

Oregon Criminal Statutes
Selected Provisions of Oregon Code, Title 16, Crimes and Punishments
Current through 2009

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CHAPTER 161. GENERAL PROVISIONS

161.015. General definitions.

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

- (1) "Dangerous weapon" means any weapon, device, instrument, material or substance which under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury.
- (2) "Deadly weapon" means any instrument, article or substance specifically designed for and presently capable of causing death or serious physical injury.
- (3) "Deadly physical force" means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.
- (4) "Peace officer" means a sheriff, constable, marshal, municipal police officer, member of the Oregon State Police, investigator of the Criminal Justice Division of the Department of Justice or investigator of a district attorney's office and such other persons as may be designated by law.
- (5) "Person" means a human being and, where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.
- (6) "Physical force" includes, but is not limited to, the use of an electrical stun gun, tear gas or mace.
- (7) "Physical injury" means impairment of physical condition or substantial pain.
- (8) "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.
- (9) "Possess" means to have physical possession or otherwise to exercise dominion or control over property.
- (10) "Public place" means a place to which the general public has access and includes, but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and premises used in connection with public passenger transportation.

161.025. Purposes; principles of construction.

- (1) The general purposes of chapter 743, Oregon Laws 1971, are:
 - (a) To insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the correction and rehabilitation of those convicted, and their confinement when required in the interests of public protection.
 - (b) To forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests.
 - (c) To give fair warning of the nature of the conduct declared to constitute an offense and of the sentences authorized upon conviction.
 - (d) To define the act or omission and the accompanying mental state that constitute each offense and limit the condemnation of conduct as criminal when it is without fault.
 - (e) To differentiate on reasonable grounds between serious and minor offenses.

(f) To prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among individual offenders.

(g) To safeguard offenders against excessive, disproportionate or arbitrary punishment.

(2) The rule that a penal statute is to be strictly construed shall not apply to chapter 743, Oregon Laws 1971, or any of its provisions. Chapter 743, Oregon Laws 1971, shall be construed according to the fair import of its terms, to promote justice and to effect the purposes stated in subsection (1) of this section.

161.055. Burden of proof as to defenses.

(1) When a "defense," other than an "affirmative defense" as defined in subsection (2) of this section, is raised at a trial, the state has the burden of disproving the defense beyond a reasonable doubt.

(2) When a defense, declared to be an "affirmative defense" by chapter 743, Oregon Laws 1971, is raised at a trial, the defendant has the burden of proving the defense by a preponderance of the evidence.

(3) The state is not required to negate a defense as defined in subsection (1) of this section unless it is raised by the defendant. "Raised by the defendant" means either notice in writing to the state before commencement of trial or affirmative evidence by a defense witness in the defendant's case in chief.

161.085. Definitions with respect to culpability.

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

(1) "Act" means a bodily movement.

(2) "Voluntary act" means a bodily movement performed consciously and includes the conscious possession or control of property.

(3) "Omission" means a failure to perform an act the performance of which is required by law.

(4) "Conduct" means an act or omission and its accompanying mental state.

(5) "To act" means either to perform an act or to omit to perform an act.

(6) "Culpable mental state" means intentionally, knowingly, recklessly or with criminal negligence as these terms are defined in subsections (7), (8), (9) and (10) of this section.

(7) "Intentionally" or "with intent," when used with respect to a result or to conduct described by a statute defining an offense, means that a person acts with a conscious objective to cause the result or to engage in the conduct so described.

(8) "Knowingly" or "with knowledge," when used with respect to conduct or to a circumstance described by a statute defining an offense, means that a person acts with an awareness that the conduct of the person is of a nature so described or that a circumstance so described exists.

(9) "Recklessly," when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(10) "Criminal negligence" or "criminally negligent," when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person fails to be aware of a substantial and unjustifiable

risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

161.095. Requirements of culpability.

(1) The minimal requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform an act which the person is capable of performing.

(2) Except as provided in ORS 161.105, a person is not guilty of an offense unless the person acts with a culpable mental state with respect to each material element of the offense that necessarily requires a culpable mental state.

161.105. Culpability requirements inapplicable to certain violations and offenses.

(1) Notwithstanding ORS 161.095, a culpable mental state is not required if:

(a) The offense constitutes a violation, unless a culpable mental state is expressly included in the definition of the offense; or

(b) An offense defined by a statute outside the Oregon Criminal Code clearly indicates a legislative intent to dispense with any culpable mental state requirement for the offense or for any material element thereof.

(2) Notwithstanding any other existing law, and unless a statute enacted after January 1, 1972, otherwise provides, an offense defined by a statute outside the Oregon Criminal Code that requires no culpable mental state constitutes a violation.

(3) Although an offense defined by a statute outside the Oregon Criminal Code requires no culpable mental state with respect to one or more of its material elements, the culpable commission of the offense may be alleged and proved, in which case criminal negligence constitutes sufficient culpability, and the classification of the offense and the authorized sentence shall be determined by ORS 161.505 to 161.605 and 161.615 to 161.655.

161.115. Construction of statutes with respect to culpability.

(1) If a statute defining an offense prescribes a culpable mental state but does not specify the element to which it applies, the prescribed culpable mental state applies to each material element of the offense that necessarily requires a culpable mental state.

(2) Except as provided in ORS 161.105, if a statute defining an offense does not prescribe a culpable mental state, culpability is nonetheless required and is established only if a person acts intentionally, knowingly, recklessly or with criminal negligence.

(3) If the definition of an offense prescribes criminal negligence as the culpable mental state, it is also established if a person acts intentionally, knowingly or recklessly. When recklessness suffices to establish a culpable mental state, it is also established if a person acts intentionally or knowingly. When acting knowingly suffices to establish a culpable mental state, it is also established if a person acts intentionally.

(4) Knowledge that conduct constitutes an offense, or knowledge of the existence, meaning or application of the statute defining an offense, is not an element of an offense unless the statute clearly so provides.

161.125. Intoxication as defense; drug or controlled substance use or dependence as defense.

(1) The use of drugs or controlled substances, dependence on drugs or controlled substances or voluntary intoxication shall not, as such, constitute a defense to a criminal charge, but in any prosecution for an offense, evidence that the defendant used drugs or controlled substances, or was dependent on drugs or controlled

substances, or was intoxicated may be offered by the defendant whenever it is relevant to negative an element of the crime charged.

(2) When recklessness establishes an element of the offense, if the defendant, due to the use of drugs or controlled substances, dependence on drugs or controlled substances or voluntary intoxication, is unaware of a risk of which the defendant would have been aware had the defendant been not intoxicated, not using drugs or controlled substances, or not dependent on drugs or controlled substances, such unawareness is immaterial.

161.150. Criminal liability described.

A person is guilty of a crime if it is committed by the person's own conduct or by the conduct of another for which the person is criminally liable, or both.

161.155. Criminal liability for conduct of another.

A person is criminally liable for the conduct of another person constituting a crime if:

- (1) The person is made criminally liable by the statute defining the crime; or
- (2) With the intent to promote or facilitate the commission of the crime the person:
 - (a) Solicits or commands such other person to commit the crime; or
 - (b) Aids or abets or agrees or attempts to aid or abet such other person in planning or committing the crime; or
 - (c) Having a legal duty to prevent the commission of the crime, fails to make an effort the person is legally required to make.

161.160. Exclusion of defenses to criminal liability for conduct of another.

In any prosecution for a crime in which criminal liability is based upon the conduct of another person pursuant to ORS 161.155, it is no defense that:

- (1) Such other person has not been prosecuted for or convicted of any crime based upon the conduct in question or has been convicted of a different crime or degree of crime; or
- (2) The crime, as defined, can be committed only by a particular class or classes of persons to which the defendant does not belong, and the defendant is for that reason legally incapable of committing the crime in an individual capacity.

161.165. Exemptions to criminal liability for conduct of another.

Except as otherwise provided by the statute defining the crime, a person is not criminally liable for conduct of another constituting a crime if:

- (1) The person is a victim of that crime; or
- (2) The crime is so defined that the conduct of the person is necessarily incidental thereto.

161.170. Criminal liability of corporations.

- (1) A corporation is guilty of an offense if:
 - (a) The conduct constituting the offense is engaged in by an agent of the corporation while acting within the scope of employment and in behalf of the corporation and the offense is a misdemeanor or a

violation, or the offense is one defined by a statute that clearly indicates a legislative intent to impose criminal liability on a corporation; or

(b) The conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law; or

(c) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded or knowingly tolerated by the board of directors or by a high managerial agent acting within the scope of employment and in behalf of the corporation.

(2) As used in this section:

(a) "Agent" means any director, officer or employee of a corporation, or any other person who is authorized to act in behalf of the corporation.

(b) "High managerial agent" means an officer of a corporation who exercises authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees, or any other agent in a position of comparable authority.

161.175. Criminal liability of an individual for corporate conduct.

A person is criminally liable for conduct constituting an offense which the person performs or causes to be performed in the name of or in behalf of a corporation to the same extent as if such conduct were performed in the person's own name or behalf.

161.190. Justification as a defense.

In any prosecution for an offense, justification, as defined in ORS 161.195 to 161.275, is a defense.

161.195. "Justification" described.

(1) Unless inconsistent with other provisions of chapter 743, Oregon Laws 1971, defining justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable and not criminal when it is required or authorized by law or by a judicial decree or is performed by a public servant in the reasonable exercise of official powers, duties or functions.

(2) As used in subsection (1) of this section, "laws and judicial decrees" include but are not limited to:

(a) Laws defining duties and functions of public servants;

(b) Laws defining duties of private citizens to assist public servants in the performance of certain of their functions;

(c) Laws governing the execution of legal process;

(d) Laws governing the military services and conduct of war; and

(e) Judgments and orders of courts.

161.200. Avoiding imminent injury.

(1) Unless inconsistent with other provisions of chapter 743, Oregon Laws 1971, defining justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable and not criminal when:

(a) That conduct is necessary as an emergency measure to avoid an imminent public or private injury; and

(b) The threatened injury is of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue.

(2) The necessity and justifiability of conduct under subsection (1) of this section shall not rest upon considerations pertaining only to the morality and advisability of the statute, either in its general application or with respect to its application to a particular class of cases arising thereunder.

161.205. Use of physical force.

The use of physical force upon another person that would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:

(1) A parent, guardian or other person entrusted with the care and supervision of a minor or an incompetent person may use reasonable physical force upon such minor or incompetent person when and to the extent the person reasonably believes it necessary to maintain discipline or to promote the welfare of the minor or incompetent person. A teacher may use reasonable physical force upon a student when and to the extent the teacher reasonably believes it necessary to maintain order in the school or classroom or at a school activity or event, whether or not it is held on school property.

(2) An authorized official of a jail, prison or correctional facility may use physical force when and to the extent that the official reasonably believes it necessary to maintain order and discipline or as is authorized by law.

(3) A person responsible for the maintenance of order in a common carrier of passengers, or a person acting under the direction of the person, may use physical force when and to the extent that the person reasonably believes it necessary to maintain order, but the person may use deadly physical force only when the person reasonably believes it necessary to prevent death or serious physical injury.

(4) A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical self-injury may use physical force upon that person to the extent that the person reasonably believes it necessary to thwart the result.

(5) A person may use physical force upon another person in self-defense or in defending a third person, in defending property, in making an arrest or in preventing an escape, as hereafter prescribed in chapter 743, Oregon Laws 1971.

161.209. Self defense or defense of another.

Except as provided in ORS 161.215 and 161.219, a person is justified in using physical force upon another person for self-defense or to defend a third person from what the person reasonably believes to be the use or imminent use of unlawful physical force, and the person may use a degree of force which the person reasonably believes to be necessary for the purpose.

161.215. Physical force in defense of a person; limitations

Notwithstanding ORS 161.209, a person is not justified in using physical force upon another person if:

(1) With intent to cause physical injury or death to another person, the person provokes the use of unlawful physical force by that person; or

(2) The person is the initial aggressor, except that the use of physical force upon another person under such circumstances is justifiable if the person withdraws from the encounter and effectively communicates to the other person the intent to do so, but the latter nevertheless continues or threatens to continue the use of unlawful

physical force; or

(3) The physical force involved is the product of a combat by agreement not specifically authorized by law.

161.219. Deadly physical force in defense of a person; limitations.

Notwithstanding the provisions of ORS 161.209, a person is not justified in using deadly physical force upon another person unless the person reasonably believes that the other person is:

(1) Committing or attempting to commit a felony involving the use or threatened imminent use of physical force against a person; or

(2) Committing or attempting to commit a burglary in a dwelling; or

(3) Using or about to use unlawful deadly physical force against a person.

161.225. Defense of premises.

(1) A person in lawful possession or control of premises is justified in using physical force upon another person when and to the extent that the person reasonably believes it necessary to prevent or terminate what the person reasonably believes to be the commission or attempted commission of a criminal trespass by the other person in or upon the premises.

(2) A person may use deadly physical force under the circumstances set forth in subsection (1) of this section only:

(a) In defense of a person as provided in ORS 161.219; or

(b) When the person reasonably believes it necessary to prevent the commission of arson or a felony by force and violence by the trespasser.

