

Senate Bill 297

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senator Floyd Prozanski for Dan Braziel)

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**.

Expands crime of invasion of personal privacy and redesignates it as invasion of personal privacy in second degree.

Creates crime of invasion of personal privacy in first degree. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both.

A BILL FOR AN ACT

1
2 Relating to invasion of personal privacy; creating new provisions; and amending ORS 131.125 and
3 163.700 and section 19, chapter 666, Oregon Laws 2001.

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

5 **SECTION 1.** ORS 163.700 is amended to read:

6 163.700. (1) Except as provided in ORS 163.702, a person commits the crime of invasion of per-
7 sonal privacy **in the second degree** if:

8 (a)(A) The person knowingly makes or records a photograph, motion picture, videotape or other
9 visual recording of another person in a state of nudity without the consent of the person being re-
10 corded; and

11 (B) At the time the visual recording is made or recorded the person being recorded is in a place
12 and circumstances where the person has a reasonable expectation of personal privacy; *[or]*

13 (b)(A) For the purpose of arousing or gratifying the sexual desire of the person, the person is
14 in a location to observe another person in a state of nudity without the consent of the other person;
15 and

16 (B) The other person is in a place and circumstances where the person has a reasonable ex-
17 pectation of personal privacy; **or**

18 **(c)(A) The person knowingly installs a recording device for the purpose of making or re-**
19 **recording a photograph, motion picture, videotape or other visual recording of another person**
20 **in a state of nudity without the consent of the other person; and**

21 **(B) The recording device is installed in a place and circumstances where the other person**
22 **has a reasonable expectation of personal privacy.**

23 (2) As used in this section:

24 (a) "Makes or records a photograph, motion picture, videotape or other visual recording" in-
25 cludes, but is not limited to, making or recording or employing, authorizing, permitting, compelling
26 or inducing another person to make or record a photograph, motion picture, videotape or other
27 visual recording.

28 (b) "Nudity" means uncovered, or less than opaquely covered, [*post-pubescent*] human genitals,
29 pubic areas or a [*post-pubescent*] human female breast below a point immediately above the top of

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 the areola. “Nudity” includes a partial state of nudity.

2 (c) “Places and circumstances where the person has a reasonable expectation of personal pri-
 3 vacy” includes, but is not limited to, a bathroom, dressing room, locker room that includes an en-
 4 closed area for dressing or showering, tanning booth and any area where a person undresses in an
 5 enclosed space that is not open to public view.

6 (d) “Public view” means that an area can be readily seen and that a person within the area can
 7 be distinguished by normal unaided vision when viewed from a public place as defined in ORS
 8 161.015.

9 (3) Invasion of personal privacy **in the second degree** is a Class A misdemeanor.

10 **SECTION 2. (1) A person commits the crime of invasion of personal privacy in the first**
 11 **degree if the person violates ORS 163.700:**

12 (a) **And the victim is less than 16 years of age.**

13 (b) **By making or recording a photograph, motion picture, videotape or other visual re-**
 14 **recording and knowingly disseminates the photograph, motion picture, videotape or visual re-**
 15 **recording or a copy of the photograph, motion picture, videotape or visual recording.**

16 (c) **And the person has a previous conviction for invasion of personal privacy in any de-**
 17 **gree. As used in this paragraph, “previous conviction” means a conviction that was entered**
 18 **prior to imposing sentence on the current crime provided that the prior conviction is based**
 19 **on a crime committed in a separate criminal episode.**

20 (2) **Invasion of personal privacy in the first degree is a Class C felony.**

21 **SECTION 3.** ORS 131.125 is amended to read:

22 131.125. (1) A prosecution for aggravated murder, murder, attempted murder or aggravated
 23 murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of
 24 manslaughter may be commenced at any time after the commission of the attempt, conspiracy or
 25 solicitation to commit aggravated murder or murder, or the death of the person killed.

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

30 (a) Criminal mistreatment in the first degree under ORS 163.205.

31 (b) Rape in the third degree under ORS 163.355.

32 (c) Rape in the second degree under ORS 163.365.

33 (d) Rape in the first degree under ORS 163.375.

34 (e) Sodomy in the third degree under ORS 163.385.

35 (f) Sodomy in the second degree under ORS 163.395.

36 (g) Sodomy in the first degree under ORS 163.405.

37 (h) Unlawful sexual penetration in the second degree under ORS 163.408.

38 (i) Unlawful sexual penetration in the first degree under ORS 163.411.

