

## HOUSE AMENDMENTS TO HOUSE BILL 2356

By COMMITTEE ON JUDICIARY

April 23

1 On page 1 of the printed bill, line 2, after “privacy;” delete the rest of the line and insert  
2 “creating new provisions; and amending ORS 131.125, 135.873, 163.700, 163.702, 181.803, 181.805 and  
3 443.004.”.

4 Delete lines 4 through 29.

5 On page 2, delete lines 1 through 11 and insert:

6 “**SECTION 1.** ORS 163.700 is amended to read:

7 “163.700. (1) Except as provided in ORS 163.702, a person commits the crime of invasion of  
8 personal privacy **in the second degree** if:

9 “[*(a)(A) The person knowingly makes or records a photograph, motion picture, videotape or other*  
10 *visual recording of another person in a state of nudity without the consent of the person being recorded;*  
11 *and]*

12 “[*(B) At the time the visual recording is made or recorded the person being recorded is in a place*  
13 *and circumstances where the person has a reasonable expectation of personal privacy; or]*

14 “[*(b)(A) (a)(A) For the purpose of arousing or gratifying the sexual desire of the person, the*  
15 *person is in a location to observe another person in a state of nudity without the consent of the*  
16 *other person; and*

17 “[*(B) The other person is in a place and circumstances where the person has a reasonable ex-*  
18 *pectation of personal privacy[.]; or*

19 “[**(b)(A) The person knowingly makes or records a photograph, motion picture, videotape**  
20 **or other visual recording of another person’s intimate area without the consent of the other**  
21 **person; and**

22 “[**(B) The person being recorded has a reasonable expectation of privacy concerning the**  
23 **intimate area.**

24 “(2) As used in this section **and section 2 of this 2015 Act:**

25 “[**(a) ‘Intimate area’ means nudity, or undergarments that are being worn by a person and**  
26 **are covered by clothing.**

27 “[*(a) (b) ‘Makes or records a photograph, motion picture, videotape or other visual recording’*  
28 *includes, but is not limited to, making or recording or employing, authorizing, permitting, compelling*  
29 *or inducing another person to make or record a photograph, motion picture, videotape or other*  
30 *visual recording.*

31 “[*(b) (c) ‘Nudity’ means any part of the uncovered or less than opaquely covered:*

32 “[*(A) Genitals;*

33 “[*(B) Pubic area; or*

34 “[*(C) Female breast below a point immediately above the top of the areola.*

35 “[*(c) (d) ‘Places and circumstances where the person has a reasonable expectation of personal*

1 privacy' includes, but is not limited to, a bathroom, dressing room, locker room that includes an  
2 enclosed area for dressing or showering, tanning booth and any area where a person undresses in  
3 an enclosed space that is not open to public view.

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

7 "(f) **'Reasonable expectation of privacy concerning the intimate area' means that the**  
8 **person intended to protect the intimate area from being seen and has not exposed the inti-**  
9 **mate area to public view.**

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

11 "**SECTION 2. (1) Except as provided in ORS 163.702, a person commits the crime of in-**  
12 **vasion of personal privacy in the first degree if:**

13 "(a)(A) **The person knowingly makes or records a photograph, motion picture, videotape**  
14 **or other visual recording of another person in a state of nudity without the consent of the**  
15 **other person; and**

16 "(B) **At the time the visual recording is made or recorded the person being recorded is**  
17 **in a place and circumstances where the person has a reasonable expectation of personal**  
18 **privacy; or**

19 "(b) **The person violates ORS 163.700 and, at the time of the offense, has a prior con-**  
20 **viction for:**

21 "(A) **Invasion of personal privacy in any degree, public indecency, private indecency or a**  
22 **sex crime as defined in ORS 181.805; or**

23 "(B) **the statutory counterpart of an offense described in subparagraph (A) of this para-**  
24 **graph in another jurisdiction.**

25 "(2)(a) **Invasion of personal privacy in the first degree is a Class C felony.**

26 "(b) **The Oregon Criminal Justice Commission shall classify invasion of personal privacy**  
27 **in the first degree as crime category 6 of the sentencing guidelines grid of the commission.**

28 "(3) **The court may designate invasion of personal privacy in the first degree as a sex**  
29 **crime under ORS 181.805 if the court finds that the circumstances of the offense require the**  
30 **defendant to register and report as a sex offender for the safety of the community."**

31 In line 12, delete "2" and insert "3".

32 On page 3, delete lines 20 and 21 and insert:

33 "(w) **Invasion of personal privacy in the first degree, if the court designates the offense as a sex**  
34 **crime pursuant to section 2 (3) of this 2015 Act;".**

