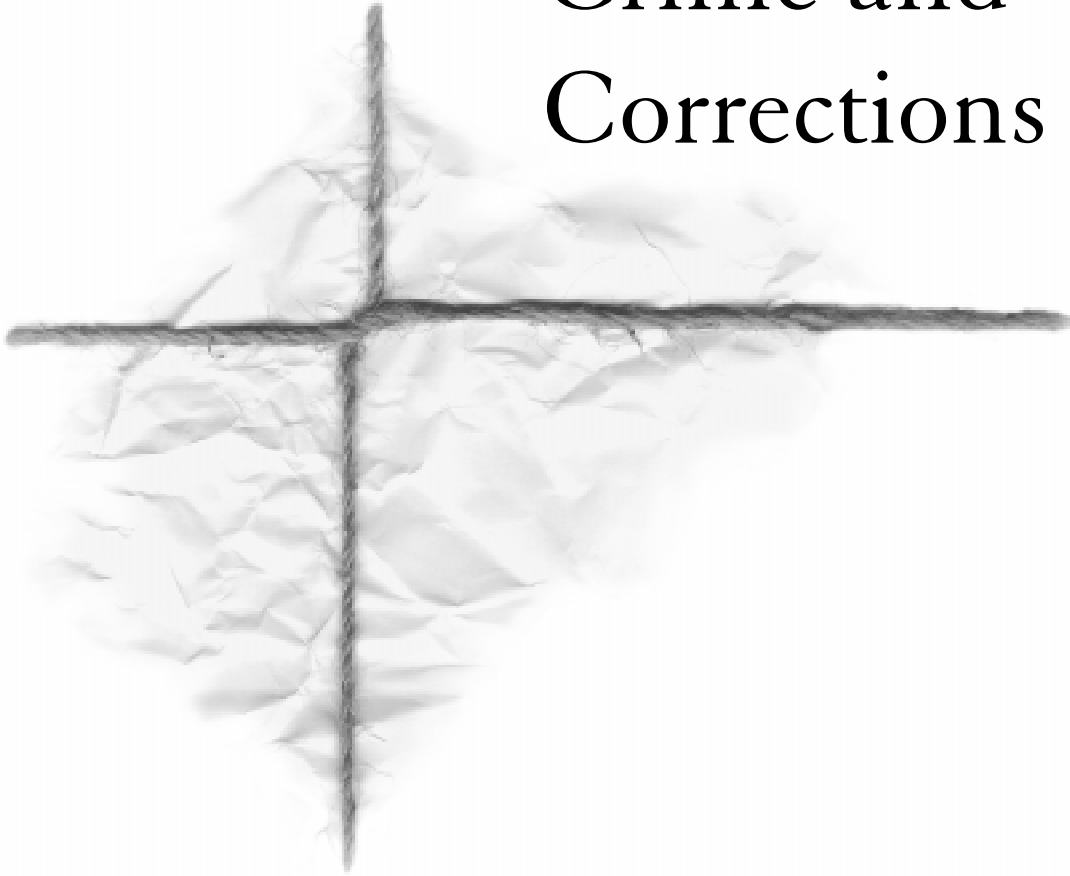


# Crime and Corrections



*[Press here to return to Table of Contents](#)*

Summary  
of Major  
Legislation

## Senate Bill 35

*Relating to crime.*

SB 35 creates the crime of possession of a hoax destructive device, a Class A misdemeanor punishable by one year jail and \$5,000 maximum fine. The penalty increases to a Class C felony if a hoax destructive device is possessed while committing or attempting to commit a felony.

SB 35 also establishes an affirmative defense to the state crime of unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun, or firearms silencer, if the weapon or silencer is registered as required under federal law. The bill prohibits a peace officer from arresting or charging a person if that person immediately possesses registration documents.

In addition, SB 35 limits eligibility of defendants to enter into diversion programs for driving while under the influence of intoxicants. It allows a defendant pleading guilty to the charge of driving while under the influence of intoxicants to apply for an extension of the diversion period. The measure requires the court to enter the guilty plea upon a finding that the defendant failed to comply with the diversion agreement. Further, the measure allows the court to dismiss the charge with prejudice upon a finding that the defendant fully complied with the diversion agreement.

The measure permits joinder of multiple offenses against a single defendant, notwithstanding any other venue law, if the offenses involve charges of sexual abuse of the same child under 18 years of age and if the defendant does not object. The measure also defines the crime of resisting arrest as including behavior occurring through the booking process.

The measure specifies that compensable losses resulting from death or injury to a crime victim include domestic violence counseling expenses of children who witnessed the domestic violence, up to a maximum of \$10,000.

Effective Date: October 4, 1997

## Senate Bill 36

*Relating to crime.*

SB 36 removes the sunset provision from the 1995 Act requiring urine tests in specified circumstances for persons arrested for driving under the influence of intoxicants.

In 1995, the legislature added urine testing to the Motorist Implied Consent Laws. That addition authorized police to request a urine sample from a driver in order to determine if the driver was driving while under the influence of a controlled substance. Before the 1995 legislation was enacted, the police were limited to testing only breath and blood for alcohol content.

Effective Date: October 4, 1997

## Senate Bill 156

*Relating to parole, probation and post-prison supervision.*

SB 156 requires the State Board of Parole and Post-Prison Supervision (board), along with the Department of Corrections and the local supervisory authorities, to adopt rules establishing sanctions for violations of conditions of post-prison supervision. The board is granted jurisdiction over imposition of those conditions for offenders convicted of felonies committed on or after November 1, 1997, if the offender was sentenced to more than 12 months prison, sentenced to a Measure 11 crime, sentenced to a crime with a sub-category of 8, 9, 10, or 11, or sentenced as a dangerous offender or sex offender. The measure further limits the imprisonment as a sanction to 24 months without a subsequent hearing to determine whether additional imprisonment is appropriate. The measure establishes local supervisory authority jurisdiction over imposition of post-prison supervision conditions, and violation of those conditions, for offenders sentenced to a term of imprisonment of 12 months or less.

