controlled substance are kept, stored or located in or on the property for the purpose of lawful
 21 sale or use of these items.

22 **SECTION 27.** ORS 453.882 is amended to read:

23 453.882. The owner of property *[that has been determined to be not fit for use pursuant to ORS*
 24 *453.855 to 453.912 who allows such property to be used as if it were fit for use]* shall be considered
 25 to be maintaining a public nuisance subject to being enjoined or abated under ORS 105.550 to
 26 105.600 **if the property has been determined to be not fit for use under ORS 453.876 and the**
 27 **owner:**

28 **(1) Allows the property to be used as if it were fit for use; or**

29 **(2) Fails to have the property decontaminated and certified as fit for use under ORS**
 30 **453.885 within 180 days after the determination under ORS 453.876.**

31 **SECTION 28.** ORS 124.105 is amended to read:

32 124.105. (1) An action may be brought under ORS 124.100 for physical abuse if the defendant
 33 engaged in conduct against an elderly or incapacitated person that would constitute any of the fol-
 34 lowing:

35 (a) Assault, under the provisions of ORS 163.160, 163.165, 163.175 and 163.185.

36 (b) Menacing, under the provisions of ORS 163.190.

37 (c) Recklessly endangering another person, under the provisions of ORS 163.195.

38 (d) Criminal mistreatment, under the provisions of ORS 163.200 and 163.205 **and section 2 of**
 39 **this 2005 Act.**

40 (e) Rape, under the provisions of ORS 163.355, 163.365 and 163.375.

41 (f) Sodomy, under the provisions of ORS 163.385, 163.395 and 163.405.

42 (g) Unlawful sexual penetration, under the provisions of ORS 163.408 and 163.411.

43 (h) Sexual abuse, under the provisions of ORS 163.415, 163.425 and 163.427.

44 (i) Strangulation, under ORS 163.187.

45 (2) An action may be brought under ORS 124.100 for physical abuse if the defendant used any

1 unreasonable physical constraint on the plaintiff or subjected the plaintiff to prolonged or continued
 2 deprivation of food or water.

3 (3) An action may be brought under ORS 124.100 for physical abuse if the defendant used a
 4 physical or chemical restraint, or psychotropic medication on the plaintiff without an order from a
 5 physician licensed in the State of Oregon or under any of the following conditions:

6 (a) For the purpose of punishing the elderly or incapacitated person.

7 (b) For any purpose not consistent with the purposes authorized by a physician.

8 (c) For a period significantly beyond that for which the restraint or medication was authorized
 9 by a physician.

10 **SECTION 29.** ORS 131.125 is amended to read:

11 131.125. (1) A prosecution for aggravated murder, murder, attempted murder or aggravated
 12 murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of
 13 manslaughter may be commenced at any time after the commission of the attempt, conspiracy or
 14 solicitation to commit aggravated murder or murder, or the death of the person killed.

15 (2) A prosecution for any of the following felonies may be commenced within six years after the
 16 commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime
 17 before the victim attains 24 years of age or within six years after the offense is reported to a law
 18 enforcement agency or other governmental agency, whichever occurs first:

19 **(a) Criminal mistreatment in the first degree under section 2 of this 2005 Act.**

20 [(a)] **(b)** Criminal mistreatment in the [*first*] **second** degree under ORS 163.205.

21 [(b)] **(c)** Rape in the third degree under ORS 163.355.

22 [(c)] **(d)** Rape in the second degree under ORS 163.365.

23 [(d)] **(e)** Rape in the first degree under ORS 163.375.

24 [(e)] **(f)** Sodomy in the third degree under ORS 163.385.

25 [(f)] **(g)** Sodomy in the second degree under ORS 163.395.

26 [(g)] **(h)** Sodomy in the first degree under ORS 163.405.

27 [(h)] **(i)** Unlawful sexual penetration in the second degree under ORS 163.408.

28 [(i)] **(j)** Unlawful sexual penetration in the first degree under ORS 163.411.

29 [(j)] **(k)** Sexual abuse in the second degree under ORS 163.425.

30 [(k)] **(L)** Sexual abuse in the first degree under ORS 163.427.

31 [(L)] **(m)** Using a child in a display of sexual conduct under ORS 163.670.

32 [(m)] **(n)** Encouraging child sexual abuse in the first degree under ORS 163.684.

