

# House Bill 2844

Sponsored by Representative OLSON, Senator WINTERS, Representative BARKER, Senator MONNES ANDERSON; Representatives GILLIAM, HUFFMAN, KENY-GUYER, LININGER, Senator BURDICK (at the request of Saving Grace, Domestic Violence Resource Center, Safe Harbors, Bridges2 Safety DVIP, NAYA Family Center's Healing Circle, Bradley Angle, Choices DVIP, Oregon Sexual Assault Task Force, Abuse Recovery Ministry & Services, Raphael House of Portland, Salvation Army West Women's and Children's Center, Clackamas Women's Services, Liberty House, KIDS Center, Russian Oregon Social Services Central City Concern-Eastside Concern, Allies in Change, YWCA of Greater Portland, Impact NW, Modus Vivendi, LLC, Oregon District Attorneys Association, Oregon Association of Chiefs of Police, Oregon State Sheriffs' Association, Portland Police Bureau -Domestic Violence Reduction Unit, Multnomah County Department of Community Justice)

## 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**.

Increases penalty for crime of strangulation when committed knowing victim was pregnant. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both.

Expands types of previous convictions that elevate crime of assault in the fourth degree to Class C felony in certain circumstances to include other degrees of assault, strangulation and menacing.

Provides that child who witnesses assault or strangulation is victim for purposes of determining separately punishable offenses.

Provides that release decision for defendant charged with sex crime or crime constituting domestic violence must include order prohibiting attempted contact with victim and third-party contact with victim while defendant is in custody.

Modifies definition of "physical injury" for purposes of Oregon Criminal Code.

Provides that for two or more domestic violence or abuse offenses between same victim and defendant, trial may take place in any county in which one offense was committed.

Adds threatening to cause physical injury to animal to induce other person to engage in conduct as manner of committing crime of coercion.

Creates hearsay exception for certain audio recordings of certified interpreter translating witness statement in criminal matter. Provides that recording is admissible without calling interpreter as witness unless defendant files written objection.

Authorizes peace officer to apply for and circuit court to enter ex parte emergency protective order when court finds probable cause to believe that person is in danger of domestic violence, abuse or abduction and protective order is necessary to prevent further domestic violence, abuse or abduction. Provides that emergency protective order expires five days after entry.

Appropriates moneys from General Fund to \_\_\_\_\_ for training, prosecuting crimes constituting domestic violence and implementing emergency protective orders.

## A BILL FOR AN ACT

1  
2 Relating to crime; creating new provisions; and amending ORS 40.460, 131.315, 133.310, 135.247,  
3 161.015, 163.160, 163.187 and 163.275.

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

5 **SECTION 1.** ORS 163.187 is amended to read:

6 163.187. (1) A person commits the crime of strangulation if the person knowingly impedes the  
7 normal breathing or circulation of the blood of another person by:

8 (a) Applying pressure on the throat or neck of the other person; or

9 (b) Blocking the nose or mouth of the other person.

10 (2) Subsection (1) of this section does not apply to legitimate medical or dental procedures or  
11 good faith practices of a religious belief.

12 (3) Strangulation is a Class A misdemeanor.

13 (4) Notwithstanding subsection (3) of this section, strangulation is a Class C felony if:

14 (a) The crime is committed in the immediate presence of, or is witnessed by, the person's or 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 victim's minor child or stepchild or a minor child residing within the household of the person or the  
 2 victim;

3 (b) The victim is under 10 years of age;

4 (c) During the commission of the crime, the person used, attempted to use or threatened to use  
 5 a dangerous or deadly weapon, as those terms are defined in ORS 161.015, unlawfully against an-  
 6 other;

7 *[(d) The person has been previously convicted of violating this section or of committing an equiv-*  
 8 *alent crime in another jurisdiction;]*

9 *[(e)]* **(d)** The person has been previously convicted of violating **this section or** ORS 163.160,  
 10 163.165, 163.175, 163.185 or 163.190, or of committing an equivalent crime in another jurisdiction,  
 11 and the victim in the previous conviction is the same person who is the victim of the current crime;  
 12 *[or]*

13 *[(f)]* **(e)** The person has at least three previous convictions *[of any combination of]* **for violating**  
 14 **this section or** ORS 163.160, 163.165, 163.175, 163.185 or 163.190 or *[of]* **for committing an** equiv-  
 15 alent *[crimes in other jurisdictions.]* **crime in another jurisdiction, in any combination; or**

16 **(f) The person commits the strangulation knowing that the victim is pregnant.**

17 (5) For purposes of subsection (4)(a) of this section, a strangulation is witnessed if the  
 18 strangulation is seen or directly perceived in any other manner by the child.

19 **(6) A child who witnesses a strangulation or in whose immediate presence a strangulation**  
 20 **is committed as described in subsection (4)(a) of this section is a victim for the purposes of**  
 21 **determining separately punishable offenses under ORS 161.067 (2).**

22 **SECTION 2.** ORS 163.160 is amended to read:

23 163.160. (1) A person commits the crime of assault in the fourth degree if the person:

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

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

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

27 (3) Notwithstanding subsection (2) of this section, assault in the fourth degree is a Class C fel-  
 28 ony if the person commits the crime of assault in the fourth degree and:

29 *[(a) The person has previously been convicted of assaulting the same victim;]*

30 *[(b) The person has previously been convicted at least three times under this section or under*  
 31 *equivalent laws of another jurisdiction and all of the assaults involved domestic violence, as defined*  
 32 *in ORS 135.230;]*

33 *[(c)]* **(a)** The assault is committed in the immediate presence of, or is witnessed by, the person's  
 34 or the victim's minor child or stepchild or a minor child residing within the household of the person  
 35 or victim; *[or]*