39 (j) Sexual abuse in the second degree under ORS 163.425.

40 (k) Sexual abuse in the first degree under ORS 163.427.

41 (L) Using a child in a display of sexual conduct under ORS 163.670.

42 (m) Encouraging child sexual abuse in the first degree under ORS 163.684.

43 (n) Incest under ORS 163.525.

44 (o) Promoting prostitution under ORS 167.012.

45 (p) Compelling prostitution under ORS 167.017.

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

- 5 (a) Sexual abuse in the third degree under ORS 163.415.
- 6 (b) Furnishing obscene materials to minors under ORS 167.065.
- 7 (c) Sending obscene materials to minors under ORS 167.070.
- 8 (d) Exhibiting an obscene performance to a minor under ORS 167.075.
- 9 (e) Displaying obscene materials to minors under ORS 167.080.

10 (4) In the case of crimes described in subsection (2)(L) of this section, the “victim” is the child
 11 engaged in sexual conduct. In the case of the crime described in subsection (2)(n) of this section, the
 12 “victim” is the party to the incest other than the party being prosecuted. In the case of crimes de-
 13 scribed in subsection (2)(o) and (p) of this section, the “victim” is the child whose acts of prostitution
 14 are promoted or compelled.

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

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

- 20 (a) For any other felony, three years.
- 21 (b) For any misdemeanor, two years.
- 22 (c) For a violation, six months.

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

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

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

34 (c) If the offense is [an] invasion of personal privacy **in the first or second degree** under ORS
 35 163.700 **or section 2 of this 2005 Act**, prosecution may be commenced within one year after dis-
 36 covery of the offense by the person aggrieved by the offense, by a person who has a legal duty to
 37 represent the person aggrieved by the offense or by a law enforcement agency, but in no case shall
 38 the period of limitation otherwise applicable be extended by more than three years.

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

43 **SECTION 4.** Section 19, chapter 666, Oregon Laws 2001, as amended by section 5, chapter 696,
 44 Oregon Laws 2001, section 52, chapter 14, Oregon Laws 2003, section 4, chapter 383, Oregon Laws
 45 2003, section 11, chapter 577, Oregon Laws 2003, and section 16, chapter 801, Oregon Laws 2003, is

1 amended to read:

2 **Sec. 19.** The crimes to which section 1 (11)(b), chapter 666, Oregon Laws 2001, applies are:

- 3 (1) Bribe giving, as defined in ORS 162.015.
- 4 (2) Bribe receiving, as defined in ORS 162.025.
- 5 (3) Public investment fraud, as defined in ORS 162.117.
- 6 (4) Bribing a witness, as defined in ORS 162.265.
- 7 (5) Bribe receiving by a witness, as defined in ORS 162.275.
- 8 (6) Simulating legal process, as defined in ORS 162.355.
- 9 (7) Official misconduct in the first degree, as defined in ORS 162.415.
- 10 (8) Custodial interference in the second degree, as defined in ORS 163.245.
- 11 (9) Custodial interference in the first degree, as defined in ORS 163.257.
- 12 (10) Buying or selling a person under 18 years of age, as defined in ORS 163.537.
- 13 (11) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.
- 14 (12) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.
- 15 (13) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.
- 16 (14) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.
- 17 (15) Possession of materials depicting sexually explicit conduct of a child in the first degree, as
18 defined in ORS 163.688.
- 19 (16) Possession of materials depicting sexually explicit conduct of a child in the second degree,
20 as defined in ORS 163.689.
- 21 (17) Theft in the second degree, as defined in ORS 164.045.
- 22 (18) Theft in the first degree, as defined in ORS 164.055.
- 23 (19) Aggravated theft in the first degree, as defined in ORS 164.057.
- 24 (20) Theft by extortion, as defined in ORS 164.075.
- 25 (21) Theft by deception, as defined in ORS 164.085, if it is a felony or a Class A misdemeanor.
- 26 (22) Theft by receiving, as defined in ORS 164.095, if it is a felony or a Class A misdemeanor.
- 27 (23) Theft of services, as defined in ORS 164.125, if it is a felony or a Class A misdemeanor.
- 28 (24) Unauthorized use of a vehicle, as defined in ORS 164.135.
- 29 (25) Mail theft or receipt of stolen mail, as defined in ORS 164.162.
- 30 (26) Laundering a monetary instrument, as defined in ORS 164.170.
- 31 (27) Engaging in a financial transaction in property derived from unlawful activity, as defined
32 in ORS 164.172.
- 33 (28) Burglary in the second degree, as defined in ORS 164.215.
- 34 (29) Burglary in the first degree, as defined in ORS 164.225.
- 35 (30) Possession of a burglary tool or theft device, as defined in ORS 164.235.
- 36 (31) Unlawful entry into a motor vehicle, as defined in ORS 164.272.
- 37 (32) Arson in the second degree, as defined in ORS 164.315.
- 38 (33) Arson in the first degree, as defined in ORS 164.325.
- 39 (34) Computer crime, as defined in ORS 164.377.
- 40 (35) Robbery in the third degree, as defined in ORS 164.395.
- 41 (36) Robbery in the second degree, as defined in ORS 164.405.
- 42 (37) Robbery in the first degree, as defined in ORS 164.415.
- 43 (38) Unlawful labeling of a sound recording, as defined in ORS 164.868.
- 44 (39) Unlawful recording of a live performance, as defined in ORS 164.869.
- 45 (40) Unlawful labeling of a videotape recording, as defined in ORS 164.872.

