

Senate Bill 481

Sponsored by Senator PROZANSKI (at the request of Detective Dan Braziel and City of Eugene)

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,
3 131.602, 135.873, 163.700 and 163.702.

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 **any part of the** uncovered, or less than opaquely covered, *[post-pubescent]*
29 human genitals, pubic areas or a *[post-pubescent]* human female breast below a point immediately
30 above the top of the areola. [*"Nudity" includes a partial state of nudity.*]

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

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

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

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

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

12 (b) **By making or recording a photograph, motion picture, videotape or other visual re-**
 13 **recording and knowingly disseminates the photograph, motion picture, videotape or other vis-**
 14 **ual recording or a copy of the photograph, motion picture, videotape or other visual**
 15 **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 163.702 is amended to read:

22 163.702. The provisions of ORS 163.700 **and section 2 of this 2009 Act** do not apply to:

23 (1) Any legitimate medical procedure performed by or under the direction of a person licensed
 24 to provide medical service for the purpose of medical diagnosis, treatment, education or research,
 25 including, but not limited to, the recording of medical procedures; and

26 (2) Any activity undertaken in the course of bona fide law enforcement or corrections activity
 27 or necessary to the proper functioning of the criminal justice system, including but not limited to
 28 the operation and management of jails, prisons and other youth and adult corrections facilities.

29 **SECTION 4.** ORS 131.125 is amended to read:

30 131.125. (1) A prosecution for aggravated murder, murder, attempted murder or aggravated
 31 murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of
 32 manslaughter may be commenced at any time after the commission of the attempt, conspiracy or
 33 solicitation to commit aggravated murder or murder, or the death of the person killed.

34 (2) A prosecution for any of the following felonies may be commenced within six years after the
 35 commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime
 36 before the victim attains 30 years of age or within 12 years after the offense is reported to a law
 37 enforcement agency or the Department of Human Services, whichever occurs first:

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

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

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

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

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

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

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

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

- 1 (i) Unlawful sexual penetration in the first degree under ORS 163.411.
- 2 (j) Sexual abuse in the second degree under ORS 163.425.
- 3 (k) Sexual abuse in the first degree under ORS 163.427.
- 4 (L) Using a child in a display of sexual conduct under ORS 163.670.
- 5 (m) Encouraging child sexual abuse in the first degree under ORS 163.684.
- 6 (n) Incest under ORS 163.525.
- 7 (o) Promoting prostitution under ORS 167.012.
- 8 (p) Compelling prostitution under ORS 167.017.
- 9 (q) Luring a minor under ORS 167.057.

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

- 14 (a) Sexual abuse in the third degree under ORS 163.415.
- 15 (b) Furnishing sexually explicit material to a child under ORS 167.054.
- 16 (c) Exhibiting an obscene performance to a minor under ORS 167.075.
- 17 (d) Displaying obscene materials to minors under ORS 167.080.

18 (4) In the case of crimes described in subsection (2)(L) of this section, the victim is the child
 19 engaged in sexual conduct. In the case of the crime described in subsection (2)(n) of this section,
 20 the victim is the party to the incest other than the party being prosecuted. In the case of crimes
 21 described in subsection (2)(o) and (p) of this section, the victim is the child whose acts of
 22 prostitution are promoted or compelled.

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

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

- 28 (a) For any other felony, three years.
- 29 (b) For any misdemeanor, two years.
- 30 (c) For a violation, six months.

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

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

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

42 (c) If the offense is [an] invasion of personal privacy **in the first or second degree** under ORS
 43 163.700 **or section 2 of this 2009 Act**, prosecution may be commenced within one year after dis-
 44 covery of the offense by the person aggrieved by the offense, by a person who has a legal duty to
 45 represent the person aggrieved by the offense or by a law enforcement agency, but in no case shall

1 the period of limitation otherwise applicable be extended by more than three years.

2 (8) Notwithstanding subsection (2) of this section, a prosecution for rape in the first or second
3 degree, sodomy in the first or second degree, unlawful sexual penetration in the first or second de-
4 gree or sexual abuse in the first degree may be commenced within 25 years after the commission
5 of the crime if the defendant is identified after the period described in subsection (2) of this section
6 on the basis of DNA (deoxyribonucleic acid) sample comparisons.

7 (9) Notwithstanding subsection (8) of this section, if a prosecution for a felony listed in sub-
8 section (8) of this section would otherwise be barred by subsection (2) of this section, the prose-
9 cution must be commenced within two years of the DNA-based identification of the defendant.

10 **SECTION 5.** ORS 135.873 is amended to read:

11 135.873. (1) As used in this section:

12 (a) "Local government" has the meaning given that term in ORS 174.116.

13 (b) "Sexual offense" includes but is not limited to a crime listed in ORS 181.594 (4).