36 **(b) The person has been previously convicted of violating this section or ORS 163.165,**  
 37 **163.175, 163.185, 163.187 or 163.190, or of committing an equivalent crime in another jurisdic-**  
 38 **tion, and the victim in the previous conviction is the same person who is the victim of the**  
 39 **current crime;**

40 **(c) The person has at least three previous convictions for violating this section or ORS**  
 41 **163.165, 163.175, 163.185, 163.187 or 163.190 or for committing an equivalent crime in another**  
 42 **jurisdiction, in any combination; or**

43 **(d) The person commits the assault knowing that the victim is pregnant.**

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

1           **(5) A child who witnesses an assault or in whose immediate presence an assault is com-**  
 2 **mitted as described in subsection (3)(a) of this section is a victim for the purposes of deter-**  
 3 **mining separately punishable offenses under ORS 161.067 (2).**

4           **SECTION 3.** ORS 135.247 is amended to read:

5           135.247. (1) When a release assistance officer or a release assistance deputy makes a release  
 6 decision under ORS 135.235 involving a defendant charged with a sex crime or a crime constituting  
 7 domestic violence, the release assistance officer or deputy shall include in the decision an order that  
 8 the defendant be prohibited from contacting **or attempting to contact** the victim, **either directly**  
 9 **or through a third party**, while the defendant is in custody. The release assistance officer or  
 10 deputy shall provide the defendant with a written copy of the order.

11           (2) When a defendant who is charged with a sex crime or a crime that constitutes domestic vi-  
 12 olence is arraigned, the court shall enter an order continuing an order issued under subsection (1)  
 13 of this section or, if no such order has been entered, enter an order prohibiting the defendant from  
 14 contacting **or attempting to contact** the victim, **either directly or through a third party**, while  
 15 the defendant is in custody.

16           (3) Except as provided in subsection (4) of this section, an order described in subsection (1) or  
 17 (2) of this section:

18           (a) Shall apply at any time during which the defendant is held in custody on the charge; and

19           (b) Shall remain valid until the defendant is sentenced for the crime, the charge is dismissed or  
 20 the defendant is acquitted of the crime.

21           (4) Upon petition of the victim, the court may enter an order terminating an order entered under  
 22 subsection (1) or (2) of this section if the court finds, after a hearing on the petition, that termi-  
 23 nating the order is in the best interests of the parties and the community.

24           (5) As used in this section:

25           (a) “Domestic violence” has the meaning given that term in ORS 135.230.

26           (b) “Sex crime” has the meaning given that term in ORS 181.805.

27           **SECTION 4.** ORS 161.015 is amended to read:

28           161.015. As used in chapter 743, Oregon Laws 1971, and ORS 166.635, unless the context requires  
 29 otherwise:

30           (1) “Dangerous weapon” means any weapon, device, instrument, material or substance which  
 31 under the circumstances in which it is used, attempted to be used or threatened to be used, is  
 32 readily capable of causing death or serious physical injury.

33           (2) “Deadly weapon” means any instrument, article or substance specifically designed for and  
 34 presently capable of causing death or serious physical injury.

35           (3) “Deadly physical force” means physical force that under the circumstances in which it is  
 36 used is readily capable of causing death or serious physical injury.

37           (4) “Peace officer” means:

38           (a) A member of the Oregon State Police;

39           (b) A sheriff, constable, marshal, municipal police officer or reserve officer as defined in ORS  
 40 133.005, or a police officer commissioned by a university under ORS 352.383 or 353.125;

41           (c) An investigator of the Criminal Justice Division of the Department of Justice or investigator  
 42 of a district attorney’s office;

43           (d) A humane special agent as defined in ORS 181.435;

44           (e) A liquor enforcement inspector exercising authority described in ORS 471.775 (2);

45           (f) An authorized tribal police officer as defined in section 1, chapter 644, Oregon Laws 2011;

1 and

2 (g) Any other person designated by law as a peace officer.

3 (5) "Person" means a human being and, where appropriate, a public or private corporation, an  
4 unincorporated association, a partnership, a government or a governmental instrumentality.

5 (6) "Physical force" includes, but is not limited to, the use of an electrical stun gun, tear gas  
6 or mace.

7 (7) "Physical injury" means **physical trauma**, impairment of physical condition or substantial  
8 pain.

9 **(8) "Physical trauma" includes but is not limited to fractures, cuts, punctures, bruises,**  
10 **discoloration, burns, swelling and other wounds, that a reasonable person could conclude**  
11 **cause impairment of physical condition or substantial pain.**

12 [(8)] (9) "Serious physical injury" means physical injury which creates a substantial risk of  
13 death or which causes serious and protracted disfigurement, protracted impairment of health or  
14 protracted loss or impairment of the function of any bodily organ.

15 [(9)] (10) "Possess" means to have physical possession or otherwise to exercise dominion or  
16 control over property.

17 [(10)] (11) "Public place" means a place to which the general public has access and includes,  
18 but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not consti-  
19 tuting rooms or apartments designed for actual residence, and highways, streets, schools, places of  
20 amusement, parks, playgrounds and premises used in connection with public passenger transporta-  
21 tion.

22 **SECTION 5.** ORS 161.015, as amended by section 46, chapter 644, Oregon Laws 2011, section  
23 17, chapter 54, Oregon Laws 2012, section 10, chapter 67, Oregon Laws 2012, and section 24, chapter  
24 180, Oregon Laws 2013, is amended to read:

25 161.015. As used in chapter 743, Oregon Laws 1971, and ORS 166.635, unless the context requires  
26 otherwise:

27 (1) "Dangerous weapon" means any weapon, device, instrument, material or substance which  
28 under the circumstances in which it is used, attempted to be used or threatened to be used, is  
29 readily capable of causing death or serious physical injury.