35 In line 40, delete "3" and insert "4".

36 On page 4, after line 17, insert:

37 "**SECTION 5.** ORS 131.125 is amended to read:

38 "131.125. (1) **A prosecution for aggravated murder, murder, attempted murder or aggravated**  
39 **murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of**  
40 **manslaughter may be commenced at any time after the commission of the attempt, conspiracy or**  
41 **solicitation to commit aggravated murder or murder, or the death of the person killed.**

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

- 1 “(a) Strangulation under ORS 163.187 (4).
- 2 “(b) Criminal mistreatment in the first degree under ORS 163.205.
- 3 “(c) Rape in the third degree under ORS 163.355.
- 4 “(d) Rape in the second degree under ORS 163.365.
- 5 “(e) Rape in the first degree under ORS 163.375.
- 6 “(f) Sodomy in the third degree under ORS 163.385.
- 7 “(g) Sodomy in the second degree under ORS 163.395.
- 8 “(h) Sodomy in the first degree under ORS 163.405.
- 9 “(i) Unlawful sexual penetration in the second degree under ORS 163.408.
- 10 “(j) Unlawful sexual penetration in the first degree under ORS 163.411.
- 11 “(k) Sexual abuse in the second degree under ORS 163.425.
- 12 “(L) Sexual abuse in the first degree under ORS 163.427.
- 13 “(m) Using a child in a display of sexual conduct under ORS 163.670.
- 14 “(n) Encouraging child sexual abuse in the first degree under ORS 163.684.
- 15 “(o) Incest under ORS 163.525.
- 16 “(p) Promoting prostitution under ORS 167.012.
- 17 “(q) Compelling prostitution under ORS 167.017.
- 18 “(r) Luring a minor under ORS 167.057.
- 19 “(3) A prosecution for any of the following misdemeanors may be commenced within four years
- 20 after the commission of the crime or, if the victim at the time of the crime was under 18 years of
- 21 age, anytime before the victim attains 22 years of age or within four years after the offense is re-
- 22 ported to a law enforcement agency or the Department of Human Services, whichever occurs first:
- 23 “(a) Strangulation under ORS 163.187 (3).
- 24 “(b) Sexual abuse in the third degree under ORS 163.415.
- 25 “(c) Exhibiting an obscene performance to a minor under ORS 167.075.
- 26 “(d) Displaying obscene materials to minors under ORS 167.080.
- 27 “(4) In the case of crimes described in subsection (2)(m) of this section, the victim is the child
- 28 engaged in sexual conduct. In the case of the crime described in subsection (2)(o) of this section,
- 29 the victim is the party to the incest other than the party being prosecuted. In the case of crimes
- 30 described in subsection (2)(p) and (q) of this section, the victim is the child whose acts of
- 31 prostitution are promoted or compelled.
- 32 “(5) A prosecution for arson in any degree may be commenced within six years after the com-
- 33 mission of the crime.
- 34 “(6) A prosecution for any of the following felonies may be commenced within six years after
- 35 the commission of the crime if the victim at the time of the crime was 65 years of age or older:
- 36 “(a) Theft in the first degree under ORS 164.055.
- 37 “(b) Aggravated theft in the first degree under ORS 164.057.
- 38 “(c) Theft by extortion under ORS 164.075.
- 39 “(d) Robbery in the third degree under ORS 164.395.
- 40 “(e) Robbery in the second degree under ORS 164.405.
- 41 “(f) Robbery in the first degree under ORS 164.415.
- 42 “(g) Forgery in the first degree under ORS 165.013.
- 43 “(h) Fraudulent use of a credit card under ORS 165.055 (4)(b).
- 44 “(i) Identity theft under ORS 165.800.
- 45 “(7) Except as provided in subsection (8) of this section or as otherwise expressly provided by

1 law, prosecutions for other offenses must be commenced within the following periods of limitations  
2 after their commission:

3 “(a) For any other felony, three years.

4 “(b) For any misdemeanor, two years.

5 “(c) For a violation, six months.

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

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

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

17 “(c) If the offense is an invasion of personal privacy under ORS 163.700 **or section 2 of this**  
18 **2015 Act**, prosecution may be commenced within one year after discovery of the offense by the  
19 person aggrieved by the offense, by a person who has a legal duty to represent the person aggrieved  
20 by the offense or by a law enforcement agency, but in no case shall the period of limitation other-  
21 wise applicable be extended by more than three years.