(3) As used in subsection (1) and subsection (2)(a) of this section, "premises" includes any building as defined in ORS 164.205 and any real property. As used in subsection (2)(b) of this section, "premises" includes any building.

161.229. Defense of property.

A person is justified in using physical force, other than deadly physical force, upon another person when and to the extent that the person reasonably believes it to be necessary to prevent or terminate the commission or attempted commission by the other person of theft or criminal mischief of property.

161.270. Duress.

(1) The commission of acts which would otherwise constitute an offense, other than murder, is not criminal if the actor engaged in the proscribed conduct because the actor was coerced to do so by the use or threatened use of unlawful physical force upon the actor or a third person, which force or threatened force was of such nature or degree to overcome earnest resistance.

(2) Duress is not a defense for one who intentionally or recklessly places oneself in a situation in which it is probable that one will be subjected to duress.

(3) It is not a defense that a spouse acted on the command of the other spouse, unless the spouse acted under such coercion as would establish a defense under subsection (1) of this section.

161.275. Entrapment.

(1) The commission of acts which would otherwise constitute an offense is not criminal if the actor engaged in the proscribed conduct because the actor was induced to do so by a law enforcement official, or by a person acting in cooperation with a law enforcement official, for the purpose of obtaining evidence to be used against the actor in a criminal prosecution.

(2) As used in this section, "induced" means that the actor did not contemplate and would not otherwise have engaged in the proscribed conduct. Merely affording the actor an opportunity to commit an offense does not constitute entrapment.

161.295. Mental disease or defect.

(1) A person is guilty except for insanity if, as a result of mental disease or defect at the time of engaging in criminal conduct, the person lacks substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of law.

(2) As used in chapter 743, Oregon Laws 1971, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct, nor do they include any abnormality constituting solely a personality disorder.

161.300. Admissibility; evidence of mental disease or defect.

Evidence that the actor suffered from a mental disease or defect is admissible whenever it is relevant to the issue of whether the actor did or did not have the intent which is an element of the crime.

161.305. Mental disease or defect, affirmative defense.

Mental disease or defect constituting insanity under ORS 161.295 is an affirmative defense.

161.360. Fitness to proceed; mental disease or defect.

(1) If, before or during the trial in any criminal case, the court has reason to doubt the defendant's fitness to proceed by reason of incapacity, the court may order an examination in the manner provided in ORS 161.365.

(2) A defendant may be found incapacitated if, as a result of mental disease or defect, the defendant is unable:

- (a) To understand the nature of the proceedings against the defendant; or
- (b) To assist and cooperate with the counsel of the defendant; or
- (c) To participate in the defense of the defendant.

161.370. Determination of fitness.

(1) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. If neither the prosecuting attorney nor counsel for the defendant contests the finding of the report filed by a psychiatrist or psychologist under ORS 161.365, the court may make the determination on the basis of such report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon such hearing, the party who contests the finding thereof shall have the right to summon and to cross-examine any psychiatrist or psychologist who submitted the report and to offer evidence upon the issue. Other evidence regarding the defendant's fitness to proceed may be introduced by either party.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant shall be suspended, except as provided in subsection (12) of this section, and the court shall commit the defendant to the custody of the superintendent of a state mental hospital designated by the Oregon Health Authority if the defendant is at least 18 years of age, or to the custody of the director of a secure intensive community inpatient facility designated by the authority if the defendant is under 18 years of age, or shall release the defendant on

supervision for as long as such unfitness shall endure. The court may release the defendant on supervision if it determines that care other than commitment for incapacity to stand trial would better serve the defendant and the community. It may place conditions which it deems appropriate on the release, including the requirement that the defendant regularly report to the authority or a community mental health program for examination to determine if the defendant has regained capacity to stand trial. When the court, on its own motion or upon the application of the superintendent of the hospital or director of the secure intensive community inpatient facility in which the defendant is committed, a person examining the defendant as a condition of release on supervision, or either party, determines, after a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment or release of the defendant on supervision that it would be unjust to resume the criminal proceeding, the court on motion of either party may dismiss the charge and may order the defendant to be discharged or cause a proceeding to be commenced forthwith under ORS 426.070 to 426.170 or 427.235 to 427.290.

(3) The superintendent of a state hospital or director of a secure intensive community inpatient facility shall cause the defendant to be evaluated within 60 days from the defendant's delivery into the superintendent's or director's custody, for the purpose of determining whether there is a substantial probability that, in the foreseeable future, the defendant will have the capacity to stand trial.

(4) In addition, the superintendent or director shall:

(a) Immediately notify the committing court if the defendant, at any time, gains or regains the capacity to stand trial or will never have the capacity to stand trial.

(b) Within 90 days of the defendant's delivery into the superintendent's or director's custody, notify the committing court that:

(A) The defendant has the present capacity to stand trial;

(B) There is no substantial probability that, in the foreseeable future, the defendant will gain or regain the capacity to stand trial; or

(C) There is a substantial probability that, in the foreseeable future, the defendant will gain or regain the capacity to stand trial. If such a probability exists, the superintendent or director shall give the court an estimate of the time in which the defendant, with appropriate treatment, is expected to gain or regain capacity.

(5) If the superintendent or director determines that there is a substantial probability that, in the foreseeable future, the defendant will gain or regain the capacity to stand trial, unless the court otherwise orders, the defendant shall remain in the superintendent's or director's custody where the defendant shall receive treatment designed for the purpose of enabling the defendant to gain or regain capacity. In keeping with the notice requirement under subsection (4)(b) of this section, the superintendent or director shall, for the duration of the defendant's period of commitment, submit a progress report to the committing court, concerning the defendant's capacity or incapacity, at least once every 180 days as measured from the date of the defendant's delivery into the superintendent's or director's custody.

(6) A defendant who remains committed under subsection (5) of this section shall be discharged within a period of time that is reasonable for making a determination concerning whether or not, and when, the defendant may gain or regain capacity. However, regardless of the number of charges with which the defendant is accused, in no event shall the defendant be committed for longer than whichever of the following, measured from the defendant's initial custody date, is shorter:

(a) Three years; or

(b) A period of time equal to the maximum sentence the court could have imposed if the defendant had been convicted.

(7) The superintendent or director shall notify the committing court of the defendant's impending discharge 30 days before the date on which the superintendent or director is required to discharge the defendant under subsection (6) of this section.

(8) When the committing court receives a notice from the superintendent or director under either subsection (4) or (7) of this section concerning the defendant's progress or lack thereof, the committing court shall determine after a hearing, if a hearing is requested, whether the defendant presently has the capacity to stand trial.

(9) If under subsection (8) of this section the court determines that the defendant lacks the capacity to stand trial, the court shall further determine whether there is a substantial probability that the defendant, in the foreseeable future, will gain or regain the capacity to stand trial and whether the defendant is entitled to discharge under subsection (6) of this section. If the court determines that there is no substantial probability that the defendant, in the foreseeable future, will gain or regain the capacity to stand trial or that the defendant is entitled to discharge under subsection (6) of this section, the court shall dismiss, without prejudice, all charges against the defendant and:

(a) Order that the defendant be discharged; or

(b) Initiate commitment proceedings under ORS 426.070 or 427.235 to 427.290.

(10) All notices required under this section shall be filed with the clerk of the court and delivered to both the district attorney and the counsel for the defendant.

(11) If the defendant regains fitness to proceed, the term of any sentence received by the defendant for conviction of the crime charged shall be reduced by the amount of time the defendant was committed under this section to the custody of a state mental hospital, or to the custody of a secure intensive community inpatient facility, designated by the Oregon Health Authority.

(12) The fact that the defendant is unfit to proceed does not preclude any objection through counsel and without the personal participation of the defendant on the grounds that the indictment is insufficient, that the statute of limitations has run, that double jeopardy principles apply or upon any other ground at the discretion of the court which the court deems susceptible of fair determination prior to trial.

161.405. Attempt.

(1) A person is guilty of an attempt to commit a crime when the person intentionally engages in conduct which constitutes a substantial step toward commission of the crime.

(2) An attempt is a:

(a) Class A felony if the offense attempted is murder or treason.

(b) Class B felony if the offense attempted is a Class A felony.

(c) Class C felony if the offense attempted is a Class B felony.

(d) Class A misdemeanor if the offense attempted is a Class C felony or an unclassified felony.

(e) Class B misdemeanor if the offense attempted is a Class A misdemeanor.

(f) Class C misdemeanor if the offense attempted is a Class B misdemeanor.

(g) Violation if the offense attempted is a Class C misdemeanor or an unclassified misdemeanor.

161.425. Impossibility as a defense.

In a prosecution for an attempt, it is no defense that it was impossible to commit the crime which was the object of the attempt where the conduct engaged in by the actor would be a crime if the circumstances were as the actor believed them to be.

161.430. Renunciation; defense to attempt.

(1) A person is not liable under ORS 161.405 if, under circumstances manifesting a voluntary and complete renunciation of the criminal intent of the person, the person avoids the commission of the crime attempted by abandoning the criminal effort and, if mere abandonment is insufficient to accomplish this avoidance, doing everything necessary to prevent the commission of the attempted crime.

(2) The defense of renunciation is an affirmative defense.

161.435. Solicitation.

(1) A person commits the crime of solicitation if with the intent of causing another to engage in specific conduct constituting a crime punishable as a felony or as a Class A misdemeanor or an attempt to commit such felony or Class A misdemeanor the person commands or solicits such other person to engage in that conduct.

(2) Solicitation is a:

- (a) Class A felony if the offense solicited is murder or treason.
- (b) Class B felony if the offense solicited is a Class A felony.
- (c) Class C felony if the offense solicited is a Class B felony.
- (d) Class A misdemeanor if the offense solicited is a Class C felony.
- (e) Class B misdemeanor if the offense solicited is a Class A misdemeanor.

161.440. Renunciation; defense to solicitation.

(1) It is a defense to the crime of solicitation that the person soliciting the crime, after soliciting another person to commit a crime, persuaded the person solicited not to commit the crime or otherwise prevented the commission of the crime, under circumstances manifesting a complete and voluntary renunciation of the criminal intent.

(2) The defense of renunciation is an affirmative defense.

161.450. Conspiracy.

(1) A person is guilty of criminal conspiracy if with the intent that conduct constituting a crime punishable as a felony or a Class A misdemeanor be performed, the person agrees with one or more persons to engage in or cause the performance of such conduct.

(2) Criminal conspiracy is a:

- (a) Class A felony if an object of the conspiracy is commission of murder, treason or a Class A felony.
- (b) Class B felony if an object of the conspiracy is commission of a Class B felony.
- (c) Class C felony if an object of the conspiracy is commission of a Class C felony.
- (d) Class A misdemeanor if an object of the conspiracy is commission of a Class A misdemeanor.

161.455. Co-conspirator conspiracy with third party.

If a person is guilty of conspiracy, as defined in ORS 161.450, and knows that a person with whom the person conspires to commit a crime has conspired or will conspire with another person or persons to commit the same crime, the person is guilty of conspiring with such other person or persons, whether or not the person knows their identity, to commit such crime.

161.460. Renunciation; defense to conspiracy.

(1) It is a defense to a charge of conspiracy that the actor, after conspiring to commit a crime, thwarted commission of the crime which was the object of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of the criminal purpose of the actor. Renunciation by one conspirator does not, however, affect the liability of another conspirator who does not join in the renunciation of the conspiratorial objective.

(2) The defense of renunciation is an affirmative defense.

161.465. Termination of conspiracy.

For the purpose of application of ORS 131.125:

(1) Conspiracy is a continuing course of conduct which terminates when the crime or crimes which are its object are completed or the agreement that they be committed is abandoned by the defendant and by those with whom the defendant conspired.

(2) Abandonment is presumed if neither the defendant nor anyone with whom the defendant conspired does any overt act in pursuance of the conspiracy during the applicable period of limitation.

(3) If an individual abandons the agreement, the conspiracy is terminated as to the individual only if and when the individual advises those with whom the individual conspired of the abandonment or the individual informs the law enforcement authorities of the existence of the conspiracy and of the participation of the individual therein.

161.475. Solicitation and conspiracy defenses.

(1) Except as provided in subsection (2) of this section, it is immaterial to the liability of a person who solicits or conspires with another to commit a crime that:

(a) The person or the person whom the person solicits or with whom the person conspires does not occupy a particular position or have a particular characteristic which is an element of such crime, if the person believes that one of them does; or

(b) The person whom the person solicits or with whom the person conspires is irresponsible or has an immunity to prosecution or conviction for the commission of the crime, or, in the case of conspiracy, has feigned the agreement; or (c) The person with whom the person conspires has not been prosecuted for or convicted of the conspiracy or a crime based upon the conduct in question, or has previously been acquitted.

(2) It is a defense to a charge of solicitation or conspiracy to commit a crime that if the criminal object were achieved, the actor would not be guilty of a crime under the law defining the offense or as an accomplice under ORS 161.150 to 161.165.