30 (2) "Deadly weapon" means any instrument, article or substance specifically designed for and  
31 presently capable of causing death or serious physical injury.

32 (3) "Deadly physical force" means physical force that under the circumstances in which it is  
33 used is readily capable of causing death or serious physical injury.

34 (4) "Peace officer" means:

35 (a) A member of the Oregon State Police;

36 (b) A sheriff, constable, marshal, municipal police officer or reserve officer as defined in ORS  
37 133.005, or a police officer commissioned by a university under ORS 352.383 or 353.125;

38 (c) An investigator of the Criminal Justice Division of the Department of Justice or investigator  
39 of a district attorney's office;

40 (d) A humane special agent as defined in ORS 181.435;

41 (e) A liquor enforcement inspector exercising authority described in ORS 471.775 (2); and

42 (f) Any other person designated by law as a peace officer.

43 (5) "Person" means a human being and, where appropriate, a public or private corporation, an  
44 unincorporated association, a partnership, a government or a governmental instrumentality.

45 (6) "Physical force" includes, but is not limited to, the use of an electrical stun gun, tear gas

1 or mace.

2 (7) "Physical injury" means **physical trauma**, impairment of physical condition or substantial  
3 pain.

4 (8) "**Physical trauma**" includes but is not limited to fractures, cuts, punctures, bruises,  
5 **discoloration, burns, swelling and other wounds, that a reasonable person could conclude**  
6 **cause impairment of physical condition or substantial pain.**

7 [(8)] (9) "Serious physical injury" means physical injury which creates a substantial risk of  
8 death or which causes serious and protracted disfigurement, protracted impairment of health or  
9 protracted loss or impairment of the function of any bodily organ.

10 [(9)] (10) "Possess" means to have physical possession or otherwise to exercise dominion or  
11 control over property.

12 [(10)] (11) "Public place" means a place to which the general public has access and includes,  
13 but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not consti-  
14 tuting rooms or apartments designed for actual residence, and highways, streets, schools, places of  
15 amusement, parks, playgrounds and premises used in connection with public passenger transporta-  
16 tion.

17 **SECTION 6.** ORS 131.315 is amended to read:

18 131.315. (1) If conduct constituting elements of an offense or results constituting elements of an  
19 offense occur in two or more counties, trial of the offense may be held in any of the counties con-  
20 cerned.

21 (2) If a cause of death is inflicted on a person in one county and the person dies therefrom in  
22 another county, trial of the offense may be held in either county.

23 (3) If the commission of an offense commenced outside this state is consummated within this  
24 state, trial of the offense shall be held in the county in which the offense is consummated or the  
25 interest protected by the criminal statute in question is impaired.

26 (4) If an offense is committed on any body of water located in, or adjacent to, two or more  
27 counties or forming the boundary between two or more counties, trial of the offense may be held in  
28 any nearby county bordering on the body of water.

29 (5) If an offense is committed in or upon any railroad car, vehicle, aircraft, boat or other  
30 conveyance in transit and it cannot readily be determined in which county the offense was com-  
31 mitted, trial of the offense may be held in any county through or over which the conveyance passed.

32 (6) If an offense is committed on the boundary of two or more counties or within one mile  
33 thereof, trial of the offense may be held in any of the counties concerned.

34 (7) A person who commits theft, burglary or robbery may be tried in any county in which the  
35 person exerts control over the property that is the subject of the crime.

36 (8) If the offense is an attempt or solicitation to commit a crime, trial of the offense may be held  
37 in any county in which any act that is an element of the offense is committed.

38 (9) If the offense is criminal conspiracy, trial of the offense may be held in any county in which  
39 any act or agreement that is an element of the offense occurs.

40 (10) A person who in one county commits an inchoate offense that results in the commission of  
41 an offense by another person in another county, or who commits the crime of hindering prosecution  
42 of the principal offense, may be tried in either county.

43 (11) A criminal nonsupport action may be tried in any county in which the dependent child is  
44 found, irrespective of the domicile of the parent, guardian or other person lawfully charged with  
45 support of the child.

1 (12) If the offense is theft, forgery or identity theft and the offense consists of an aggregate  
 2 transaction involving more than one county, trial of the offense may be held in any county in which  
 3 one of the acts of theft, forgery or identity theft was committed.

4 (13) When a prosecution is for violation of the Oregon Securities Law, the trial of the offense  
 5 may be held in the county in which:

6 (a) The offer to purchase or sell securities took place or where the sale or purchase of securities  
 7 took place; or

8 (b) Any act that is an element of the offense occurred.

9 (14) When a prosecution under ORS 165.692 and 165.990 or 411.675 and 411.990 (2) and (3) in-  
 10 volves Medicaid funds, the trial of the offense may be held in the county in which the claim was  
 11 submitted for payment or in the county in which the claim was paid.

12 (15)(a) If the offense is stalking under ORS 163.732 and involves contacts as defined in ORS  
 13 163.730 in more than one county, trial of the offense may be held in any county in which a contact  
 14 occurred.

15 (b) If the offense is violating a court's stalking protective order under ORS 163.750, trial of the  
 16 offense may be held in the county in which the defendant engaged in conduct prohibited by the order  
 17 or in the county in which the order was issued.