22 “(9) Notwithstanding subsection (2) of this section, if the defendant is identified after the period  
23 described in subsection (2) of this section on the basis of DNA (deoxyribonucleic acid) sample com-  
24 parisons, a prosecution for:

25 “(a) Rape in the first degree, sodomy in the first degree, unlawful sexual penetration in the first  
26 degree or sexual abuse in the first degree may be commenced at any time after the commission of  
27 the crime.

28 “(b) Rape in the second degree, sodomy in the second degree or unlawful sexual penetration in  
29 the second degree may be commenced within 25 years after the commission of the crime.

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

33 “**SECTION 6.** ORS 135.873 is amended to read:

34 “135.873. (1) As used in this section:

35 “(a) ‘Local government’ has the meaning given that term in ORS 174.116.

36 “(b) ‘Sexual offense’ includes but is not limited to a sex crime as defined in ORS 181.805.

37 “(c) ‘State government’ has the meaning given that term in ORS 174.111.

38 “(d) ‘Victim’ has the meaning given that term in ORS 131.007.

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

41 “(3) Upon request of any party, the court may permit a showing of good cause for denial or  
42 regulation of disclosures, or portion of such showing, to be made in camera. A record shall be made  
43 of such proceedings.

44 “(4) If the court enters an order granting relief following a showing in camera, the entire record  
45 of the showing shall be sealed and preserved in the records of the court, to be made available to the

1 appellate court in the event of an appeal. Except for information or materials subject to an order  
2 that has been entered under subsection (5) or (6) of this section, the trial court, in its discretion,  
3 may, after the case has been concluded, unseal matters previously sealed.

4 “(5) Upon the request of a district attorney or the victim, the court shall enter a protective  
5 order prohibiting any party to or attorney in, or the agent of a party to or attorney in, criminal  
6 proceedings involving a sexual offense, an offense involving the visual or audio recording of sexual  
7 conduct by a child or invasion of personal privacy under ORS 163.700 **or section 2 of this 2015**  
8 **Act** from copying or disseminating any information of a sexually explicit nature including, but not  
9 limited to, photographs depicting a person in a state of nudity, photographs of human genitalia, any  
10 information of the prior sexual history of the victim and any visual or audio recording of the sexual  
11 victimization.

12 “(6) Upon the request of a district attorney or the victim, unless the court finds good cause to  
13 do otherwise, the court shall enter a protective order prohibiting any party to or attorney in, or the  
14 agent of a party to or attorney in, criminal proceedings involving a sexual offense, an offense in-  
15 volving the visual or audio recording of sexual conduct by a child or invasion of personal privacy  
16 under ORS 163.700 **or section 2 of this 2015 Act** from copying or disseminating a visual or audio  
17 recording of the victim describing the victim’s sexual victimization.

18 “(7) Notwithstanding a protective order entered under subsection (5) or (6) of this section, in-  
19 formation or materials described in subsections (5) and (6) may be copied or disseminated for the  
20 purpose of:

21 “(a) Providing discovery;

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

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

26 “(d) Providing copies of the information or materials to the parties’ attorneys or agents; or

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

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

31 “**SECTION 7.** ORS 163.702 is amended to read:

32 “163.702. (1) The provisions of ORS 163.700 **and section 2 of this 2015 Act** do not apply to:

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

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

39 “(2) The provisions of [ORS 163.700 (1)(a)] **section 2 (1)(a) of this 2015 Act** do not apply to a  
40 visual recording of a person under 12 years of age if:

41 “(a) The person who makes or records the visual recording is the father, mother, sibling,  
42 grandparent, aunt, uncle or first cousin, by blood, adoption or marriage, of the person under 12 years  
43 of age; and

44 “(b) The visual recording is made or recorded for a purpose other than arousing or gratifying  
45 the sexual desire of the person or another person.