161.485. Multiple convictions.

(1) It is no defense to a prosecution under ORS 161.405, 161.435 or 161.450 that the offense the defendant either attempted to commit, solicited to commit or conspired to commit was actually committed pursuant to such attempt, solicitation or conspiracy.

(2) A person shall not be convicted of more than one offense defined by ORS 161.405, 161.435 and 161.450 for conduct designed to commit or to culminate in commission of the same crime.

(3) A person shall not be convicted on the basis of the same course of conduct of both the actual commission of an offense and an attempt to commit that offense or solicitation of that offense or conspiracy to commit that offense.

(4) Nothing in this section shall be construed to bar inclusion of multiple counts charging violation of the substantive crime and ORS 161.405, 161.435 and 161.450 in a single indictment or information, provided the penal conviction is consistent with subsections (2) and (3) of this section.

161.605. Maximum terms of imprisonment.

The maximum term of an indeterminate sentence of imprisonment for a felony is as follows:

- (1) For a Class A felony, 20 years.
- (2) For a Class B felony, 10 years.
- (3) For a Class C felony, 5 years.
- (4) For an unclassified felony as provided in the statute defining the crime.

161.610. Use of firearm during commission of felony.

(1) As used in this section, "firearm" means a weapon which is designed to expel a projectile by the action of black powder or smokeless powder.

(2) The use or threatened use of a firearm, whether operable or inoperable, by a defendant during the commission of a felony may be pleaded in the accusatory instrument and proved at trial as an element in aggravation of the crime as provided in this section. When a crime is so pleaded, the aggravated nature of the crime may be indicated by adding the words "with a firearm" to the title of the offense. The unaggravated crime shall be considered a lesser included offense.

(3) Notwithstanding the provisions of ORS 161.605 or 137.010 (3) and except as otherwise provided in subsection (6) of this section, if a defendant is convicted of a felony having as an element the defendant's use or threatened use of a firearm during the commission of the crime, the court shall impose at least the minimum term of imprisonment as provided in subsection (4) of this section. Except as provided in ORS 144.122 and 144.126 and subsection (5) of this section, in no case shall any person punishable under this section become eligible for work release, parole, temporary leave or terminal leave until the minimum term of imprisonment is served, less a period of time equivalent to any reduction of imprisonment granted for good time served or time credits earned under ORS 421.121, nor shall the execution of the sentence imposed upon such person be suspended by the court.

(4) The minimum terms of imprisonment for felonies having as an element the defendant's use or threatened use of a firearm in the commission of the crime shall be as follows:

- (a) Except as provided in subsection (5) of this section, upon the first conviction for such felony, five years, except that if the firearm is a machine gun, short-barreled rifle, short-barreled shotgun or is equipped with a firearms silencer, the term of imprisonment shall be 10 years.

(b) Upon conviction for such felony committed after punishment pursuant to paragraph (a) of this subsection or subsection (5) of this section, 10 years, except that if the firearm is a machine gun, short-barreled rifle, short-barreled shotgun or is equipped with a firearms silencer, the term of imprisonment shall be 20 years.

(c) Upon conviction for such felony committed after imprisonment pursuant to paragraph (b) of this subsection, 30 years.

(5) If it is the first time that the defendant is subject to punishment under this section, rather than impose the sentence otherwise required by subsection (4)(a) of this section, the court may:

(a) For felonies committed prior to November 1, 1989, suspend the execution of the sentence or impose a lesser term of imprisonment, when the court expressly finds mitigating circumstances justifying such lesser sentence and sets forth those circumstances in its statement on sentencing; or

(b) For felonies committed on or after November 1, 1989, impose a lesser sentence in accordance with the rules of the Oregon Criminal Justice Commission.

(6) When a defendant who is convicted of a felony having as an element the defendant's use or threatened use of a firearm during the commission of the crime is a person who was waived from juvenile court under ORS 137.707 (5)(b)(A), 419C.349, 419C.352, 419C.364 or 419C.370, the court is not required to impose a minimum term of imprisonment under this section.

161.615. Sentences for misdemeanors.

Sentences for misdemeanors shall be for a definite term. The court shall fix the term of imprisonment within the following maximum limitations:

(1) For a Class A misdemeanor, 1 year.

(2) For a Class B misdemeanor, 6 months.

(3) For a Class C misdemeanor, 30 days.

(4) For an unclassified misdemeanor, as provided in the statute defining the crime.

161.625. Felonies; fines.

(1) A sentence to pay a fine for a felony shall be a sentence to pay an amount, fixed by the court, not exceeding:

(a) \$ 500,000 for murder or aggravated murder.

(b) \$ 375,000 for a Class A felony.

(c) \$ 250,000 for a Class B felony.

(d) \$ 125,000 for a Class C felony.

(2) A sentence to pay a fine for an unclassified felony shall be a sentence to pay an amount, fixed by the court, as provided in the statute defining the crime.

(3) (a) If a person has gained money or property through the commission of a felony, then upon conviction thereof the court, in lieu of imposing the fine authorized for the crime under subsection (1) or (2) of this section, may sentence the defendant to pay an amount, fixed by the court, not exceeding double the

amount of the defendant's gain from the commission of the crime.

(b) The provisions of paragraph (a) of this subsection do not apply to the felony theft of a companion animal, as defined in ORS 164.055, or a captive wild animal.

(4) As used in this section, "gain" means the amount of money or the value of property derived from the commission of the felony, less the amount of money or the value of property returned to the victim of the crime or seized by or surrendered to lawful authority before the time sentence is imposed. "Value" shall be determined by the standards established in ORS 164.115.

(5) When the court imposes a fine for a felony the court shall make a finding as to the amount of the defendant's gain from the crime. If the record does not contain sufficient evidence to support a finding the court may conduct a hearing upon the issue.

(6) Except as provided in ORS 161.655, this section does not apply to a corporation.

161.635. Misdemeanors; fines.

(1) A sentence to pay a fine for a misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding:

(a) \$ 6,250 for a Class A misdemeanor.

(b) \$ 2,500 for a Class B misdemeanor.

(c) \$ 1,250 for a Class C misdemeanor.

(2) A sentence to pay a fine for an unclassified misdemeanor shall be a sentence to pay an amount, fixed by the court, as provided in the statute defining the crime.

(3) If a person has gained money or property through the commission of a misdemeanor, then upon conviction thereof the court, instead of imposing the fine authorized for the offense under this section, may sentence the defendant to pay an amount fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the offense. In that event, ORS 161.625 (4) and (5) apply.

(4) This section does not apply to corporations.

161.655. Fines imposed upon corporations.

(1) A sentence to pay a fine when imposed on a corporation for an offense defined in the Oregon Criminal Code or for an offense defined outside this code for which no special corporate fine is specified, shall be a sentence to pay an amount, fixed by the court, not exceeding:

(a) \$ 50,000 when the conviction is of a felony.

(b) \$ 5,000 when the conviction is of a Class A misdemeanor or of an unclassified misdemeanor for which a term of imprisonment of more than six months is authorized.

(c) \$ 2,500 when the conviction is of a Class B misdemeanor or of an unclassified misdemeanor for which the authorized term of imprisonment is not more than six months.

(d) \$ 1,000 when the conviction is of a Class C misdemeanor or an unclassified misdemeanor for which the authorized term of imprisonment is not more than 30 days.

(2) A sentence to pay a fine, when imposed on a corporation for an offense defined outside the Oregon Criminal Code, if a special fine for a corporation is provided in the statute defining the offense, shall be a sentence to pay

an amount, fixed by the court, as provided in the statute defining the offense.

(3) If a corporation has gained money or property through the commission of an offense, then upon conviction thereof the court, in lieu of imposing the fine authorized for the offense under subsection (1) or (2) of this section, may sentence the corporation to pay an amount, fixed by the court, not exceeding double the amount of the corporation's gain from the commission of the offense. In that event, ORS 161.625 (4) and (5) apply.

161.725. Sentencing of dangerous offenders.

(1) Subject to the provisions of ORS 161.737, the maximum term of an indeterminate sentence of imprisonment for a dangerous offender is 30 years, if because of the dangerousness of the defendant an extended period of confined correctional treatment or custody is required for the protection of the public and one or more of the following grounds exist:

(a) The defendant is being sentenced for a Class A felony and the defendant is suffering from a severe personality disorder indicating a propensity toward crimes that seriously endanger the life or safety of another.

(b) The defendant is being sentenced for a felony that seriously endangered the life or safety of another, the defendant has been previously convicted of a felony not related to the instant crime as a single criminal episode and the defendant is suffering from a severe personality disorder indicating a propensity toward crimes that seriously endanger the life or safety of another.

(c) The defendant is being sentenced for a felony that seriously endangered the life or safety of another, the defendant has previously engaged in unlawful conduct not related to the instant crime as a single criminal episode that seriously endangered the life or safety of another and the defendant is suffering from a severe personality disorder indicating a propensity toward crimes that seriously endanger the life or safety of another.

(2) As used in this section, "previously convicted of a felony" means:

(a) Previous conviction of a felony in a court of this state;

(b) Previous conviction in a court of the United States, other than a court-martial, of an offense which at the time of conviction of the offense was and at the time of conviction of the instant crime is punishable under the laws of the United States by death or by imprisonment in a penitentiary, prison or similar institution for a term of one year or more; or

(c) Previous conviction by a general court-martial of the United States or in a court of any other state or territory of the United States, or of the Commonwealth of Puerto Rico, of an offense which at the time of conviction of the offense was punishable by death or by imprisonment in a penitentiary, prison or similar institution for a term of one year or more and which offense also at the time of conviction of the instant crime would have been a felony if committed in this state.

(3) As used in this section, "previous conviction of a felony" does not include:

(a) An offense committed when the defendant was less than 16 years of age;

(b) A conviction rendered after the commission of the instant crime;

(c) A conviction that is the defendant's most recent conviction described in subsection (2) of this section, and the defendant was finally and unconditionally discharged from all resulting imprisonment, probation or parole more than seven years before the commission of the instant crime; or

(d) A conviction that was by court-martial of an offense denounced only by military law and triable

only by court-martial.

(4) As used in this section, "conviction" means an adjudication of guilt upon a plea, verdict or finding in a criminal proceeding in a court of competent jurisdiction, but does not include an adjudication which has been expunged by pardon, reversed, set aside or otherwise rendered nugatory.

161.735. Determination of whether defendant is dangerous.

(1) Upon motion of the district attorney, and if, in the opinion of the court, there is reason to believe that the defendant falls within ORS 161.725, the court shall order a presentence investigation and an examination by a psychiatrist or psychologist. The court may appoint one or more qualified psychiatrists or psychologists to examine the defendant in the local correctional facility.

(2) All costs connected with the examination shall be paid by the state.

(3) The examination performed pursuant to this section shall be completed within 30 days, subject to additional extensions not exceeding 30 days on order of the court. Each psychiatrist and psychologist appointed to examine a defendant under this section shall file with the court a written report of findings and conclusions, including an evaluation of whether the defendant is suffering from a severe personality disorder indicating a propensity toward criminal activity.

(4) No statement made by a defendant under this section or ORS 137.124 or 423.090 shall be used against the defendant in any civil proceeding or in any other criminal proceeding.

(5) Upon receipt of the examination and presentence reports the court shall set a time for a presentence hearing, unless the district attorney and the defendant waive the hearing. At the presentence hearing the district attorney and the defendant may question any psychiatrist or psychologist who examined the defendant pursuant to this section.

(6) If, after considering the evidence in the case or in the presentence hearing, the jury or, if the defendant waives the right to a jury trial, the court finds that the defendant comes within ORS 161.725, the court may sentence the defendant as a dangerous offender.

(7) In determining whether a defendant has been previously convicted of a felony for purposes of ORS 161.725, the court shall consider as prima facie evidence of the previous conviction:

(a) A copy of the judicial record of the conviction which copy is authenticated under ORS 40.510;

(b) A copy of the fingerprints of the subject of that conviction which copy is authenticated under ORS 40.510; and

(c) Testimony that the fingerprints of the subject of that conviction are those of the defendant.

(8) Subsection (7) of this section does not prohibit proof of the previous conviction by any other procedure.

(9) The facts required to be found to sentence a defendant as a dangerous offender under this section are enhancement facts, as defined in ORS 136.760, and ORS 136.765 to 136.785 apply to making determinations of those facts.

161.737. Sentence imposed on dangerous offender as departure from sentencing guidelines.

(1) A sentence imposed under ORS 161.725 and 161.735 for felonies committed on or after November 1, 1989, shall constitute a departure from the sentencing guidelines created by rules of the Oregon Criminal Justice Commission. The findings made to classify the defendant as a dangerous offender under ORS 161.725 and 161.735 shall constitute substantial and compelling reasons to depart from the presumptive sentence as provided by rules of the Oregon Criminal Justice Commission.

