

Senate Bill 347

Sponsored by Senator BURDICK, Representative TOMEI; Senators DINGFELDER, HASS, ROSENBAUM, STEINER HAYWARD, Representatives DOHERTY, FREDERICK, GALLEGOS, GREENLICK, WILLIAMSON (Pre-session filed.)

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 crime applicable to possession of firearm, or instrument used as dangerous weapon, while in or on school grounds. Requires entity controlling school grounds to adopt written policy before concealed handgun licensees may assert affirmative defense to crime.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to weapons on school grounds; creating new provisions; amending ORS 166.173, 166.262,
3 166.360, 166.370, 166.380 and 419A.004; and declaring an emergency.

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

5 **SECTION 1.** ORS 166.370 is amended to read:

6 166.370. (1)(a) [*Any*] A person who intentionally possesses a [*loaded or unloaded*] firearm or any
7 other instrument used as a dangerous weapon, while in or on a public building, [*shall upon conviction*
8 *be guilty of*] **commits** a Class C felony.

9 **(b) A person who intentionally possesses a firearm or any other instrument used as a**
10 **dangerous weapon, while in or on school grounds, commits a Class C felony.**

11 (2)(a) Except as otherwise provided in paragraph (b) of this subsection, a person who inten-
12 tionally possesses:

13 (A) A firearm in a court facility [*is guilty, upon conviction, of*] **commits** a Class C felony. A
14 person who intentionally possesses a firearm in a court facility shall surrender the firearm to a law
15 enforcement officer.

16 (B) A weapon, other than a firearm, in a court facility may be required to surrender the weapon
17 to a law enforcement officer or to immediately remove it from the court facility. A person who fails
18 to comply with this subparagraph [*is guilty, upon conviction, of*] **commits** a Class C felony.

19 (b) The presiding judge of a judicial district may enter an order permitting the possession of
20 specified weapons in a court facility.

21 (3) Subsection (1) of this section does not apply to:

22 (a) A sheriff, police officer, other duly appointed peace officers or a corrections officer while
23 acting within the scope of employment.

24 (b) A person summoned by a peace officer to assist in making an arrest or preserving the peace,
25 while the summoned person is engaged in assisting the officer.

26 (c) An active or reserve member of the military forces of this state or the United States, when
27 engaged in the performance of duty.

28 [*d*] A person who is licensed under ORS 166.291 and 166.292 to carry a concealed handgun.]

29 [*e*] (d) A person who is authorized by the [*officer or agency*] **person or entity** that controls the

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 public building **or the school grounds** to possess a firearm or dangerous weapon in *[that]* **or on**
 2 **the public building or in or on the school grounds.**

3 *[(f)]* **(e)** An employee of the United States Department of Agriculture, acting within the scope
 4 of employment, who possesses a firearm in the course of the lawful taking of wildlife.

5 *[(g)]* **(f)** Possession of a firearm on school property if the firearm:

6 (A) Is possessed by a person who is not otherwise prohibited from possessing the firearm; and

7 (B) Is unloaded and locked in a motor vehicle.

8 **(4)(a) Subsection (1)(a) of this section does not apply to a person who is licensed under**
 9 **ORS 166.291 and 166.292 to carry a concealed handgun.**

10 **(b) Subsection (1)(b) of this section does not apply to a person who is licensed under ORS**
 11 **166.291 and 166.292 to carry a concealed handgun, if the school district or other entity that**
 12 **controls the school grounds adopts a written policy authorizing persons licensed under ORS**
 13 **166.291 and 166.292 to possess a firearm in or on the school grounds under the control of the**
 14 **district or other entity.**

15 *[(4)]* **(5)** The *[exceptions listed in subsection (3)(b) to (g)]* **defenses described in subsections**
 16 **(3)(b) to (f) and (4)** of this section *[constitute]* **are** affirmative defenses *[to a charge of violating*
 17 *subsection (1) of this section].*

18 *[(5)(a)]* **(6)(a)** *[Any]* **A** person who knowingly, or with reckless disregard for the safety of an-
 19 other, discharges or attempts to discharge a firearm at a place that the person knows is a school
 20 *[shall upon conviction be guilty of]* **commits** a Class C felony.