SB 156 was proposed in order to allow local authorities to work with offenders who serve their sentences locally under SB 1145 (1995 Special Session). The measure allows local authorities to establish release plans, set conditions of supervision, and determine when and how to sanction violations of supervision conditions for offenders who serve their time locally. In addition, the measure allows the board to continue concentrating on the more serious offenders. The board may return certain offenders to the Department of Corrections if they are sentenced to more than 12 months when they become too dangerous to be supervised in the community.

Effective Date: July 14, 1997

## Senate Bill 157

*Relating to restitution in criminal cases.*

SB 157 allows the State Board of Parole and Post-Prison Supervision to require payment of restitution imposed upon conviction of a crime as condition of post-prison supervision for a subsequent crime. The measure also allows a court to amend the judgment relating to restitution under certain circumstances.

Effective Date: July 14, 1997

## Senate Bill 301

*Relating to restraining and protective orders.*

SB 301 sets the security amount for release after violation of foreign restraining orders or a child abuse restraining order at \$5,000, unless the order provides otherwise. The measure allows for a warrantless arrest of persons violating restraining orders issued in child abuse cases. Under the measure, restraining orders will be in effect for one year unless amended or modified by a court. SB 301 dictates procedures for recording restraining orders in child abuse cases in the Law Enforcement Data Systems.

SB 301 further expands the scope of the Family Abuse Prevention Act to include the following: (1) attempts to enter a reasonable area surrounding the petitioner's residence; (2) attempts to intimidate, molest, interfere with, or menace the person seeking protection; (3) attempts to intimidate, molest, interfere with, or menace the children of the petitioner. The measure establishes a reasonable person standard and sets forth the statutory procedure for renewing a restraining order. The measure requires that a court determine whether a person seeking an extension of a restraining order has a reasonable fear of further acts of abuse. The restrained person is allowed to request a hearing to contest extension of restraining order. The measure allows a court to order a peace officer to accompany the restrained person to a household to remove personal property.

In addition, SB 301 adds the crime of attempt to commit to the stalking statute (ORS 163.695 - 163.755), in elder abuse protective statutes (ORS 124.005 - 124.040), and in a child abuse statute (ORS 419B.190).

Effective Date: August 15, 1997

## Senate Bill 303

*Relating to selling a person under 18 years of age.*

SB 303 creates the crime of buying or selling a person under 18 years of age, punishable by a Class B felony. The measure specifies exemptions for the legal adoption of a child, establishment of child support or custody of children, and application for fees for services in adoption pursuant to a surrogacy agreement. The bill includes selling a child within the definition of child abuse for the purposes of mandatory reporting requirements (ORS 419B.005).

Effective Date: October 4, 1997

## Senate Bill 423

*Relating to crime.*

SB 423 creates the crime of interfering with a peace officer as a Class A misdemeanor. In addition, it creates the crimes of possession of materials depicting sexually explicit conduct of a child in the first degree, as a Class B felony and use of the materials to induce sexually explicit conduct by a child. In the second degree it creates a Class C felony (5 years imprisonment and a \$100,000 maximum fine), requiring intent to use the materials to induce sexually explicit conduct by a child.

Effective Date: October 4, 1997

## Senate Bill 443

*Relating to criminal records check.*

SB 443 modifies the means by which, and the purposes for which, the Department of Human Resources (DHR) and the Employment Department may obtain criminal offender information. The measure requires that criminal checks must be necessary to protect vulnerable people. Criminal records checks may be conducted through the Law Enforcement Data System, a qualified vendor or, if necessary, the Department of State Police by means of a Federal Bureau of Investigation (FBI) check. SB 443 modifies the process by which DHR and the Employment Department request and obtain criminal background information from the Department of State Police. The measure specifies procedures for, and limits upon, disclosure of criminal background information, and access to that information.

Qualified entities are directed to determine whether a subject individual is fit to hold a position, based on a

criminal records check, an individual's refusal to submit to such a check, or false statements made with regard to criminal history. The measure specifies the considerations by which such a determination must be made. DHR and the Employment Department are the only entities qualified to make fitness determinations based upon information furnished by the FBI. The liability of qualified entities is limited. The measure requires DHR and the Employment Department to establish a contested case process for appeals of fitness determinations. The departments must maintain criminal background information and adopt rules specifying persons authorized to conduct background checks, subject individuals, and qualified entities. DHR is directed to appoint a criminal records check rules coordinator. SB 443 specifies that criminal offender information is confidential.

The measure directs the Child Care Division of the Employment Department to establish a Criminal History Registry, according to specified procedures. SB 443 sets out procedures and conditions for enrollment in, renewal of enrollment in, and removal from the registry. In addition, child care facilities are prohibited from employing individuals not enrolled, or not conditionally enrolled, in the registry.

Effective Date: October 4, 1997

## Senate Bill 613

*Relating to criminal jury verdicts.*

SB 613 modifies provisions relating to jury verdicts in criminal cases. Under SB 613, juries are required to deliberate on the charged offense first, before considering any lesser included offenses. Deliberations must proceed in order of seriousness. The measure prohibits juries from deliberating on lesser included offenses until the jury finds the defendant not guilty on the original charge. In addition, the measure requires judges to instruct the jury to continue deliberations on the original charge if less than the required number of jurors find the defendant not guilty.

Effective Date: October 4, 1997

## Senate Bill 614

*Relating to crime.*

SB 614 expands the offense of aggravated murder to include the intentional homicide of a person under 14 years of age. The measure expands instances in which criminal homicide constitutes murder to include assault

in the first and second degrees when the victim is under 14 years of age. The definition of pattern or practice for purposes of the criminal homicide statute is changed from "more than one previous episode" to "one or more previous episodes." Under SB 614, criminal homicide may constitute manslaughter in the first and second degrees when recklessly causing the death of a child under 14 years of age or a dependent person. SB 614 also provides that prosecution for attempted or aggravated murder, conspiracy or solicitation to commit murder, or aggravated murder, or any degree of manslaughter may be commenced any time after the commission of the crime.