18 **(16) If there are two or more offenses involving domestic violence as defined in ORS**  
 19 **135.230, abuse as defined in ORS 107.705 or 419B.005 or abuse of an elderly person as those**  
 20 **terms are defined in ORS 124.050, and each offense is alleged to have occurred between the**  
 21 **same defendant and victim and could otherwise be properly joined under ORS 132.560, trial**  
 22 **of the offenses may be held in any county in which one of the offenses was committed.**

23 **SECTION 7.** ORS 163.275 is amended to read:

24 163.275. (1) A person commits the crime of coercion when the person compels or induces another  
 25 person to engage in conduct from which the other person has a legal right to abstain, or to abstain  
 26 from engaging in conduct in which the other person has a legal right to engage, by means of in-  
 27 stilling in the other person a fear that, if the other person refrains from the conduct compelled or  
 28 induced or engages in conduct contrary to the compulsion or inducement, the actor or another will:

29 (a) Unlawfully cause physical injury to some person;

30 **(b) Unlawfully cause physical injury to some animal;**

31 [(b)] (c) Unlawfully cause damage to property;

32 [(c)] (d) Engage in conduct constituting a crime;

33 [(d)] (e) Falsely accuse some person of a crime or cause criminal charges to be instituted against  
 34 the person;

35 [(e)] (f) Cause or continue a strike, boycott or other collective action injurious to some person's  
 36 business, except that such a threat is not deemed coercive when the act or omission compelled is  
 37 for the benefit of the group in whose interest the actor purports to act;

38 [(f)] (g) Testify falsely or provide false information or withhold testimony or information with  
 39 respect to another's legal claim or defense; or

40 [(g)] (h) Unlawfully use or abuse the person's position as a public servant by performing some  
 41 act within or related to official duties, or by failing or refusing to perform an official duty, in such  
 42 manner as to affect some person adversely.

43 (2) Coercion is a Class C felony.

44 **SECTION 8.** ORS 40.460 is amended to read:

45 40.460. The following are not excluded by ORS 40.455, even though the declarant is available

1 as a witness:

2 (1) (Reserved.)

3 (2) A statement relating to a startling event or condition made while the declarant was under  
4 the stress of excitement caused by the event or condition.

5 (3) A statement of the declarant's then existing state of mind, emotion, sensation or physical  
6 condition, such as intent, plan, motive, design, mental feeling, pain or bodily health, but not includ-  
7 ing a statement of memory or belief to prove the fact remembered or believed unless it relates to  
8 the execution, revocation, identification, or terms of the declarant's will.

9 (4) Statements made for purposes of medical diagnosis or treatment and describing medical his-  
10 tory, or past or present symptoms, pain or sensations, or the inception or general character of the  
11 cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

12 (5) A memorandum or record concerning a matter about which a witness once had knowledge  
13 but now has insufficient recollection to enable the witness to testify fully and accurately, shown to  
14 have been made or adopted by the witness when the matter was fresh in the memory of the witness  
15 and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into  
16 evidence but may not itself be received as an exhibit unless offered by an adverse party.

17 (6) A memorandum, report, record, or data compilation, in any form, of acts, events, conditions,  
18 opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person  
19 with knowledge, if kept in the course of a regularly conducted business activity, and if it was the  
20 regular practice of that business activity to make the memorandum, report, record, or data compi-  
21 lation, all as shown by the testimony of the custodian or other qualified witness, unless the source  
22 of information or the method of circumstances of preparation indicate lack of trustworthiness. The  
23 term "business" as used in this subsection includes business, institution, association, profession, oc-  
24 cupation, and calling of every kind, whether or not conducted for profit.

25 (7) Evidence that a matter is not included in the memoranda, reports, records, or data compila-  
26 tions, and in any form, kept in accordance with the provisions of subsection (6) of this section, to  
27 prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a  
28 memorandum, report, record, or data compilation was regularly made and preserved, unless the  
29 sources of information or other circumstances indicate lack of trustworthiness.

30 (8) Records, reports, statements or data compilations, in any form, of public offices or agencies,  
31 including federally recognized American Indian tribal governments, setting forth:

32 (a) The activities of the office or agency;

33 (b) Matters observed pursuant to duty imposed by law as to which matters there was a duty to  
34 report, excluding, in criminal cases, matters observed by police officers and other law enforcement  
35 personnel;

36 (c) In civil actions and proceedings and against the government in criminal cases, factual  
37 findings, resulting from an investigation made pursuant to authority granted by law, unless the  
38 sources of information or other circumstances indicate lack of trustworthiness; or

39 (d) In civil actions and criminal proceedings, a sheriff's return of service.

40 (9) Records or data compilations, in any form, of births, fetal deaths, deaths or marriages, if the  
41 report thereof was made to a public office, including a federally recognized American Indian tribal  
42 government, pursuant to requirements of law.

43 (10) To prove the absence of a record, report, statement or data compilation, in any form, or the  
44 nonoccurrence or nonexistence of a matter of which a record, report, statement or data compilation,  
45 in any form, was regularly made and preserved by a public office or agency, including a federally

1 recognized American Indian tribal government, evidence in the form of a certification in accordance  
 2 with ORS 40.510, or testimony, that diligent search failed to disclose the record, report, statement  
 3 or data compilation, or entry.

4 (11) Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood  
 5 or marriage, or other similar facts of personal or family history, contained in a regularly kept record  
 6 of a religious organization.

7 (12) A statement of fact contained in a certificate that the maker performed a marriage or other  
 8 ceremony or administered a sacrament, made by a member of the clergy, a public official, an official  
 9 of a federally recognized American Indian tribal government or any other person authorized by the  
 10 rules or practices of a religious organization or by law to perform the act certified, and purporting  
 11 to have been issued at the time of the act or within a reasonable time thereafter.

12 (13) Statements of facts concerning personal or family history contained in family bibles,  
 13 genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts,  
 14 or tombstones, or the like.

15 (14) The record of a document purporting to establish or affect an interest in property, as proof  
 16 of content of the original recorded document and its execution and delivery by each person by whom  
 17 it purports to have been executed, if the record is a record of a public office, including a federally  
 18 recognized American Indian tribal government, and an applicable statute authorizes the recording  
 19 of documents of that kind in that office.