14 (c) "State government" has the meaning given that term in ORS 174.111.

15 (d) "Victim" has the meaning given that term in ORS 131.007.

16 (2) Upon a showing of good cause, the court may at any time order that specified disclosures
17 be denied, restricted or deferred, or make such other order as is appropriate.

18 (3) Upon request of any party, the court may permit a showing of good cause for denial or reg-
19 ulation of disclosures, or portion of such showing, to be made in camera. A record shall be made
20 of such proceedings.

21 (4) If the court enters an order granting relief following a showing in camera, the entire record
22 of the showing shall be sealed and preserved in the records of the court, to be made available to the
23 appellate court in the event of an appeal. Except for information or materials subject to an order
24 that has been entered under subsection (5) or (6) of this section, the trial court, in its discretion,
25 may, after the case has been concluded, unseal matters previously sealed.

26 (5) Upon the request of a district attorney or the victim, the court shall enter a protective order
27 prohibiting any party to or attorney in, or the agent of a party to or attorney in, criminal pro-
28 ceedings involving a sexual offense, an offense involving the visual or audio recording of sexual
29 conduct by a child or invasion of personal privacy **in the first or second degree** under ORS 163.700
30 **or section 2 of this 2009 Act** from copying or disseminating any information of a sexually explicit
31 nature including, but not limited to, photographs depicting a person in a state of nudity, photographs
32 of human genitalia, any information of the prior sexual history of the victim and any visual or audio
33 recording of the sexual victimization.

34 (6) Upon the request of a district attorney or the victim, unless the court finds good cause to
35 do otherwise, the court shall enter a protective order prohibiting any party to or attorney in, or the
36 agent of a party to or attorney in, criminal proceedings involving a sexual offense, an offense in-
37 volving the visual or audio recording of sexual conduct by a child or invasion of personal privacy
38 **in the first or second degree** under ORS 163.700 **or section 2 of this 2009 Act** from copying or
39 disseminating a visual or audio recording of the victim describing the victim's sexual victimization.

40 (7) Notwithstanding a protective order entered under subsection (5) or (6) of this section, infor-
41 mation or materials described in subsections (5) and (6) may be copied or disseminated for the pur-
42 pose of:

43 (a) Providing discovery;

44 (b) Submitting evidence to a grand jury, a court, an agency of state government, a local gov-
45 ernment or a federal agency for use in judicial or administrative proceedings;

1 (c) Having the information or materials examined by an expert witness for the court, the state
2 or any party;

3 (d) Providing copies of the information or materials to the parties' attorneys or agents; or

4 (e) Sharing the information or materials with an agency of state government for use in carrying
5 out duties imposed on the agency by statute.

6 (8) Upon the request of the victim, the court may order that the victim be provided with a copy
7 of information or materials described in subsections (5) and (6) of this section.

8 **SECTION 6.** ORS 131.602 is amended to read:

9 131.602. The crimes to which ORS 131.550 (11)(b) applies are:

10 (1) Bribe giving, as defined in ORS 162.015.

11 (2) Bribe receiving, as defined in ORS 162.025.

12 (3) Public investment fraud, as defined in ORS 162.117.

13 (4) Bribing a witness, as defined in ORS 162.265.

14 (5) Bribe receiving by a witness, as defined in ORS 162.275.

15 (6) Simulating legal process, as defined in ORS 162.355.

16 (7) Official misconduct in the first degree, as defined in ORS 162.415.

17 (8) Custodial interference in the second degree, as defined in ORS 163.245.

18 (9) Custodial interference in the first degree, as defined in ORS 163.257.

19 (10) Buying or selling a person under 18 years of age, as defined in ORS 163.537.

20 (11) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.

21 (12) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.

22 (13) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.

23 (14) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.

24 (15) Possession of materials depicting sexually explicit conduct of a child in the first degree, as
25 defined in ORS 163.688.

26 (16) Possession of materials depicting sexually explicit conduct of a child in the second degree,
27 as defined in ORS 163.689.

28 (17) Theft in the second degree, as defined in ORS 164.045.

29 (18) Theft in the first degree, as defined in ORS 164.055.

30 (19) Aggravated theft in the first degree, as defined in ORS 164.057.

31 (20) Theft by extortion, as defined in ORS 164.075.

32 (21) Theft by deception, as defined in ORS 164.085, if it is a felony or a Class A misdemeanor.

33 (22) Theft by receiving, as defined in ORS 164.095, if it is a felony or a Class A misdemeanor.

34 (23) Theft of services, as defined in ORS 164.125, if it is a felony or a Class A misdemeanor.

35 (24) Unauthorized use of a vehicle, as defined in ORS 164.135.

36 (25) Mail theft or receipt of stolen mail, as defined in ORS 164.162.

37 (26) Laundering a monetary instrument, as defined in ORS 164.170.