Effective Date: October 4, 1997

## Senate Bill 773

*Relating to corrections.*

SB 773 modifies and creates provisions relating to inmate workers and work programs, in accord with Ballot Measure 49 (May 1997). The measure deletes "working in this state at gainful private employment that has been approved by the department" (of Corrections) as a purpose for which the department is required to establish and administer a work release program. Inmates enrolled in a work release program are required to surrender to the department all compensation earned other than voluntary withholdings by the employer. Certain statutory provisions regarding the disposition of inmate compensation are deleted and replaced with provisions granting rulemaking authority to the director.

The Oregon Department of Corrections is authorized to enter into specified contracts for certain prison operations and programs. The measure exempts these contracts from certain public contracting and purchasing statutes. The measure modifies provisions governing the State Prison Work Programs Account and eliminates the Prison Industries Subaccount. The measure replaces statutory provisions governing payment of inmates for labor at forest camps with provisions requiring the director of the department to determine compensation earned from labor and adopt rules governing the disposition of that compensation.

Inmates assigned to participate in an inmate work program are permitted to be enrolled in an apprenticeship or training program. Those enrolled are entitled to the protection and benefits of certain laws governing apprentices and trainees. The measure modifies the protections and benefits afforded to inmates in prison work

programs by eliminating certain protections and benefits under labor and industrial relations law. SB 773 deletes the requirement that an inmate must give written consent in order to be enrolled in a work release program.

Under SB 773 the director is authorized to permit participants in inmate work programs to retain a portion of compensation earned pursuant to rules designed to achieve specified purposes and to retain no more than 20 percent of gross compensation for work resulting in production of goods transported in interstate commerce. The department is permitted to acquire or develop intellectual property; to manage, license, market, develop, or dispose of that property for implementing, maintaining, and developing prison work programs; and to deposit the proceeds in the State Prison Work Programs Account.

SB 773 authorizes the Attorney General to employ attorneys for certain legal services related to inmate work programs. Under certain circumstances, the attorneys' compensation is to be paid from funds obtained from the private sector. The measure increases the SB 5009 limits on expenditures until July 1, 1999, for the purposes of carrying out legal services provisions. The measure repeals certain statutory provisions governing the department including certain provisions governing the cost-accounting system, inmate rights to certain intellectual property, rules for the conduct of industries, inmate labor goals, programs and rules, the Prison Industries Advisory Board, and inmate compensation. The measure modifies the definition of authorized work or occupational training assignment.

The measure requires the Department of Corrections to replace all free weight lifting equipment with universal equipment and assign two corrections officers to guard inmates using free weight lifting equipment. The measure allows inmates participating in a prison work program, pursuant to an intergovernmental agreement, to be supervised by an employee or agent of a local, state, or federal governmental agency, if the employee or agent has received security training from the department.

Effective Date: August 13, 1997

## Senate Bill 936

*Relating to implementing victim rights initiative.*

SB 936 implements Ballot Measure 40, which was approved by voters on November 5, 1996, amending the

Oregon Constitution, Article I section 42. The ballot measure provided certain rights to crime victims, expanded admissible evidence addressed pretrial release criteria in criminal cases, criminal jury pool composition, and jury verdicts in aggravated murder and murder jury trials.

SB 936 requires admission of relevant evidence unless excluded by the U.S. Constitution, Oregon Constitution, or rules of evidence governing privileges and hearsay or rights of the press. The measure allows relevant evidence of other crimes, wrongs, or acts by a defendant to be admitted in a criminal proceeding, unless the evidence is excluded by specified rules of evidence, the Oregon Constitution or the U.S. Constitution.

SB 936 grants certain rights to crime victims: 1) the right to obtain, if prepared, a transcript, audio tape, or videotape of open court proceedings; 2) the right to be consulted in plea negotiations involving a violent felony; 3) requires a sentencing judge to inquire about the victim's rights and whether they were afforded to the victim at the time of sentencing; 4) requires a law enforcement agency to notify victims of their rights, under the measure, as soon as reasonably possible; 5) requires a public body to provide certain information to victims; 6) prohibits defense from contacting victims for certain pre-trial matters, unless the victim consents; 7) requires notification to victims, if requested, of probation, parole and post-prison supervision hearings and allows the victim to appear in person to express any relevant view on the issues before the court or reviewing body; and 8) the right to a jury trial, asserted through the prosecutor.

The measure modifies eligibility to serve on criminal jury trials by excluding people who are non-registered voters (to sunset on July 1, 1999) and those convicted of a felony or that have served a felony sentence within the past 15 years.

The measure requires a sentencing judge to state on the record and in the judgment whether the defendant may be considered for a reduction of sentence by receiving credit for good time. or participating in a bootcamp, work release, or other program. The measure applies to both adult and juvenile criminal proceedings. The measure prohibits the Department of Corrections from considering inmates for reduction in sentence or the bootcamp program unless the sentencing judge authorized such consideration in open court and in the judgment.

SB 936 requires a court to deny release of a person charged with murder, aggravated murder, or treason if the court finds that proof is evident or the presumption is strong that the person committed the crime. A court is allowed to consider a person for release if such proof is not found. However, the court must consider release using the standards of review for Measure 11 crimes.

A court is required to deny release of a person charged with a Measure 11 crime (except for attempt or conspiracy to commit murder or attempt or conspiracy to commit aggravated murder) unless the court finds by clear and convincing evidence that the person will not commit a new criminal offense while on release. The measure also modifies release proceedings and requirements.

The measure requires a court to set bail at a minimum of \$50,000 for a person who is charged with a Measure 11 crime if release provisions are held invalid. The court may impose supervisory conditions if the defendant posts bail. If the defendant commits a new crime while on release, the court must take the defendant into custody and set bail at a minimum of \$250,000. The court may take the defendant into custody or set bail at a minimum of \$250,000, if the release violation does not constitute a new crime.

SB 936 modifies restitution statutes by requiring a court to order the prompt payment of restitution for crimes committed on or after December 5, 1996. The measure allows a court to order the defendant to sell assets in order to pay restitution to the victim. The court is prohibited from revoking probation if the defendant fails to pay restitution unless the court determines from the totality of the circumstances that the purpose of probation is not being served.