33 [(n)] **(o)** Incest under ORS 163.525.

34 [(o)] **(p)** Promoting prostitution under ORS 167.012.

35 [(p)] **(q)** Compelling prostitution under ORS 167.017.

36 (3) A prosecution for any of the following misdemeanors may be commenced within four years
 37 after the commission of the crime or, if the victim at the time of the crime was under 18 years of
 38 age, anytime before the victim attains 22 years of age or within four years after the offense is re-
 39 ported to a law enforcement agency or other governmental agency, whichever occurs first:

40 (a) Sexual abuse in the third degree under ORS 163.415.

41 (b) Furnishing obscene materials to minors under ORS 167.065.

42 (c) Sending obscene materials to minors under ORS 167.070.

43 (d) Exhibiting an obscene performance to a minor under ORS 167.075.

44 (e) Displaying obscene materials to minors under ORS 167.080.

45 (4) In the case of crimes described in subsection [(2)/(L)] **(2)(m)** of this section, the "victim" is

1 the child engaged in sexual conduct. In the case of the crime described in subsection [(2)(n)] **(2)(o)**
 2 of this section, the “victim” is the party to the incest other than the party being prosecuted. In the
 3 case of crimes described in subsection [(2)(o) and (p)] **(2)(p) and (q)** of this section, the “victim” is
 4 the child whose acts of prostitution are promoted or compelled.

5 (5) A prosecution for arson in any degree may be commenced within six years after the com-
 6 mission of the crime.

7 (6) Except as provided in subsection (7) of this section or as otherwise expressly provided by
 8 law, prosecutions for other offenses must be commenced within the following periods of limitations
 9 after their commission:

10 (a) For any other felony, three years.

11 (b) For any misdemeanor, two years.

12 (c) For a violation, six months.

13 (7) If the period prescribed in subsection (6) of this section has expired, a prosecution never-
 14 theless may be commenced as follows:

15 (a) If the offense has as a material element either fraud or the breach of a fiduciary obligation,
 16 prosecution may be commenced within one year after discovery of the offense by an aggrieved party
 17 or by a person who has a legal duty to represent an aggrieved party and who is not a party to the
 18 offense, but in no case shall the period of limitation otherwise applicable be extended by more than
 19 three years;

20 (b) If the offense is based upon misconduct in office by a public officer or employee, prosecution
 21 may be commenced at any time while the defendant is in public office or employment or within two
 22 years thereafter, but in no case shall the period of limitation otherwise applicable be extended by
 23 more than three years; or

24 (c) If the offense is an invasion of personal privacy under ORS 163.700, prosecution may be
 25 commenced within one year after discovery of the offense by the person aggrieved by the offense,
 26 by a person who has a legal duty to represent the person aggrieved by the offense or by a law
 27 enforcement agency, but in no case shall the period of limitation otherwise applicable be extended
 28 by more than three years.

29 (8) Notwithstanding subsection (2) of this section, a prosecution for rape in the first or second
 30 degree or sodomy in the first or second degree may be commenced within 12 years after the com-
 31 mission of the crime if the defendant is identified after the period described in subsection (2) of this
 32 section on the basis of DNA (deoxyribonucleic acid) sample comparisons.

33 **SECTION 30.** ORS 137.225 is amended to read:

34 137.225. (1)(a) At any time after the lapse of three years from the date of pronouncement of
 35 judgment, any defendant who has fully complied with and performed the sentence of the court and
 36 whose conviction is described in subsection (5) of this section by motion may apply to the court
 37 wherein that conviction was entered for entry of an order setting aside the conviction; or

38 (b) At any time after the lapse of one year from the date of any arrest, if no accusatory in-
 39 strument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested per-
 40 son may apply to the court which would have jurisdiction over the crime for which the person was
 41 arrested, for entry of an order setting aside the record of such arrest. For the purpose of computing
 42 the one-year period, time during which the arrested person has secreted himself or herself within
 43 or without the state shall not be included.

44 (2)(a) A copy of the motion and a full set of the defendant’s fingerprints shall be served upon
 45 the office of the prosecuting attorney who prosecuted the crime or violation, or who had authority

1 to prosecute the charge if there was no accusatory instrument filed, and opportunity be given to
 2 contest the motion. The fingerprint card with the notation “motion for setting aside conviction” or
 3 “motion for setting aside arrest record” as the case may be, shall be forwarded to the Department
 4 of State Police Bureau of Criminal Identification. Information resulting from the fingerprint search
 5 along with the fingerprint card shall be returned to the prosecuting attorney.