38 (27) Engaging in a financial transaction in property derived from unlawful activity, as defined
39 in ORS 164.172.

40 (28) Burglary in the second degree, as defined in ORS 164.215.

41 (29) Burglary in the first degree, as defined in ORS 164.225.

42 (30) Possession of a burglary tool or theft device, as defined in ORS 164.235.

43 (31) Unlawful entry into a motor vehicle, as defined in ORS 164.272.

44 (32) Arson in the second degree, as defined in ORS 164.315.

45 (33) Arson in the first degree, as defined in ORS 164.325.

- 1 (34) Computer crime, as defined in ORS 164.377.
- 2 (35) Robbery in the third degree, as defined in ORS 164.395.
- 3 (36) Robbery in the second degree, as defined in ORS 164.405.
- 4 (37) Robbery in the first degree, as defined in ORS 164.415.
- 5 (38) Unlawful labeling of a sound recording, as defined in ORS 164.868.
- 6 (39) Unlawful recording of a live performance, as defined in ORS 164.869.
- 7 (40) Unlawful labeling of a videotape recording, as defined in ORS 164.872.
- 8 (41) A violation of ORS 164.886.
- 9 (42) Endangering aircraft, as defined in ORS 164.885.
- 10 (43) Interference with agricultural operations, as defined in ORS 164.887.
- 11 (44) Forgery in the second degree, as defined in ORS 165.007.
- 12 (45) Forgery in the first degree, as defined in ORS 165.013.
- 13 (46) Criminal possession of a forged instrument in the second degree, as defined in ORS 165.017.
- 14 (47) Criminal possession of a forged instrument in the first degree, as defined in ORS 165.022.
- 15 (48) Criminal possession of a forgery device, as defined in ORS 165.032.
- 16 (49) Criminal simulation, as defined in ORS 165.037.
- 17 (50) Fraudulently obtaining a signature, as defined in ORS 165.042.
- 18 (51) Fraudulent use of a credit card, as defined in ORS 165.055.
- 19 (52) Negotiating a bad check, as defined in ORS 165.065.
- 20 (53) Possessing a fraudulent communications device, as defined in ORS 165.070.
- 21 (54) Unlawful factoring of a payment card transaction, as defined in ORS 165.074.
- 22 (55) Falsifying business records, as defined in ORS 165.080.
- 23 (56) Sports bribery, as defined in ORS 165.085.
- 24 (57) Sports bribe receiving, as defined in ORS 165.090.
- 25 (58) Misapplication of entrusted property, as defined in ORS 165.095.
- 26 (59) Issuing a false financial statement, as defined in ORS 165.100.
- 27 (60) Obtaining execution of documents by deception, as defined in ORS 165.102.
- 28 (61) A violation of ORS 165.543.
- 29 (62) Cellular counterfeiting in the third degree, as defined in ORS 165.577.
- 30 (63) Cellular counterfeiting in the second degree, as defined in ORS 165.579.
- 31 (64) Cellular counterfeiting in the first degree, as defined in ORS 165.581.
- 32 (65) Identity theft, as defined in ORS 165.800.
- 33 (66) A violation of ORS 166.190.
- 34 (67) Unlawful use of a weapon, as defined in ORS 166.220.
- 35 (68) A violation of ORS 166.240.
- 36 (69) Unlawful possession of a firearm, as defined in ORS 166.250.
- 37 (70) A violation of ORS 166.270.
- 38 (71) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or
39 firearms silencer, as defined in ORS 166.272.
- 40 (72) A violation of ORS 166.275.
- 41 (73) Unlawful possession of armor piercing ammunition, as defined in ORS 166.350.
- 42 (74) A violation of ORS 166.370.
- 43 (75) Unlawful possession of a destructive device, as defined in ORS 166.382.
- 44 (76) Unlawful manufacture of a destructive device, as defined in ORS 166.384.
- 45 (77) Possession of a hoax destructive device, as defined in ORS 166.385.