(2) When the sentence is imposed, the sentencing judge shall indicate on the record the reasons for the departure and shall impose, in addition to the indeterminate sentence imposed under ORS 161.725, a required incarceration term that the offender must serve before release to post-prison supervision. If the presumptive sentence that would have been imposed if the court had not imposed the sentence under ORS 161.725 and 161.735 as a departure is a prison sentence, the required incarceration term shall be no less than the presumptive incarceration term and no more than twice the maximum presumptive incarceration term. If the presumptive sentence for the offense is probation, the required incarceration term shall be no less than the maximum incarceration term provided by the rule of the Oregon Criminal Justice Commission that establishes incarceration terms for dispositional departures and no more than twice that amount. However, the indeterminate sentence imposed under this section and ORS 161.725 is not subject to any guideline rule establishing limitations on the duration of departures.

CHAPTER 162. OFFENSES AGAINST THE STATE AND PUBLIC JUSTICE

162.245. Refusing to assist a peace officer.

(1) A person commits the offense of refusing to assist a peace officer if upon command by a person known by the person to be a peace officer the person unreasonably refuses or fails to assist in effecting an authorized arrest or preventing another from committing a crime.

(2) Refusing to assist a peace officer is a Class B violation.

162.335. Compounding.

(1) A person commits the crime of compounding if the person accepts or agrees to accept any pecuniary benefit as consideration for refraining from reporting to law enforcement authorities the commission or suspected commission of any felony or information relating to a felony.

(2) Compounding is a Class A misdemeanor.

CHAPTER 163. OFFENSES AGAINST PERSONS

163.005. Criminal homicide.

(1) A person commits criminal homicide if, without justification or excuse, the person intentionally, knowingly, recklessly or with criminal negligence causes the death of another human being.

(2) "Criminal homicide" is murder, manslaughter or criminally negligent homicide.

(3) "Human being" means a person who has been born and was alive at the time of the criminal act.

163.095. Aggravated murder.

As used in ORS 163.105 and this section, "aggravated murder" means murder as defined in ORS 163.115 which is committed under, or accompanied by, any of the following circumstances:

- (1)
 - (a) The defendant committed the murder pursuant to an agreement that the defendant receive money or other thing of value for committing the murder.
 - (b) The defendant solicited another to commit the murder and paid or agreed to pay the person money or other thing of value for committing the murder.
 - (c) The defendant committed murder after having been convicted previously in any jurisdiction of any homicide, the elements of which constitute the crime of murder as defined in ORS 163.115 or manslaughter in the first degree as defined in

- (d) There was more than one murder victim in the same criminal episode as defined in ORS 131.505.
 - (e) The homicide occurred in the course of or as a result of intentional maiming or torture of the victim.
 - (f) The victim of the intentional homicide was a person under the age of 14 years.
- (2) (a) The victim was one of the following and the murder was related to the performance of the victim's official duties in the justice system:
- (A) A police officer as defined in ORS 181.610;
 - (B) A correctional, parole and probation officer or other person charged with the duty of custody, control or supervision of convicted persons;
 - (C) A member of the Oregon State Police;
 - (D) A judicial officer as defined in ORS 1.210;
 - (E) A juror or witness in a criminal proceeding;
 - (F) An employee or officer of a court of justice; or
 - (G) A member of the State Board of Parole and Post-Prison Supervision.
- (b) The defendant was confined in a state, county or municipal penal or correctional facility or was otherwise in custody when the murder occurred.
- (c) The defendant committed murder by means of an explosive as defined in ORS 164.055.
- (d) Notwithstanding ORS 163.115 (1)(b), the defendant personally and intentionally committed the homicide under the circumstances set forth in ORS 163.115 (1)(b).
- (e) The murder was committed in an effort to conceal the commission of a crime, or to conceal the identity of the perpetrator of a crime.
- (f) The murder was committed after the defendant had escaped from a state, county or municipal penal or correctional facility and before the defendant had been returned to the custody of the facility.

163.105. Sentencing for aggravated murder.

Notwithstanding the provisions of ORS chapter 144 and ORS 421.450 to 421.490:

- (1) (a) Except as otherwise provided in ORS 137.700, when a defendant is convicted of aggravated murder as defined by ORS 163.095, the defendant shall be sentenced, pursuant to ORS 163.150, to death, life imprisonment without the possibility of release or parole or life imprisonment.
- (b) A person sentenced to life imprisonment without the possibility of release or parole under this section shall not have that sentence suspended, deferred or commuted by any judicial officer, and the State Board of Parole and Post-Prison Supervision may not parole the prisoner nor reduce the period of confinement in any manner whatsoever. The Department of Corrections or any executive official may not permit the prisoner to participate in any sort of release or furlough program.
- (c) If sentenced to life imprisonment, the court shall order that the defendant shall be confined for a minimum of 30 years without possibility of parole, release to post-prison supervision, release on work

release or any form of temporary leave or employment at a forest or work camp.

(2) At any time after completion of a minimum period of confinement pursuant to subsection (1)(c) of this section, the State Board of Parole and Post-Prison Supervision, upon the petition of a prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period of time. The sole issue is whether or not the prisoner is likely to be rehabilitated within a reasonable period of time. At the hearing, the prisoner has:

(a) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time;

(b) The right, if the prisoner is without sufficient funds to employ an attorney, to be represented by legal counsel, appointed by the board, at board expense; and

(c) The right to a subpoena upon a showing of the general relevance and reasonable scope of the evidence sought, provided that any subpoena issued on behalf of the prisoner must be issued by the State Board of Parole and Post-Prison Supervision pursuant to rules adopted by the board.

(3) If, upon hearing all of the evidence, the board, upon a unanimous vote of all of its members, finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement should be changed to life imprisonment with the possibility of parole, release to post-prison supervision or work release, it shall enter an order to that effect and the order shall convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole, release to post-prison supervision or work release and may set a release date. Otherwise the board shall deny the relief sought in the petition.

(4) If the board denies the relief sought in the petition, the board shall determine the date of the subsequent hearing, and the prisoner may petition for an interim hearing, in accordance with section 1 of this 2009 Act.

(5) The board's final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the board's order.

163.115. Murder; affirmative defense; felony murders; sentence required; minimum term.

(1) Except as provided in ORS 163.118 and 163.125, criminal homicide constitutes murder:

(a) When it is committed intentionally, except that it is an affirmative defense that, at the time of the homicide, the defendant was under the influence of an extreme emotional disturbance;

(b) When it is committed by a person, acting either alone or with one or more persons, who commits or attempts to commit any of the following crimes and in the course of and in furtherance of the crime the person is committing or attempting to commit, or during the immediate flight therefrom, the person, or another participant if there be any, causes the death of a person other than one of the participants:

(A) Arson in the first degree as defined in ORS 164.325;

(B) Criminal mischief in the first degree by means of an explosive as defined in ORS 164.365;

(C) Burglary in the first degree as defined in ORS 164.225;

(D) Escape in the first degree as defined in ORS 162.165;

(E) Kidnapping in the second degree as defined in ORS 163.225;

(F) Kidnapping in the first degree as defined in ORS 163.235;

(G) Robbery in the first degree as defined in ORS 164.415;

(H) Any felony sexual offense in the first degree defined in this chapter;

(I) Compelling prostitution as defined in ORS 167.017; or

(J) Assault in the first degree, as defined in ORS 163.185, and the victim is under 14 years of age, or assault in the second degree, as defined in ORS 163.175 (1)(a) or (b), and the victim is under 14 years of age; or

(c) By abuse when a person, recklessly under circumstances manifesting extreme indifference to the value of human life, causes the death of a child under 14 years of age or a dependent person, as defined in ORS 163.205, and:

(A) The person has previously engaged in a pattern or practice of assault or torture of the victim or another child under 14 years of age or a dependent person; or

(B) The person causes the death by neglect or maltreatment.

(2) An accusatory instrument alleging murder by abuse under subsection (1)(c) of this section need not allege specific incidents of assault or torture.

(3) It is an affirmative defense to a charge of violating subsection (1)(b) of this section that the defendant:

(a) Was not the only participant in the underlying crime;

(b) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid in the commission thereof;

(c) Was not armed with a dangerous or deadly weapon;

(d) Had no reasonable ground to believe that any other participant was armed with a dangerous or deadly weapon; and

(e) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death.

(4) It is an affirmative defense to a charge of violating subsection (1)(c)(B) of this section that the child or dependent person was under care or treatment solely by spiritual means pursuant to the religious beliefs or practices of the child or person or the parent or guardian of the child or person.

(5) (a) Except as otherwise provided in section 1a of this 2009 Act, a person convicted of murder, who was at least 15 years of age at the time of committing the murder, shall be punished by imprisonment for life.

(b) When a defendant is convicted of murder under this section, the court shall order that the defendant shall be confined for a minimum of 25 years without possibility of parole, release to post-prison supervision, release on work release or any form of temporary leave or employment at a forest or work camp.

(c) At any time after completion of a minimum period of confinement pursuant to paragraph (b) of this subsection, the State Board of Parole and Post-Prison Supervision, upon the petition of a prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period of time. The sole issue is whether or not the prisoner is likely to be rehabilitated within a reasonable period of time. At the hearing the prisoner has:

(A) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and

(B) The right, if the prisoner is without sufficient funds to employ an attorney, to be represented by legal counsel, appointed by the board, at board expense; and

(C) The right to a subpoena upon a showing of the general relevance and reasonable scope of the evidence sought, provided that any subpoena issued on behalf of the prisoner must be issued by the State Board of Parole and Post-Prison Supervision pursuant to rules adopted by the board.

(d) If, upon hearing all of the evidence, the board, upon a unanimous vote of all of its members, finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement should be changed to life imprisonment with the possibility of parole, release to post-prison supervision or work release, it shall enter an order to that effect and the order shall convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole, release to post-prison supervision or work release and may set a release date. Otherwise, the board shall deny the relief sought in the petition.

(e) If the board denies the relief sought in the petition, the board shall determine the date of the subsequent hearing, and the prisoner may petition for an interim hearing, in accordance with section 1 of this 2009 Act.

(f) The board's final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the board's order.

(6) As used in this section:

(a) "Assault" means to intentionally, knowingly or recklessly cause physical injury to another person. "Assault" does not include the causing of physical injury in a motor vehicle accident that occurs by reason of the reckless conduct of a defendant.

(b) "Neglect or maltreatment" means a violation of ORS 163.535, 163.545 or 163.547 or a failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of a child under 14 years of age or a dependent person. This paragraph is not intended to replace or affect the duty or standard of care required under ORS chapter 677.

(c) "Pattern or practice" means one or more previous episodes.

(d) "Torture" means to intentionally inflict intense physical pain upon an unwilling victim as a separate objective apart from any other purpose.

163.117. Causing or aiding suicide.

It is a defense to a charge of murder that the defendant's conduct consisted of causing or aiding, without the use of duress or deception, another person to commit suicide. Nothing contained in this section shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter or any other crime.

163.118. First degree manslaughter.

Criminal homicide constitutes manslaughter in the first degree when:

(a) It is committed recklessly under circumstances manifesting extreme indifference to the value of human life;

(b) It is committed intentionally by a defendant under the influence of extreme emotional disturbance as provided in ORS 163.135, which constitutes a mitigating circumstance reducing the homicide that would otherwise be murder to manslaughter in the first degree and need not be proved in any prosecution;

(c) A person recklessly causes the death of a child under 14 years of age or a dependent person, as defined in ORS 163.205, and:

(A) The person has previously engaged in a pattern or practice of assault or torture of the victim or another child under 14 years of age or a dependent person; or

(B) The person causes the death by neglect or maltreatment, as defined in ORS 163.115 ; or

(d) It is committed recklessly or with criminal negligence by a person operating a motor vehicle while under the influence of intoxicants in violation of ORS 813.010 and:

(A) The person has at least three previous convictions for driving while under the influence of intoxicants under ORS 813.010, or its statutory counterpart in any jurisdiction, in the 10 years prior to the date of the current offense; or

(B)(i) The person has a previous conviction for any of the crimes described in subsection (2) of this section, or their statutory counterparts in any jurisdiction; and

(ii) The victim's serious physical injury in the previous conviction was caused by the person driving a motor vehicle.

(2) The previous convictions to which subsection (1)(d)(B) of this section applies are:

(a) Assault in the first degree under ORS 163.185;

(b) Assault in the second degree under ORS 163.175; or

(c) Assault in the third degree under ORS 163.165.

(3) Manslaughter in the first degree is a Class A felony.

(4) It is an affirmative defense to a charge of violating:

(a) Subsection (1)(c)(B) of this section that the child or dependent person was under care or treatment solely by spiritual means pursuant to the religious beliefs or practices of the child or person or the parent or guardian of the child or person.

(b) Subsection (1)(d)(B) of this section that the defendant was not under the influence of intoxicants at the time of the conduct that resulted in the previous conviction.

163.125. Second degree manslaughter.

(1) Criminal homicide constitutes manslaughter in the second degree when:

(a) It is committed recklessly;

(b) A person intentionally causes or aids another person to commit suicide; or

(c) A person, with criminal negligence, causes the death of a child under 14 years of age or a dependent person, as defined in ORS 163.205, and:

(A) The person has previously engaged in a pattern or practice of assault or torture of the victim or another child under 14 years of age or a dependent person; or

(B) The person causes the death by neglect or maltreatment, as defined in ORS 163.115.

(2) Manslaughter in the second degree is a Class B felony.

