

# Enrolled Senate Bill 907

Sponsored by COMMITTEE ON JUDICIARY (at the request of Governor Theodore R. Kulongoski, President of the Senate Peter Courtney, Speaker of the House Karen Minnis, Senate Majority Leader Kate Brown, Senate Republican Leader Ted Ferrioli, House Majority Leader Wayne Scott, House Democratic Leader Jeff Merkley)

CHAPTER .....

AN ACT

Relating to controlled substances; creating new provisions; amending ORS 90.400, 105.555, 107.135, 133.619, 133.724, 133.726, 161.570, 161.705, 163.205, 163.505, 163.547, 165.663, 165.667, 181.085, 342.143, 419B.005, 419C.239, 419C.420, 419C.443, 421.504, 475.245, 475.967, 475.992, 475.995, 475.996 and 475.999 and section 19, chapter 666, Oregon Laws 2001; and declaring an emergency.

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

**SECTION 1.** ORS 163.205 is amended to read:

163.205. (1) A person commits the crime of criminal mistreatment in the first degree if:

(a) The person, in violation of a legal duty to provide care for another person, or having assumed the permanent or temporary care, custody or responsibility for the supervision of another person, intentionally or knowingly withholds necessary and adequate food, physical care or medical attention from that other person; or

(b) The person, in violation of a legal duty to provide care for a dependent person or elderly person, or having assumed the permanent or temporary care, custody or responsibility for the supervision of a dependent person or elderly person, intentionally or knowingly:

(A) Causes physical injury or injuries to the dependent person or elderly person;

(B) Deserts the dependent person or elderly person in a place with the intent to abandon that person;

(C) Leaves the dependent person or elderly person unattended at a place for such a period of time as may be likely to endanger the health or welfare of that person;

(D) Hides the dependent person's or elderly person's money or property or takes the money or property for, or appropriates the money or property to, any use or purpose not in the due and lawful execution of the person's responsibility; [or]

(E) Takes charge of a dependent or elderly person for the purpose of fraud; or

**(F) Leaves the dependent person or elderly person, or causes the dependent person or elderly person to enter or remain, in or upon premises where a chemical reaction involving one or more precursor substances:**

**(i) Is occurring as part of unlawfully manufacturing a controlled substance or grinding, soaking or otherwise breaking down a precursor substance for the unlawful manufacture of a controlled substance; or**

**(ii) Has occurred as part of unlawfully manufacturing a controlled substance or grinding, soaking or otherwise breaking down a precursor substance for the unlawful manufacture of**

**a controlled substance and the premises have not been certified as fit for use under ORS 453.885.**

(2) As used in this section:

(a) **“Controlled substance” has the meaning given that term in ORS 475.005.**

[(a)] (b) “Dependent person” means a person who because of either age or a physical or mental disability is dependent upon another to provide for the person’s physical needs.

[(b)] (c) “Elderly person” means a person 65 years of age or older.

[(c)] (d) “Legal duty” includes but is not limited to a duty created by familial relationship, court order, contractual agreement or statutory or case law.

(e) **“Precursor substance” has the meaning given that term in ORS 475.940.**

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

**SECTION 2.** ORS 163.547 is amended to read:

163.547. (1)(a) A person having custody or control of a child under 16 years of age commits the crime of child neglect in the first degree if the person knowingly leaves the child, or allows the child to stay:

(A) In a vehicle where controlled substances are being criminally delivered or manufactured;

(B) [Or] **In or upon** premises and in the immediate proximity where controlled substances are criminally delivered or manufactured for consideration or profit **or where a chemical reaction involving one or more precursor substances:**

(i) **Is occurring as part of unlawfully manufacturing a controlled substance or grinding, soaking or otherwise breaking down a precursor substance for the unlawful manufacture of a controlled substance; or**

(ii) **Has occurred as part of unlawfully manufacturing a controlled substance or grinding, soaking or otherwise breaking down a precursor substance for the unlawful manufacture of a controlled substance and the premises have not been certified as fit for use under ORS 453.885; or**

(C) In or upon premises that have been determined to be not fit for use under ORS 453.855 to 453.912.

(b) As used in this subsection, “vehicle” and “premises” do not include public places, as defined in ORS 161.015.

(2) Child neglect in the first degree is a Class B felony.

(3) Subsection (1) of this section does not apply if the controlled substance is marijuana and is delivered for no consideration.

(4) **The Oregon Criminal Justice Commission shall classify child neglect in the first degree as crime category 6 of the sentencing guidelines grid of the commission if the controlled substance being delivered or manufactured is methamphetamine.**

**SECTION 3.** ORS 163.505 is amended to read:

163.505. As used in ORS 163.505 to 163.575, unless the context requires otherwise:

(1) **“Controlled substance” has the meaning given that term in ORS 475.005.**

[(1)] (2) “Descendant” includes persons related by descending lineal consanguinity, step-children and lawfully adopted children.

(3) **“Precursor substance” has the meaning given that term in ORS 475.940.**

[(2)] (4) “Support” includes, but is not limited to, necessary and proper shelter, food, clothing, medical attention and education.

**SECTION 4.** ORS 419B.005 is amended to read:

419B.005. As used in ORS 418.747, 418.748, 418.749 and 419B.005 to 419B.050, unless the context requires otherwise:

(1)(a) “Abuse” means:

(A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

(B) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.

(C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are defined in ORS chapter 163.

(D) Sexual abuse, as defined in ORS chapter 163.

(E) Sexual exploitation, including but not limited to:

(i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; and

(ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution, as defined in ORS chapter 167.

(F) Negligent treatment or maltreatment of a child, including but not limited to the failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child.

(G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.

(H) Buying or selling a person under 18 years of age as described in ORS 163.537.

(I) Permitting a person under 18 years of age to enter or remain in [a place] or upon premises where methamphetamines are being manufactured.

**(J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, that subjects a child to a substantial risk of harm to the child's health or safety.**

(b) "Abuse" does not include reasonable discipline unless the discipline results in one of the conditions described in paragraph (a) of this subsection.

(2) "Child" means an unmarried person who is under 18 years of age.

(3) "Public or private official" means:

(a) Physician, including any intern or resident.

(b) Dentist.

(c) School employee.

(d) Licensed practical nurse or registered nurse.

(e) Employee of the Department of Human Services, State Commission on Children and Families, Child Care Division of the Employment Department, the Oregon Youth Authority, a county health department, a community mental health and developmental disabilities program, a county juvenile department, a licensed child-caring agency or an alcohol and drug treatment program.

(f) Peace officer.

(g) Psychologist.

(h) Member of the clergy.

(i) Licensed clinical social worker.

(j) Optometrist.

(k) Chiropractor.