The measure allows a jury verdict in aggravated murder or murder trials by concurrence of at least 11 of 12 jurors, unless the prosecution requests a unanimous verdict. In addition, SB 936 directs the Oregon Criminal Justice Commission to amend OAR 213-08-007 and OAR 213-12-020 to omit sentencing limits on consecutive sentencing involving crimes that have different victims. The measure creates no new civil liabilities.

Effective Date: June 12, 1997

## Senate Bill 1049

*Relating to criminal procedure.*

SB 1049 allows a court, for second degree offenses of

assault, kidnapping, and robbery to depart from Ballot Measure 11 (1994) mandatory minimum sentences, under certain circumstances, and impose the shorter Oregon Criminal Justice Commission sentencing guidelines grid crime category nine sentences or probation. Under the measure, a court is required to impose the presumptive category nine prison sentence when an offender, by committing a new crime, violates a departure probation sentence. The measure creates mandatory minimum sentences for offenses including compelling prostitution, using a child in a display of sexually explicit conduct, and first degree arson where there was a threat of serious physical injury.

SB 1049 prohibits the filing of a juvenile court petition alleging that a person has committed an act that, if committed by an adult, would constitute aggravated murder or a specified offense requiring a mandatory minimum sentence if the person was 15 to 17 years of age at the time that the act was committed. Instead, the measure clarifies that a charge on such an offense must be filed in adult court. Ballot Measure 11 (1994) required a person charged with aggravated murder or a specified offense otherwise requiring a mandatory minimum sentence to be prosecuted as an adult in criminal court where the person was 15 to 17 years of age at the time that the act was committed. Because the word "charge" was limited by Ballot Measure 11 to criminal offenses, Measure 11 has been interpreted to allow the filing of juvenile court petitions instead of criminal charges, thereby avoiding the requirement that the cases proceed as adult criminal matters. This interpretation may also result in the avoidance of the imposition of Measure 11 minimum sentences upon conviction.

The measure allows a court, under certain circumstances, to reduce the portion of a sentence that exceeds the mandatory minimum. Prior to SB 1049, where a sentence greater than the mandatory minimum was imposed, no reduction of the increased sentence was possible.

Within 30 days of the effective date of the measure, the Oregon Criminal Justice Commission is required to classify the second degree offenses of assault, kidnapping, and robbery as crime category nine offenses.

The measure permits appellate review of an error of a sentencing court, in failing to impose a mandatory minimum sentence, under statutes amended by this measure. Except as otherwise required in aggravated murder and guilty except for insanity statutes, the measure requires that the jury may not consider or be informed

of any punishment that the court may impose.

The measure changes the requirement that a case proceed as a violation unless a district attorney declares otherwise to require that a case proceed as a misdemeanor unless a district attorney declares otherwise.

Effective Date: October 4, 1997

## Senate Bill 1076

*Relating to crime; creates the crime of invasion of personal privacy.*

SB 1076 creates the crime of invasion of personal privacy, a Class A misdemeanor. The measure prohibits video recordings of another person without that person's consent, requires the person who is the subject of the recording be in a state of nudity or partial nudity, requires the recorded person who is subjected to the recording have a reasonable expectation of privacy, and requires a knowing mental state. The measure also exempts legitimate medical services and any activities undertaken in the course of bona fide law enforcement activity or corrections related activity.

Effective Date: October 4, 1997

## Senate Bill 1078

*Relating to sex offender registration.*

SB 1078 modifies provisions relating to registration of sex offenders for the purposes of compliance with the Jacob Wetterling Crimes Against Children Act. The Act requires states to display good faith effort to comply with the Act in order to obtain certain federal funds.

The measure requires courts to notify sex offenders of the requirement to register as a sex offender when found guilty of a sex offense. Courts are required to send a copy of the criminal judgment to the Oregon State Police (OSP). The measure requires the sex offender to complete documents on the offender's obligation to register after sentencing at the initial intake of incarceration or any type of supervised release.

In addition, the measure modifies criminal penalties for a sex offender failing to initially register, report their address, or change of address. OSP are required to notify another state if the police learn that a person who is required to register is moving to that other state. The measure allows OSP to receive information on adult and juvenile predatory sex offenders for the purpose of sex offender profiling, and allows OSP to release information to local law enforcement agencies compiled

on the methodology of offenses and behavior profiles derived from information received in accordance with this measure. SB 1078 also allows law enforcement to make public lists of predatory sex offenders not supervised by an agency and provides for certain immunity from liability for public agencies and their employees.

Effective Date: October 4, 1997

## House Bill 2158

*Relating to the duties of parole and probation officers.*

HB 2158 authorizes individuals who are not certified as parole and probation officers to perform limited parole and probation duties as specified by a county. The authorization applies only if the duties are performed under the direction of a certified parole and probation officer. The duties of non-certified parole and probation officers are limited by requiring the county to specify their responsibilities and by prohibiting their function as principal reporting or supervising office. The measure also restricts the definition of parole and probation officer to an officer who primarily performs parole and probation duties.

HB 2158 is expected to free certified parole and probation officers to spend more of their time in direct supervision of parolees and probationers by allowing non-certified personnel to perform paperwork and related tasks.

Effective Date: October 4, 1997

## House Bill 2272

*Relating to indigent defense.*

HB 2272 authorizes a court to order repayment of indigent defense and related costs. The measure modifies provisions relating to payment for legal and other services provided at state expense. ORS 161.665 permits a court to order repayment of indigent defense costs in criminal cases resulting in the conviction of the defendant. HB 2272 expands the types of cases in which repayment of defense costs may be ordered to include any case for which counsel is appointed such as criminal cases without regard to outcome. These include cases dismissed through civil compromise or successful completion of diversion, juvenile proceedings and appeals, post conviction relief cases, habeas corpus proceedings, and civil commitment proceedings.