21 (b) Paragraph (a) of this subsection does not apply to the discharge of a firearm:

22 (A) As part of a program approved by a school in the school by an individual who is partic-
 23 ipating in the program;

24 (B) By a law enforcement officer acting in the officer’s official capacity; or

25 (C) By an employee of the United States Department of Agriculture, acting within the scope of
 26 employment, in the course of the lawful taking of wildlife.

27 *[(6)]* **(7)** *[Any]* **A** weapon carried in violation of this section is subject to the forfeiture provisions
 28 of ORS 166.279.

29 *[(7)]* **(8)** Notwithstanding the fact that a person’s conduct in a single criminal episode constitutes
 30 a violation of both subsections *[(1) and (5)]* **(1)(b) and (6)** of this section, the district attorney may
 31 charge the person with only one of the offenses.

32 *[(8)]* **(9)** As used in this section, “dangerous weapon” means a dangerous weapon as that term
 33 is defined in ORS 161.015.

34 **SECTION 2.** ORS 166.360 is amended to read:

35 166.360. As used in ORS 166.360 to 166.380, unless the context requires otherwise:

36 (1) “Capitol building” means the Capitol, the State Office Building, the State Library Building,
 37 the Labor and Industries Building, the State Transportation Building, the Agriculture Building or
 38 the Public Service Building and includes any new buildings which may be constructed on the same
 39 grounds as an addition to the group of buildings listed in this subsection.

40 (2) “Court facility” means a courthouse or that portion of any other building occupied by a
 41 circuit court, the Court of Appeals, the Supreme Court or the Oregon Tax Court or occupied by
 42 personnel related to the operations of those courts, or in which activities related to the operations
 43 of those courts take place.

44 *[(3)]* “Loaded firearm” means:]

45 *[(a)]* A breech-loading firearm in which there is an unexpended cartridge or shell in or attached to

1 *the firearm including but not limited to, in a chamber, magazine or clip which is attached to the*
2 *firearm.]*

3 *[(b) A muzzle-loading firearm which is capped or primed and has a powder charge and ball, shot*
4 *or projectile in the barrel or cylinder.]*

5 [(4)] (3) “Public building” means a hospital, a capitol building, [*a public or private school, as*
6 *defined in ORS 339.315,*] a college or university, a city hall or the residence of any state official
7 elected by the state at large, and the grounds adjacent to each such building. The term also includes
8 that portion of any other building occupied by an agency of the state or a municipal corporation,
9 as defined in ORS 297.405, other than a court facility **or a building on school grounds.**

10 (4) **“School grounds” means a school as defined in ORS 339.315.**

11 (5) “Weapon” means:

12 (a) A firearm;

13 (b) Any dirk, dagger, ice pick, slingshot, metal knuckles or any similar instrument or a knife
14 other than an ordinary pocket knife, the use of which could inflict injury upon a person or property;

15 (c) Mace, tear gas, pepper mace or any similar deleterious agent as defined in ORS 163.211;

16 (d) An electrical stun gun or any similar instrument;

17 (e) A tear gas weapon as defined in ORS 163.211;

18 (f) A club, bat, baton, billy club, bludgeon, knobkerrie, nunchaku, nightstick, truncheon or any
19 similar instrument, the use of which could inflict injury upon a person or property; or

20 (g) A dangerous or deadly weapon as those terms are defined in ORS 161.015.

21 **SECTION 3.** ORS 166.380 is amended to read:

22 166.380. [(1) *A peace officer may examine a firearm possessed by anyone on the person while in*
23 *or on a public building to determine whether the firearm is a loaded firearm.]*

24 [(2) *Refusal by a person to allow the examination authorized by subsection (1) of this section con-*
25 *stitutes reason to believe that the person has committed a crime and the peace officer may make an*
26 *arrest pursuant to ORS 133.310.]* **For purposes of ORS 166.370 (4)(b), a school district or other**
27 **entity that controls school grounds may adopt a written policy that authorizes persons li-**
28 **icensed under ORS 166.291 and 166.292 to possess a firearm in or on the school grounds under**
29 **the control of the district or other entity.**

30 **SECTION 4.** ORS 166.173 is amended to read:

31 166.173. (1) A city or county may adopt ordinances to regulate, restrict or prohibit the pos-
32 session of loaded firearms in public places as defined in ORS 161.015.