20 (15) A statement contained in a document purporting to establish or affect an interest in prop-  
 21 erty if the matter stated was relevant to the purpose of the document, unless dealings with the  
 22 property since the document was made have been inconsistent with the truth of the statement or  
 23 the purport of the document.

24 (16) Statements in a document in existence 20 years or more the authenticity of which is es-  
 25 tablished.

26 (17) Market quotations, tabulations, lists, directories, or other published compilations, generally  
 27 used and relied upon by the public or by persons in particular occupations.

28 (18) (Reserved.)

29 (18a)(a) A complaint of sexual misconduct, complaint of abuse as defined in ORS 107.705 or  
 30 419B.005, complaint of abuse of an elderly person, as those terms are defined in ORS 124.050, or a  
 31 complaint relating to a violation of ORS 163.205 or 164.015 in which a person 65 years of age or  
 32 older is the victim, made by the witness after the commission of the alleged misconduct or abuse  
 33 at issue. Except as provided in paragraph (b) of this subsection, such evidence must be confined to  
 34 the fact that the complaint was made.

35 (b) A statement made by a person concerning an act of abuse as defined in ORS 107.705 or  
 36 419B.005, a statement made by a person concerning an act of abuse of an elderly person, as those  
 37 terms are defined in ORS 124.050, or a statement made by a person concerning a violation of ORS  
 38 163.205 or 164.015 in which a person 65 years of age or older is the victim, is not excluded by ORS  
 39 40.455 if the declarant either testifies at the proceeding and is subject to cross-examination, or is  
 40 unavailable as a witness but was chronologically or mentally under 12 years of age when the  
 41 statement was made or was 65 years of age or older when the statement was made. However, if a  
 42 declarant is unavailable, the statement may be admitted in evidence only if the proponent estab-  
 43 lishes that the time, content and circumstances of the statement provide indicia of reliability, and  
 44 in a criminal trial that there is corroborative evidence of the act of abuse and of the alleged  
 45 perpetrator's opportunity to participate in the conduct and that the statement possesses indicia of

1 reliability as is constitutionally required to be admitted. No statement may be admitted under this  
 2 paragraph unless the proponent of the statement makes known to the adverse party the proponent's  
 3 intention to offer the statement and the particulars of the statement no later than 15 days before  
 4 trial, except for good cause shown. For purposes of this paragraph, in addition to those situations  
 5 described in ORS 40.465 (1), the declarant shall be considered "unavailable" if the declarant has a  
 6 substantial lack of memory of the subject matter of the statement, is presently incompetent to tes-  
 7 tify, is unable to communicate about the abuse or sexual conduct because of fear or other similar  
 8 reason or is substantially likely, as established by expert testimony, to suffer lasting severe emo-  
 9 tional trauma from testifying. Unless otherwise agreed by the parties, the court shall examine the  
 10 declarant in chambers and on the record or outside the presence of the jury and on the record. The  
 11 examination shall be conducted immediately prior to the commencement of the trial in the presence  
 12 of the attorney and the legal guardian or other suitable person as designated by the court. If the  
 13 declarant is found to be unavailable, the court shall then determine the admissibility of the evidence.  
 14 The determinations shall be appealable under ORS 138.060 (1)(c) or (2)(a). The purpose of the ex-  
 15 amination shall be to aid the court in making its findings regarding the availability of the declarant  
 16 as a witness and the reliability of the statement of the declarant. In determining whether a state-  
 17 ment possesses indicia of reliability under this paragraph, the court may consider, but is not limited  
 18 to, the following factors:

19 (A) The personal knowledge of the declarant of the event;

20 (B) The age and maturity of the declarant or extent of disability if the declarant is a person  
 21 with a developmental disability;

22 (C) Certainty that the statement was made, including the credibility of the person testifying  
 23 about the statement and any motive the person may have to falsify or distort the statement;

24 (D) Any apparent motive the declarant may have to falsify or distort the event, including bias,  
 25 corruption or coercion;

26 (E) The timing of the statement of the declarant;

27 (F) Whether more than one person heard the statement;

28 (G) Whether the declarant was suffering pain or distress when making the statement;

29 (H) Whether the declarant's young age or disability makes it unlikely that the declarant fabri-  
 30 cated a statement that represents a graphic, detailed account beyond the knowledge and experience  
 31 of the declarant;

32 (I) Whether the statement has internal consistency or coherence and uses terminology appro-  
 33 priate to the declarant's age or to the extent of the declarant's disability if the declarant is a person  
 34 with a developmental disability;

35 (J) Whether the statement is spontaneous or directly responsive to questions; and

36 (K) Whether the statement was elicited by leading questions.

37 (c) This subsection applies to all civil, criminal and juvenile proceedings.

38 (d) This subsection applies to a child declarant, a declarant who is an elderly person as defined  
 39 in ORS 124.050 or an adult declarant with a developmental disability. For the purposes of this sub-  
 40 section, "developmental disability" means any disability attributable to mental retardation, autism,  
 41 cerebral palsy, epilepsy or other disabling neurological condition that requires training or support  
 42 similar to that required by persons with mental retardation, if either of the following apply:

43 (A) The disability originates before the person attains 22 years of age, or if the disability is at-  
 44 tributable to mental retardation the condition is manifested before the person attains 18 years of  
 45 age, the disability can be expected to continue indefinitely, and the disability constitutes a sub-

1   stantial handicap to the ability of the person to function in society.

2       (B) The disability results in a significant subaverage general intellectual functioning with con-  
3   current deficits in adaptive behavior that are manifested during the developmental period.