ORS 151.487 permits a court to order full or partial repayment of indigent defense legal services based upon

the person's ability to pay. HB 2272 expands the indigent defense costs that may be subject to a repayment order to include the costs of investigators, interpreters, psychological services, and the verification of indigence. In addition, the measure expands the authority of courts to order payment of a contribution toward the costs of determining eligibility for indigent defense representation to include payment or partial payment of the administrative costs of determining the eligibility of a person and other services related to the provision of appointed counsel.

The authorized use of information supplied by a person seeking court-appointed counsel is increased from use of that information for the purpose of collecting amounts owed by reason of the conviction to include use for the purpose of collecting any delinquent amounts owed to the state. HB 2272 clarifies that all indigent defense cases are subject to partial payment orders and authorizes reimbursement for the expenses of the partial payment program. The measure specifies the permitted use of information supplied by a person seeking a court-appointed attorney and applies to cases filed after January 1, 1998.

Effective Date: October 4, 1997

## House Bill 2377

*Relating to parking for disabled persons.*

HB 2377 creates the offense of blocking a parking space reserved for a disabled person and specifies a penalty for this violation of up to \$75. Unauthorized parking in a disabled parking place is currently a Class B traffic infraction punishable by a minimum fine of \$190 and maximum fine of \$300. Law enforcement or specially trained and certified volunteers in some communities currently issue citations for such violations. While blocking a disabled parking place with a vehicle or object renders the space unusable, there is currently no specific offense for blocking a parking place or adjacent side aisle.

The Americans with Disabilities Act Handbook, Appendix B (Accessibility Guidelines), at 4.6.5, requires provisions of a vehicle access route from site entrances and exits to accessible parking spaces. Parking enforcement volunteers witness frequent blocking of disabled parking places by delivery and other vehicles because of the proximity of the spaces to building entrances. The authorities are currently unable to cite such vehicles unless the vehicles are actually parked in the disabled space. HB 2377 creates a new Class D traffic

infraction punishable by a fine of \$50 to \$75. The measure also authorizes volunteers who have been appointed by law enforcement agencies to issue disabled parking citations to issue these citations.

Effective Date: October 4, 1997

## House Bill 2383

*Relating to investigators.*

HB 2383 establishes a five-member Board of Investigators to license and register private investigators and operatives. The measure specifies exemptions to the licensing requirement for persons performing official or specified duties, including but not limited to proprietary investigators, peace officers, and licensed private security officers. The measure specifies minimum qualifications for licensure and registration. HB 2383 authorizes the Board of Investigators to issue licenses and identification cards, and collect license fees. The measure sets a code of conduct and certain business practices for licensed investigators and operatives.

The measure creates the crime of knowingly falsifying fingerprints, photographs, or other data pertinent to the application for license or registration, a Class A misdemeanor. The measure also creates the crime of knowingly practicing as an investigator without a license, a Class B misdemeanor.

The measure appropriates \$50,000 to the Board of Investigators for costs incurred in implementing the measure, and authorizes Department of Administrative Services to request additional funds for start-up costs. The board is required to repay the general fund with revenues by June 30, 2001.

Effective Date: October 4, 1997 (Note: Governor vetoed the Emergency Clause; See veto section)

## House Bill 2433

*Relating to criminal procedure.*

HB 2433 specifies that the inquiries a peace officer may make of a person reasonably suspected of committing a crime may also be made of a person the officer reasonably suspects is *about* to commit a crime. The measure changes the requirement that a person stopped by an officer must be armed and *presently* dangerous before the officer may frisk the person for weapons, to require that the person must be armed and dangerous. It also expands the allowable inquiries an officer may make during a stop for a traffic infraction to include an inquiry necessary to ensure the safety of anyone present,

an inquiry into the circumstances arising during the course of a detention and investigation that give rise to a reasonable suspicion of criminal activity, and, effective July 1, 1998, a request for consent to search under certain circumstances. The measure permits an officer to use the force necessary to make the stop and ensure the safety of anyone present.

In addition, HB 2433 requires law enforcement agencies to adopt specified policies prohibiting stops and searches motivated by race, color, sex or national origin. The measure requires law enforcement agencies to collect data and provide the data to the Asset Forfeiture Oversight Advisory Committee. The measure requires the committee to submit a report to the Legislative Assembly on data collected.

Effective Date: October 4, 1997

## House Bill 2835

*Relating to juveniles.*

HB 2835 eliminates the statutory prohibition against unlicensed persons administering non-injectable stimulants, tranquilizers, controlled substances, or psychotropic drugs to persons detained in a juvenile detention facility. Under current law, a county juvenile facility must employ a nurse to administer certain types of medication to juveniles detained within a juvenile detention facility.

HB 2835 also requires a county juvenile department to send, monthly, each school district in the county a list of juvenile youth offenders enrolled in the district. If the juvenile is adjudicated for an offense involving a firearm or delivery of a controlled substance, the juvenile department shall notify the school district of the specific offense. For all other offenses, the school may notify the school district. The measure allows the school district to notify any school employee that the district deems appropriate. Under HB 2835, the juvenile department, school district, or anyone employed or acting for either, is held harmless from civil and criminal liability for failing to disclose information required by this measure.

Effective Date: October 4, 1997

## House Bill 2951

*Relating to asset forfeiture.*

HB 2951 repeals the sunset date on Oregon's asset forfeiture law. This law, codified as Chapter 791 Oregon Laws (1989), allows forfeiture of certain property that

is used to commit certain offenses or the proceeds of those offenses. The law was set to be repealed by a sunset provision on December 31, 1997.

In addition, the measure modifies the membership and duties of the Asset Forfeiture Oversight Advisory Committee and provides for the financing of the committee including creation of the Asset Forfeiture Oversight Account.