33 (2) Ordinances adopted under subsection (1) of this section do not apply to or affect:

34 (a) A law enforcement officer in the performance of official duty.

35 (b) A member of the military in the performance of official duty.

36 (c) A person licensed to carry a concealed handgun.

37 (d) A person authorized to possess a [*loaded*] firearm while in or on a public building, **in or on**
38 **school grounds or in a court facility under ORS 166.370.**

39 (e) An employee of the United States Department of Agriculture, acting within the scope of
40 employment, who possesses a loaded firearm in the course of the lawful taking of wildlife.

41 **SECTION 5.** ORS 166.262 is amended to read:

42 166.262. A peace officer may not arrest or charge a person for violating ORS 166.250 (1)(a) or
43 (b) or 166.370 (1)(a) if the person has in the person’s immediate possession a valid license to carry
44 a firearm as provided in ORS 166.291 and 166.292.

45 **SECTION 6.** ORS 419A.004, as amended by section 30, chapter 97, Oregon Laws 2012, is

1 amended to read:

2 419A.004. As used in this chapter and ORS chapters 419B and 419C, unless the context requires
3 otherwise:

4 (1) "CASA Volunteer Program" means a program that is approved or sanctioned by a juvenile
5 court, has received accreditation from the National CASA Association and has entered into a con-
6 tract with the Oregon Volunteers Commission for Voluntary Action and Service under section 4,
7 chapter 97, Oregon Laws 2012, to recruit, train and supervise volunteers to serve as court appointed
8 special advocates.

9 (2) "Child care center" means a residential facility for wards or youth offenders that is licensed
10 under the provisions of ORS 418.240.

11 (3) "Community service" has the meaning given that term in ORS 137.126.

12 (4) "Conflict of interest" means a person appointed to a local citizen review board who has a
13 personal or pecuniary interest in a case being reviewed by that board.

14 (5) "Counselor" means a juvenile department counselor or a county juvenile probation officer.

15 (6) "Court" means the juvenile court.

16 (7) "Court appointed special advocate" means a person in a CASA Volunteer Program who is
17 appointed by the court to act as a court appointed special advocate pursuant to section 2, chapter
18 97, Oregon Laws 2012.

19 (8) "Court facility" has the meaning given that term in ORS 166.360.

20 (9) "Department" means the Department of Human Services.

21 (10) "Detention" or "detention facility" means a facility established under ORS 419A.010 to
22 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youths or youth offenders
23 pursuant to a judicial commitment or order.

24 (11) "Director" means the director of a juvenile department established under ORS 419A.010 to
25 419A.020 and 419A.050 to 419A.063.

26 (12) "Guardian" means guardian of the person and not guardian of the estate.

27 (13) "Indian child" means any unmarried person less than 18 years of age who is:

28 (a) A member of an Indian tribe; or

29 (b) Eligible for membership in an Indian tribe and is the biological child of a member of an In-
30 dian tribe.

31 (14) "Juvenile court" means the court having jurisdiction of juvenile matters in the several
32 counties of this state.

33 (15) "Local citizen review board" means the board specified by ORS 419A.090 and 419A.092.

34 (16) "Parent" means the biological or adoptive mother and the legal father of the child, ward,
35 youth or youth offender. As used in this subsection, "legal father" means:

36 (a) A man who has adopted the child, ward, youth or youth offender or whose paternity has been
37 established or declared under ORS 109.070 or 416.400 to 416.465 or by a juvenile court; and

38 (b) In cases in which the Indian Child Welfare Act applies, a man who is a father under appli-
39 cable tribal law.

40 (17) "Permanent foster care" means an out-of-home placement in which there is a long-term
41 contractual foster care agreement between the foster parents and the department that is approved
42 by the juvenile court and in which the foster parents commit to raise a ward in substitute care or
43 youth offender until the age of majority.

44 (18) "Planned permanent living arrangement" means an out-of-home placement other than by
45 adoption, placement with a relative or placement with a legal guardian that is consistent with the

1 case plan and in the best interests of the ward.