4       (19) Reputation among members of a person's family by blood, adoption or marriage, or among  
5   a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce,  
6   death, legitimacy, relationship by blood or adoption or marriage, ancestry, or other similar fact of  
7   a person's personal or family history.

8       (20) Reputation in a community, arising before the controversy, as to boundaries of or customs  
9   affecting lands in the community, and reputation as to events of general history important to the  
10   community or state or nation in which located.

11       (21) Reputation of a person's character among associates of the person or in the community.

12       (22) Evidence of a final judgment, entered after a trial or upon a plea of guilty, but not upon a  
13   plea of no contest, adjudging a person guilty of a crime other than a traffic offense, to prove any  
14   fact essential to sustain the judgment, but not including, when offered by the government in a  
15   criminal prosecution for purposes other than impeachment, judgments against persons other than the  
16   accused. The pendency of an appeal may be shown but does not affect admissibility.

17       (23) Judgments as proof of matters of personal, family or general history, or boundaries, essen-  
18   tial to the judgment, if the same would be provable by evidence of reputation.

19       (24) Notwithstanding the limits contained in subsection (18a) of this section, in any proceeding  
20   in which a child under 12 years of age at the time of trial, or a person with a developmental disa-  
21   bility as described in subsection (18a)(d) of this section, may be called as a witness to testify con-  
22   cerning an act of abuse, as defined in ORS 419B.005, or sexual conduct performed with or on the  
23   child or person with a developmental disability by another, the testimony of the child or person with  
24   a developmental disability taken by contemporaneous examination and cross-examination in another  
25   place under the supervision of the trial judge and communicated to the courtroom by closed-circuit  
26   television or other audiovisual means. Testimony will be allowed as provided in this subsection only  
27   if the court finds that there is a substantial likelihood, established by expert testimony, that the  
28   child or person with a developmental disability will suffer severe emotional or psychological harm  
29   if required to testify in open court. If the court makes such a finding, the court, on motion of a  
30   party, the child, the person with a developmental disability or the court in a civil proceeding, or on  
31   motion of the district attorney, the child or the person with a developmental disability in a criminal  
32   or juvenile proceeding, may order that the testimony of the child or the person with a developmental  
33   disability be taken as described in this subsection. Only the judge, the attorneys for the parties, the  
34   parties, individuals necessary to operate the equipment and any individual the court finds would  
35   contribute to the welfare and well-being of the child or person with a developmental disability may  
36   be present during the testimony of the child or person with a developmental disability.

37       (25)(a) Any document containing data prepared or recorded by the Oregon State Police pursuant  
38   to ORS 813.160 (1)(b)(C) or (E), or pursuant to ORS 475.235 (4), if the document is produced by data  
39   retrieval from the Law Enforcement Data System or other computer system maintained and operated  
40   by the Oregon State Police, and the person retrieving the data attests that the information was re-  
41   trieved directly from the system and that the document accurately reflects the data retrieved.

42       (b) Any document containing data prepared or recorded by the Oregon State Police that is  
43   produced by data retrieval from the Law Enforcement Data System or other computer system  
44   maintained and operated by the Oregon State Police and that is electronically transmitted through  
45   public or private computer networks under an electronic signature adopted by the Oregon State

1 Police if the person receiving the data attests that the document accurately reflects the data re-  
 2 ceived.

3 (c) Notwithstanding any statute or rule to the contrary, in any criminal case in which docu-  
 4 ments are introduced under the provisions of this subsection, the defendant may subpoena the ana-  
 5 lyst, as defined in ORS 475.235 (6), or other person that generated or keeps the original document  
 6 for the purpose of testifying at the preliminary hearing and trial of the issue. Except as provided  
 7 in ORS 44.550 to 44.566, no charge shall be made to the defendant for the appearance of the analyst  
 8 or other person.

9 (26)(a) A statement that purports to narrate, describe, report or explain an incident of domestic  
 10 violence, as defined in ORS 135.230, made by a victim of the domestic violence within 24 hours after  
 11 the incident occurred, if the statement:

12 (A) Was recorded, either electronically or in writing, or was made to a peace officer as defined  
 13 in ORS 161.015, corrections officer, youth correction officer, parole and probation officer, emergency  
 14 medical services provider or firefighter; and

15 (B) Has sufficient indicia of reliability.

16 (b) In determining whether a statement has sufficient indicia of reliability under paragraph (a)  
 17 of this subsection, the court shall consider all circumstances surrounding the statement. The court  
 18 may consider, but is not limited to, the following factors in determining whether a statement has  
 19 sufficient indicia of reliability:

20 (A) The personal knowledge of the declarant.

21 (B) Whether the statement is corroborated by evidence other than statements that are subject  
 22 to admission only pursuant to this subsection.

23 (C) The timing of the statement.

24 (D) Whether the statement was elicited by leading questions.

25 (E) Subsequent statements made by the declarant. Recantation by a declarant is not sufficient  
 26 reason for denying admission of a statement under this subsection in the absence of other factors  
 27 indicating unreliability.

28 (27) A report prepared by a forensic scientist that contains the results of a presumptive test  
 29 conducted by the forensic scientist as described in ORS 475.235, if the forensic scientist attests that  
 30 the report accurately reflects the results of the presumptive test.

31 **(28) An audio recording of a declarant translating a statement made by a witness in a**  
 32 **criminal matter from a foreign language to English, provided that:**

33 **(a) The declarant is an interpreter certified under ORS 45.291; and**

34 **(b) The declarant certifies or declares on the audio recording that the translated state-**  
 35 **ment is a true and accurate translation of the witness's statement made to the best of the**  
 36 **declarant's ability.**

37 [(28)(a)] **(29)(a)** A statement not specifically covered by any of the foregoing exceptions but  
 38 having equivalent circumstantial guarantees of trustworthiness, if the court determines that:

39 (A) The statement is relevant;

40 (B) The statement is more probative on the point for which it is offered than any other evidence  
 41 that the proponent can procure through reasonable efforts; and

42 (C) The general purposes of the Oregon Evidence Code and the interests of justice will best be  
 43 served by admission of the statement into evidence.