(L) Certified provider of foster care, or an employee thereof.

(m) Attorney.

(n) Naturopathic physician.

(o) Licensed professional counselor.

(p) Licensed marriage and family therapist.

(q) Firefighter or emergency medical technician.

(r) A court appointed special advocate, as defined in ORS 419A.004.

(s) A child care provider registered or certified under ORS 657A.030 and 657A.250 to 657A.450.

- (t) Member of the Legislative Assembly.
- (4) "Law enforcement agency" means:
  - (a) Any city or municipal police department.
  - (b) Any county sheriff's office.
  - (c) The Oregon State Police.
  - (d) A county juvenile department.

**NOTE:** Section 5 was deleted by amendment. Subsequent sections were not renumbered.

**SECTION 6.** ORS 107.135 is amended to read:

107.135. (1) The court may at any time after a judgment of annulment or dissolution of marriage or of separation is granted, upon the motion of either party and after service of notice on the other party in the manner provided by ORCP 7, and after notice to the Division of Child Support when required under subsection (9) of this section:

(a) Set aside, alter or modify any portion of the judgment that provides for the appointment and duties of trustees, for the custody, parenting time, visitation, support and welfare of the minor children and the children attending school, as defined in ORS 107.108, including any health or life insurance provisions, for the support of a party or for life insurance under ORS 107.820 or 107.830;

(b) Make an order, after service of notice to the other party, providing for the future custody, support and welfare of minor children residing in the state, who, at the time the judgment was given, were not residents of the state, or were unknown to the court or were erroneously omitted from the judgment;

(c) Terminate a duty of support toward any minor child who has become self-supporting, emancipated or married;

(d) After service of notice on the child in the manner provided by law for service of a summons, suspend future support for any child who has ceased to be a child attending school as defined in ORS 107.108; and

(e) Set aside, alter or modify any portion of the judgment that provides for a property award based on the enhanced earning capacity of a party that was awarded before October 23, 1999. A property award may be set aside, altered or modified under this paragraph:

(A) When the person with the enhanced earning capacity makes a good faith career change that results in less income;

(B) When the income of the person with the enhanced earning capacity decreases due to circumstances beyond the person's control; or

(C) Under such other circumstances as the court deems just and proper.

(2) When a party moves to set aside, alter or modify the child support provisions of the judgment:

(a) The party shall state in the motion, to the extent known:

(A) Whether there is pending in this state or any other jurisdiction any type of support proceeding involving children of the marriage, including one brought under ORS 25.287, 107.431, 109.100, 125.025, 416.400 to 416.470, 419B.400 or 419C.590 or ORS chapter 110; and

(B) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.303, involving children of the marriage, other than the judgment the party is moving to set aside, alter or modify.

(b) The party shall include with the motion a certificate regarding any pending support proceeding and any existing support order other than the judgment the party is moving to set aside, alter or modify. The party shall use a certificate that is in a form established by court rule and include information required by court rule and paragraph (a) of this subsection.

(3) In a proceeding under this section to reconsider the spousal or child support provisions of the judgment, the following provisions apply:

(a) A substantial change in economic circumstances of a party, which may include, but is not limited to, a substantial change in the cost of reasonable and necessary expenses to either party, is sufficient for the court to reconsider its order of support, except that an order of compensatory

spousal support may only be modified upon a showing of an involuntary, extraordinary and unanticipated change in circumstances that reduces the earning capacity of the paying spouse.

(b) If the judgment provided for a termination or reduction of spousal support at a designated age in anticipation of the commencement of pension, Social Security or other entitlement payments, and if the obligee is unable to obtain the anticipated entitlement payments, that inability is sufficient change in circumstances for the court to reconsider its order of support.

(c) If Social Security is considered in lieu of spousal support or partial spousal support, the court shall determine the amount of Social Security the party is eligible to collect. The court shall take into consideration any pension, retirement or other funds available to either party to effect an equitable distribution between the parties and shall also take into consideration any reduction of entitlement caused by taking early retirement.

(4) In considering under this section whether a change in circumstances exists sufficient for the court to reconsider spousal or child support provisions of a judgment, the following provisions apply:

(a) The court or administrator, as defined in ORS 25.010, shall consider income opportunities and benefits of the respective parties from all sources, including but not limited to:

(A) The reasonable opportunity of each party, the obligor and obligee respectively, to acquire future income and assets.

(B) Retirement benefits available to the obligor and to the obligee.

(C) Other benefits to which the obligor is entitled, such as travel benefits, recreational benefits and medical benefits, contrasted with benefits to which the obligee is similarly entitled.

(D) Social Security benefits paid to a child, or to a representative payee administering the funds for the child's use and benefit, as a result of the obligor's disability or retirement if the benefits:

(i) Were not previously considered in the child support order; or

(ii) Were considered in an action initiated before May 12, 2003.

(E) Apportioned Veterans' benefits or Survivors' and Dependents' Educational Assistance under 38 U.S.C. chapter 35 paid to a child, or to a representative payee administering the funds for the child's use and benefit, as a result of the obligor's disability or retirement if the benefits:

(i) Were not previously considered in the child support order; or

(ii) Were considered in an action initiated before May 12, 2003.

(b) If the motion for modification is one made by the obligor to reduce or terminate support, and if the obligee opposes the motion, the court shall not find a change in circumstances sufficient for reconsideration of support provisions, if the motion is based upon a reduction of the obligor's financial status resulting from the obligor's taking voluntary retirement, partial voluntary retirement or any other voluntary reduction of income or self-imposed curtailment of earning capacity, if it is shown that such action of the obligor was not taken in good faith but was for the primary purpose of avoiding the support obligation. In any subsequent motion for modification, the court shall deny the motion if the sole basis of the motion for modification is the termination of voluntarily taken retirement benefits and the obligor previously has been found not to have acted in good faith.

(c) The court shall consider the following factors in deciding whether the actions of the obligor were not in "good faith":

(A) Timing of the voluntary retirement or other reduction in financial status to coincide with court action in which the obligee seeks or is granted an increase in spousal support.

(B) Whether all or most of the income producing assets and property were awarded to the obligor, and spousal support in lieu of such property was awarded to the obligee.

(C) Extent of the obligor's dissipation of funds and assets prior to the voluntary retirement or soon after filing for the change of circumstances based on retirement.

(D) If earned income is reduced and absent dissipation of funds or large gifts, whether the obligor has funds and assets from which the spousal support could have been paid.

(E) Whether the obligor has given gifts of substantial value to others, including a current spouse, to the detriment of the obligor's ability to meet the preexisting obligation of spousal support.

(5) Upon terminating a duty of spousal support, a court shall make specific findings of the basis for the termination and shall include the findings in the judgment order.