163.135. Extreme emotional disturbance; expert testimony; psychiatric examination.

(1) It is an affirmative defense to murder for purposes of ORS 163.115 (1)(a) that the homicide was committed under the influence of extreme emotional disturbance if the disturbance is not the result of the person's own intentional, knowing, reckless or criminally negligent act and if there is a reasonable explanation for the disturbance. The reasonableness of the explanation for the disturbance must be determined from the standpoint of an ordinary person in the actor's situation under the circumstances that the actor reasonably believed them to be. Extreme emotional disturbance does not constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the first degree or any other crime.

(2) The defendant may not introduce in the defendant's case in chief expert testimony regarding extreme emotional disturbance under this section unless the defendant gives notice of the defendant's intent to do so.

(3) The notice required must be in writing and must be filed at the time the defendant pleads not guilty. The defendant may file the notice at any time after the defendant pleads but before trial if the court determines that there was just cause for failure to file the notice at the time of the defendant's plea.

(4) If the defendant fails to file notice, the defendant may not introduce evidence for the purpose of proving extreme emotional disturbance under ORS 163.115 unless the court, in its discretion, determines that there was just cause for failure to file notice.

(5) After the defendant files notice as provided in this section, the state may have at least one psychiatrist or licensed psychologist of its selection examine the defendant in the same manner and subject to the same provisions as provided in ORS 161.315.

163.145. Criminally negligent homicide.

(1) A person commits the crime of criminally negligent homicide when, with criminal negligence, the person causes the death of another person.

(2) Criminally negligent homicide is a Class B felony.

163.147. Classifications of manslaughter and criminally negligent homicide.

The Oregon Criminal Justice Commission shall classify manslaughter in the second degree as described in ORS 163.125 and criminally negligent homicide as described in ORS 163.145 as crime category 9 of the sentencing guidelines grid of the commission if:

(1) The manslaughter or criminally negligent homicide resulted from the operation of a motor vehicle; and

(2) The driver of the motor vehicle was driving while under the influence of intoxicants.

163.149 Aggravated Vehicular Homicide

(1) Criminal homicide constitutes aggravated vehicular homicide when it is committed with criminal negligence, recklessly or recklessly under circumstances manifesting extreme indifference to the value of human life by a person operating a motor vehicle while under the influence of intoxicants in violation of ORS 813.010 and:

(a) The person has a previous conviction for any of the crimes described in subsection (2) of this section, or their statutory counterparts in any jurisdiction; and

(b) The victim's death in the previous conviction was caused by the person driving a motor vehicle.

(2) The previous convictions to which subsection (1) of this section applies are:

(a) Manslaughter in the first degree under ORS 163.118;

(b) Manslaughter in the second degree under ORS 163.125; or

(c) Criminally negligent homicide under ORS 163.145.

(3) It is an affirmative defense to a prosecution under this section that the defendant was not under the influence of intoxicants at the time of the conduct that resulted in the previous conviction.

(4) Aggravated vehicular homicide is a Class A felony.

163.150. Sentencing; aggravated murder.

(1) (a) Upon a finding that the defendant is guilty of aggravated murder, the court, except as otherwise provided in subsection (3) of this section, shall conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to life imprisonment, as described in ORS 163.105 (1)(c), life imprisonment without the possibility of release or parole, as described in ORS 163.105 (1)(b), or death. The proceeding shall be conducted in the trial court before the trial jury as soon as practicable. If a juror for any reason is unable to perform the function of a juror, the juror shall be dismissed from the sentencing proceeding. The court shall cause to be drawn the name of one of the alternate jurors, who shall then become a member of the jury for the sentencing proceeding notwithstanding the fact that the alternate juror did not deliberate on the issue of guilt. The substitution of an alternate juror shall be allowed only if the jury has not begun to deliberate on the issue of the sentence. If the defendant has pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose. In the proceeding, evidence may be presented as to any matter that the court deems relevant to sentence including, but not limited to, victim impact evidence relating to the personal characteristics of the victim or the impact of the crime on the victim's family and any aggravating or mitigating evidence relevant to the issue in paragraph (b)(D) of this subsection; however, neither the state nor the defendant shall be allowed to introduce repetitive evidence that has previously been offered and received during the trial on the issue of guilt. The court shall instruct the jury that all evidence previously offered and received may be considered for purposes of the sentencing hearing. This paragraph shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the State of Oregon. The state and the defendant or the counsel of the defendant shall be permitted to present arguments for or against a sentence of death and for or against a sentence of life imprisonment with or without the possibility of release or parole.

(b) Upon the conclusion of the presentation of the evidence, the court shall submit the following issues to the jury:

(A) Whether the conduct of the defendant that caused the death of the deceased was committed deliberately and with the reasonable expectation that death of the deceased or another would result;

(B) Whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society;

(C) If raised by the evidence, whether the conduct of the defendant in killing the deceased was unreasonable in response to the provocation, if any, by the deceased; and

(D) Whether the defendant should receive a death sentence.

(c)(A) The court shall instruct the jury to consider, in determining the issues in paragraph (b) of this subsection, any mitigating circumstances offered in evidence, including but not limited to the defendant's age, the extent and severity of the defendant's prior criminal conduct and the extent of the mental and emotional pressure under which the defendant was acting at the time the offense was committed.

(B) The court shall instruct the jury to answer the question in paragraph (b)(D) of this subsection "no" if, after considering any aggravating evidence and any mitigating evidence concerning any aspect of the defendant's character or background, or any circumstances of the offense and any victim impact evidence as described in paragraph (a) of this subsection, one or more of the jurors believe that the defendant should not receive a death sentence.(d) The state must prove each issue submitted under paragraph (b)(A) to (C) of this subsection beyond a reasonable doubt, and the jury shall return a special verdict of "yes" or "no" on each issue considered.

(e) The court shall charge the jury that it may not answer any issue "yes," under paragraph (b) of this subsection unless it agrees unanimously.

(f) If the jury returns an affirmative finding on each issue considered under paragraph (b) of this subsection, the trial judge shall sentence the defendant to death.

- (2) (a) Upon the conclusion of the presentation of the evidence, the court shall also instruct the jury that if it reaches a negative finding on any issue under subsection (1)(b) of this section, the trial court shall sentence the defendant to life imprisonment without the possibility of release or parole, as described in ORS 163.105 (1)(b), unless 10 or more members of the jury further find that there are sufficient mitigating circumstances to warrant life imprisonment, in which case the trial court shall sentence the defendant to life imprisonment as described in ORS 163.105 (1)(c).

(b) If the jury returns a negative finding on any issue under subsection (1)(b) of this section and further finds that there are sufficient mitigating circumstances to warrant life imprisonment, the trial court shall sentence the defendant to life imprisonment in the custody of the Department of Corrections as provided in ORS 163.105 (1)(c).

- (3) (a) When the defendant is found guilty of aggravated murder, and ORS 137.707 (2) applies or the state advises the court on the record that the state declines to present evidence for purposes of sentencing the defendant to death, the court:

(A) Shall not conduct a sentencing proceeding as described in subsection (1) of this section, and a sentence of death shall not be ordered.

(B) Shall conduct a sentencing proceeding to determine whether the defendant shall be sentenced to life imprisonment without the possibility of release or parole as described in ORS 163.105 (1)(b) or life imprisonment as described in ORS 163.105 (1)(c). If the defendant waives all rights to a jury sentencing proceeding, the court shall conduct the sentencing proceeding as the trier of fact. The procedure for the sentencing proceeding, whether before a court or a jury, shall follow the procedure of subsection (1)(a) of this section, as modified by this subsection. In the proceeding, evidence may be presented as to any matter that the court deems relevant to sentence, including, but not limited to, victim impact evidence relating to the personal characteristics of the victim or the impact of the crime on the victim's family.

(b) Following the presentation of evidence and argument under paragraph (a) of this subsection, the court shall instruct the jury that the trial court shall sentence the defendant to life imprisonment without the possibility of release or parole as described in ORS 163.105 (1)(b), unless after considering all of the evidence submitted, 10 or more members of the jury find there are sufficient mitigating

circumstances to warrant life imprisonment with the possibility of parole as described in ORS 163.105 (1)(c). If 10 or more members of the jury find there are sufficient mitigating circumstances to warrant life imprisonment with the possibility of parole, the trial court shall sentence the defendant to life imprisonment as described in ORS 163.105 (1)(c).

(c) Nothing in this subsection shall preclude the court from sentencing the defendant to life imprisonment, as described in ORS 163.105 (1)(c), or life imprisonment without the possibility of release or parole, as described in ORS 163.105 (1)(b), pursuant to a stipulation of sentence or stipulation of sentencing facts agreed to and offered by both parties if the defendant waives all rights to a jury sentencing proceeding.

(4) If any part of subsection (2) of this section is held invalid and as a result thereof a defendant who has been sentenced to life imprisonment without possibility of release or parole will instead be sentenced to life imprisonment in the custody of the Department of Corrections as provided in ORS 163.105 (2), the defendant shall be confined for a minimum of 30 years without possibility of parole, release on work release or any form of temporary leave or employment at a forest or work camp. Subsection (2) of this section shall apply only to trials commencing on or after July 19, 1989.

(5) Notwithstanding subsection (1)(a) of this section, if the trial court grants a mistrial during the sentencing proceeding, the trial court, at the election of the state, shall either:

(a) Sentence the defendant to imprisonment for life in the custody of the Department of Corrections as provided in ORS 163.105 (1)(c); or

(b) Impanel a new sentencing jury for the purpose of conducting a new sentencing proceeding to determine if the defendant should be sentenced to:

(A) Death;

(B) Imprisonment for life without the possibility of release or parole as provided in ORS 163.105 (1)(b); or

(C) Imprisonment for life in the custody of the Department of Corrections as provided in ORS 163.105 (1)(c).

163.155. Sentencing for Murder of a Pregnant Victim

(1) When a defendant, who was at least 15 years of age at the time of committing the murder, is convicted of murdering a pregnant victim under ORS 163.115 (1)(a) and the defendant knew that the victim was pregnant, the defendant shall be sentenced to life imprisonment without the possibility of release or parole or to life imprisonment. The court shall conduct a sentencing proceeding to determine whether the defendant shall be sentenced to life imprisonment without the possibility of release or parole as described in subsection (4) of this section or to life imprisonment as described in subsection (5) of this section. If the defendant waives all rights to a jury sentencing proceeding, the court shall conduct the sentencing proceeding as the trier of fact. The procedure for the sentencing proceeding, whether before a court or a jury, shall follow the procedure of ORS 163.150 (1)(a), as modified by this section.

(2) Following the presentation of evidence and argument under subsection (1) of this section, the court shall instruct the jury that the trial court shall sentence the defendant to life imprisonment without the possibility of release or parole as described in subsection (4) of this section, unless after considering all of the evidence submitted, 10 or more members of the jury find there are sufficient mitigating circumstances to warrant life imprisonment with the possibility of release or parole as described in subsection (5) of this section. If 10 or more members of the jury do not find there are sufficient mitigating circumstances to warrant life imprisonment with the possibility of release or parole, the trial court shall sentence the defendant to life imprisonment without the possibility of release or parole as described in subsection (4) of this section. If 10 or more members of the jury find there are sufficient mitigating circumstances to warrant life imprisonment with the possibility of release or

parole, the trial court shall sentence the defendant to life imprisonment as described in subsection (5) of this section.

(3) Nothing in this section precludes the court from sentencing the defendant to life imprisonment, as described in subsection (5) of this section, or life imprisonment without the possibility of release or parole, as described in subsection (4) of this section, pursuant to a stipulation of sentence or stipulation of sentencing facts agreed to and offered by both parties if the defendant waives all rights to a jury sentencing proceeding.

(4) A sentence of life imprisonment without the possibility of release or parole under this section may not be suspended, deferred or commuted by any judicial officer, and the State Board of Parole and Post-Prison Supervision may neither parole the prisoner nor reduce the period of confinement in any manner whatsoever. The Department of Corrections or any executive official may not permit the prisoner to participate in any sort of release or furlough program.

(5) If the defendant is sentenced to life imprisonment, the court shall order that the defendant be confined for a minimum of 30 years without possibility of parole, release to post-prison supervision, release on work release or any form of temporary leave or employment at a forest or work camp.

(6) At any time after completion of the minimum period of confinement pursuant to subsection (5) of this section, the board, upon the petition of a prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period of time. The sole issue shall be whether the prisoner is likely to be rehabilitated within a reasonable period of time. The proceeding shall be conducted in the manner prescribed for a contested case hearing under ORS chapter 183, except that:

(a) The prisoner has the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time;

(b) The prisoner has the right, if the prisoner is without sufficient funds to employ an attorney, to be represented by legal counsel, appointed by the board, at board expense; and

(c) The prisoner has the right to a subpoena upon a showing of the general relevance and reasonable scope of the evidence sought, provided that any subpoena issued on behalf of the prisoner must be issued by the board pursuant to rules adopted by the board.

