

House Bill 2613

Sponsored by Representative RILEY; Representatives BARKER, BERGER, BOONE, ESQUIVEL, GALIZIO, ROBLAN, SCHAUFLEER, Senators BATES, METSGER, MONNES ANDERSON

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.

A BILL FOR AN ACT

1
2 Relating to methamphetamine; creating new provisions; and amending ORS 124.105, 131.125, 137.225,
3 137.712, 163.200, 163.205 and 419A.260.

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

5 **SECTION 1. Section 2 of this 2005 Act is added to and made a part of ORS 163.160 to**
6 **163.208.**

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

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

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

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

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

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

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

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

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

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

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

22 163.200. (1) A person commits the crime of criminal mistreatment in the [*second*] **third** degree
23 if, with criminal negligence and:

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

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

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

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

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

2 163.205. (1) A person commits the crime of criminal mistreatment in the [*first*] **second** degree if:

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

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

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

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

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

15 (D) Hides the dependent person's or elderly person's money or property or takes the money or
16 property for, or appropriates the money or property to, any use or purpose not in the due and lawful
17 execution of the person's responsibility; or

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

19 (2) As used in this section:

20 (a) "Dependent person" means a person who because of either age or a physical or mental dis-
21 ability is dependent upon another to provide for the person's physical needs.

22 (b) "Elderly person" means a person 65 years of age or older.

23 (c) "Legal duty" includes but is not limited to a duty created by familial relationship, court or-
24 der, contractual agreement or statutory or case law.

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

26 **SECTION 5.** ORS 124.105 is amended to read:

27 124.105. (1) An action may be brought under ORS 124.100 for physical abuse if the defendant
28 engaged in conduct against an elderly or incapacitated person that would constitute any of the fol-
29 lowing:

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

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

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

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

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

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

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

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

39 (i) Strangulation, under ORS 163.187.

40 (2) An action may be brought under ORS 124.100 for physical abuse if the defendant used any
41 unreasonable physical constraint on the plaintiff or subjected the plaintiff to prolonged or continued
42 deprivation of food or water.

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

- 1 (a) For the purpose of punishing the elderly or incapacitated person.
- 2 (b) For any purpose not consistent with the purposes authorized by a physician.
- 3 (c) For a period significantly beyond that for which the restraint or medication was authorized
- 4 by a physician.

5 **SECTION 6.** ORS 131.125 is amended to read:

6 131.125. (1) A prosecution for aggravated murder, murder, attempted murder or aggravated
 7 murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of
 8 manslaughter may be commenced at any time after the commission of the attempt, conspiracy or
 9 solicitation to commit aggravated murder or murder, or the death of the person killed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 [(n)] (o) Incest under ORS 163.525.

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

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

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

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

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

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

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

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

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

45 (5) A prosecution for arson in any degree may be commenced within six years after the com-

1 mission of the crime.

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

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

6 (b) For any misdemeanor, two years.

7 (c) For a violation, six months.

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

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

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

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

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

28 **SECTION 7.** ORS 137.225 is amended to read:

29 137.225. (1)(a) At any time after the lapse of three years from the date of pronouncement of
 30 judgment, any defendant who has fully complied with and performed the sentence of the court and
 31 whose conviction is described in subsection (5) of this section by motion may apply to the court
 32 wherein that conviction was entered for entry of an order setting aside the conviction; or

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

39 (2)(a) A copy of the motion and a full set of the defendant's fingerprints shall be served upon
 40 the office of the prosecuting attorney who prosecuted the crime or violation, or who had authority
 41 to prosecute the charge if there was no accusatory instrument filed, and opportunity be given to
 42 contest the motion. The fingerprint card with the notation "motion for setting aside conviction" or
 43 "motion for setting aside arrest record" as the case may be, shall be forwarded to the Department
 44 of State Police Bureau of Criminal Identification. Information resulting from the fingerprint search
 45 along with the fingerprint card shall be returned to the prosecuting attorney.

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

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

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

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

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

29 (a) A Class C felony, except for criminal mistreatment in the *[first]* **second** degree under ORS
 30 163.205 when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime.