(6) Any modification of child or spousal support granted because of a change of circumstances may be ordered effective retroactive to the date the motion for modification was served or to any date thereafter.

(7) The judgment is final as to any installment or payment of money that has accrued up to the time the nonmoving party, other than the state, is served with a motion to set aside, alter or modify the judgment. The court may not set aside, alter or modify any portion of the judgment that provides for any payment of money, either for minor children or for the support of a party, that has accrued before the motion is served. However:

(a) The court may allow a credit against child support arrearages for periods of time, excluding reasonable parenting time unless otherwise provided by order or judgment, during which the obligor, with the knowledge and consent of the obligee or pursuant to court order, has physical custody of the child; and

(b) The court may allow, as provided in the rules of the Child Support Program, a dollar-for-dollar credit against child support arrearages for any lump sum Social Security or Veterans' benefits paid retroactively to the child, or to a representative payee administering the funds for the child's use and benefit, as a result of an obligor's disability or retirement.

(8) In a proceeding under subsection (1) of this section, the court may assess against either party a reasonable attorney fee and costs for the benefit of the other party. If a party is found to have acted in bad faith, the court shall order that party to pay a reasonable attorney fee and costs of the defending party.

(9) Whenever a motion to establish, modify or terminate child support or satisfy or alter support arrearages is filed and the child support rights of one of the parties or of a child of both of the parties have been assigned to the state, a true copy of the motion shall be served by mail or personal delivery on the Administrator of the Division of Child Support of the Department of Justice or on the branch office providing support services to the county in which the motion is filed.

(10)(a) Except as provided in ORS 109.701 to 109.834, the courts of Oregon, having once acquired personal and subject matter jurisdiction in a domestic relations action, retain such jurisdiction regardless of any change of domicile.

(b) The courts of Oregon, in a proceeding to establish, enforce or modify a child support order, shall recognize the provisions of the federal Full Faith and Credit for Child Support Orders Act (28 U.S.C. 1738B).

(11) In a proceeding under this section to reconsider provisions in a judgment relating to custody or parenting time, the court may consider repeated and unreasonable denial of, or interference with, parenting time to be a substantial change of circumstances.

**(12) In a proceeding under this section to reconsider provisions in a judgment relating to parenting time, the court may suspend or terminate a parent's parenting time with a child if the court finds that the parent has abused a controlled substance and that the parenting time is not in the best interests of the child. If a court has suspended or terminated a parent's parenting time with a child for reasons described in this subsection, the court may not grant the parent future parenting time until the parent has shown that the reasons for the suspension or termination are resolved and that reinstated parenting time is in the best interests of the child. Nothing in this subsection limits the court's authority under subsection (1)(a) of this section.**

[(12)] **(13)** Within 30 days after service of notice under subsection (1) of this section, the party served shall file a written response with the court.

[(13)(a)] **(14)(a)** It is the policy of this state:

(A) To encourage the settlement of cases brought under this section; and

(B) For courts to enforce the terms of settlements described in paragraph (b) of this subsection to the fullest extent possible, except when to do so would violate the law or would clearly contravene public policy.

(b) In a proceeding under subsection (1) of this section, the court may enforce the terms set forth in a stipulated order or judgment signed by the parties, an order or judgment resulting from a settlement on the record or an order or judgment incorporating a settlement agreement:

(A) As contract terms using contract remedies;

(B) By imposing any remedy available to enforce an order or judgment, including but not limited to contempt; or

(C) By any combination of the provisions of subparagraphs (A) and (B) of this paragraph.

(c) A party may seek to enforce an agreement and obtain remedies described in paragraph (b) of this subsection by filing a motion, serving notice on the other party in the manner provided by ORCP 7 and, if a remedy under paragraph (b)(B) of this subsection is sought, complying with the statutory requirements for that remedy. All claims for relief arising out of the same acts or omissions must be joined in the same proceeding.

(d) Nothing in paragraph (b) or (c) of this subsection limits a party's ability, in a separate proceeding, to file a motion to modify an order or judgment under subsection (1) of this section or to seek enforcement of an ancillary agreement to the order or judgment.

**SECTION 7.** ORS 475.996 is amended to read:

475.996. (1) A violation of ORS 475.992 **or sections 14 to 38 of this 2005 Act** shall be classified as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if:

(a) The violation constitutes delivery or manufacture of a controlled substance and involves substantial quantities of a controlled substance. For purposes of this paragraph, the following amounts constitute substantial quantities of the following controlled substances:

(A) Five grams or more of a mixture or substance containing a detectable amount of heroin;

(B) Ten grams or more of a mixture or substance containing a detectable amount of cocaine;

(C) Ten grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers or salts of its isomers;

(D) One hundred grams or more of a mixture or substance containing a detectable amount of hashish;

(E) One hundred and fifty grams or more of a mixture or substance containing a detectable amount of marijuana;

(F) Two hundred or more user units of a mixture or substance containing a detectable amount of lysergic acid diethylamide;

(G) Sixty grams or more of a mixture or substance containing a detectable amount of psilocybin or psilocin; or

(H) Five grams or more or 25 or more pills, tablets or capsules of a mixture or substance containing a detectable amount of:

(i) 3,4-methylenedioxyamphetamine;

(ii) 3,4-methylenedioxymethamphetamine; or

(iii) 3,4-methylenedioxy-N-ethylamphetamine.

(b) The violation constitutes possession, delivery or manufacture of a controlled substance and the possession, delivery or manufacture is a commercial drug offense. A possession, delivery or manufacture is a commercial drug offense for purposes of this subsection if it is accompanied by at least three of the following factors:

(A) The delivery was of heroin, cocaine, hashish, marijuana, methamphetamine, lysergic acid diethylamide, psilocybin or psilocin and was for consideration;

(B) The offender was in possession of \$300 or more in cash;

(C) The offender was unlawfully in possession of a firearm or other weapon as described in ORS 166.270 (2), or the offender used, attempted to use or threatened to use a deadly or dangerous weapon as defined in ORS 161.015, or the offender was in possession of a firearm or other deadly or dangerous weapon as defined in ORS 161.015 for the purpose of using it in connection with a controlled substance offense;

(D) The offender was in possession of materials being used for the packaging of controlled substances such as scales, wrapping or foil, other than the material being used to contain the substance that is the subject of the offense;

(E) The offender was in possession of drug transaction records or customer lists;

(F) The offender was in possession of stolen property;

(G) Modification of structures by painting, wiring, plumbing or lighting to facilitate a controlled substance offense;

(H) The offender was in possession of manufacturing paraphernalia, including recipes, precursor chemicals, laboratory equipment, lighting, ventilating or power generating equipment;

(I) The offender was using public lands for the manufacture of controlled substances;