(7) If, upon hearing all of the evidence, the board, upon a unanimous vote of all of its members, finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement should be changed to life imprisonment with the possibility of parole, release on post-prison supervision or work release, it shall enter an order to that effect and the order shall convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole, release on post-prison supervision or work release and may set a release date. Otherwise the board shall deny the relief sought in the petition.

(8) Not less than two years after the denial of the relief sought in a petition under this section, the prisoner may petition again for a change in the terms of confinement. Further petitions for a change may be filed at intervals of not less than two years thereafter.

163.160. Assault in the fourth degree.

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

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

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

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

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

- (a) The person has previously been convicted of assaulting the same victim;
 - (b) The person has previously been convicted at least three times under this section or under equivalent laws of another jurisdiction and all of the assaults involved domestic violence, as defined in ORS 135.230;
 - (c) The assault is committed in the immediate presence of, or is witnessed by, the person's or the victim's minor child or stepchild or a minor child residing within the household of the person or victim; or
 - (d) The person commits the assault knowing that the victim is pregnant.
- (4) For the purposes of subsection (3) of this section, an assault is witnessed if the assault is seen or directly perceived in any other manner by the child.

163.165. Assault in the third degree.

(1) A person commits the crime of assault in the third degree if the person:

- (a) Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon;
- (b) Recklessly causes serious physical injury to another under circumstances manifesting extreme indifference to the value of human life;
- (c) Recklessly causes physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life;
- (d) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a public transit vehicle while the operator is in control of or operating the vehicle. As used in this paragraph, "public transit vehicle" has the meaning given that term in ORS 166.116;
- (e) While being aided by another person actually present, intentionally or knowingly causes physical injury to another;
- (f) While committed to a youth correction facility, intentionally or knowingly causes physical injury to another knowing the other person is a staff member of a youth correction facility while the other person is acting in the course of official duty;
- (g) Intentionally, knowingly or recklessly causes physical injury to an emergency medical technician, as defined in ORS 682.025, or a paramedic while the emergency medical technician or paramedic is performing official duties;
- (h) Being at least 18 years of age, intentionally or knowingly causes physical injury to a child 10 years of age or younger; or
- (i) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a taxi while the operator is in control of the taxi.

(2) Assault in the third degree is a Class C felony.

(3) As used in this section:

(a) "Staff member" means:

(A) A corrections officer as defined in ORS 181.610, a youth correction officer, a Department of Corrections or Oregon Youth Authority staff member or a person employed pursuant to a contract with the department or youth authority to work with, or in the vicinity of, inmates or youth offenders; and

(B) A volunteer authorized by the department, youth authority or other entity in charge of a corrections facility to work with, or in the vicinity of, inmates or youth offenders.

(b) "Youth correction facility" has the meaning given that term in ORS 162.135.

163.175. Assault in the second degree.

(1) A person commits the crime of assault in the second degree if the person:

(a) Intentionally or knowingly causes serious physical injury to another;

(b) Intentionally or knowingly causes physical injury to another by means of a deadly or dangerous weapon; or

(c) Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life.

(2) Assault in the second degree is a Class B felony.

163.185. Assault in the first degree.

(1) A person commits the crime of assault in the first degree if the person:

(a) Intentionally causes serious physical injury to another by means of a deadly or dangerous weapon;

(b) Intentionally or knowingly causes serious physical injury to a child under six years of age;

(c) Violates ORS 163.175 knowing that the victim is pregnant; or

(d) Intentionally, knowingly or recklessly causes serious physical injury to another while operating a motor vehicle under the influence of intoxicants in violation of ORS 813.010 and:

(A) The person has at least three previous convictions for driving while under the influence of intoxicants under ORS 813.010, or its statutory counterpart in any jurisdiction, in the 10 years prior to the date of the current offense; or

(B)(i) The person has a previous conviction for any of the crimes described in subsection (2) of this section, or their statutory counterparts in any jurisdiction; and

(ii) The victim's death or serious physical injury in the previous conviction was caused by the person driving a motor vehicle.

(2) The previous convictions to which subsection (1)(d)(B) of this section apply are:

(a) Manslaughter in the first degree under ORS 163.118;

(b) Manslaughter in the second degree under ORS 163.125;

- (c) Criminally negligent homicide under ORS 163.145;
- (d) Assault in the first degree under this section;
- (e) Assault in the second degree under ORS 163.175; or
- (f) Assault in the third degree under ORS 163.165.

(3) Assault in the first degree is a Class A felony.

(4) It is an affirmative defense to a prosecution under subsection (1)(d)(B) of this section that the defendant was not under the influence of intoxicants at the time of the conduct that resulted in the previous conviction.

163.190. Menacing.

(1) A person commits the crime of menacing if by word or conduct the person intentionally attempts to place another person in fear of imminent serious physical injury.

(2) Menacing is a Class A misdemeanor.

163.195. Recklessly endangering another person.

(1) A person commits the crime of recklessly endangering another person if the person recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.

(2) Recklessly endangering another person is a Class A misdemeanor.

163.305. Definitions.

As used in chapter 743, Oregon Laws 1971, unless the context requires otherwise:

(1) "Deviate sexual intercourse" means sexual conduct between persons consisting of contact between the sex organs of one person and the mouth or anus of another.

(2) "Forcible compulsion" means to compel by:

(a) Physical force; or

(b) A threat, express or implied, that places a person in fear of immediate or future death or physical injury to self or another person, or in fear that the person or another person will immediately or in the future be kidnapped.

(3) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person incapable of appraising the nature of the conduct of the person.

(4) "Mentally incapacitated" means that a person is rendered incapable of appraising or controlling the conduct of the person at the time of the alleged offense.

(5) "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(6) "Sexual contact" means any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(7) "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight; emission is not required.

163.315. Capability to consent; lack of resistance.

(1) A person is considered incapable of consenting to a sexual act if the person is:

- (a) Under 18 years of age;
- (b) Mentally defective;
- (c) Mentally incapacitated; or
- (d) Physically helpless.

(2) A lack of verbal or physical resistance does not, by itself, constitute consent but may be considered by the trier of fact along with all other relevant evidence.

163.325. Knowledge of victim's age.

(1) In any prosecution under ORS 163.355 to 163.445 in which the criminality of conduct depends on a child's being under the age of 16, it is no defense that the defendant did not know the child's age or that the defendant reasonably believed the child to be older than the age of 16.

(2) When criminality depends on the child's being under a specified age other than 16, it is an affirmative defense for the defendant to prove that the defendant reasonably believed the child to be above the specified age at the time of the alleged offense.

(3) In any prosecution under ORS 163.355 to 163.445 in which the victim's lack of consent is based solely upon the incapacity of the victim to consent because the victim is mentally defective, mentally incapacitated or physically helpless, it is an affirmative defense for the defendant to prove that at the time of the alleged offense the defendant did not know of the facts or conditions responsible for the victim's incapacity to consent.

163.345. Age; defense.

(1) In any prosecution under ORS 163.355, 163.365, 163.385, 163.395, 163.415, 163.425, 163.427 or 163.435 in which the victim's lack of consent was due solely to incapacity to consent by reason of being less than a specified age, it is a defense that the actor was less than three years older than the victim at the time of the alleged offense.

(2) In any prosecution under ORS 163.408, when the object used to commit the unlawful sexual penetration was the hand or any part thereof of the actor and in which the victim's lack of consent was due solely to incapacity to consent by reason of being less than a specified age, it is a defense that the actor was less than three years older than the victim at the time of the alleged offense.

(3) In any prosecution under ORS 163.445 in which the victim's lack of consent was due solely to incapacity to consent by reason of being less than a specified age, it is a defense that the actor was less than three years older than the victim at the time of the alleged offense if the victim was at least 15 years of age at the time of the alleged offense.

163.355. Rape in the third degree.

(1) A person commits the crime of rape in the third degree if the person has sexual intercourse with another person under 16 years of age.

(2) Rape in the third degree is a Class C felony.

163.365. Rape in the second degree.

(1) A person who has sexual intercourse with another person commits the crime of rape in the second degree if the other person is under 14 years of age.

(2) Rape in the second degree is a Class B felony.

163.375. Rape in the first degree.

(1) A person who has sexual intercourse with another person commits the crime of rape in the first degree if:

- (a) The victim is subjected to forcible compulsion by the person;
- (b) The victim is under 12 years of age;
- (c) The victim is under 16 years of age and is the person's sibling, of the whole or half blood, the person's child or the person's spouse's child; or
- (d) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

(2) Rape in the first degree is a Class A felony.

163.385. Sodomy in the third degree.

(1) A person commits the crime of sodomy in the third degree if the person engages in deviate sexual intercourse with another person under 16 years of age or causes that person to engage in deviate sexual intercourse.

(2) Sodomy in the third degree is a Class C felony.

163.395. Sodomy in the second degree.

(1) A person who engages in deviate sexual intercourse with another person or causes another to engage in deviate sexual intercourse commits the crime of sodomy in the second degree if the victim is under 14 years of age.

(2) Sodomy in the second degree is a Class B felony.

163.405. Sodomy in the first degree.

(1) A person who engages in deviate sexual intercourse with another person or causes another to engage in deviate sexual intercourse commits the crime of sodomy in the first degree if:

- (a) The victim is subjected to forcible compulsion by the actor;
- (b) The victim is under 12 years of age;
- (c) The victim is under 16 years of age and is the actor's brother or sister, of the whole or half blood, the son or daughter of the actor or the son or daughter of the actor's spouse; or
- (d) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

(2) Sodomy in the first degree is a Class A felony.

163.408. Unlawful sexual penetration in the second degree.

(1) Except as permitted under ORS 163.412, a person commits the crime of unlawful sexual penetration in the second degree if the person penetrates the vagina, anus or penis of another with any object other than the penis or mouth of the actor and the victim is under 14 years of age.

(2) Unlawful sexual penetration in the second degree is a Class B felony.

163.411. Unlawful sexual penetration in the first degree.

(1) Except as permitted under ORS 163.412, a person commits the crime of unlawful sexual penetration in the first degree if the person penetrates the vagina, anus or penis of another with any object other than the penis or mouth of the actor and:

- (a) The victim is subjected to forcible compulsion;
- (b) The victim is under 12 years of age; or
- (c) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

(2) Unlawful sexual penetration in the first degree is a Class A felony.

163.412. Unlawful sexual penetration; exceptions.

Nothing in ORS 163.408, 163.411 or 163.452 prohibits a penetration described in those sections when:

- (1) The penetration is part of a medically recognized treatment or diagnostic procedure; or
- (2) The penetration is accomplished by a peace officer or a corrections officer acting in official capacity, or by medical personnel at the request of such an officer, in order to search for weapons, contraband or evidence of crime.

163.415. Sexual abuse in the third degree.

(1) A person commits the crime of sexual abuse in the third degree if:

- (a) The person subjects another person to sexual contact and:
 - (A) The victim does not consent to the sexual contact; or
 - (B) The victim is incapable of consent by reason of being under 18 years of age; or
- (b) For the purpose of arousing or gratifying the sexual desire of the person or another person, the person intentionally propels any dangerous substance at a victim without the consent of the victim.

(2) Sexual abuse in the third degree is a Class A misdemeanor.

(3) As used in this section, "dangerous substance" means blood, urine, semen or feces.

163.425. Sexual abuse in the second degree.

(1) A person commits the crime of sexual abuse in the second degree when:

(a) The person subjects another person to sexual intercourse, deviate sexual intercourse or, except as provided in ORS 163.412, penetration of the vagina, anus or penis with any object other than the penis or mouth of the actor and the victim does not consent thereto; or

(b)(A) The person violates ORS 163.415 (1)(b);

(B) The person is 21 years of age or older; and

(C) At any time before the commission of the offense, the person was the victim's coach as defined in section 1 of this 2009 Act.

(2) Sexual abuse in the second degree is a Class C felony.

163.427. Sexual abuse in the first degree.

(1) A person commits the crime of sexual abuse in the first degree when that person:

(a) Subjects another person to sexual contact and:

(A) The victim is less than 14 years of age;

(B) The victim is subjected to forcible compulsion by the actor; or

(C) The victim is incapable of consent by reason of being mentally defective, mentally incapacitated or physically helpless; or

(b) Intentionally causes a person under 18 years of age to touch or contact the mouth, anus or sex organs of an animal for the purpose of arousing or gratifying the sexual desire of a person.

(2) Sexual abuse in the first degree is a Class B felony.

163.435. Contributing to the sexual delinquency of a minor.

(1) A person 18 years of age or older commits the crime of contributing to the sexual delinquency of a minor if:

(a) Being a male, he engages in sexual intercourse with a female under 18 years of age; or

(b) Being a female, she engages in sexual intercourse with a male under 18 years of age; or

(c) The person engages in deviate sexual intercourse with another person under 18 years of age or causes that person to engage in deviate sexual intercourse.

(2) Contributing to the sexual delinquency of a minor is a Class A misdemeanor.

163.445. Sexual misconduct.

(1) A person commits the crime of sexual misconduct if the person engages in sexual intercourse or deviate sexual intercourse with an unmarried person under 18 years of age.

(2) Sexual misconduct is a Class C misdemeanor.