6 (b) When a prosecuting attorney is served with a copy of a motion to set aside a conviction
 7 under this section, the prosecuting attorney shall provide a copy of the motion and notice of the
 8 hearing date to the victim, if any, of the crime by mailing a copy of the motion and notice to the
 9 victim’s last-known address.

10 (c) When a person makes a motion under subsection (1)(a) of this section, the person must pay
 11 a fee of \$80. The person shall attach a certified check payable to the Department of State Police in
 12 the amount of \$80 to the fingerprint card that is served upon the prosecuting attorney. The office
 13 of the prosecuting attorney shall forward the check with the fingerprint card to the Department of
 14 State Police Bureau of Criminal Identification.

15 (3) Upon hearing the motion, the court may require the filing of such affidavits and may require
 16 the taking of such proofs as it deems proper. The court shall allow the victim to make a statement
 17 at the hearing. Except as otherwise provided in subsection (11) of this section, if the court deter-
 18 mines that the circumstances and behavior of the applicant from the date of conviction, or from the
 19 date of arrest as the case may be, to the date of the hearing on the motion warrant setting aside
 20 the conviction, or the arrest record as the case may be, it shall enter an appropriate order which
 21 shall state the original arrest charge and the conviction charge, if any and if different from the or-
 22 iginal, date of charge, submitting agency and disposition. The order shall further state that positive
 23 identification has been established by the bureau and further identified as to state bureau number
 24 or submitting agency number. Upon the entry of such an order, the applicant for purposes of the law
 25 shall be deemed not to have been previously convicted, or arrested as the case may be, and the
 26 court shall issue an order sealing the record of conviction and other official records in the case,
 27 including the records of arrest whether or not the arrest resulted in a further criminal proceeding.

28 (4) The clerk of the court shall forward a certified copy of the order to such agencies as directed
 29 by the court. A certified copy must be sent to the Department of Corrections when the person has
 30 been in the custody of the Department of Corrections. Upon entry of such an order, such conviction,
 31 arrest or other proceeding shall be deemed not to have occurred, and the applicant may answer
 32 accordingly any questions relating to their occurrence.

33 (5) The provisions of subsection (1)(a) of this section apply to a conviction of:

34 (a) A Class C felony, except for criminal mistreatment in the [*first*] **second** degree under ORS
 35 163.205 when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime.

36 (b) The crime of possession of the narcotic drug marijuana when that crime was punishable as
 37 a felony only.

38 (c) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, except
 39 for:

40 (A) Any sex crime; and

41 (B) The following crimes when they would constitute child abuse as defined in ORS 419B.005:

42 (i) Criminal mistreatment in the [*first*] **second** degree under ORS 163.205; and

43 (ii) Endangering the welfare of a minor **in the second degree** under ORS 163.575 (1)(a).

44 (d) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may
 45 be imposed, except for endangering the welfare of a minor **in the second degree** under ORS 163.575