1           “**SECTION 8.** ORS 443.004 is amended to read:  
2           “443.004. (1) The Department of Human Services or the Oregon Health Authority shall complete  
3 a criminal records check under ORS 181.534 on:  
4           “(a) An employee of a residential facility or an adult foster home;  
5           “(b) Any individual who is paid directly or indirectly with public funds who has or will have  
6 contact with a recipient of support services or a resident of an adult foster home or a residential  
7 facility; and  
8           “(c) A home care worker registering with the Home Care Commission or renewing a registration  
9 with the Home Care Commission.  
10          “(2)(a) A home health agency shall conduct a criminal background check before hiring or con-  
11 tracting with an individual and before allowing an individual to volunteer to provide services on  
12 behalf of the home health agency, if the individual will have direct contact with a patient of the  
13 home health agency.  
14          “(b) An in-home care agency shall conduct a criminal background check before hiring or con-  
15 tracting with an individual and before allowing an individual to volunteer to provide services on  
16 behalf of the in-home care agency, if the individual will have direct contact with a client of the in-  
17 home care agency.  
18          “(c) The authority shall prescribe by rule the process for conducting a criminal background  
19 check.  
20          “(3) Public funds may not be used to support, in whole or in part, the employment in any ca-  
21 pacity having contact with a recipient of support services or a resident of a residential facility or  
22 an adult foster home, of an individual, other than a mental health or substance abuse treatment  
23 provider, who has been convicted:  
24          “(a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,  
25 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,  
26 163.467, 163.535, 163.537, 163.547, 163.689, 163.700, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d),  
27 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032, 165.800, 165.803,  
28 167.012, 167.017, 167.057, 167.320 or 167.322 **or section 2 of this 2015 Act**;  
29          “(b) Notwithstanding paragraph (a) of this subsection, of a crime described in ORS 163.465,  
30 163.467, 163.700, 164.055, 164.125 or 164.377 **or section 2 of this 2015 Act**, the date of conviction for  
31 which was within the five years immediately preceding employment in any capacity of an individual,  
32 other than a mental health or substance abuse treatment provider, having contact with a recipient  
33 of support services, a resident of a residential facility or a resident of an adult foster home, when  
34 the recipient or resident is 65 years of age or older;  
35          “(c) Of a crime listed in ORS 181.805;  
36          “(d) In the last 10 years, of a crime involving the delivery or manufacture of a controlled sub-  
37 stance;  
38          “(e) Of an attempt, conspiracy or solicitation to commit a crime described in paragraphs (a) to  
39 (d) of this subsection; or  
40          “(f) Of a crime in another jurisdiction that is substantially equivalent, as defined by rule, to a  
41 crime described in paragraphs (a) to (e) of this subsection.  
42          “(4) If the criminal background check conducted by a home health agency or in-home care  
43 agency under subsection (2) of this section reveals that the individual who is subject to the criminal  
44 background check has been convicted of any of the crimes described in subsection (3) of this section,  
45 the home health agency or in-home care agency may not employ the individual.

1       “(5) Public funds may not be used to support, in whole or in part, the employment, in any ca-  
2       pacity having contact with a recipient of support services or a resident of a residential facility or  
3       an adult foster home, of a mental health or substance abuse treatment provider who has been con-  
4       victed of committing, or convicted of an attempt, conspiracy or solicitation to commit, a crime de-  
5       scribed in ORS 163.095, 163.115, 163.375, 163.405, 163.411 or 163.427.

6       “(6) Upon the request of a mental health or substance abuse treatment provider, the department  
7       or authority shall maintain a record of the results of any fitness determination made under ORS  
8       181.534 (11) and (12). The department or authority may disclose the record only to a person the  
9       provider specifically authorizes, by a written release, to receive the information.

10       “(7) If the department or authority has a record of substantiated abuse committed by an em-  
11       ployee or potential employee of a home health agency, in-home care agency, adult foster home or  
12       residential facility, regardless of whether criminal charges were filed, the department or authority  
13       shall notify, in writing, the employer and the employee or potential employee.

14       “(8) As used in this section:

15       “(a) ‘Adult foster home’ has the meaning given that term in ORS 443.705.

16       “(b) ‘Home care worker’ has the meaning given that term in ORS 410.600.

17       “(c) ‘Home health agency’ has the meaning given that term in ORS 443.005.

18       “(d) ‘In-home care agency’ has the meaning given that term in ORS 443.305.

19       “(e) ‘Mental health or substance abuse treatment provider’ means:

20       “(A) A peer support specialist;

21       “(B) An employee of a residential treatment facility or a residential treatment home that is li-  
22       censed under ORS 443.415 to provide treatment for individuals with alcohol or drug dependence;

23       “(C) An individual who provides treatment or services for persons with substance use disorders;

24       or

25       “(D) An individual who provides mental health treatment or services.

26       “(f) ‘Peer support specialist’ means a person who:

27       “(A) Is providing peer support services as defined by the authority by rule;

28       “(B) Is under the supervision of a qualified clinical supervisor;

29       “(C) Has completed training required by the authority; and

30       “(D) Is currently receiving or has formerly received mental health services, or is in recovery  
31       from a substance use disorder and meets the abstinence requirements for staff providing services in  
32       alcohol or other drug treatment programs.

33       “(g) ‘Residential facility’ has the meaning given that term in ORS 443.400.”.