(J) The offender had constructed fortifications or had taken security measures with the potential of injuring persons; or

(K) The offender was in possession of controlled substances in an amount greater than:

(i) Three grams or more of a mixture or substance containing a detectable amount of heroin;

(ii) Eight grams or more of a mixture or substance containing a detectable amount of cocaine;

(iii) Eight grams or more of a mixture or substance containing a detectable amount of methamphetamine;

(iv) Eight grams or more of a mixture or substance containing a detectable amount of hashish;

(v) One hundred ten grams or more of a mixture or substance containing a detectable amount of marijuana;

(vi) Twenty or more user units of a mixture or substance containing a detectable amount of lysergic acid diethylamide;

(vii) Ten grams or more of a mixture or substance containing a detectable amount of psilocybin or psilocin; or

(viii) Four grams or more or 20 or more pills, tablets or capsules of a mixture or substance containing a detectable amount of:

(I) 3,4-methylenedioxyamphetamine;

(II) 3,4-methylenedioxymethamphetamine; or

(III) 3,4-methylenedioxy-N-ethylamphetamine.

(c) The violation constitutes a violation of ORS 475.999 **or section 15, 17, 20, 22, 25, 27, 30, 31, 32, 35 or 37 of this 2005 Act.**

**(d) The violation constitutes manufacturing methamphetamine and the manufacturing consists of:**

**(A) A chemical reaction involving one or more precursor substances for the purpose of manufacturing methamphetamine; or**

**(B) Grinding, soaking or otherwise breaking down a precursor substance for the purpose of manufacturing methamphetamine.**

(2) A violation of ORS 475.992 **or sections 14 to 38 of this 2005 Act** shall be classified as crime category 6 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if:

(a) The violation constitutes delivery of heroin, cocaine, methamphetamine or 3,4-methylenedioxyamphetamine, 3,4-methylenedioxymethamphetamine or 3,4-methylenedioxy-N-ethylamphetamine and is for consideration.

(b) The violation constitutes possession of:

(A) Five grams or more of a mixture or substance containing a detectable amount of heroin;

(B) Ten grams or more of a mixture or substance containing a detectable amount of cocaine;

(C) Ten grams or more of a mixture or substance containing a detectable amount of methamphetamine;

(D) One hundred grams or more of a mixture or substance containing a detectable amount of hashish;

(E) One hundred fifty grams or more of a mixture or substance containing a detectable amount of marijuana;

(F) Two hundred or more user units of a mixture or substance containing a detectable amount of lysergic acid diethylamide;

(G) Sixty grams or more of a mixture or substance containing a detectable amount of psilocybin or psilocin; or

(H) Five grams or more or 25 or more pills, tablets or capsules of a mixture or substance containing a detectable amount of:

(i) 3,4-methylenedioxyamphetamine;

(ii) 3,4-methylenedioxymethamphetamine; or

(iii) 3,4-methylenedioxy-N-ethylamphetamine.

(3) Any felony violation of ORS 475.992 **or sections 14 to 38 of this 2005 Act** not contained in subsection (1) or (2) of this section shall be classified as:

(a) Crime category 4 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if the violation involves delivery or manufacture of a controlled substance; or

(b) Crime category 1 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if the violation involves possession of a controlled substance.

(4) In order to prove a commercial drug offense, the state shall plead in the accusatory instrument sufficient factors of a commercial drug offense under subsections (1) and (2) of this section. The state has the burden of proving each factor beyond a reasonable doubt.

(5) As used in this section, "mixture or substance" means any mixture or substance, whether or not the mixture or substance is in an ingestible or marketable form at the time of the offense.

**SECTION 8. (1) When a court sentences a person convicted of:**

**(a) Manufacture of methamphetamine under section 14 or 15 of this 2005 Act, the court may not impose a sentence of optional probation or grant a downward dispositional departure or a downward durational departure of more than one-half of the presumptive prison sentence under the rules of the Oregon Criminal Justice Commission if the person has a previous conviction for:**

**(A) Delivery or manufacture of methamphetamine under ORS 475.992 or section 14 or 16 of this 2005 Act;**

**(B) Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS 475.999 or section 15 or 17 of this 2005 Act; or**

**(C) Possession of a precursor substance with intent to manufacture a controlled substance under ORS 475.967.**

**(b) Delivery of methamphetamine under section 16 or 17 of this 2005 Act, the court may not impose a sentence of optional probation or grant a downward dispositional departure under the rules of the Oregon Criminal Justice Commission if:**

**(A) The delivery involved a substantial quantity of methamphetamine as described in ORS 475.996; and**

**(B) The person has a previous conviction for:**

**(i) Delivery or manufacture of methamphetamine under ORS 475.992 or section 14 or 16 of this 2005 Act;**

**(ii) Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS 475.999 or section 15 or 17 of this 2005 Act; or**

**(iii) Possession of a precursor substance with intent to manufacture a controlled substance under ORS 475.967.**

**(c) Delivery of methamphetamine under section 16 or 17 of this 2005 Act, the presumptive sentence is 19 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has two or more previous convictions for any combination of the following crimes:**

**(A) Delivery or manufacture of methamphetamine under ORS 475.992 or section 14 or 16 of this 2005 Act;**

**(B) Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS 475.999 or section 15 or 17 of this 2005 Act; or**

(C) Possession of a precursor substance with intent to manufacture a controlled substance under ORS 475.967.

(2) The court may impose a sentence other than the sentence provided by subsection (1) of this section if the court imposes:

(a) A longer term of incarceration that is otherwise required or authorized by law; or

(b) An upward or downward durational departure sentence that is authorized by law or the rules of the Oregon Criminal Justice Commission based upon findings of substantial and compelling reasons unless otherwise noted in subsection (1) of this section. Unless otherwise authorized by law or rule of the Oregon Criminal Justice Commission, the maximum departure allowed for a person sentenced under this subsection is double the presumptive sentence provided in subsection (1) of this section.

(3) As used in this section, "previous conviction" means:

(a) Convictions occurring before, on or after the effective date of this 2005 Act; and

(b) Convictions entered in any other state or federal court for comparable offenses.

(4)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have occurred upon the pronouncement of sentence in open court. However, when sentences are imposed for two or more convictions arising out of the same conduct or criminal episode, none of the convictions is considered to have occurred prior to any of the other convictions arising out of the same conduct or criminal episode.

(b) For a crime committed prior to November 1, 1989, a conviction is considered to have occurred upon the pronouncement in open court of a sentence or upon the pronouncement in open court of the suspended imposition of a sentence.

(5) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.