163.465. Public indecency.

(1) A person commits the crime of public indecency if while in, or in view of, a public place the person

performs:

- (a) An act of sexual intercourse;
 - (b) An act of deviate sexual intercourse; or
 - (c) An act of exposing the genitals of the person with the intent of arousing the sexual desire of the person or another person.
- (2) (a) Public indecency is a Class A misdemeanor.
- (b) Notwithstanding paragraph (a) of this subsection, public indecency is a Class C felony if the person has a prior conviction for public indecency or a crime described in ORS 163.355 to 163.445 or for a crime in another jurisdiction that, if committed in this state, would constitute public indecency or a crime described in ORS 163.355 to 163.445.

163.467. Private indecency.

(1) A person commits the crime of private indecency if the person exposes the genitals of the person with the intent of arousing the sexual desire of the person or another person and:

- (a) The person is in a place where another person has a reasonable expectation of privacy;
 - (b) The person is in view of the other person;
 - (c) The exposure reasonably would be expected to alarm or annoy the other person; and
 - (d) The person knows that the other person did not consent to the exposure.
- (2) Private indecency is a Class A misdemeanor.
- (3) Subsection (1) of this section does not apply to a person who commits the act described in subsection (1) of this section if the person cohabits with and is involved in a sexually intimate relationship with the other person.
- (4) For purposes of this section, "place where another person has a reasonable expectation of privacy" includes, but is not limited to, residences, yards of residences, working areas and offices.

163.476. Locations where children congregate.

(1) A person commits the crime of unlawfully being in a location where children regularly congregate if the person:

- (a) (A) Has been designated a sexually violent dangerous offender under ORS 137.765;
- (B) Has been designated a predatory sex offender under ORS 181.585 and does not have written approval from the State Board of Parole and Post-Prison Supervision or the person's supervisory authority or supervising officer to be in or upon the specific premises;
- (C) Has been sentenced as a dangerous offender under ORS 161.725 upon conviction of a sex crime; or
- (D) Has been given a similar designation or been sentenced under a similar law of another jurisdiction; and

(b) Knowingly enters or remains in or upon premises where persons under 18 years of age regularly congregate.

(2) As used in this section:

(a) "Premises where persons under 18 years of age regularly congregate" means schools, child care centers, playgrounds, other places intended for use primarily by persons under 18 years of age and places where persons under 18 years of age gather for regularly scheduled educational and recreational programs.

(b) "Sex crime" has the meaning given that term in ORS 181.594.

(3) Unlawfully being in a location where children regularly congregate is a Class A misdemeanor.

163.479. Unlawful contact with a child.

(1) A person commits the crime of unlawful contact with a child if the person:

- (a) (A) Has been designated a sexually violent dangerous offender under ORS 137.765;
- (B) Has been designated a predatory sex offender under ORS 181.585;
- (C) Has been sentenced as a dangerous offender under ORS 161.725 upon conviction of a sex crime; or
- (D) Has been given a similar designation or been sentenced under a similar law of another jurisdiction; and

(b) Knowingly contacts a child with the intent to commit a crime or for the purpose of arousing or satisfying the sexual desires of the person or another person.

(2) As used in this section:

(a) "Child" means a person under 18 years of age.

(b) "Contact" means to communicate in any manner.

(c) "Sex crime" has the meaning given that term in ORS 181.594.

(3) Unlawful contact with a child is a Class C felony.

163.515. Bigamy.

(1) A person commits the crime of bigamy if the person knowingly marries or purports to marry another person at a time when either is lawfully married.

(2) Bigamy is a Class C felony.

163.730. Definitions for ORS 30.866 and 163.730 to 163.750.

As used in ORS 30.866 and 163.730 to 163.750, unless the context requires otherwise:

(1) "Alarm" means to cause apprehension or fear resulting from the perception of danger.

(2) "Coerce" means to restrain, compel or dominate by force or threat.

(3) "Contact" includes but is not limited to:

- (a) Coming into the visual or physical presence of the other person;
- (b) Following the other person;
- (c) Waiting outside the home, property, place of work or school of the other person or of a member of that person's family or household;
- (d) Sending or making written or electronic communications in any form to the other person;
- (e) Speaking with the other person by any means;
- (f) Communicating with the other person through a third person;
- (g) Committing a crime against the other person;
- (h) Communicating with a third person who has some relationship to the other person with the intent of affecting the third person's relationship with the other person;
- (i) Communicating with business entities with the intent of affecting some right or interest of the other person;
- (j) Damaging the other person's home, property, place of work or school; ~~or~~
- (k) Delivering directly or through a third person any object to the home, property, place of work or school of the other person; or
- (l) Service of process or other legal documents unless the other person is served as provided in ORCP 7 or 9.

(4) "Household member" means any person residing in the same residence as the victim.

(5) "Immediate family" means father, mother, child, sibling, spouse, grandparent, stepparent and stepchild.

(6) "Law enforcement officer" means any person employed in this state as a police officer by a county sheriff, constable, marshal or municipal or state police agency.

(7) "Repeated" means two or more times.

(8) "School" means a public or private institution of learning or a child care facility.

163.732. Stalking.

(1) A person commits the crime of stalking if:

- (a) The person knowingly alarms or coerces another person or a member of that person's immediate family or household by engaging in repeated and unwanted contact with the other person;
- (b) It is objectively reasonable for a person in the victim's situation to have been alarmed or coerced by the contact; and
- (c) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim's immediate family or household.

(2) (a) Stalking is a Class A misdemeanor.

(b) Notwithstanding paragraph (a) of this subsection, stalking is a Class C felony if the person has a prior conviction for:

(A) Stalking; or

(B) Violating a court's stalking protective order.

(c) When stalking is a Class C felony pursuant to paragraph (b) of this subsection, stalking shall be classified as a person felony and as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

163.755. Conduct authorized or protected by labor laws.

(1) Nothing in ORS 30.866 or 163.730 to 163.750 shall be construed to permit the issuance of a court's stalking protective order under ORS 30.866 or 163.738, the issuance of a citation under ORS 163.735, a criminal prosecution under ORS 163.732 or a civil action under ORS 30.866:

(a) For conduct that is authorized or protected by the labor laws of this state or of the United States.

(b) By or on behalf of a person who is in the legal or physical custody of a law enforcement unit or is in custody under ORS chapter 419C.

(c) By or on behalf of a person not described in paragraph (b) of this subsection to or against another person who:

(A) Is a parole and probation officer or an officer, employee or agent of a law enforcement unit, a county juvenile department or the Oregon Youth Authority; and

(B) Is acting within the scope of the other person's official duties.

(2) As used in this section, "law enforcement unit" and "parole and probation officer" have the meanings given those terms in ORS 181.610.

CHAPTER 164. OFFENSES AGAINST PROPERTY

164.015. Theft.

A person commits theft when, with intent to deprive another of property or to appropriate property to the person or to a third person, the person:

(1) Takes, appropriates, obtains or withholds such property from an owner thereof;

(2) Commits theft of property lost, mislaid or delivered by mistake as provided in ORS 164.065;

(3) Commits theft by extortion as provided in ORS 164.075;

(4) Commits theft by deception as provided in ORS 164.085; or

(5) Commits theft by receiving as provided in ORS 164.095.

164.025. Consolidation of theft offenses; pleading and proof.

(1) Except for the crime of theft by extortion, conduct denominated theft under ORS 164.015 constitutes a single offense.

(2) If it is an element of the crime charged that property was taken by extortion, an accusation of theft must so

specify. In all other cases an accusation of theft is sufficient if it alleges that the defendant committed theft of property of the nature or value required for the commission of the crime charged without designating the particular way or manner in which the theft was committed.

(3) Proof that the defendant engaged in conduct constituting theft as defined in ORS 164.015 is sufficient to support any indictment, information or complaint for theft other than one charging theft by extortion. An accusation of theft by extortion must be supported by proof establishing theft by extortion.

164.035. Defenses.

(1) In a prosecution for theft it is a defense that the defendant acted under an honest claim of right, in that:

(a) The defendant was unaware that the property was that of another; or

(b) The defendant reasonably believed that the defendant was entitled to the property involved or had a right to acquire or dispose of it as the defendant did.

(2) In a prosecution for theft by extortion committed by instilling in the victim a fear that the victim or another person would be charged with a crime, it is a defense that the defendant reasonably believed the threatened charge to be true and that the sole purpose of the defendant was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of the threatened charge.

(3) In a prosecution for theft by receiving, it is a defense that the defendant received, retained, concealed or disposed of the property with the intent of restoring it to the owner.

(4) It is a defense that the property involved was that of the defendant's spouse, unless the parties were not living together as husband and wife and were living in separate abodes at the time of the alleged theft.

164.043. Theft in the third degree.

(1) A person commits the crime of theft in the third degree if

(a) By means other than extortion, the person commits theft as defined in ORS 164.015; and

(b) The total value of the property in a single or an aggregate transaction is under \$50.

(2) Theft in the third degree is a Class C misdemeanor.

164.045. Theft in the second degree.

(1) A person commits the crime of theft in the second degree if

(a) By other than extortion, the person commits theft as defined in ORS 164.015; and

(b) The total value of the property in a single or aggregate transaction is \$100 or more and less than \$1000.

(2) Theft in the second degree is a Class A misdemeanor.

164.055. Theft in the first degree.

(1) A person commits the crime of theft in the first degree if, by means other than extortion, the person commits theft as defined in ORS 164.015 and:

(a) The total value of the property in a single or aggregate transaction is \$1,000 or more;

(b) The theft is committed during a riot, fire, explosion, catastrophe or other emergency in an area affected by the riot, fire, explosion, catastrophe or other emergency;

(c) The theft is theft by receiving committed by buying, selling, borrowing or lending on the security of the property;

(d) The subject of the theft is a firearm or explosive;

(e) The subject of the theft is a livestock animal, a companion animal or a wild animal removed from habitat or born of a wild animal removed from habitat, pursuant to ORS 497.308 (2)(c); or

(f) The subject of the theft is a precursor substance.

(2) As used in this section:

(a) "Companion animal" means a dog or cat possessed by a person, business or other entity for purposes of companionship, security, hunting, herding or providing assistance in relation to a physical disability.

(b) "Explosive" means a chemical compound, mixture or device that is commonly used or intended for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin, blasting caps and nitrojelly, but excluding fireworks as defined in ORS 480.110 (1), black powder, smokeless powder, small arms ammunition and small arms ammunition primers.

(c) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile by the action of black powder or smokeless powder and which is readily capable of use as a weapon.

(d) "Livestock animal" means a ratite, psittacine, horse, gelding, mare, filly, stallion, colt, mule, ass, jenny, bull, steer, cow, calf, goat, sheep, lamb, llama, pig or hog.

(e) "Precursor substance" has the meaning given that term in ORS 475.940.

(3) Theft in the first degree is a Class C felony.

164.057. Aggravated theft in the first degree.

(1) A person commits the crime of aggravated theft in the first degree, if:

(a) The person violates ORS 164.055 with respect to property, other than a motor vehicle used primarily for personal rather than commercial transportation; and

(b) The value of the property in a single or aggregate transaction is \$ 10,000 or more.

(2) Aggravated theft in the first degree is a Class B felony.

164.065. Theft of lost, mislaid, or misdelivered property.

A person who comes into control of property of another that the person knows or has good reason to know to have been lost, mislaid or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, commits theft if, with intent to deprive the owner thereof, the person fails to take reasonable measures to restore the property to the owner.

164.075. Theft by extortion.

(1) A person commits theft by extortion when the person compels or induces another to deliver property to the

person or to a third person by instilling in the other a fear that, if the property is not so delivered, the actor or a third person will in the future:

- (a) Cause physical injury to some person; or
- (b) Cause damage to property; or
- (c) Engage in other conduct constituting a crime; or
- (d) Accuse some person of a crime or cause criminal charges to be instituted against the person; or
- (e) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
- (f) Cause or continue a strike, boycott or other collective action injurious to some person's business; except that such conduct shall not be considered extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; or
- (g) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (h) Use or abuse the position as a public servant by performing some act within or related to official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
- (i) Inflict any other harm that would not benefit the actor.

(2) Theft by extortion is a Class B felony.

164.085. Theft by deception.

(1) A person, who obtains property of another thereby, commits theft by deception when, with intent to defraud, the person:

- (a) Creates or confirms another's false impression of law, value, intention or other state of mind which the actor does not believe to be true;
- (b) Fails to correct a false impression which the person previously created or confirmed;
- (c) Prevents another from acquiring information pertinent to the disposition of the property involved;
- (d) Sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim or other legal impediment to the enjoyment of the property, whether such impediment is or is not valid, or is or is not a matter of official record; or
- (e) Promises performance which the person does not intend to perform or knows will not be performed.

(2) "Deception" does not include falsity as to matters having no pecuniary significance, or representations unlikely to deceive ordinary persons in the group addressed. For purposes of this subsection, the theft of a companion animal, as defined in ORS 164.055, or a captive wild animal is a matter having pecuniary significance.

(3) In a prosecution for theft by deception the defendant's intention or belief that a promise would not be performed shall not be established by or inferred from the fact alone that such promise was not performed.