44 (b) A statement may not be admitted under this subsection unless the proponent of it makes  
 45 known to the adverse party the intention to offer the statement and the particulars of it, including

1 the name and address of the declarant, sufficiently in advance of the trial or hearing, or as soon as  
 2 practicable after it becomes apparent that such statement is probative of the issues at hand, to  
 3 provide the adverse party with a fair opportunity to prepare to meet it.

4 **SECTION 9. Notwithstanding any other provision of law, in a criminal prosecution, an**  
 5 **audio recording of an interpreter translating a statement made by a witness from a foreign**  
 6 **language to English that complies with ORS 40.460 (28) shall be considered authenticated and**  
 7 **is admissible as evidence without calling the interpreter as a witness, unless the defendant**  
 8 **has filed a written objection within 30 days after receiving the audio recording.**

9 **SECTION 10. (1) A peace officer may apply to a circuit court judge for an ex parte**  
 10 **emergency protective order when the peace officer has probable cause to believe:**

11 (a)(A) A person is in imminent danger of domestic violence as defined in ORS 135.230,  
 12 based on an allegation of a recent incident of abuse or threat of abuse by the respondent;

13 (B) A child is in imminent danger of being abducted by the respondent who is a parent  
 14 or other relative of the child, based on a reasonable belief that the respondent has an intent  
 15 to abduct the child or flee with the child from the jurisdiction or based on an allegation of  
 16 a recent threat to abduct the child or flee with the child from the jurisdiction; or

17 (C) An elderly person or person with a disability is in imminent danger of abuse as de-  
 18 fined in ORS 124.005 (1)(a) to (e) or (h) based on an allegation of a recent incident of abuse  
 19 or threat of abuse by the respondent; and

20 (b) An emergency protective order is necessary to prevent a person from being abducted  
 21 or suffering the occurrence or recurrence of domestic violence or abuse.

22 (2)(a) An application for an emergency protective order described in subsection (1) of this  
 23 section must consist of a proposed emergency protective order and an affidavit setting forth  
 24 the facts and circumstances underlying entry of the order.

25 (b) Instead of the affidavit described in paragraph (a) of this subsection, a peace officer  
 26 may provide to the circuit court judge an oral statement under oath. The oral statement  
 27 shall be recorded and a copy of the recording submitted to the judge who took the oral  
 28 statement. In such cases, the judge shall certify that the recording of the sworn oral state-  
 29 ment is a true recording of the sworn oral statement and shall retain the recording as part  
 30 of the record of proceedings for the issuance of the emergency protective order. The re-  
 31 cording constitutes an affidavit for the purposes of this section.

32 (c) The proposed emergency protective order and the affidavit may be sent to the court  
 33 by electronic transmission that delivers a complete printable image of the order and signed  
 34 affidavit.

35 (3) Upon examination of the application and any additional evidence offered, a circuit  
 36 court may enter an emergency protective order if the court finds there is probable cause to  
 37 believe that:

38 (a)(A) A person is in imminent danger of domestic violence as defined in ORS 135.230,  
 39 based on an allegation of a recent incident of abuse or threat of abuse by the respondent;

40 (B) A child is in imminent danger of being abducted by the respondent who is a parent  
 41 or other relative of the child, based on a reasonable belief that the respondent has an intent  
 42 to abduct the child or flee with the child from the jurisdiction or based on an allegation of  
 43 a recent threat to abduct the child or flee with the child from the jurisdiction; or

44 (C) An elderly person or person with a disability is in imminent danger of abuse as de-  
 45 fined in ORS 124.005 (1)(a) to (e) or (h) based on an allegation of a recent incident of abuse

1 or threat of abuse by the respondent; and

2 (b) An emergency protective order is necessary to prevent a person from being abducted  
3 or suffering the occurrence or recurrence of domestic violence or abuse.

4 (4) An emergency protective order entered under subsection (3) of this section must:

5 (a) Restrain the respondent from contacting the person protected by the order and from  
6 intimidating, molesting, interfering with or menacing the person, or attempting to intim-  
7 idate, molest, interfere with or menace the person.

8 (b) Determine the temporary custody of any minor child of the person protected by the  
9 order and the respondent, if applicable.

10 (c) Determine the temporary custody of the child at risk of abuse or abduction and any  
11 other minor children in the family or household of the child at risk of abuse or abduction,  
12 if applicable.

13 (d) Include the following information:

14 (A) Findings of probable cause authorizing issuance of the order;

15 (B) The address of the circuit court for the county in which the person protected by the  
16 order resides; and

17 (C) The date and time that the order expires.

18 (5) The court shall also include in an emergency protective order entered under sub-  
19 section (3) of this section the following information, in both English and Spanish, in sub-  
20 stantially the following form:

21 \_\_\_\_\_

22  
23 **TO THE PROTECTED PERSON:**

24 **To the person protected by this order: This order will last only until the date and time noted**  
25 **above. If you wish to seek continuing protection, or a more permanent custody order, you**  
26 **will have to apply for an order from the court at the address on this order. You may seek**  
27 **the advice of an attorney as to any matter connected with your application for any future**  
28 **court orders. The attorney should be consulted promptly so that the attorney may assist you**  
29 **in making your application.**

30 **TO THE RESTRAINED PERSON:**

31 **This order will last only until the date and time noted above. The protected person, however,**  
32 **may obtain a more permanent order from the court. You may seek the advice of an attorney**  
33 **as to any matter connected with the application for a future court order. The attorney**  
34 **should be consulted promptly so that the attorney may assist you in responding to the ap-**  
35 **plication.**

36 \_\_\_\_\_

37  
38 (6) If the circuit court enters an emergency protective order under subsection (3) of this  
39 section:

40 (a) The clerk of the court shall provide, without charge, the number of certified true  
41 copies of the application and the emergency protective order necessary to provide the person  
42 protected by the order with one copy and to provide the peace officer who applied for the  
43 order with two copies.