- 1 (1)(a) when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime.
- 2 (e) A violation, whether under state law or local ordinance.
- 3 (f) An offense committed before January 1, 1972, which if committed after that date would be:
- 4 (A) A Class C felony, except for any sex crime or for the following crimes when they would
5 constitute child abuse as defined in ORS 419B.005:
- 6 (i) Criminal mistreatment in the [*first*] **second** degree under ORS 163.205; and
- 7 (ii) Endangering the welfare of a minor **in the second degree** under ORS 163.575 (1)(a).
- 8 (B) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, ex-
9 cept for any sex crime or for the following crimes when they would constitute child abuse as defined
10 in ORS 419B.005:
- 11 (i) Criminal mistreatment in the [*first*] **second** degree under ORS 163.205; and
- 12 (ii) Endangering the welfare of a minor **in the second degree** under ORS 163.575 (1)(a).
- 13 (C) A misdemeanor, except for endangering the welfare of a minor **in the second degree** under
14 ORS 163.575 (1)(a) when it would constitute child abuse, as defined in ORS 419B.005, or any sex
15 crime.
- 16 (D) A violation.
- 17 (6) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section
18 do not apply to:
- 19 (a) A person convicted of, or arrested for, a state or municipal traffic offense;
- 20 (b) A person convicted, within the 10-year period immediately preceding the filing of the motion
21 pursuant to subsection (1) of this section, of any other offense, excluding motor vehicle violations,
22 whether or not the other conviction is for conduct associated with the same criminal episode that
23 caused the arrest or conviction that is sought to be set aside. Notwithstanding subsection (1) of this
24 section, a conviction which has been set aside under this section shall be considered for the purpose
25 of determining whether this paragraph is applicable; or
- 26 (c) A person who at the time the motion authorized by subsection (1) of this section is pending
27 before the court is under charge of commission of any crime.
- 28 (7) The provisions of subsection (1)(b) of this section do not apply to a person arrested within
29 the three-year period immediately preceding the filing of the motion for any offense, excluding motor
30 vehicle violations, and excluding arrests for conduct associated with the same criminal episode that
31 caused the arrest that is sought to be set aside.
- 32 (8) The provisions of subsection (1) of this section apply to convictions and arrests which oc-
33 curred before, as well as those which occurred after, September 9, 1971. There shall be no time limit
34 for making such application.
- 35 (9) For purposes of any civil action in which truth is an element of a claim for relief or affir-
36 mative defense, the provisions of subsection (3) of this section providing that the conviction, arrest
37 or other proceeding be deemed not to have occurred shall not apply and a party may apply to the
38 court for an order requiring disclosure of the official records in the case as may be necessary in the
39 interest of justice.
- 40 (10) Upon motion of any prosecutor or defendant in a case involving records sealed under this
41 section, supported by affidavit showing good cause, the court with jurisdiction may order the reo-
42 pening and disclosure of any records sealed under this section for the limited purpose of assisting
43 the investigation of the movant. However, such an order shall have no other effect on the orders
44 setting aside the conviction or the arrest record.
- 45 (11) Unless the court makes written findings by clear and convincing evidence that granting the

1 motion would not be in the best interests of justice, the court shall grant the motion and enter an
 2 order as provided in subsection (3) of this section if the defendant has been convicted of one of the
 3 following crimes and is otherwise eligible for relief under this section:

- 4 (a) Abandonment of a child, ORS 163.535.
- 5 (b) Attempted assault in the second degree, ORS 163.175.
- 6 (c) Assault in the third degree, ORS 163.165.
- 7 (d) Coercion, ORS 163.275.
- 8 (e) Criminal mistreatment in the [first] **second** degree, ORS 163.205.
- 9 (f) Attempted escape in the first degree, ORS 162.165.
- 10 (g) Incest, ORS 163.525, if the victim was at least 18 years of age.
- 11 (h) Intimidation in the first degree, ORS 166.165.
- 12 (i) Attempted kidnapping in the second degree, ORS 163.225.
- 13 (j) Criminally negligent homicide, ORS 163.145.
- 14 (k) Attempted robbery in the second degree, ORS 164.405.
- 15 (L) Robbery in the third degree, ORS 164.395.
- 16 (m) Supplying contraband, ORS 162.185.
- 17 (n) Unlawful use of a weapon, ORS 166.220.
- 18 (12) As used in this section, “sex crime” has the meaning given that term in ORS 181.594.

19 **SECTION 31.** ORS 137.712 is amended to read:

20 137.712. (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person is convicted of
 21 manslaughter in the second degree as defined in ORS 163.125, assault in the second degree as de-
 22 fined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225, rape in the
 23 second degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395,
 24 unlawful sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first
 25 degree as defined in ORS 163.427 (1)(a)(A) or robbery in the second degree as defined in ORS
 26 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice
 27 Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700
 28 or 137.707 if the court, on the record at sentencing, makes the findings set forth in subsection (2)
 29 of this section and finds that a substantial and compelling reason under the rules of the Oregon
 30 Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under
 31 this subsection, the person is eligible for a reduction in the sentence as provided in ORS 421.121 and
 32 any other statute.

33 (b) In order to make a dispositional departure under this section, the court must make the fol-
 34 lowing additional findings on the record:

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

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

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

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

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

43 (A) That the defendant is the mother or father of the victim;

44 (B) That the death of the victim was the result of an injury or illness that was not caused by
 45 the defendant;

1 (C) That the defendant treated the injury or illness solely by spiritual treatment in accordance
 2 with the religious beliefs or practices of the defendant and based on a good faith belief that spiritual
 3 treatment would bring about the victim's recovery from the injury or illness;

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

7 (E) That the defendant does not have a previous conviction for a crime listed in subsection (4)
 8 of this section or for criminal mistreatment in the [second] **third** degree.