Effective Date: July 23, 1997

## House Bill 3009

*Relating to gambling.*

HB 3009 clarifies gambling crimes, including bookmaking, and creates the crimes of unlawful gambling, a Class A misdemeanor, and of cheating, a Class C felony. HB 3009 tightens regulations on charity fundraising gambling by specifying allowable operating expenses, defining handle, and making other related changes. HB 3009 authorizes conduct of Monte Carlo events under regulation of the Department of Justice and expands Department of Justice regulation authority to cover the types of games, equipment used, suppliers of equipment, hours, locations, frequency, and organizations conducting Monte Carlo events. The measure eliminates the \$1 million handle limit for charitable, fraternal, or religious organizations conducting bingo, lotto or raffle games, but prohibits bingo, lotto or raffle operations with a handle in excess of \$250,000 that do not generate at least five percent profit for the organization, unless exempted by the Department of Justice. HB 3009 also provides authority for Oregon Racing Commission to regulate an interstate wagering hub, should such a hub be located in Oregon.

HB 3009 reflects the recommendations made by the Governor's Task Force on Gaming in its October 4, 1996 final report. As Oregon is said to be under consideration for establishment of a national wagering hub, the bill was amended to provide for regulation of such a hub, consistent with the state's existing racing and wagering regulatory system.

Effective Date: October 4, 1997

## House Bill 3357

*Relating to racketeering.*

HB 3357 expands the definition of racketeering to include crimes committed before the offender attains the age of 18. The measure provides that conduct, which was the subject of a previous prosecution, may consti-

tute an incident of racketeering activity unless the prosecution resulted in acquittal. Under HB 3357, the list of racketeering crimes is expanded to include sexual offenses and offenses relating to riot, intimidation, real estate and escrow, outfitters and guides, making a false claim for health care payment, and public investment fraud.

HB 3357 addresses the court's decision in *State v. Fair*, 145 Or App 96, 929 P2d 1012 (1996), rev allowed 325 Or 45 (1997), in which the Court of Appeals held an indictment invalid because it failed to allege the relationship between the predicate offense, and the relationship was not otherwise apparent from the allegations of the indictment.

Effective Date: October 4, 1997

## House Bill 3643

*Relating to controlled substances.*

HB 3643 reclassifies the offense of possession of less than one ounce of marijuana from a violation to a Class C misdemeanor, punishable by a maximum of 30 days imprisonment in addition to a fine of \$500 to \$1000. In 1971, possession of less than one ounce of marijuana was classified as a Class A misdemeanor for a first offense and a Class B felony for second or subsequent offense. In 1973, the offense was reduced to a violation, punishable by a fine of not more than \$100. In 1989, the current punishment for the offense was enacted, increasing the fine to a minimum of \$500 and a maximum of \$1,000.

In order to enter into diversion, the measure requires an adult defendant to stipulate that the controlled substance, possessed by the defendant, was marijuana. Under a diversion, the original possession charge is dismissed if the defendant complies with certain requirements including successful completion of a drug treatment program. For adult defendants who fail to complete a diversion, the bill mandates a six-month suspension of the person's driving privileges or right to apply for driving privileges. The measure disallows the defense that the offense, upon which the suspension was based, did not involve a motor vehicle.

Effective Date: October 4, 1997

## Measures Vetoed by the Governor Senate Bill 440

*Relating to obstruction of mail.*

SB 440 creates the following crimes relating to mail theft: obstruction of mail, a Class B misdemeanor; destruction of letter boxes or mail, a Class C felony; and mail theft or receipt of stolen mail, a Class C felony.

### Governor's Veto Message (August 15, 1997):

*I am returning herewith Senate Bill 440, unsigned and disapproved.*

*This legislation created two new state felony crimes to address mail theft, an important and growing problem in Oregon. Mail theft crimes increasingly are affecting more Oregonians and costing them more money, and the resulting debate on Senate Bill 440 has provided a needed focus on this public safety responsibility.*

*Having recognized the rise of mail theft crimes, I have vetoed Senate Bill 440 for three specific reasons. First, mail theft already is a federal crime. Before Oregon creates new crimes to assume what traditionally has been a federal responsibility, I believe we should engage in serious discussions with the U.S. Attorney's office regarding what the appropriate state and federal roles should be in a comprehensive and diligent effort to prevent and prosecute mail theft crimes. It is my intention to discuss this with the U.S. Attorney's office, Oregon district attorneys, and other Oregon law enforcement officials.*

*Second, Senate Bill 440 is flawed in its crafting and overreaching in its scope. For example, it is not appropriate for a teenager to be prosecuted in juvenile court for what would be a Class C felony if committed by an adult for a single act of damaging a mailbox, as this bill would allow. In addition, this bill would allow prosecution of a person who inadvertently opens another person's mail delivered to their address. These flaws alone would not have precluded my approval of this legislation, because I believe Oregon's district attorneys would exercise appropriate discretion in these types of cases and that these flaws could be fixed in the next legislative session. However, these reasons do contribute to my overall decision to veto this bill.*

*The third and most important reason for my veto is that the legislature failed to appropriate or reserve any money to pay for the costs of this new felony crime. While there has been a dispute about the precise fiscal impact of this bill, the legislature made no allocation at all. Because the state has engaged in a new partnership with counties for them to handle incarceration and supervision of many of these offenders, it is inappropriate to impose that cost without providing funding for it. Had the legislature made a specific allocation, my concerns about the cost of this legislation would have been alleviated.*

*I also would have been persuaded to sign this bill if I had been convinced that the majority of people stealing mail went without appropriate criminal punishment. However, I am informed that felony charges already are being filed in approximately 80 percent of mail theft cases. I therefore have concluded that the problems with this legislation outweigh the need to take immediate action.*

*As I have said, protecting the financial health of Oregon citizens and businesses by protecting delivery of the mail is an important responsibility of government. I will talk with the U.S. Attorney's office in Oregon about the steps that can be taken to heighten their role in protecting the integrity of our postal system. If after that discussion I determine that a sole federal response will be inadequate, I will work with local, state and federal law enforcement officials to review Senate Bill 440 and improve it with the intention that the funding necessary to accomplish this job will be part of my 1999 recommended budget.*

*For these reasons, I am vetoing Senate Bill 440.*

## Senate Bill 541

*Relating to prison siting and building.*

SB 541 limits where the Department of Corrections (DOC) can site or build a residential correctional facility. Under the bill, the DOC cannot build or site on soils classified as prime, unique, Class I, or Class II by the U.S. Department of Agriculture. Further, they may not build within one mile of an elementary school, secondary school, or residential area containing four or more dwellings per acre. The DOC can proceed if the properties are separated by a qualifying natural barrier, in which case the site may be as little as one half mile from the school or residential area. This measure requires the Corrections Facilities Siting Authority (CFSA) to adopt specific findings sufficient to support

a compelling state interest if CFSA selects a site within a jurisdiction that opposed or did not demonstrate any interest in such placement.