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

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

35 (A) Any sex crime; and

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

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

38 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

39 (d) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may
 40 be imposed, except for endangering the welfare of a minor under ORS 163.575 (1)(a) when it would
 41 constitute child abuse, as defined in ORS 419B.005, or any sex crime.

42 (e) A violation, whether under state law or local ordinance.

43 (f) An offense committed before January 1, 1972, which if committed after that date would be:

44 (A) A Class C felony, except for any sex crime or for the following crimes when they would
 45 constitute child abuse as defined in ORS 419B.005:

- 1 (i) Criminal mistreatment in the [*first*] **second** degree under ORS 163.205; and
- 2 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).
- 3 (B) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, ex-
- 4 cept for any sex crime or for the following crimes when they would constitute child abuse as defined
- 5 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 under ORS 163.575 (1)(a).
- 8 (C) A misdemeanor, except for endangering the welfare of a minor under ORS 163.575 (1)(a)
- 9 when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime.
- 10 (D) A violation.
- 11 (6) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section
- 12 do not apply to:
- 13 (a) A person convicted of, or arrested for, a state or municipal traffic offense;
- 14 (b) A person convicted, within the 10-year period immediately preceding the filing of the motion
- 15 pursuant to subsection (1) of this section, of any other offense, excluding motor vehicle violations,
- 16 whether or not the other conviction is for conduct associated with the same criminal episode that
- 17 caused the arrest or conviction that is sought to be set aside. Notwithstanding subsection (1) of this
- 18 section, a conviction which has been set aside under this section shall be considered for the purpose
- 19 of determining whether this paragraph is applicable; or
- 20 (c) A person who at the time the motion authorized by subsection (1) of this section is pending
- 21 before the court is under charge of commission of any crime.
- 22 (7) The provisions of subsection (1)(b) of this section do not apply to a person arrested within
- 23 the three-year period immediately preceding the filing of the motion for any offense, excluding motor
- 24 vehicle violations, and excluding arrests for conduct associated with the same criminal episode that
- 25 caused the arrest that is sought to be set aside.
- 26 (8) The provisions of subsection (1) of this section apply to convictions and arrests which oc-
- 27 curred before, as well as those which occurred after, September 9, 1971. There shall be no time limit
- 28 for making such application.
- 29 (9) For purposes of any civil action in which truth is an element of a claim for relief or affir-
- 30 mative defense, the provisions of subsection (3) of this section providing that the conviction, arrest
- 31 or other proceeding be deemed not to have occurred shall not apply and a party may apply to the
- 32 court for an order requiring disclosure of the official records in the case as may be necessary in the
- 33 interest of justice.
- 34 (10) Upon motion of any prosecutor or defendant in a case involving records sealed under this
- 35 section, supported by affidavit showing good cause, the court with jurisdiction may order the reo-
- 36 pening and disclosure of any records sealed under this section for the limited purpose of assisting
- 37 the investigation of the movant. However, such an order shall have no other effect on the orders
- 38 setting aside the conviction or the arrest record.
- 39 (11) Unless the court makes written findings by clear and convincing evidence that granting the
- 40 motion would not be in the best interests of justice, the court shall grant the motion and enter an
- 41 order as provided in subsection (3) of this section if the defendant has been convicted of one of the
- 42 following crimes and is otherwise eligible for relief under this section:
- 43 (a) Abandonment of a child, ORS 163.535.
- 44 (b) Attempted assault in the second degree, ORS 163.175.
- 45 (c) Assault in the third degree, ORS 163.165.

- 1 (d) Coercion, ORS 163.275.
- 2 (e) Criminal mistreatment in the *[first]* **second** degree, ORS 163.205.
- 3 (f) Attempted escape in the first degree, ORS 162.165.
- 4 (g) Incest, ORS 163.525, if the victim was at least 18 years of age.
- 5 (h) Intimidation in the first degree, ORS 166.165.
- 6 (i) Attempted kidnapping in the second degree, ORS 163.225.
- 7 (j) Criminally negligent homicide, ORS 163.145.
- 8 (k) Attempted robbery in the second degree, ORS 164.405.
- 9 (L) Robbery in the third degree, ORS 164.395.
- 10 (m) Supplying contraband, ORS 162.185.
- 11 (n) Unlawful use of a weapon, ORS 166.220.