44 (b) The peace officer who applied for the emergency protective order shall serve the re-  
45 spondent personally. Upon completion of service, the peace officer shall prepare an affidavit

1 of proof of service verifying that the emergency protective order was served personally on  
 2 the respondent, file a copy of the affidavit with the court and enter the order into the Law  
 3 Enforcement Data System maintained by the Department of State Police.

4 (c) If the peace officer cannot complete service within one day of the emergency protec-  
 5 tive order’s entry, the peace officer shall notify the court that the documents have not been  
 6 served.

7 (7) Entry into the Law Enforcement Data System constitutes notice to all law enforce-  
 8 ment agencies of the existence of the emergency protective order. Law enforcement agencies  
 9 shall establish procedures adequate to ensure that an officer at the scene of an alleged vio-  
 10 lation of the emergency protective order may be informed of the existence and terms of the  
 11 order. The emergency protective order is fully enforceable in any county or tribal land in this  
 12 state.

13 (8) An emergency protective order expires at the close of judicial business on the fifth  
 14 day following the day of its entry. At the expiration of the emergency protective order, the  
 15 peace officer who applied for the order shall promptly remove the original order from the  
 16 Law Enforcement Data System.

17 (9)(a) A contempt proceeding for an alleged violation of an emergency protective order  
 18 must be conducted by the circuit court that issued the order or by the circuit court for the  
 19 county in which the alleged violation of the order occurred.

20 (b) Pending a contempt hearing for an alleged violation of an emergency protective order,  
 21 a person arrested and taken into custody pursuant to ORS 133.310 may be released as pro-  
 22 vided in ORS 135.230 to 135.290.

23 (10) The presiding judge of the circuit court in each county shall designate at least one  
 24 judge to be reasonably available to enter, in person or by electronic transmission, ex parte  
 25 emergency protective orders at all times whether or not the court is in session.

26 (11) As used in this section, “peace officer” has the meaning given that term in ORS  
 27 161.015.

28 **SECTION 11.** ORS 133.310 is amended to read:

29 133.310. (1) A peace officer may arrest a person without a warrant if the officer has probable  
 30 cause to believe that the person has committed any of the following:

31 (a) A felony.

32 (b) A misdemeanor.

33 (c) An unclassified offense for which the maximum penalty allowed by law is equal to or greater  
 34 than the maximum penalty allowed for a Class C misdemeanor.

35 (d) Any other crime committed in the officer’s presence.

36 (2) A peace officer may arrest a person without a warrant when the peace officer is notified by  
 37 telegraph, telephone, radio or other mode of communication by another peace officer of any state  
 38 that there exists a duly issued warrant for the arrest of a person within the other peace officer’s  
 39 jurisdiction.

40 (3) A peace officer shall arrest and take into custody a person without a warrant when the  
 41 peace officer has probable cause to believe that:

42 (a) There exists an order issued pursuant to ORS 30.866, 107.095 (1)(c) or (d), 107.716, 107.718,  
 43 124.015, 124.020, 163.738, 163.765, 163.767 or 419B.845 or **section 10 of this 2015 Act** restraining the  
 44 person;

45 (b) A true copy of the order and proof of service on the person has been filed as required in

1 ORS 107.720, 124.030, 163.741, 163.773 or 419B.845 or **section 10 of this 2015 Act**; and

2 (c) The person to be arrested has violated the terms of that order.

3 (4) A peace officer shall arrest and take into custody a person without a warrant if:

4 (a) The person protected by a foreign restraining order as defined by ORS 24.190 presents a copy  
5 of the foreign restraining order to the officer and represents to the officer that the order supplied  
6 is the most recent order in effect between the parties and that the person restrained by the order  
7 has been personally served with a copy of the order or has actual notice of the order; and

8 (b) The peace officer has probable cause to believe that the person to be arrested has violated  
9 the terms of the foreign restraining order.

10 (5) A peace officer shall arrest and take into custody a person without a warrant if:

11 (a) The person protected by a foreign restraining order as defined by ORS 24.190 has filed a copy  
12 of the foreign restraining order with a court or has been identified by the officer as a party pro-  
13 tected by a foreign restraining order entered in the Law Enforcement Data System or in the data-  
14 bases of the National Crime Information Center of the United States Department of Justice; and

15 (b) The peace officer has probable cause to believe that the person to be arrested has violated  
16 the terms of the foreign restraining order.

17 (6) A peace officer shall arrest and take into custody a person without a warrant if the peace  
18 officer has probable cause to believe:

19 (a) The person has been charged with an offense and is presently released as to that charge  
20 under ORS 135.230 to 135.290; and

21 (b) The person has failed to comply with a no contact condition of the release agreement.

22 **SECTION 12. In addition to and not in lieu of any other appropriation, there is appro-**  
23 **priated to \_\_\_\_\_, for the biennium beginning July 1, 2015, out of the General Fund, the**  
24 **amount of \$\_\_\_\_\_, which shall be used for the purposes of training, prosecuting crimes**  
25 **constituting domestic violence and implementing section 10 of this 2015 Act.**

26