**NOTE:** Sections 9 through 11 were deleted by amendment. Subsequent sections were not renumbered.

**SECTION 12.** ORS 421.504 is amended to read:

421.504. (1) The Department of Corrections, in consultation with the Oregon Criminal Justice Commission, shall establish a special alternative incarceration program stressing a highly structured and regimented routine. The program:

(a) Shall be based on a military basic training model that includes extensive discipline, physical work, physical exercise and military drill;

(b) Shall provide for cognitive restructuring in conformance with generally accepted rehabilitative standards;

(c) Shall include a drug and alcohol treatment component that meets standards generally accepted by mental health professionals; and

(d) Shall be no longer than 270 days' duration.

(2) The department shall provide capital improvements and capital construction necessary for the implementation of the program.

(3) Notwithstanding subsection (1) of this section, the department may convert the special alternative incarceration program required by this section into an intensive alternative incarceration addiction program as described in ORS 421.506 if the department determines that the needs of offenders in the department's custody would be better served by an intensive alternative incarceration addiction program than by the special alternative incarceration program.

**SECTION 13.** Sections 14 to 38 of this 2005 Act are added to and made a part of ORS 475.940 to 475.999.

**SECTION 14.** (1) Except as authorized by ORS 475.005 to 475.285 and 475.940 to 475.999, it is unlawful for any person to manufacture methamphetamine.

(2) Unlawful manufacture of methamphetamine is a Class B felony.

**SECTION 15.** (1) Except as authorized by ORS 475.005 to 475.285 and 475.940 to 475.999, it is unlawful for any person to manufacture methamphetamine within 1,000 feet of the real

property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful manufacture of methamphetamine within 1,000 feet of a school is a Class A felony.

**SECTION 16.** (1) Except as authorized by ORS 475.005 to 475.285 and 475.940 to 475.999, it is unlawful for any person to deliver methamphetamine.

(2) Unlawful delivery of methamphetamine is a Class B felony.

(3) Notwithstanding subsection (2) of this section, unlawful delivery of methamphetamine is a Class A felony if the delivery is to a person under 18 years of age.

**SECTION 17.** (1) Except as authorized by ORS 475.005 to 475.285 and 475.940 to 475.999, it is unlawful for any person to deliver methamphetamine within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful delivery of methamphetamine within 1,000 feet of a school is a Class A felony.

**SECTION 18.** (1) It is unlawful for any person knowingly or intentionally to possess methamphetamine unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of professional practice, or except as otherwise authorized by ORS 475.005 to 475.285 and 475.940 to 475.999.

(2) Unlawful possession of methamphetamine is a Class C felony.

**SECTION 19.** (1) Except as authorized by ORS 475.005 to 475.285 and 475.940 to 475.999, it is unlawful for any person to manufacture cocaine.

(2) Unlawful manufacture of cocaine is a Class B felony.

**SECTION 20.** (1) Except as authorized by ORS 475.005 to 475.285 and 475.940 to 475.999, it is unlawful for any person to manufacture cocaine within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful manufacture of cocaine within 1,000 feet of a school is a Class A felony.

**SECTION 21.** (1) Except as authorized by ORS 475.005 to 475.285 and 475.940 to 475.999, it is unlawful for any person to deliver cocaine.

(2) Unlawful delivery of cocaine is a Class B felony.

(3) Notwithstanding subsection (2) of this section, unlawful delivery of cocaine is a Class A felony if the delivery is to a person under 18 years of age.

**SECTION 22.** (1) Except as authorized by ORS 475.005 to 475.285 and 475.940 to 475.999, it is unlawful for any person to deliver cocaine within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful delivery of cocaine within 1,000 feet of a school is a Class A felony.

**SECTION 23.** (1) It is unlawful for any person knowingly or intentionally to possess cocaine unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of professional practice, or except as otherwise authorized by ORS 475.005 to 475.285 and 475.940 to 475.999.

(2) Unlawful possession of cocaine is a Class C felony.

**SECTION 24.** (1) It is unlawful for any person to manufacture heroin.

(2) Unlawful manufacture of heroin is a Class A felony.

**SECTION 25.** (1) It is unlawful for any person to manufacture heroin within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful manufacture of heroin within 1,000 feet of a school is a Class A felony.

**SECTION 26.** (1) It is unlawful for any person to deliver heroin.

(2) Unlawful delivery of heroin is a Class A felony.

**SECTION 27.** (1) It is unlawful for any person to deliver heroin within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful delivery of heroin within 1,000 feet of a school is a Class A felony.

**SECTION 28.** (1) It is unlawful for any person knowingly or intentionally to possess heroin.

(2) Unlawful possession of heroin is a Class B felony.

**SECTION 29.** (1) It is unlawful for any person to manufacture marijuana.

(2) Unlawful manufacture of marijuana is a Class A felony.

**SECTION 30.** (1) It is unlawful for any person to manufacture marijuana within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful manufacture of marijuana within 1,000 feet of a school is a Class A felony.

**SECTION 31.** (1) It is unlawful for any person to deliver marijuana.

(2) Unlawful delivery of marijuana is a Class B felony if the delivery is for consideration.

(3) Notwithstanding subsection (2) of this section, unlawful delivery of marijuana is a:

(a) Class A misdemeanor, if the delivery is for no consideration and consists of less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae; or

(b) Violation, if the delivery is for no consideration and consists of less than five grams of the dried leaves, stems and flowers of the plant Cannabis family Moraceae. A violation under this paragraph is punishable by a fine of not less than \$500 and not more than \$1,000. Fines collected under this paragraph shall be forwarded to the Department of Revenue for deposit in the Criminal Fine and Assessment Account established in ORS 137.300.

(4) Notwithstanding subsections (2) and (3) of this section, unlawful delivery of marijuana is a:

(a) Class A felony, if the delivery is to a person under 18 years of age and the defendant is at least 18 years of age and is at least three years older than the person to whom the marijuana is delivered; or

(b) Class C misdemeanor, if the delivery:

(A) Is for no consideration;

(B) Consists of less than five grams of the dried leaves, stems and flowers of the plant Cannabis family Moraceae;

(C) Takes place in a public place, as defined in ORS 161.015, that is within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors; and

(D) Is to a person who is 18 years of age or older.

**SECTION 32.** (1) It is unlawful for any person to deliver marijuana within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful delivery of marijuana within 1,000 feet of a school is a Class A felony.

**SECTION 33.** (1) It is unlawful for any person knowingly or intentionally to possess marijuana.

(2) Unlawful possession of marijuana is a Class B felony.

(3) Notwithstanding subsection (2) of this section, unlawful possession of marijuana is a violation if the amount possessed is less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae. A violation under this subsection is punishable by a fine of not less than \$500 and not more than \$1,000. Fines collected under this subsection shall be forwarded to the Department of Revenue for deposit in the Criminal Fine and Assessment Account established under ORS 137.300.