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

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

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

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

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

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

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

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

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

20 (B) That, if the defendant represented by words or conduct that the defendant was armed with
 21 a dangerous weapon, the representation did not reasonably put the victim in fear of imminent sig-
 22 nificant physical injury;

23 (C) That, if the defendant represented by words or conduct that the defendant was armed with
 24 a deadly weapon, the representation did not reasonably put the victim in fear of imminent physical
 25 injury; and

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

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

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

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

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

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

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

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

42 (f) If the conviction is for unlawful sexual penetration in the second degree:

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

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

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

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

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

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

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

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

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

16 (a) A crime listed in ORS 137.700 (2) or 137.707 (4);

17 (b) Escape in the first degree, as defined in ORS 162.165;

18 (c) Aggravated murder, as defined in ORS 163.095;

19 (d) Criminally negligent homicide, as defined in ORS 163.145;

20 (e) Assault in the third degree, as defined in ORS 163.165;

21 (f) Criminal mistreatment in the *[first]* **second** degree, as defined in ORS 163.205 (1)(b)(A);

22 (g) Rape in the third degree, as defined in ORS 163.355;

23 (h) Sodomy in the third degree, as defined in ORS 163.385;

24 (i) Sexual abuse in the second degree, as defined in ORS 163.425;

25 (j) Stalking, as defined in ORS 163.732;

26 (k) Burglary in the first degree, as defined in ORS 164.225, when it is classified as a person
 27 felony under the rules of the Oregon Criminal Justice Commission;

28 (L) Arson in the first degree, as defined in ORS 164.325;

29 (m) Robbery in the third degree, as defined in ORS 164.395;

30 (n) Intimidation in the first degree, as defined in ORS 166.165;

31 (o) Promoting prostitution, as defined in ORS 167.012; and

32 (p) An attempt or solicitation to commit any Class A or B felony listed in paragraphs (a) to (L)
 33 of this subsection.

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

38 (6) As used in this section:

39 (a) “Conviction” includes, but is not limited to:

40 (A) A juvenile court adjudication finding a person within the court’s jurisdiction under ORS
 41 419C.005, if the person was at least 15 years of age at the time the person committed the offense
 42 that brought the person within the jurisdiction of the juvenile court.

43 (B) A conviction in another jurisdiction for a crime that if committed in this state would con-
 44 stitute a crime listed in subsection (4) of this section.

45 (b) “Previous conviction” means a conviction that was entered prior to imposing sentence on the

1 current crime provided that the prior conviction is based on a crime committed in a separate crim-
 2 inal episode. "Previous conviction" does not include a conviction for a Class C felony, including an
 3 attempt or solicitation to commit a Class B felony, or a misdemeanor, unless the conviction was
 4 entered within the 10-year period immediately preceding the date on which the current crime was
 5 committed.

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

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

8 (B) Causes a serious and temporary disfigurement;

9 (C) Causes a protracted disfigurement; or

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

11 **SECTION 32.** ORS 342.143 is amended to read:

12 342.143. (1) No teaching, personnel service or administrative license shall be issued to any per-
 13 son until the person has attained the age of 18 years and has furnished satisfactory evidence of
 14 proper educational training.

15 (2) The Teacher Standards and Practices Commission may also require an applicant for a
 16 teaching, personnel service or administrative license to furnish evidence satisfactory to the com-
 17 mission of good moral character, mental and physical health, and such other evidence as it may
 18 deem necessary to establish the applicant's fitness to serve as a teacher.