- 1 (41) A violation of ORS 164.877.
- 2 (42) Endangering aircraft, as defined in ORS 164.885.
- 3 (43) Interference with agricultural operations, as defined in ORS 164.887.
- 4 (44) Forgery in the second degree, as defined in ORS 165.007.
- 5 (45) Forgery in the first degree, as defined in ORS 165.013.
- 6 (46) Criminal possession of a forged instrument in the second degree, as defined in ORS 165.017.
- 7 (47) Criminal possession of a forged instrument in the first degree, as defined in ORS 165.022.
- 8 (48) Criminal possession of a forgery device, as defined in ORS 165.032.
- 9 (49) Criminal simulation, as defined in ORS 165.037.
- 10 (50) Fraudulently obtaining a signature, as defined in ORS 165.042.
- 11 (51) Fraudulent use of a credit card, as defined in ORS 165.055.
- 12 (52) Negotiating a bad check, as defined in ORS 165.065.
- 13 (53) Possessing a fraudulent communications device, as defined in ORS 165.070.
- 14 (54) Unlawful factoring of a payment card transaction, as defined in ORS 165.074.
- 15 (55) Falsifying business records, as defined in ORS 165.080.
- 16 (56) Sports bribery, as defined in ORS 165.085.
- 17 (57) Sports bribe receiving, as defined in ORS 165.090.
- 18 (58) Misapplication of entrusted property, as defined in ORS 165.095.
- 19 (59) Issuing a false financial statement, as defined in ORS 165.100.
- 20 (60) Obtaining execution of documents by deception, as defined in ORS 165.102.
- 21 (61) A violation of ORS 165.543.
- 22 (62) Cellular counterfeiting in the third degree, as defined in ORS 165.577.
- 23 (63) Cellular counterfeiting in the second degree, as defined in ORS 165.579.
- 24 (64) Cellular counterfeiting in the first degree, as defined in ORS 165.581.
- 25 (65) Identity theft, as defined in ORS 165.800.
- 26 (66) A violation of ORS 166.190.
- 27 (67) Unlawful use of a weapon, as defined in ORS 166.220.
- 28 (68) A violation of ORS 166.240.
- 29 (69) Unlawful possession of a firearm, as defined in ORS 166.250.
- 30 (70) A violation of ORS 166.270.
- 31 (71) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or
32 firearms silencer, as defined in ORS 166.272.
- 33 (72) A violation of ORS 166.275.
- 34 (73) Unlawful possession of armor piercing ammunition, as defined in ORS 166.350.
- 35 (74) A violation of ORS 166.370.
- 36 (75) Unlawful possession of a destructive device, as defined in ORS 166.382.
- 37 (76) Unlawful manufacture of a destructive device, as defined in ORS 166.384.
- 38 (77) Possession of a hoax destructive device, as defined in ORS 166.385.
- 39 (78) A violation of ORS 166.410.
- 40 (79) Providing false information in connection with a transfer of a firearm, as defined in ORS
41 166.416.
- 42 (80) Improperly transferring a firearm, as defined in ORS 166.418.
- 43 (81) Unlawfully purchasing a firearm, as defined in ORS 166.425.
- 44 (82) A violation of ORS 166.429.
- 45 (83) A violation of ORS 166.470.