## Governor's Veto Message (August 8, 1997):

*I am returning herewith Senate Bill 541, unsigned and disapproved.*

*My decision to veto this legislation is consistent with my decision to veto Senate Bill 397. It is based on the same clear policy: if the legislature takes an action that would prohibit the construction and operation of a prison facility sited in the past eight months, it is incumbent on the legislature to provide an alternative solution to meeting the state's need for prison facilities.*

*If the legislature did not agree with the results of the prison siting process, the legislature could have accepted the responsibility to site prisons to meet the mandate the people of Oregon placed upon us when Ballot Measure 11 was passed in 1994. The legislature, with the assistance of the Department of Corrections, did consider one site late in the session, but that effort was unsuccessful.*

*Senate Bill 541 only serves to remove the availability of sited prison facilities — therefore, I cannot support its aims. I have already accepted and exercised the authority to site prison facilities in every region of Oregon. I am not willing to again subject Oregon communities, inside or outside the tri-county metropolitan area, to yet another prison siting effort.*

*The siting of prisons is not an easy or pleasant responsibility. The Corrections Facilities Siting Authority, Oregon Department of Corrections, and I have carried out this difficult task in a fair and open manner which has resulted in accountable and cost-effective decisions. This veto, in combination with the budget the legislature provided for prison construction, will ensure that Oregon has the capacity to incarcerate violent criminals.*

## Senate Bill 770

*Relating to criminal law.*

SB 770 allows a district attorney and defense attorney to stipulate to any sentence outside the presumptive sentence range as part of a plea agreement. While a court must follow the sentencing guidelines when sentencing a defendant, there are no statutes or adminis-

trative rules that specifically prohibit the parties' stipulating to a sentence outside the guidelines. SB 770 makes it clear that such stipulations are permissible.

## Governor's Veto Message (August 15, 1997):

*I am returning herewith Senate Bill 770, unsigned and disapproved.*

*This bill would have the effect of weakening Oregon's felony sentencing guidelines by allowing sentences negotiated between a prosecutor and defense attorney to ignore established limits on the length of felony sentences.*

*This bill was presented to the legislature as being necessary to avoid miscarriages of justice in cases that fell under Measure 11 by letter of the law but where a Measure 11 sentence would be inappropriate. The proponents argued that increased flexibility - beyond that already established in the sentencing guidelines — was necessary in these cases to hold offenders appropriately accountable while avoiding unjust results. The legislature responded to that argument not only by passing Senate Bill 770, but also directly addressing potential injustices under Measure 11 by passing Senate Bill 1049, which allows judges to impose less-than Measure 11 sentences in specific circumstances.*

*I cannot approve Senate Bill 770 because it provides unrestricted discretion without any consideration for state policy. If the sentencing guidelines limits are too restrictive - in general or in specific types of cases — then proponents should work with the Criminal Justice Commission to change those limits. But sentencing policy should continue to be governed by a consistent state policy, not through case-by-case decisions in each county.*

*In addition, I would not veto this bill if I believed that pleas already negotiated were at risk. But the Oregon Supreme Court has ruled in *State vs. Adams* (315 Or 359, 1993) that a person who stipulates to a sentence cannot appeal that sentence. The concurring opinion in *Adams* provides supporting authority for the current practice.*

*But before the legislature grants express approval for this practice, I believe it should carefully consider structuring sentencing discretion to provide additional flexibility where it is needed but to maintain state policy limits. Therefore, I am vetoing Senate Bill 770.*

## House Bill 2222

*Related to crime.*

HB 2222 creates the crime of insurance fraud, a Class C felony. If physical injury was threatened or caused while committing the crime, the offense is a Class B felony. HB 2222 requires restitution for specific losses or damages resulting from the offense. Notification of a conviction must be given to the licensing agency or board of the offender's occupation, if any. The measure provides immunity from civil liability for disclosure of information to an agency investigating or prosecuting suspected insurance fraud. An insurer is required to cooperate with the agency and the investigating agency is required to disclose certain information to the insurer.

The measure expands the definition of racketeering to include insurance fraud and false claims for health care payment. Insurance applications and claim forms provided after January 1, 1998, must warn of the crime of insurance fraud. The measure's requirements of notice, disclosure of information, and immunity from liability provisions apply to the State Accident Insurance Fund Corporation, fraternal benefit societies, health care service providers, and trusts that carry out a multiple employer welfare arrangement. The measure also prohibits threatening criminal charges to obtain an advantage in settling a claim.

In addition, beginning July 1, 1999, the measure expands the crime of assault in the third degree, a Class C felony, to include an assault where a person, knowing that the other person is a corrections officer, intentionally or knowingly propels any dangerous object or substance at the corrections officer. The penalty includes mandatory incarceration at a state corrections facility.

HB 2222 permits a district attorney or police officer to apply for a search warrant by transmitting the proposed warrant and supporting affidavit to a court via facsimile and delivering the originals as soon as practicable. Prior to enactment of this measure, a search warrant could be obtained from a judge by a police officer, applying in person, with a signed affidavit. Currently, in some counties, an officer can apply by making a sworn statement over the telephone if it is not practical to deliver the application in person. Finally, the measure exempts reserve officers from the statute prohibiting the carrying of concealed firearms.