19 (3) Without limiting the powers of the Teacher Standards and Practices Commission under sub-
 20 section (2) of this section and notwithstanding ORS 670.280:

21 (a) No teaching, personnel service or administrative license or registration as a public charter
 22 school teacher shall be issued to any person who:

23 (A) Has been convicted of a crime listed in ORS 163.095, 163.115, 163.185, 163.235, 163.355,
 24 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 163.435, 163.445,
 25 163.465, 163.515, 163.525, 163.547, 163.575, 163.670, 163.675 (1985 Replacement Part), 163.680 (1993
 26 Edition), 163.684, 163.686, 163.687, 163.688, 163.689, 164.325, 164.415, 166.005, 166.087, 167.007, 167.012,
 27 167.017, 167.062, 167.065, 167.070, 167.075, 167.080, 167.087, 167.090, 475.995 or 475.999 **or section 6**
 28 **of this 2005 Act;**

29 (B) Has been convicted under ORS 161.405 of an attempt to commit any of the crimes listed in
 30 subparagraph (A) of this paragraph; or

31 (C) Has been convicted in another jurisdiction of a crime that is substantially equivalent, as
 32 defined by rule, to any of the crimes listed in subparagraphs (A) and (B) of this paragraph.

33 (b) The Teacher Standards and Practices Commission may refuse to issue a license or registra-
 34 tion to any person who has been convicted of a crime involving the illegal use, sale or possession
 35 of controlled substances.

36 (4) In denying the issuance of a license or registration under this section, the commission shall
 37 follow the procedure set forth in ORS 342.176 and 342.177.

38 (5) The Department of Education shall provide school districts and public charter schools a copy
 39 of the list contained in subsection (3) of this section.

40 **SECTION 33.** ORS 419A.260 is amended to read:

41 419A.260. (1) As used in this section and ORS 419A.262:

42 (a) "Contact" means any instance in which a person's act or behavior, or alleged act or behav-
 43 ior, which could result in a juvenile court's assumption of jurisdiction under ORS 419B.100 (1)(a) to
 44 (c) and (f) or 419C.005 comes to the attention of an agency specified in paragraph (d) of this sub-
 45 section.

1 (b) “Expunction” means:

2 (A) The removal and destruction or sealing of a judgment or order related to a contact and all
 3 records and references; and

4 (B) Where a record is kept by the Department of Human Services or the Oregon Youth Au-
 5 thority, either the sealing of such record by the department or the Oregon Youth Authority or, in
 6 a multiperson file, the affixing to the front of the file, by the department or the youth authority, a
 7 stamp or statement identifying the name of the individual, the date of expunction and instruction
 8 that no further reference shall be made to the material that is subject to the expunction order ex-
 9 cept upon an order of a court of competent jurisdiction.

10 (c) “Person” includes a person under 18 years of age.

11 (d) “Record” includes a fingerprint or photograph file, report, exhibit or other material which
 12 contains information relating to a person’s contact with any law enforcement agency or juvenile
 13 court or juvenile department and is kept manually, through the use of electronic data processing
 14 equipment, or by any other means by a law enforcement or public investigative agency, a juvenile
 15 court or juvenile department or an agency of the State of Oregon. “Record” does not include:

16 (A) A transcript of a student’s Youth Corrections Education Program academic record;

17 (B) Material on file with a public agency which is necessary for obtaining federal financial
 18 participation regarding financial assistance or services on behalf of a person who has had a contact;

19 (C) Records kept or disseminated by the Department of Transportation, State Marine Board and
 20 State Fish and Wildlife Commission pursuant to juvenile or adult order or recommendation;

21 (D) Police and court records related to an order of waiver where the matter is still pending in
 22 the adult court or on appeal therefrom, or to any disposition as an adult pursuant to such order;

23 (E) Records related to a support obligation;

24 (F) Medical records;

25 (G) Records of a proposed or adjudicated termination of parental rights and adoptions;

26 (H) Any law enforcement record of a person who currently does not qualify for expunction or
 27 of current investigations or cases waived to the adult court;

28 (I) Records and case reports of the Oregon Supreme Court and the Oregon Court of Appeals;

29 (J) Any records in cases under ORS 419C.005 in which a juvenile court found a person to be
 30 within the jurisdiction of the court based upon the person’s commission of an act which if done by
 31 an adult would constitute one of the following offenses:

32 (i) Aggravated murder under ORS 163.095;

33 (ii) Murder under ORS 163.115;

34 (iii) Attempt, solicitation or conspiracy to commit murder or aggravated murder;

35 (iv) Manslaughter in the first degree under ORS 163.118;

36 (v) Manslaughter in the second degree under ORS 163.125;

37 (vi) Criminally negligent homicide under ORS 163.145;

38 (vii) Assault in the first degree under ORS 163.185;

39 **(viii) Criminal mistreatment in the first degree under section 2 of this 2005 Act;**

40 [(viii)] **(ix)** Criminal mistreatment in the [first] **second** degree under ORS 163.205;

