

Senate Bill 943

Sponsored by COMMITTEE ON JUDICIARY

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**.

Modifies crimes of assault in third and fourth degrees.

Increases presumptive sentence for certain repeat property offenders under certain circumstances.

A BILL FOR AN ACT

1
2 Relating to crime; amending ORS 137.225, 137.717, 163.160 and 163.165.

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

4 **SECTION 1.** ORS 163.160 is amended to read:

5 163.160. (1) A person commits the crime of assault in the fourth degree if the person:

6 (a) Intentionally, knowingly or recklessly causes physical injury to another; or

7 (b) With criminal negligence causes physical injury to another by means of a deadly weapon.

8 (2) Assault in the fourth degree is a Class A misdemeanor.

9 (3) Notwithstanding subsection (2) of this section, assault in the fourth degree is a Class C felony if the person commits the crime of assault in the fourth degree and:

10 (a) The person has previously been convicted of assaulting the same victim;

11 (b) The person has previously been convicted at least three times [*under this section*] **of:**

12 **(A) Assault in the first, second, third or fourth degree;**

13 **(B) Menacing;** or [*under*]

14 **(C) Equivalent [*laws*] crimes** of another jurisdiction [*and all of the assaults involved domestic violence, as defined in ORS 135.230*]; or

15 (c) The assault is committed in the immediate presence of, or is witnessed by, the person's or
16 the victim's minor child or stepchild or a minor child residing within the household of the person
17 or victim.

18 (4) For the purposes of subsection (3) of this section, an assault is witnessed if the assault is
19 seen or directly perceived in any other manner by the child.

20 **SECTION 2.** ORS 163.165 is amended to read:

21 163.165. (1) A person commits the crime of assault in the third degree if the person:

22 (a) Recklessly causes serious physical injury to another by means of a deadly or dangerous
23 weapon;

24 (b) Recklessly causes serious physical injury to another under circumstances manifesting extreme
25 indifference to the value of human life;

26 (c) Recklessly causes physical injury to another by means of a deadly or dangerous weapon under
27 circumstances manifesting extreme indifference to the value of human life;

28 (d) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical
29 injury to the operator of a public transit vehicle while the operator is in control of or operating the
30 injury to the operator of a public transit vehicle while the operator is in control of or operating the
31

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 vehicle. As used in this paragraph, “public transit vehicle” has the meaning given that term in ORS
 2 166.116;

3 (e) While being aided by another person actually present, intentionally or knowingly causes
 4 physical injury to another;

5 (f) While committed to a youth correction facility, intentionally or knowingly causes physical
 6 injury to another knowing the other person is a staff member of a youth correction facility while
 7 the other person is acting in the course of official duty;

8 (g) Intentionally, knowingly or recklessly causes physical injury to an emergency medical tech-
 9 nician or paramedic, as those terms are defined in ORS 682.025, while the technician or paramedic
 10 is performing official duties;

11 (h) Being at least 18 years of age, intentionally or knowingly causes physical injury to a child
 12 10 years of age or younger;

13 (i) Knowing the other person is a staff member, intentionally or knowingly propels any danger-
 14 ous substance at the staff member while the staff member is acting in the course of official duty or
 15 as a result of the staff member’s official duties; or

16 (j) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical
 17 injury to the operator of a taxi while the operator is in control of the taxi.

18 (2) Assault in the third degree is a Class C felony. When a person is convicted of violating
 19 subsection (1)(i) of this section, in addition to any other sentence it may impose, the court shall
 20 impose a term of incarceration in a state correction facility.

21 **(3) Notwithstanding subsection (2) of this section, assault in the third degree is a Class**
 22 **B felony if the assault is committed by the driver of a motor vehicle and the driver is driving**
 23 **while under the influence of intoxicants. The Oregon Criminal Justice Commission shall**
 24 **classify assault in the third degree as described in this subsection as crime category 8 of the**
 25 **sentencing guidelines grid of the commission.**

26 [(3)] (4) As used in this section:

27 (a) “Dangerous substance” includes, but is not limited to, blood, urine, saliva, semen and feces.

28 (b) “Staff member” means:

29 (A) A corrections officer as defined in ORS 181.610, a youth correction officer, a Department
 30 of Corrections or Oregon Youth Authority staff member or a person employed pursuant to a con-
 31 tract with the department or youth authority to work with, or in the vicinity of, inmates or youth
 32 offenders; and

33 (B) A volunteer authorized by the department, youth authority or other entity in charge of a
 34 corrections facility to work with, or in the vicinity of, inmates or youth offenders.

35 (c) “Youth correction facility” has the meaning given that term in ORS 162.135.

36 **SECTION 3.** ORS 137.225 is amended to read:

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

41 (b) At any time after the lapse of one year from the date of any arrest, if no accusatory in-
 42 strument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested per-
 43 son may apply to the court [*which*] **that** would have jurisdiction over the crime for which the person
 44 was arrested, for entry of an order setting aside the record of [*such*] **the** arrest. For the purpose of
 45 computing the one-year period, time during which the arrested person has secreted himself or herself

1 within or without the state [*shall not be*] **is not** included.

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

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

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

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

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

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

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

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

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

44 (A) Any sex crime; and

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

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

1 pening and disclosure of any records sealed under this section for the limited purpose of assisting
 2 the investigation of the movant. However, such an order [*shall have*] **has** no other effect on the or-
 3 ders setting aside the conviction or the arrest record.