- 1 (84) A violation of ORS 166.480.
- 2 (85) A violation of ORS 166.635.
- 3 (86) A violation of ORS 166.638.
- 4 (87) Unlawful paramilitary activity, as defined in ORS 166.660.
- 5 (88) A violation of ORS 166.720.
- 6 (89) Prostitution, as defined in ORS 167.007.
- 7 (90) Promoting prostitution, as defined in ORS 167.012.
- 8 (91) Compelling prostitution, as defined in ORS 167.017.
- 9 (92) Exhibiting an obscene performance to a minor, as defined in ORS 167.075.
- 10 (93) Unlawful gambling in the second degree, as defined in ORS 167.122.
- 11 (94) Unlawful gambling in the first degree, as defined in ORS 167.127.
- 12 (95) Possession of gambling records in the second degree, as defined in ORS 167.132.
- 13 (96) Possession of gambling records in the first degree, as defined in ORS 167.137.
- 14 (97) Possession of a gambling device, as defined in ORS 167.147.
- 15 (98) Possession of a gray machine, as defined in ORS 167.164.
- 16 (99) Cheating, as defined in ORS 167.167.
- 17 (100) Tampering with drug records, as defined in ORS 167.212.
- 18 (101) A violation of ORS 167.262.
- 19 (102) Research and animal interference, as defined in ORS 167.312.
- 20 (103) Animal abuse in the first degree, as defined in ORS 167.320.
- 21 (104) Aggravated animal abuse in the first degree, as defined in ORS 167.322.
- 22 (105) Animal neglect in the first degree, as defined in ORS 167.330.
- 23 (106) Interfering with an assistance, a search and rescue or a therapy animal, as defined in ORS
- 24 167.352.
- 25 (107) Involvement in animal fighting, as defined in ORS 167.355.
- 26 (108) Dogfighting, as defined in ORS 167.365.
- 27 (109) Participation in dogfighting, as defined in ORS 167.370.
- 28 (110) Unauthorized use of a livestock animal, as defined in ORS 167.385.
- 29 (111) Interference with livestock production, as defined in ORS 167.388.
- 30 (112) A violation of ORS 167.390.
- 31 (113) A violation of ORS 471.410.
- 32 (114) Failure to report missing precursor substances, as defined in ORS 475.955.
- 33 (115) Illegally selling drug equipment, as defined in ORS 475.960.
- 34 (116) Providing false information on a precursor substances report, as defined in ORS 475.965.
- 35 (117) Unlawful delivery of an imitation controlled substance, as defined in ORS 475.991.
- 36 (118) A violation of ORS 475.992, if it is a felony or a Class A misdemeanor.
- 37 (119) A violation of ORS 475.993, if it is a felony or a Class A misdemeanor.
- 38 (120) A violation of ORS 475.994.
- 39 (121) A violation of ORS 475.995, if it is a felony or a Class A misdemeanor.
- 40 (122) A violation of ORS 475.999 (1)(a).
- 41 (123) Misuse of an identification card, as defined in ORS 807.430.
- 42 (124) Unlawful production of identification cards, licenses, permits, forms or camera cards, as
- 43 defined in ORS 807.500.
- 44 (125) Transfer of documents for the purposes of misrepresentation, as defined in ORS 807.510.
- 45 (126) Using an invalid license, as defined in ORS 807.580.

1 (127) Permitting misuse of a license, as defined in ORS 807.590.

2 (128) Using another's license, as defined in ORS 807.600.

3 (129) Criminal driving while suspended or revoked, as defined in ORS 811.182, when it is a fel-
4 ony.

5 (130) Driving while under the influence of intoxicants, as defined in ORS 813.010, when it is a
6 felony.

7 (131) Unlawful distribution of cigarettes, as defined in ORS 323.482.

8 (132) A violation of ORS 180.440 (2).

9 **(133) Invasion of personal privacy in the first degree, as defined in section 2 of this 2005**
10 **Act.**

11 [(133)] **(134)** An attempt, conspiracy or solicitation to commit a crime in subsections (1) to
12 [(132)] **(133)** of this section if the attempt, conspiracy or solicitation is a felony or a Class A
13 misdemeanor.

14 **SECTION 5. Notwithstanding section 55, chapter 666, Oregon Laws 2001, the amendments**
15 **to section 19, chapter 666, Oregon Laws 2001, by section 4 of this 2005 Act, apply to property**
16 **seized for criminal forfeiture on or after the effective date of this 2005 Act.**

17