(4) Notwithstanding subsections (2) and (3) of this section, unlawful possession of marijuana is a Class C misdemeanor if the amount possessed is less than one avoirdupois

ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae and the possession takes place in a public place, as defined in ORS 161.015, that is within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

**SECTION 34.** (1) It is unlawful for any person to manufacture 3,4-methylenedioxyamphetamine.

(2) Unlawful manufacture of 3,4-methylenedioxyamphetamine is a Class A felony.

**SECTION 35.** (1) It is unlawful for any person to manufacture 3,4-methylenedioxyamphetamine within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful manufacture of 3,4-methylenedioxyamphetamine within 1,000 feet of a school is a Class A felony.

**SECTION 36.** (1) It is unlawful for any person to deliver 3,4-methylenedioxyamphetamine.

(2) Unlawful delivery of 3,4-methylenedioxyamphetamine is a Class A felony.

**SECTION 37.** (1) It is unlawful for any person to deliver 3,4-methylenedioxyamphetamine within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful delivery of 3,4-methylenedioxyamphetamine within 1,000 feet of a school is a Class A felony.

**SECTION 38.** (1) It is unlawful for any person knowingly or intentionally to possess 3,4-methylenedioxyamphetamine.

(2) Unlawful possession of 3,4-methylenedioxyamphetamine is a Class B felony.

**SECTION 39.** ORS 475.992 is amended to read:

475.992. (1) Except as authorized by ORS 475.005 to 475.285 and 475.940 to 475.999, it is unlawful for any person to manufacture or deliver a controlled substance. Any person who violates this subsection with respect to:

(a) A controlled substance in Schedule I, is guilty of a Class A felony, **except as otherwise provided in section 31 of this 2005 Act.**

(b) A controlled substance in Schedule II, is guilty of a Class B felony, **except as otherwise provided in ORS 475.995 and 475.999 and sections 15, 16, 17, 20, 21 and 22 of this 2005 Act.**

(c) A controlled substance in Schedule III, is guilty of a Class C felony, **except as otherwise provided in ORS 475.995 and 475.999.**

(d) A controlled substance in Schedule IV, is guilty of a Class B misdemeanor.

(e) A controlled substance in Schedule V, is guilty of a Class C misdemeanor.

[*(2) Notwithstanding the placement of marijuana in a schedule of controlled substances under ORS 475.005 to 475.285 and 475.940 to 475.999:*

*[(a) Any person who delivers marijuana for consideration is guilty of a Class B felony.]*

*[(b) Any person who delivers, for no consideration, less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae is guilty of a Class A misdemeanor, except that any person who delivers, for no consideration, less than five grams of the dried leaves, stems and flowers of the plant Cannabis family Moraceae is guilty of a violation, punishable by a fine of not less than \$500 and not more than \$1,000. Fines collected under this paragraph shall be forwarded to the Department of Revenue for deposit in the Criminal Fine and Assessment Account established in ORS 137.300.]*

[*(3)*] (2) Except as authorized in ORS 475.005 to 475.285 and 475.940 to 475.999, it is unlawful for any person to create or deliver a counterfeit substance. Any person who violates this subsection with respect to:

(a) A counterfeit substance in Schedule I, is guilty of a Class A felony.

(b) A counterfeit substance in Schedule II, is guilty of a Class B felony.

(c) A counterfeit substance in Schedule III, is guilty of a Class C felony.

(d) A counterfeit substance in Schedule IV, is guilty of a Class B misdemeanor.

(e) A counterfeit substance in Schedule V, is guilty of a Class C misdemeanor.

[(4)] (3) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of professional practice, or except as otherwise authorized by ORS 475.005 to 475.285 and 475.940 to 475.999. Any person who violates this subsection with respect to:

(a) A controlled substance in Schedule I, is guilty of a Class B felony, **except as otherwise provided in section 33 of this 2005 Act.**

(b) A controlled substance in Schedule II, is guilty of a Class C felony.

(c) A controlled substance in Schedule III, is guilty of a Class A misdemeanor.

(d) A controlled substance in Schedule IV, is guilty of a Class C misdemeanor.

(e) A controlled substance in Schedule V, is guilty of a violation.

[(f)] *Notwithstanding the placement of marijuana in a schedule of controlled substances under ORS 475.005 to 475.285 and 475.940 to 475.999, any person who knowingly or intentionally is in unlawful possession of less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae is guilty of a violation, punishable by a fine of not less than \$500 and not more than \$1,000. Fines collected under this paragraph shall be forwarded to the Department of Revenue for deposit in the Criminal Fine and Assessment Account established under ORS 137.300.]*

[(5)] (4) In any prosecution under this section for manufacture, possession or delivery of that plant of the genus Lophophora commonly known as peyote, it is an affirmative defense that the peyote is being used or is intended for use:

(a) In connection with the good faith practice of a religious belief;

(b) As directly associated with a religious practice; and

(c) In a manner that is not dangerous to the health of the user or others who are in the proximity of the user.

[(6)] (5) The affirmative defense created in subsection [(5)] (4) of this section is not available to any person who has possessed or delivered the peyote while incarcerated in a correctional facility in this state.

**SECTION 40.** ORS 475.995 is amended to read:

475.995. Except as authorized by ORS 475.005 to 475.285 and 475.940 to 475.999, it is unlawful for any person to deliver a controlled substance to a person under 18 years of age. Any person who violates this section with respect to:

(1) A controlled substance in Schedule I or II, is guilty of a Class A felony.

(2) A controlled substance in Schedule III, is guilty of a Class B felony.

(3) A controlled substance in Schedule IV, is guilty of a Class A misdemeanor.

(4) A controlled substance in Schedule V, is guilty of a Class B misdemeanor.

[(5)] *Notwithstanding the placement of marijuana in a schedule of controlled substances under ORS 475.005 to 475.285 and 475.940 to 475.999, and notwithstanding ORS 475.992 (2), delivery of marijuana to a minor is a Class A felony if:*

[(a)] *The defendant is 18 years of age or over; and*

[(b)] *The conviction is for delivery of marijuana to a person under 18 years of age who is at least three years younger than the defendant.*

**SECTION 41.** ORS 475.999 is amended to read:

475.999. (1) Except as authorized by ORS 475.005 to 475.285 and 475.940 to 475.999, it is unlawful for any person to[:]

[(1)] manufacture or deliver a schedule I, II or III controlled substance within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

[(a)] (2) Unlawful manufacture or delivery of a controlled substance within 1,000 feet of a school is a Class A felony, **except as otherwise provided in section 31 of this 2005 Act.**

[(b)] *Notwithstanding the provisions of paragraph (a) of this subsection, delivery for no consideration of less than five grams of the dried leaves, stems and flowers of the plant Cannabis family*