12 (12) As used in this section, “sex crime” has the meaning given that term in ORS 181.594.

13 **SECTION 8.** ORS 137.712 is amended to read:

14 137.712. (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person is convicted of
15 manslaughter in the second degree as defined in ORS 163.125, assault in the second degree as de-
16 fined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225, rape in the
17 second degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395,
18 unlawful sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first
19 degree as defined in ORS 163.427 (1)(a)(A) or robbery in the second degree as defined in ORS
20 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice
21 Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700
22 or 137.707 if the court, on the record at sentencing, makes the findings set forth in subsection (2)
23 of this section and finds that a substantial and compelling reason under the rules of the Oregon
24 Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under
25 this subsection, the person is eligible for a reduction in the sentence as provided in ORS 421.121 and
26 any other statute.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 10 (a) A crime listed in ORS 137.700 (2) or 137.707 (4);
- 11 (b) Escape in the first degree, as defined in ORS 162.165;
- 12 (c) Aggravated murder, as defined in ORS 163.095;
- 13 (d) Criminally negligent homicide, as defined in ORS 163.145;
- 14 (e) Assault in the third degree, as defined in ORS 163.165;
- 15 (f) Criminal mistreatment in the [*first*] **second** degree, as defined in ORS 163.205 (1)(b)(A);
- 16 (g) Rape in the third degree, as defined in ORS 163.355;
- 17 (h) Sodomy in the third degree, as defined in ORS 163.385;
- 18 (i) Sexual abuse in the second degree, as defined in ORS 163.425;
- 19 (j) Stalking, as defined in ORS 163.732;
- 20 (k) Burglary in the first degree, as defined in ORS 164.225, when it is classified as a person
 21 felony under the rules of the Oregon Criminal Justice Commission;
- 22 (L) Arson in the first degree, as defined in ORS 164.325;
- 23 (m) Robbery in the third degree, as defined in ORS 164.395;
- 24 (n) Intimidation in the first degree, as defined in ORS 166.165;
- 25 (o) Promoting prostitution, as defined in ORS 167.012; and
- 26 (p) An attempt or solicitation to commit any Class A or B felony listed in paragraphs (a) to (L)
 27 of this subsection.

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

32 (6) As used in this section:

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

34 (A) A juvenile court adjudication finding a person within the court’s jurisdiction under ORS
 35 419C.005, if the person was at least 15 years of age at the time the person committed the offense
 36 that brought the person within the jurisdiction of the juvenile court.

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

39 (b) “Previous conviction” means a conviction that was entered prior to imposing sentence on the
 40 current crime provided that the prior conviction is based on a crime committed in a separate crim-
 41 inal episode. “Previous conviction” does not include a conviction for a Class C felony, including an
 42 attempt or solicitation to commit a Class B felony, or a misdemeanor, unless the conviction was
 43 entered within the 10-year period immediately preceding the date on which the current crime was
 44 committed.

45 (c) “Significant physical injury” means a physical injury that:

- 1 (A) Creates a risk of death that is not a remote risk;
- 2 (B) Causes a serious and temporary disfigurement;
- 3 (C) Causes a protracted disfigurement; or
- 4 (D) Causes a prolonged impairment of health or the function of any bodily organ.

5 **SECTION 9.** ORS 419A.260 is amended to read:

6 419A.260. (1) As used in this section and ORS 419A.262:

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

11 (b) "Expunction" means:

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

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

20 (c) "Person" includes a person under 18 years of age.