## Governor's Veto Message (August 15, 1997):

*I am returning HB 2222 unsigned and disapproved.*

*This measure contains provisions relating to unrelated topics. It enhances the crime of assault on a corrections officer to include hurling dangerous objects or substances at guards. It allows reserve police officers to carry concealed weapons. The measure also allows fax machines to be used in obtaining search warrants.*

*If these measures stood alone, I would enthusiastically sign the bill into law.*

*However, the bill also creates the crime of insurance fraud. Proponents of the measure have argued that Oregon needs this improvement to prosecute fraud rings that are operating now on the West Coast. I agree that we need to update our laws to provide law enforcement with the tools to combat these sophisticated criminals.*

*This bill, however, is flawed in one important respect — in some situations, it applies to claimants but not insurers. Although the crime this bill creates does apply to fraudulent activity on the part of insurers in the solicitation of an insurance policy, it does not apply to an insurer's intentional fraudulent acts committed when settling a claim. It does, however, apply to a claimant's intentional acts committed in filing and settling a claim. I find this lack of equal treatment unacceptable.*

*I will support a law that erases these ambiguities and allows law enforcement to focus on the real target: sophisticated organized fraud rings. Since House Bill 2222 does not do that, I am vetoing the bill.*

## House Bill 2383

*Relating to investigators; (appropriating money; declaring an emergency.)*

HB 2383 establishes a five-member Board of Investigators to license and register private investigators and operatives. The measure specifies exemptions to the licensing requirement for persons performing official or specified duties, including but not limited to proprietary investigators, peace officers, and licensed private security officers. The measure specifies minimum qualifications for licensure and registration. HB 2383 authorizes the Board of Investigators to issue licenses and identification cards, and collect license fees. The measure sets a code of conduct and certain business practices for licensed investigators and operatives.

The measure creates the crime of knowingly falsifying fingerprints, photographs, or other data pertinent to the application for license or registration, a Class A misdemeanor. The measure also creates the crime of knowingly practicing as an investigator without a license, a Class B misdemeanor.

The measure appropriates \$50,000 to the Board of Investigators for costs incurred in implementing the measure, and authorizes Department of Administrative Services to request additional funds for start-up costs. The board is required to repay the general fund with revenues by June 30, 2001.

Effective Date: October 4, 1997 (Note: Governor vetoed the Emergency Clause)

## Governor's Veto Message (August 15, 1997):

*I have signed House Bill 2383 but disapproved section 26, the emergency clause. This bill creates the Oregon Board of Investigators, appointed by the Governor and confirmed by the Senate, to license private investigators and operatives. The bill prescribes a five-member Board consisting of three investigators, one law enforcement officer, and one member of the general public. Disapproving the emergency clause will allow time to recruit and select members to the board and for the Board to develop a work plan to ensure that most of the fundamental public safety concerns can be addressed, such as specifying professional education requirements.*

*By disapproving the emergency clause, the new law will not take effect until early October.*

## House Bill 2920

*Relating to crime.*

HB 2920 increases the maximum fine from \$250 to \$500 for minors violating alcohol prohibitions. The prohibitions include attempting to purchase, purchasing, or acquiring alcoholic liquor. Also prohibited is a minor possessing alcohol unless the minor is in a private residence and accompanied by their parent or guardian. Unless authorized by rule or necessitated by emergency, minors are also prohibited from entering or attempting to enter a licensed premises that is posted as being prohibited to the use of minors.

## Governor's Veto Message (August 8, 1997):

*I am returning HB 2920 unsigned and disapproved.*

*This bill raises the fine for Minor in Possession of Liquor to \$500. I support efforts to prevent young people from beginning to drink and/or use tobacco products. But this measure will not accomplish the desired effect.*

*The legislature can not simply increase the fine for a single offense. In order to effectively change the fine the legislature must either change the classification of the offense or change the maximum fine for an entire class of crimes. See, State v. Rudder, 324 Or 380 (1996).*

*The companion bill that would have accomplished this, HB 3611 did not pass the legislature.*

*Rather than force the courts through needless litigation which will result in the fine remaining the same, I am vetoing this bill.*

## House Bill 3002

*Relating to court orders.*

HB 3002 expands the scope of the Family Abuse Prevention Act by prohibiting certain attempts at contacting a protected individual. Current law authorizes a court to prohibit an abusive spouse, partner, or family member from intimidating, menacing, or otherwise contacting a person seeking protection. Current law does not prohibit attempts at this conduct.

The measure also sets forth a procedure by which restraining orders may be renewed. For renewal of an order, the measure requires a finding that the individual seeking the order has a reasonable fear of further acts of abuse.

## Governor's Veto Message (August 15, 1997):

*This bill is a companion to SB 301 which allows enforcement of restraining orders from other states in Oregon courts. This is an important tool as we continue to develop tools to combat domestic violence and spousal abuse. SB 301 sets out timetables and establishes grounds for violation of these orders.*

*However, HB 3002 adds attempted behavior to the list of violations of these orders. It does so without adequate definition to direct the courts in applying the law.*

*As a result we run the risk of blunting this major advance in fighting domestic violence through needless litigation over what actually constitutes an "attempt".*

*To avoid this I have signed SB 301 to let those coming to Oregon know that they can expect support from our courts as they seek to restore peace in their lives. I'm disapproving HB 3002 to avoid making the system confusing and frustrating.*

## Major Legislation

### Not Enacted

#### Senate Bill 155

*Relating to parole, probation and post-prison supervision.*

Senate Bill 155 would have required imposition of maximum term of imprisonment and a presumptive term of imprisonment on a person convicted of certain felonies on or after November 1, 1997. If a request was made by the Department of Corrections, or the supervisory authority, and the inmate is determined to present a serious danger to the public at the end of the presumptive sentence, the measure would have allowed the State Board of Parole and Post-Prison Supervision to extend length of imprisonment of an inmate.

#### Senate Bill 1126

*Relating to crime.*

SB 1126 would have modified certain crimes committed as a result of driving under the influence of intoxicants.

#### House Bill 2726

*Relating to driving offenses.*

HB 2726 would have increased the penalty classification of a third or subsequent conviction for driving while under the influence of intoxicants from a Class A misdemeanor to a Class C felony. The increased penalty would have applied to offenses within 10 years of a second or subsequent offense.