*Moraceae in a public place, as defined in ORS 161.015, that is within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors to a person who is 18 years of age or older is a Class C misdemeanor.]*

*[(2)(a) Possess less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae in a public place, as defined in ORS 161.015, that is within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.]*

*[(b) Possession of less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae in a public place that is within 1,000 feet of a school is a Class C misdemeanor.]*

**SECTION 42.** ORS 90.400 is amended to read:

90.400. (1)(a) Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement, a noncompliance with ORS 90.325 materially affecting health and safety, a material noncompliance with a rental agreement regarding a program of recovery in drug and alcohol free housing or a failure to pay a late charge pursuant to ORS 90.260 or a utility or service charge pursuant to ORS 90.315 (4), the landlord may deliver a written notice to the tenant terminating the tenancy for cause as provided in this subsection. The notice shall specify the acts and omissions constituting the breach and shall state that the rental agreement will terminate upon a date not less than 30 days after delivery of the notice. If the breach is remediable by repairs, payment of damages, payment of a late charge or utility or service charge, change in conduct or otherwise, the notice shall also state that the tenant can avoid termination by remedying the breach within 14 days.

(b) If the breach is not remedied in 14 days, the rental agreement shall terminate as provided in the notice subject to paragraphs (c) and (d) of this subsection.

(c) If the tenant adequately remedies the breach before the date for remedying the breach as specified in the notice, the rental agreement does not terminate.

(d) If substantially the same act or omission that constituted a prior noncompliance of which notice was given pursuant to paragraph (a) of this subsection reoccurs within six months after the date specified in that notice as the date for remedying the prior noncompliance, the landlord may terminate the rental agreement upon at least 10 days' written notice specifying the breach and the date of termination of the rental agreement. The tenant does not have a right to cure this subsequent breach. The date of termination specified in the 10-day notice given pursuant to this paragraph may not be sooner than the date of termination specified in the 30-day notice of the prior noncompliance given pursuant to paragraph (a) of this subsection. A landlord may not terminate a rental agreement pursuant to this paragraph if the only breach is a failure to pay the current month's rent.

(e) In the case of a week-to-week tenancy, the notice periods in:

(A) Paragraph (a) of this subsection shall be changed from 30 days to seven days and from 14 days to four days;

(B) Paragraph (b) of this subsection shall be changed from 14 days to four days; and

(C) Paragraph (d) of this subsection shall be changed from 10 days to four days.

(f) This subsection does not apply to a tenancy governed by ORS 90.505 to 90.840.

(2) The landlord may immediately terminate the rental agreement for nonpayment of rent and take possession of the dwelling unit in the manner provided in ORS 105.105 to 105.168 after written notice, as follows:

(a) In the case of a week-to-week tenancy, by delivering to the tenant at least 72 hours' written notice of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period. The landlord shall give this notice no sooner than on the fifth day of the rental period, including the first day the rent is due.

(b) In the case of all other tenancies, by delivering to the tenant:

(A) At least 72 hours' written notice of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period. The landlord shall give this notice no sooner than on the eighth day of the rental period, including the first day the rent is due; or

(B) At least 144 hours' written notice of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period. The landlord shall give this notice no sooner than on the fifth day of the rental period, including the first day the rent is due.

(c) The notices described in this subsection shall also specify the date and time by which the tenant must pay the rent to cure the nonpayment of rent.

(d) Payment by a tenant who has received a nonpayment of rent notice under this subsection is timely if mailed to the landlord within the period of the notice unless:

(A) The nonpayment of rent notice is served on the tenant:

(i) By personal delivery as provided in ORS 90.155 (1)(a); or

(ii) By first class mail and attachment as provided in ORS 90.155 (1)(c);

(B) A written rental agreement and the nonpayment of rent notice expressly state that payment is to be made at a specified location that is either on the premises or at a place where the tenant has made all previous rent payments in person; and

(C) The place so specified is available to the tenant for payment throughout the period of the notice.

(3) Except as provided in subsection (4) of this section, the landlord, after at least 24 hours' written notice specifying the acts and omissions constituting the cause and specifying the date and time of the termination, may immediately terminate the rental agreement and take possession in the manner provided in ORS 105.105 to 105.168, if:

(a) The tenant, someone in the tenant's control or the tenant's pet seriously threatens to inflict substantial personal injury, or inflicts any substantial personal injury, upon a person on the premises other than the tenant;

(b) The tenant or someone in the tenant's control recklessly endangers a person on the premises other than the tenant by creating a serious risk of substantial personal injury;

(c) The tenant, someone in the tenant's control or the tenant's pet inflicts any substantial personal injury upon a neighbor living in the immediate vicinity of the premises;

(d) The tenant or someone in the tenant's control intentionally inflicts any substantial damage to the premises or the tenant's pet inflicts substantial damage to the premises on more than one occasion;

(e)(A) The tenant intentionally provided substantial false information on the application for the tenancy within the past year;

(B) The false information was with regard to a criminal conviction of the tenant that would have been material to the landlord's acceptance of the application; and

(C) The landlord terminates the rental agreement within 30 days after discovering the falsity of the information;

(f) The tenant has vacated the premises, the person in possession is holding contrary to a written rental agreement that prohibits subleasing the premises to another or allowing another person to occupy the premises without the written permission of the landlord, and the landlord has not knowingly accepted rent from the person in possession; or

(g) The tenant, someone in the tenant's control or the tenant's pet commits any act that is outrageous in the extreme, on the premises or in the immediate vicinity of the premises. An act that is "outrageous in the extreme" is an act not described in paragraphs (a) to (e) of this subsection, but is similar in degree and is one that a reasonable person in that community would consider to be so offensive as to warrant termination of the tenancy within 24 hours, considering the seriousness of the act or the risk to others. Such an act is more extreme or serious than an act that warrants a 30-day termination under subsection (1) of this section. An act that is "outrageous in the extreme" includes, but is not limited to, the following acts by a person:

(A) Prostitution or promotion of prostitution, as described in ORS 167.007 and 167.012;

(B) Manufacture, delivery or possession of a controlled substance, as described in ORS 475.005, but not including:

(i) The medical use of marijuana in compliance with ORS 475.300 to 475.346;  
(ii) Possession of, or delivery for no consideration of, less than one avoirdupois ounce of marijuana as described in [ORS 475.992 (2)(b) or (4)(f)] **section 31 or 33 of this 2005 Act**; or

(iii) Possession of prescription drugs;

(C) Intimidation, as described in ORS 166.155 and 166.165; or

(D) Burglary as described in ORS 164.215 and 164.225.