- 1 (78) A violation of ORS 166.410.
- 2 (79) Providing false information in connection with a transfer of a firearm, as defined in ORS
- 3 166.416.
- 4 (80) Improperly transferring a firearm, as defined in ORS 166.418.
- 5 (81) Unlawfully purchasing a firearm, as defined in ORS 166.425.
- 6 (82) A violation of ORS 166.429.
- 7 (83) A violation of ORS 166.470.
- 8 (84) A violation of ORS 166.480.
- 9 (85) A violation of ORS 166.635.
- 10 (86) A violation of ORS 166.638.
- 11 (87) Unlawful paramilitary activity, as defined in ORS 166.660.
- 12 (88) A violation of ORS 166.720.
- 13 (89) Prostitution, as defined in ORS 167.007.
- 14 (90) Promoting prostitution, as defined in ORS 167.012.
- 15 (91) Compelling prostitution, as defined in ORS 167.017.
- 16 (92) Exhibiting an obscene performance to a minor, as defined in ORS 167.075.
- 17 (93) Unlawful gambling in the second degree, as defined in ORS 167.122.
- 18 (94) Unlawful gambling in the first degree, as defined in ORS 167.127.
- 19 (95) Possession of gambling records in the second degree, as defined in ORS 167.132.
- 20 (96) Possession of gambling records in the first degree, as defined in ORS 167.137.
- 21 (97) Possession of a gambling device, as defined in ORS 167.147.
- 22 (98) Possession of a gray machine, as defined in ORS 167.164.
- 23 (99) Cheating, as defined in ORS 167.167.
- 24 (100) Tampering with drug records, as defined in ORS 167.212.
- 25 (101) A violation of ORS 167.262.
- 26 (102) Research and animal interference, as defined in ORS 167.312.
- 27 (103) Animal abuse in the first degree, as defined in ORS 167.320.
- 28 (104) Aggravated animal abuse in the first degree, as defined in ORS 167.322.
- 29 (105) Animal neglect in the first degree, as defined in ORS 167.330.
- 30 (106) Interfering with an assistance, a search and rescue or a therapy animal, as defined in ORS
- 31 167.352.
- 32 (107) Involvement in animal fighting, as defined in ORS 167.355.
- 33 (108) Dogfighting, as defined in ORS 167.365.
- 34 (109) Participation in dogfighting, as defined in ORS 167.370.
- 35 (110) Unauthorized use of a livestock animal, as defined in ORS 167.385.
- 36 (111) Interference with livestock production, as defined in ORS 167.388.
- 37 (112) A violation of ORS 167.390.
- 38 (113) A violation of ORS 471.410.
- 39 (114) Failure to report missing precursor substances, as defined in ORS 475.955.
- 40 (115) Illegally selling drug equipment, as defined in ORS 475.960.
- 41 (116) Providing false information on a precursor substances report, as defined in ORS 475.965.
- 42 (117) Unlawful delivery of an imitation controlled substance, as defined in ORS 475.912.
- 43 (118) A violation of ORS 475.840, if it is a felony or a Class A misdemeanor.
- 44 (119) A violation of ORS 475.914, if it is a felony or a Class A misdemeanor.
- 45 (120) A violation of ORS 475.916.

- 1 (121) A violation of ORS 475.906, if it is a felony or a Class A misdemeanor.
- 2 (122) A violation of ORS 475.904.
- 3 (123) Misuse of an identification card, as defined in ORS 807.430.
- 4 (124) Unlawful production of identification cards, licenses, permits, forms or camera cards, as
- 5 defined in ORS 807.500.
- 6 (125) Transfer of documents for the purposes of misrepresentation, as defined in ORS 807.510.
- 7 (126) Using an invalid license, as defined in ORS 807.580.
- 8 (127) Permitting misuse of a license, as defined in ORS 807.590.
- 9 (128) Using another’s license, as defined in ORS 807.600.
- 10 (129) Criminal driving while suspended or revoked, as defined in ORS 811.182, when it is a fel-
- 11 ony.
- 12 (130) Driving while under the influence of intoxicants, as defined in ORS 813.010, when it is a
- 13 felony.
- 14 (131) Unlawful distribution of cigarettes, as defined in ORS 323.482.
- 15 (132) Unlawful distribution of tobacco products, as defined in ORS 323.632.
- 16 (133) A violation of ORS 180.440 (2).
- 17 (134) A violation described in ORS 475.846 to 475.894, if it is a felony.
- 18 (135) Subjecting another person to involuntary servitude in the first degree, as defined in ORS
- 19 163.264.
- 20 (136) Subjecting another person to involuntary servitude in the second degree, as defined in ORS
- 21 163.263.
- 22 (137) Trafficking in persons, as defined in ORS 163.266.
- 23 (138) Furnishing sexually explicit material to a child, as defined in ORS 167.054.
- 24 (139) Luring a minor, as defined in ORS 167.057.
- 25 (140) Online sexual corruption of a child in the second degree, as defined in ORS 163.432.
- 26 (141) Online sexual corruption of a child in the first degree, as defined in ORS 163.433.
- 27 **(142) Invasion of personal privacy in the first degree, as defined in section 2 of this 2009**
- 28 **Act.**
- 29 ~~[(142)]~~ **(143)** An attempt, conspiracy or solicitation to commit a crime in subsections (1) to
- 30 ~~[(141)]~~ **(142)** of this section if the attempt, conspiracy or solicitation is a felony or a Class A
- 31 misdemeanor.
- 32 **SECTION 7. The amendments to ORS 131.602 by section 6 of this 2009 Act apply to**
- 33 **property seized for criminal forfeiture on or after the effective date of this 2009 Act.**

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