21 (d) "Record" includes a fingerprint or photograph file, report, exhibit or other material which
22 contains information relating to a person's contact with any law enforcement agency or juvenile
23 court or juvenile department and is kept manually, through the use of electronic data processing
24 equipment, or by any other means by a law enforcement or public investigative agency, a juvenile
25 court or juvenile department or an agency of the State of Oregon. "Record" does not include:

26 (A) A transcript of a student's Youth Corrections Education Program academic record;

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

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

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

33 (E) Records related to a support obligation;

34 (F) Medical records;

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

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

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

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

42 (i) Aggravated murder under ORS 163.095;

43 (ii) Murder under ORS 163.115;

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

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

- 1 (v) Manslaughter in the second degree under ORS 163.125;
- 2 (vi) Criminally negligent homicide under ORS 163.145;
- 3 (vii) Assault in the first degree under ORS 163.185;
- 4 **(viii) Criminal mistreatment in the first degree under section 2 of this 2005 Act;**
- 5 [(viii)] **(ix)** Criminal mistreatment in the [first] **second** degree under ORS 163.205;
- 6 [(ix)] **(x)** Kidnapping in the first degree under ORS 163.235;
- 7 [(x)] **(xi)** Rape in the third degree under ORS 163.355;
- 8 [(xi)] **(xii)** Rape in the second degree under ORS 163.365;
- 9 [(xii)] **(xiii)** Rape in the first degree under ORS 163.375;
- 10 [(xiii)] **(xiv)** Sodomy in the third degree under ORS 163.385;
- 11 [(xiv)] **(xv)** Sodomy in the second degree under ORS 163.395;
- 12 [(xv)] **(xvi)** Sodomy in the first degree under ORS 163.405;
- 13 [(xvi)] **(xvii)** Unlawful sexual penetration in the second degree under ORS 163.408;
- 14 [(xvii)] **(xviii)** Unlawful sexual penetration in the first degree under ORS 163.411;
- 15 [(xviii)] **(xix)** Sexual abuse in the third degree under ORS 163.415;
- 16 [(xix)] **(xx)** Sexual abuse in the second degree under ORS 163.425;
- 17 [(xx)] **(xxi)** Sexual abuse in the first degree under ORS 163.427;
- 18 [(xxi)] **(xxii)** Promoting prostitution under ORS 167.012;
- 19 [(xxii)] **(xxiii)** Compelling prostitution under ORS 167.017; or
- 20 [(xxiii)] **(xxiv)** An attempt to commit a crime listed in this subparagraph other than
- 21 manslaughter in the second degree and criminally negligent homicide;
- 22 (K) Blood samples, buccal samples and other physical evidence and identification information
- 23 obtained, stored or maintained by the Department of State Police under authority of ORS 137.076,
- 24 181.085 or 419C.473; or
- 25 (L) Records maintained in the Law Enforcement Data System under ORS 181.592.
- 26 (e) "Termination" means:
- 27 (A) For a person who is the subject of a record kept by a juvenile court or juvenile department,
- 28 the final disposition of a case by informal means, by a decision not to place the person on probation
- 29 or make the person a ward of the court after the person has been found to be within the court's
- 30 jurisdiction, or by a discontinuance of probation or of the court's wardship.
- 31 (B) For a person who is the subject of a record kept by a law enforcement or public investi-
- 32 gative agency, a juvenile court or juvenile department or an agency of the State of Oregon, the final
- 33 disposition of the person's most recent contact with a law enforcement agency.
- 34 (2) The juvenile court or juvenile department shall make reasonable effort to provide written
- 35 notice to a child who is within the court's jurisdiction under ORS 419B.100 (1)(a) to (c) and (f) or
- 36 to a youth who is within the court's jurisdiction under ORS 419C.005, and to the child's or youth's
- 37 parent, of the procedures for expunction of a record, the right to counsel under this chapter, the
- 38 legal effect of an expunction order and the procedures for seeking relief from the duty to report as
- 39 a sex offender provided under ORS 181.607, at the following times:
- 40 (a) At any dispositional hearing or at the time of entering into a formal accountability agree-
- 41 ment;
- 42 (b) At the time of termination;
- 43 (c) Upon notice to the subject of an expunction pending pursuant to application of a juvenile
- 44 department or motion on a juvenile court; and
- 45 (d) At the time of notice of execution of an expunction order.