2 (19) "Public building" [*has the meaning given that term in ORS 166.360.*] **means:**

3 **(a) A public building as defined in ORS 166.360; or**

4 **(b) School grounds as defined in ORS 166.360.**

5 (20) "Reasonable time" means a period of time that is reasonable given a child or ward's emo-
6 tional and developmental needs and ability to form and maintain lasting attachments.

7 (21) "Records" means any information in written form, pictures, photographs, charts, graphs,
8 recordings or documents pertaining to a case.

9 (22) "Resides" or "residence," when used in reference to the residence of a child, ward, youth
10 or youth offender, means the place where the child, ward, youth or youth offender is actually living
11 or the jurisdiction in which wardship or jurisdiction has been established.

12 (23) "Restitution" has the meaning given that term in ORS 137.103.

13 (24) "Serious physical injury" means:

14 (a) A serious physical injury as defined in ORS 161.015; or

15 (b) A physical injury that:

16 (A) Has a permanent or protracted significant effect on a child's daily activities;

17 (B) Results in substantial and recurring pain; or

18 (C) In the case of a child under 10 years of age, is a broken bone.

19 (25) "Shelter care" means a home or other facility suitable for the safekeeping of a child, ward,
20 youth or youth offender who is taken into temporary custody pending investigation and disposition.

21 (26) "Short-term detention facility" means a facility established under ORS 419A.050 (3) for
22 holding children, youths and youth offenders pending further placement.

23 (27) "Sibling" means one of two or more children or wards related:

24 (a) By blood or adoption through a common legal parent; or

25 (b) Through the marriage of the children's or wards' legal or biological parents.

26 (28) "Substitute care" means an out-of-home placement directly supervised by the department
27 or other agency, including placement in a foster family home, group home or other child caring in-
28 stitution or facility. "Substitute care" does not include care in:

29 (a) A detention facility, forestry camp or youth correction facility;

30 (b) A family home that the court has approved as a ward's permanent placement, when a private
31 child caring agency has been appointed guardian of the ward and when the ward's care is entirely
32 privately financed; or

33 (c) In-home placement subject to conditions or limitations.

34 (29) "Surrogate" means a person appointed by the court to protect the right of the child, ward,
35 youth or youth offender to receive procedural safeguards with respect to the provision of free ap-
36 propriate public education.

37 (30) "Tribal court" means a court with jurisdiction over child custody proceedings and that is
38 either a Court of Indian Offenses, a court established and operated under the code of custom of an
39 Indian tribe or any other administrative body of a tribe that is vested with authority over child
40 custody proceedings.

41 (31) "Victim" means any person determined by the district attorney, the juvenile department or
42 the court to have suffered direct financial, psychological or physical harm as a result of the act that
43 has brought the youth or youth offender before the juvenile court. When the victim is a minor,
44 "victim" includes the legal guardian of the minor. The youth or youth offender may not be consid-
45 ered the victim. When the victim of the crime cannot be determined, the people of Oregon, as re-

1 presented by the district attorney, are considered the victims.

2 (32) "Violent felony" means any offense that, if committed by an adult, would constitute a felony
3 and:

4 (a) Involves actual or threatened serious physical injury to a victim; or

5 (b) Is a sexual offense. As used in this paragraph, "sexual offense" has the meaning given the
6 term "sex crime" in ORS 181.594.

7 (33) "Ward" means a person within the jurisdiction of the juvenile court under ORS 419B.100.

8 (34) "Young person" means a person who has been found responsible except for insanity under
9 ORS 419C.411 and placed under the jurisdiction of the Psychiatric Security Review Board.

10 (35) "Youth" means a person under 18 years of age who is alleged to have committed an act that
11 is a violation, or, if done by an adult would constitute a violation, of a law or ordinance of the
12 United States or a state, county or city.

13 (36) "Youth care center" has the meaning given that term in ORS 420.855.

14 (37) "Youth offender" means a person who has been found to be within the jurisdiction of the
15 juvenile court under ORS 419C.005 for an act committed when the person was under 18 years of age.

16 **SECTION 7. The amendments to ORS 166.262 and 166.370 by sections 1 and 5 of this 2013
17 Act apply to conduct occurring on or after the effective date of this 2013 Act.**

18 **SECTION 8. This 2013 Act being necessary for the immediate preservation of the public
19 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
20 on its passage.**

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