41 [(ix)] **(x)** Kidnapping in the first degree under ORS 163.235;

42 [(x)] **(xi)** Rape in the third degree under ORS 163.355;

43 [(xi)] **(xii)** Rape in the second degree under ORS 163.365;

44 [(xii)] **(xiii)** Rape in the first degree under ORS 163.375;

45 [(xiii)] **(xiv)** Sodomy in the third degree under ORS 163.385;

- 1 [(xiv)] (xv) Sodomy in the second degree under ORS 163.395;
- 2 [(xv)] (xvi) Sodomy in the first degree under ORS 163.405;
- 3 [(xvi)] (xvii) Unlawful sexual penetration in the second degree under ORS 163.408;
- 4 [(xvii)] (xviii) Unlawful sexual penetration in the first degree under ORS 163.411;
- 5 [(xviii)] (xix) Sexual abuse in the third degree under ORS 163.415;
- 6 [(xix)] (xx) Sexual abuse in the second degree under ORS 163.425;
- 7 [(xx)] (xxi) Sexual abuse in the first degree under ORS 163.427;
- 8 [(xxi)] (xxii) Promoting prostitution under ORS 167.012;
- 9 [(xxii)] (xxiii) Compelling prostitution under ORS 167.017; or
- 10 [(xxiii)] (xxiv) An attempt to commit a crime listed in this subparagraph other than

11 manslaughter in the second degree and criminally negligent homicide;

12 (K) Blood samples, buccal samples and other physical evidence and identification information

13 obtained, stored or maintained by the Department of State Police under authority of ORS 137.076,

14 181.085 or 419C.473; or

15 (L) Records maintained in the Law Enforcement Data System under ORS 181.592.

16 (e) "Termination" means:

17 (A) For a person who is the subject of a record kept by a juvenile court or juvenile department,

18 the final disposition of a case by informal means, by a decision not to place the person on probation

19 or make the person a ward of the court after the person has been found to be within the court's

20 jurisdiction, or by a discontinuance of probation or of the court's wardship.

21 (B) For a person who is the subject of a record kept by a law enforcement or public investi-

22 gative agency, a juvenile court or juvenile department or an agency of the State of Oregon, the final

23 disposition of the person's most recent contact with a law enforcement agency.

24 (2) The juvenile court or juvenile department shall make reasonable effort to provide written

25 notice to a child who is within the court's jurisdiction under ORS 419B.100 (1)(a) to (c) and (f) or

26 to a youth who is within the court's jurisdiction under ORS 419C.005, and to the child's or youth's

27 parent, of the procedures for expunction of a record, the right to counsel under this chapter, the

28 legal effect of an expunction order and the procedures for seeking relief from the duty to report as

29 a sex offender provided under ORS 181.607, at the following times:

30 (a) At any dispositional hearing or at the time of entering into a formal accountability agree-

31 ment;

32 (b) At the time of termination;

33 (c) Upon notice to the subject of an expunction pending pursuant to application of a juvenile

34 department or motion on a juvenile court; and

35 (d) At the time of notice of execution of an expunction order.

36 **SECTION 34.** ORS 431.840 is amended to read:

37 431.840. (1) It shall be unlawful to do any of the following:

38 (a) To distribute free tobacco products to persons under 18 years of age as part of a marketing

39 strategy to encourage the use of tobacco products.

40 (b) To fail as a retailer to post a notice substantially similar to that set forth in subsection (3)

41 of this section in a location clearly visible to the seller and the purchaser that sale of tobacco

42 products to persons under 18 years of age is prohibited.

43 (c) To sell cigarettes in any form other than a sealed package.

44 (2) As used in this section "tobacco products" means bidis, cigars, cheroots, stogies, periques,

45 granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour,

1 cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clip-
2 pings, cuttings and sweepings of tobacco and other kinds and forms of tobacco, prepared in such
3 manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and
4 smoking, and shall include cigarettes as defined in ORS 323.010 (1).

5 (3) The notice shall be substantially as follows:

6 _____

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NOTICE

9 The sale of tobacco in any form to persons under 18 years of age is prohibited by law. Any
10 person who knowingly sells, or causes to be sold, tobacco to a person under 18 years of age commits
11 the crime of endangering the welfare of a minor **in the second degree**, pursuant to ORS 163.575.

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