(4) In a prosecution for theft by deception committed by means of a bad check, it is prima facie evidence of

knowledge that the check or order would not be honored if:

- (a) The drawer has no account with the drawee at the time the check or order is drawn or uttered; or
- (b) Payment is refused by the drawee for lack of funds, upon presentation within 30 days after the date of utterance, and the drawer fails to make good within 10 days after receiving notice of refusal.

164.095. Theft by receiving.

(1) A person commits theft by receiving if the person receives, retains, conceals or disposes of property of another knowing or having good reason to know that the property was the subject of theft.

(2) It is a defense to a charge of violating subsection (1) of this section if:

- (a) The person is a scrap metal business as defined in section 1 of this 2009 Act or an agent or employee of a scrap metal business;
- (b) The person receives or retains metal property as defined in section 1 of this 2009 Act; and
- (c) The person makes a report in accordance with section 2 (3)(a) of this 2009 Act.

(3) "Receiving" means acquiring possession, control or title, or lending on the security of the property.

164.098. Organized Retail Theft.

(1) A person commits the crime of organized retail theft if, acting in concert with another person:

- (a) The person violates ORS 164.015 or aids or abets the other person to violate ORS 164.015;
- (b) The subject of the theft is merchandise and the merchandise is taken from a mercantile establishment; and
- (c) The aggregate value of the merchandise taken within any 90-day period exceeds \$5,000.

(2) As used in this section:

- (a) "Merchandise" has the meaning given that term in ORS 30.870.
- (b) "Mercantile establishment" has the meaning given that term in ORS 30.870.

(3) Organized retail theft is a Class B felony.

164.125. Theft of services.

(1) A person commits the crime of theft of services if:

- (a) With intent to avoid payment therefor, the person obtains services that are available only for compensation, by force, threat, deception or other means to avoid payment for the services; or
- (b) Having control over the disposition of labor or of business, commercial or industrial equipment or facilities of another, the person uses or diverts to the use of the person or a third person such labor, equipment or facilities with intent to derive for the person or the third person a commercial benefit to which the person or the third person is not entitled.

(2) As used in this section, "services" includes, but is not limited to, labor, professional services, toll facilities, transportation, communications service, entertainment, the supplying of food, lodging or other accommodations

in hotels, restaurants or elsewhere, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam and water. "Communication service" includes, but is not limited to, use of telephone, computer and cable television systems.

(3) Absconding without payment or offer to pay for hotel, restaurant or other services for which compensation is customarily paid immediately upon the receiving of them is prima facie evidence that the services were obtained with intent to avoid payment therefor. Obtaining the use of any communication system the use of which is available only for compensation, including but not limited to telephone, computer and cable television systems, or obtaining the use of any services of a public utility nature, without payment or offer to pay for such use is prima facie evidence that the obtaining of the use of such system or the use of such services was gained with intent to avoid payment therefor.

(4) The value of single theft transactions may be added together if the thefts were committed:

(a) Against multiple victims by a similar means within a 30-day period; or

(b) Against the same victim, or two or more persons who are joint owners, within a 180-day period.

(5) Theft of services is:

(a) A Class C misdemeanor if the aggregate total value of services that are the subject of the theft is less than \$100;

(b) A Class A misdemeanor if the aggregate total value of services that are the subject of the theft is \$100 or more and less than \$1,000;

(c) A Class C felony if the aggregate total value of services that are the subject of the theft is \$1,000 or more; and

(d) A Class B felony if the aggregate total value of services that are the subject of the theft is \$10,000 or more.

164.135. Unauthorized use of a vehicle.

(1) A person commits the crime of unauthorized use of a vehicle when:

(a) The person takes, operates, exercises control over, rides in or otherwise uses another's vehicle, boat or aircraft without consent of the owner;

(b) Having custody of a vehicle, boat or aircraft pursuant to an agreement between the person or another and the owner thereof whereby the person or another is to perform for compensation a specific service for the owner involving the maintenance, repair or use of such vehicle, boat or aircraft, the person intentionally uses or operates it, without consent of the owner, for the person's own purpose in a manner constituting a gross deviation from the agreed purpose; or

(c) Having custody of a vehicle, boat or aircraft pursuant to an agreement with the owner thereof whereby such vehicle, boat or aircraft is to be returned to the owner at a specified time, the person knowingly retains or withholds possession thereof without consent of the owner for so lengthy a period beyond the specified time as to render such retention or possession a gross deviation from the agreement.

(2) Unauthorized use of a vehicle, boat or aircraft is a Class C felony.

(3) Subsection (1)(a) of this section does not apply to a person who rides in or otherwise uses a public transit vehicle, as defined in ORS 166.116, if the vehicle is being operated by an authorized operator within the scope

of the operator's employment.

164.205. Definitions for ORS 164.205 to 164.270.

As used in ORS 164.205 to 164.270, except as the context requires otherwise:

(1) "Building," in addition to its ordinary meaning, includes any booth, vehicle, boat, aircraft or other structure adapted for overnight accommodation of persons or for carrying on business therein. Where a building consists of separate units, including, but not limited to, separate apartments, offices or rented rooms, each unit is, in addition to being a part of such building, a separate building.

(2) "Dwelling" means a building which regularly or intermittently is occupied by a person lodging therein at night, whether or not a person is actually present.

(3) "Enter or remain unlawfully" means:

(a) To enter or remain in or upon premises when the premises, at the time of such entry or remaining, are not open to the public or when the entrant is not otherwise licensed or privileged to do so;

(b) To fail to leave premises that are open to the public after being lawfully directed to do so by the person in charge;

(c) To enter premises that are open to the public after being lawfully directed not to enter the premises;
or

(d) To enter or remain in a motor vehicle when the entrant is not authorized to do so.

(4) "Open to the public" means premises which by their physical nature, function, custom, usage, notice or lack thereof or other circumstances at the time would cause a reasonable person to believe that no permission to enter or remain is required.

(5) "Person in charge" means a person, a representative or employee of the person who has lawful control of premises by ownership, tenancy, official position or other legal relationship. "Person in charge" includes, but is not limited to the person, or holder of a position, designated as the person or position-holder in charge by the Governor, board, commission or governing body of any political subdivision of this state.

(6) "Premises" includes any building and any real property, whether privately or publicly owned.

164.215. Burglary in the second degree.

(1) Except as otherwise provided in ORS 164.255, a person commits the crime of burglary in the second degree if the person enters or remains unlawfully in a building with intent to commit a crime therein.

(2) Burglary in the second degree is a Class C felony.

164.225. Burglary in the first degree.

(1) A person commits the crime of burglary in the first degree if the person violates ORS 164.215 and the building is a dwelling, or if in effecting entry or while in a building or in immediate flight therefrom the person:

(a) Is armed with a burglary tool or theft device as defined in ORS 164.235 or a deadly weapon;

(b) Causes or attempts to cause physical injury to any person; or

(c) Uses or threatens to use a dangerous weapon.

(2) Burglary in the first degree is a Class A felony.

164.235. Possession of burglar's tools.

(1) A person commits the crime of possession of a burglary tool or theft device if the person possesses a burglary tool or theft device and the person:

(a) Intends to use the tool or device to commit or facilitate a forcible entry into premises or a theft by a physical taking; or

(b) Knows that another person intends to use the tool or device to commit or facilitate a forcible entry into premises or a theft by a physical taking.

(2) For purposes of this section, "burglary tool or theft device" means an acetylene torch, electric arc, burning bar, thermal lance, oxygen lance or other similar device capable of burning through steel, concrete or other solid material, or nitroglycerine, dynamite, gunpowder or any other explosive, tool, instrument or other article adapted or designed for committing or facilitating a forcible entry into premises or theft by a physical taking.

(3) Possession of a burglary tool or theft device is a Class A misdemeanor.

164.243. Criminal trespass in the second degree by a guest.

A guest commits the crime of criminal trespass in the second degree if that guest intentionally remains unlawfully in a transient lodging after the departure date of the guest's reservation without the approval of the hotelkeeper. "Guest" means a person who is registered at a hotel and is assigned to transient lodging, and includes any individual accompanying the person.

164.245. Criminal trespass in the second degree.

(1) A person commits the crime of criminal trespass in the second degree if the person enters or remains unlawfully in a motor vehicle or in or upon premises.

(2) Criminal trespass in the second degree is a Class C misdemeanor.

164.255. Criminal trespass in the first degree.

(1) A person commits the crime of criminal trespass in the first degree if the person:

(a) Enters or remains unlawfully in a dwelling;

(b) Having been denied future entry to a building pursuant to a merchant's notice of trespass, reenters the building during hours when the building is open to the public with the intent to commit theft therein;

(c) Enters or remains unlawfully upon railroad yards, tracks, bridges or rights of way; or

(d) Enters or remains unlawfully in or upon premises that have been determined to be not fit for use under ORS 453.855 to 453.912.

(2) Subsection (1)(d) of this section does not apply to the owner of record of the premises if:

(a) The owner notifies the law enforcement agency having jurisdiction over the premises that the owner intends to enter the premises;

(b) The owner enters or remains on the premises for the purpose of inspecting or decontaminating the premises or lawfully removing items from the premises; and

(c) The owner has not been arrested for, charged with or convicted of a criminal offense that contributed to the determination that the premises are not fit for use.

(3) Criminal trespass in the first degree is a Class A misdemeanor.

164.265. Criminal trespass while in possession of firearm.

(1) A person commits the crime of criminal trespass while in possession of a firearm who, while in possession of a firearm, enters or remains unlawfully in or upon premises.

(2) Criminal trespass while in possession of a firearm is a Class A misdemeanor.

164.272. Unlawful entry into motor vehicle.

(1) A person commits the crime of unlawful entry into a motor vehicle if the person enters a motor vehicle, or any part of a motor vehicle, with the intent to commit a crime.

(2) Unlawful entry into a motor vehicle is a Class A misdemeanor.

(3) As used in this section, "enters" includes, but is not limited to, inserting:

(a) Any part of the body; or

(b) Any object connected with the body.

164.395. Robbery in the third degree.

(1) A person commits the crime of robbery in the third degree if in the course of committing or attempting to commit theft or unauthorized use of a vehicle as defined in ORS 164.135 the person uses or threatens the immediate use of physical force upon another person with the intent of:

(a) Preventing or overcoming resistance to the taking of the property or to retention thereof immediately after the taking; or

(b) Compelling the owner of such property or another person to deliver the property or to engage in other conduct which might aid in the commission of the theft or unauthorized use of a vehicle.

(2) Robbery in the third degree is a Class C felony.

164.405. Robbery in the second degree.

(1) A person commits the crime of robbery in the second degree if the person violates ORS 164.395 and the person:

(a) Represents by word or conduct that the person is armed with what purports to be a dangerous or deadly weapon; or

(b) Is aided by another person actually present.

(2) Robbery in the second degree is a Class B felony.

164.415. Robbery in the first degree.

(1) A person commits the crime of robbery in the first degree if the person violates ORS 164.395 and the person:

- (a) Is armed with a deadly weapon;
- (b) Uses or attempts to use a dangerous weapon; or
- (c) Causes or attempts to cause serious physical injury to any person.

(2) Robbery in the first degree is a Class A felony.

166.015. Riot

(1) A person commits the crime of riot if while participating with five or more other persons the person engages in tumultuous and violent conduct and thereby intentionally or recklessly creates a grave risk of causing public alarm.

(2) Riot is a Class C felony.

166.025. Disorderly conduct

(1) A person commits the crime of disorderly conduct in the second degree if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, the person:

- (a) Engages in fighting or in violent, tumultuous or threatening behavior;
- (b) Makes unreasonable noise;
- (c) Disturbs any lawful assembly of persons without lawful authority;
- (d) Obstructs vehicular or pedestrian traffic on a public way;
- (e) Congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse;
- (f) Initiates or circulates a report, knowing it to be false, concerning an alleged or impending fire, explosion, crime, catastrophe or other emergency; or
- (g) Creates a hazardous or physically offensive condition by any act which the person is not licensed or privileged to do.

(2) Disorderly conduct in the second degree is a Class B misdemeanor.

166.065. Harassment

(1) A person commits the crime of harassment if the person intentionally:

- (a) Harasses or annoys another person by:
 - (A) Subjecting such other person to offensive physical contact; or
 - (B) Publicly insulting such other person by abusive words or gestures in a manner intended and likely to provoke a violent response;
- (b) Subjects another to alarm by conveying a false report, known by the conveyor to be false, concerning death or serious physical injury to a person, which report reasonably would be expected to cause alarm; or

(c) Subjects another to alarm by conveying a telephonic, electronic or written threat to inflict serious physical injury on that person or to commit a felony involving the person or property of that person or any member of that person's family, which threat reasonably would be expected to cause alarm.

(2) A person is criminally liable for harassment if the person knowingly permits any telephone or electronic device under the person's control to be used in violation of subsection (1) of this section.

(3) Harassment is a Class B misdemeanor.

(4) Notwithstanding subsection (3) of this section, harassment is a Class A misdemeanor if a person violates subsection (1) of this section by subjecting another person to offensive physical contact and the offensive physical contact consists of touching the sexual or other intimate parts of the other person.