4 (11) Unless the court makes written findings by clear and convincing evidence that granting the
 5 motion would not be in the best interests of justice, the court shall grant the motion and enter an
 6 order as provided in subsection (3) of this section if the defendant has been convicted of one of the
 7 following crimes and is otherwise eligible for relief under this section:

- 8 (a) Abandonment of a child, ORS 163.535.
- 9 (b) Attempted assault in the second degree, ORS 163.175.
- 10 (c) Assault in the third degree, ORS 163.165, **that is punishable as a Class C felony.**
- 11 (d) Coercion, ORS 163.275.
- 12 (e) Criminal mistreatment in the first degree, ORS 163.205.
- 13 (f) Attempted escape in the first degree, ORS 162.165.
- 14 (g) Incest, ORS 163.525, if the victim was at least 18 years of age.
- 15 (h) Intimidation in the first degree, ORS 166.165.
- 16 (i) Attempted kidnapping in the second degree, ORS 163.225.
- 17 (j) Criminally negligent homicide, ORS 163.145.
- 18 (k) Attempted robbery in the second degree, ORS 164.405.
- 19 (L) Robbery in the third degree, ORS 164.395.
- 20 (m) Supplying contraband, ORS 162.185.
- 21 (n) Unlawful use of a weapon, ORS 166.220.

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

23 **SECTION 4.** ORS 137.717 is amended to read:

24 137.717. (1) When a court sentences a person convicted of:

25 (a) Aggravated theft in the first degree under ORS 164.057 or burglary in the first degree under
 26 ORS 164.225, the presumptive sentence is 19 months of incarceration, unless the rules of the Oregon
 27 Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

28 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, burglary
 29 in the first degree under ORS 164.225, robbery in the second degree under ORS 164.405 or robbery
 30 in the first degree under ORS 164.415; or

31 (B) Four previous convictions for any combination of the other crimes listed in subsection (2)
 32 of this section.

33 (b) Theft in the first degree under ORS 164.055, unauthorized use of a vehicle under ORS
 34 164.135, burglary in the second degree under ORS 164.215, criminal mischief in the first degree under
 35 ORS 164.365, computer crime under ORS 164.377, forgery in the first degree under ORS 165.013,
 36 identity theft under ORS 165.800, possession of a stolen vehicle under ORS 819.300 or trafficking in
 37 stolen vehicles under ORS 819.310, the presumptive sentence is 13 months of incarceration, unless
 38 the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the
 39 person has:

40 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unau-
 41 thorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, robbery
 42 in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415, possession
 43 of a stolen vehicle under ORS 819.300 or trafficking in stolen vehicles under ORS 819.310; or

44 (B) Four previous convictions for any combination of the other crimes listed in subsection (2)
 45 of this section.

(2) The crimes to which subsection (1) of this section applies are:

- (a) Theft in the second degree under ORS 164.045;
- (b) Theft in the first degree under ORS 164.055;
- (c) Aggravated theft in the first degree under ORS 164.057;
- (d) Unauthorized use of a vehicle under ORS 164.135;
- (e) Burglary in the second degree under ORS 164.215;
- (f) Burglary in the first degree under ORS 164.225;
- (g) Criminal mischief in the second degree under ORS 164.354;
- (h) Criminal mischief in the first degree under ORS 164.365;
- (i) Computer crime under ORS 164.377;
- (j) Forgery in the second degree under ORS 165.007;
- (k) Forgery in the first degree under ORS 165.013;
- (L) Criminal possession of a forged instrument in the second degree under ORS 165.017;
- (m) Criminal possession of a forged instrument in the first degree under ORS 165.022;
- (n) Fraudulent use of a credit card under ORS 165.055;
- (o) Identity theft under ORS 165.800;
- (p) Possession of a stolen vehicle under ORS 819.300; and
- (q) Trafficking in stolen vehicles under ORS 819.310.

(3) Notwithstanding subsection (1) of this section, when a court sentences a person convicted of a crime listed in subsection (1)(b) of this section, the presumptive sentence is 24 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has been sentenced previously under subsection (1) of this section and has served any previously imposed sentence.

[3] (4) The court may impose a sentence other than the sentence provided by subsection (1) or (3) of this section if the court imposes:

(a) A longer term of incarceration that is otherwise required or authorized by law; or

(b) A departure sentence authorized by the rules of the Oregon Criminal Justice Commission based upon findings of substantial and compelling reasons. Unless the law or the rules of the Oregon Criminal Justice Commission allow for imposition of a longer sentence, the maximum departure allowed for a person sentenced under this subsection is double the presumptive sentence provided in subsection (1) or (3) of this section.

[4] (5) As used in this section, "previous conviction" includes:

(a) Convictions occurring before, on or after July 1, 2003; and

(b) Convictions entered in any other state or federal court for comparable offenses.

[(5)(a)] (6)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have occurred upon the pronouncement of sentence in open court. However, when sentences are imposed for two or more convictions arising out of the same conduct or criminal episode, none of the convictions is considered to have occurred prior to any of the other convictions arising out of the same conduct or criminal episode.

(b) For a crime committed prior to November 1, 1989, a conviction is considered to have occurred upon the pronouncement in open court of a sentence or upon the pronouncement in open court of the suspended imposition of a sentence.

[6] (7) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.