(4) If the cause for a termination notice given pursuant to subsection (3)(a), (c), (d) or (g) of this section is based upon the acts of the tenant's pet, the tenant may cure the cause and avoid termination of the tenancy by removing the pet from the premises prior to the end of the notice period. The notice shall describe the right of the tenant to cure the cause. If the tenant returns the pet to the premises at any time after having cured the violation, the landlord, after at least 24 hours' written notice specifying the subsequent presence of the offending pet, may terminate the rental agreement and take possession in the manner provided in ORS 105.105 to 105.168. The tenant does not have a right to cure this subsequent violation.

(5) Someone is in the tenant's control, as that phrase is used in subsection (3) of this section, when that person enters or remains on the premises with the tenant's permission or consent after the tenant reasonably knows or should know of that person's act or likelihood to commit any act of the type described in subsection (3)(a) to (d) and (g) of this section.

(6) The landlord's 24 hours' written notice given under subsection (3)(f) of this section is not an admission by the landlord that the individual occupying the premises is a lessee or sublessee of the landlord.

(7) With regard to "acts outrageous in the extreme" as described in subsection (3)(g) of this section, an act can be proven to be outrageous in the extreme even if it is one that does not violate a criminal statute. In addition, notwithstanding the reference in subsection (3) of this section to existing criminal statutes, the landlord's standard of proof in an action for possession under subsection (3) of this section remains the civil standard, proof by a preponderance of the evidence.

(8) If a good faith effort by a landlord to terminate a tenancy pursuant to subsection (3)(g) of this section and to recover possession of the rental unit pursuant to ORS 105.105 to 105.168 fails by decision of the court, the landlord may not be found in violation of any state statute or local ordinance requiring the landlord to remove that tenant upon threat of fine, abatement or forfeiture as long as the landlord continues to make a good faith effort to terminate the tenancy.

(9) If a tenant living for less than two years in drug and alcohol free housing uses, possesses or shares alcohol, illegal drugs, controlled substances or prescription drugs without a medical prescription, the landlord may deliver a written notice to the tenant terminating the tenancy for cause as provided in this subsection. The notice shall specify the acts constituting the drug or alcohol violation and shall state that the rental agreement will terminate in not less than 48 hours after delivery of the notice, at a specified date and time. The notice shall also state that the tenant can cure the drug or alcohol violation by a change in conduct or otherwise within 24 hours after delivery of the notice. If the tenant cures the violation within the 24-hour period, the rental agreement does not terminate. If the tenant does not cure the violation within the 24-hour period, the rental agreement shall terminate as provided in the notice. If substantially the same act that constituted a prior drug or alcohol violation of which notice was given reoccurs within six months, the landlord may terminate the rental agreement upon at least 24 hours' written notice specifying the violation and the date and time of termination of the rental agreement. The tenant does not have a right to cure this subsequent violation.

(10) Except as provided in this chapter, a landlord may pursue any one or more of the remedies listed in this section, simultaneously or sequentially.

(11) Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or ORS 90.325 or 90.740.

**SECTION 43.** ORS 105.555 is amended to read:

105.555. (1) The following are declared to be nuisances and shall be enjoined and abated as provided in ORS 105.550 to 105.600:

(a) Any place that, as a regular course of business, is used for the purpose of prostitution and any place where acts of prostitution occur;

(b) Any place which is used and maintained for profit and for the purpose of gambling or a lottery, as defined in ORS 167.117, by any person, partnership or corporation organized for profit and wherein take place any of the acts or wherein are kept, stored or located any of the games, devices or things which are forbidden by or made punishable by ORS 167.108 to 167.164; and

(c) Any place where activity involving the unauthorized delivery, manufacture or possession of a controlled substance, as defined in ORS 475.005, occurs or any place wherein are kept, stored or located any of the devices, equipment, things or substances used for unauthorized delivery, manufacture or possession of a controlled substance. As used in this subsection "devices, equipment and things" does not include hypodermic syringes or needles. This subsection shall not apply to acts which constitute violations under [ORS 475.992 (2)(b) and (4)(f)] **section 31 or 33 of this 2005 Act.**

(2) Nothing in ORS 105.550 to 105.600, 166.715 and 167.158 applies to property to the extent that the devices, equipment, things or substances that are used for delivery, manufacture or possession of a controlled substance are kept, stored or located in or on the property for the purpose of lawful sale or use of these items.

**SECTION 44.** ORS 133.619 is amended to read:

133.619. (1) A warrant authorizing the installation or tracking of a mobile tracking device shall be executed as provided in this section.

(2) The officer need not inform any person of the existence or content of the warrant prior to its execution.

(3) Except as provided in subsection (4) of this section, the officer need not deliver or leave a receipt for things seized or observations made under authority of the warrant.

(4) Within five days of the execution of the warrant, or, in the case of an ongoing investigation, within such additional time as the issuing judge may allow upon application, the officer shall mail a receipt for things seized or observations made under authority of the warrant to the following:

(a) If the mobile tracking device has been affixed to a vehicle, to the registered owner; and

(b) To such other persons as the court may direct in the warrant.

(5) The receipt provided for in subsection (4) of this section shall include the dates and times during which the officer monitored or attempted to monitor the mobile tracking device.

(6) A warrant authorizing the installation or tracking of a mobile tracking device shall only be issued based upon the submission of an affidavit or oral statement as set forth in ORS 133.545, which affidavit or statement demonstrates that probable cause exists to believe that an individual is committing or is about to commit a particular felony of murder, kidnapping, arson, robbery or other crime dangerous to life and punishable as a felony, any crime punishable as a felony arising under ORS 475.992 or **sections 14 to 38 of this 2005 Act**, bribery, extortion, burglary or unauthorized use of a motor vehicle punishable as a felony, or any conspiracy to commit any of the crimes listed in this subsection.

**SECTION 45.** ORS 133.724 is amended to read:

133.724. (1) An ex parte order for the interception of wire, electronic or oral communications may be issued by any circuit court judge upon written application made upon oath or affirmation of the individual who is the district attorney or a deputy district attorney authorized by the district attorney for the county in which the order is sought. The application shall include:

(a) The name of the district attorney or the deputy district attorney making the application and the authority of the district attorney or the deputy district attorney to make the application;

(b) The identity of the investigative or law enforcement officer making the application and the officer authorizing the application;

(c) A statement demonstrating that there is probable cause to believe that an individual is committing, has committed or is about to commit, a particular felony of murder, kidnapping, arson, robbery, bribery, extortion or other crime dangerous to life and punishable as a felony, or a crime

punishable as a felony under ORS 475.992 or 475.995 or **sections 14 to 38 of this 2005 Act** or as a misdemeanor under ORS 167.007, or any conspiracy to commit any of the foregoing crimes;

(d) A statement of the details, if known, of the particular crime alleged under paragraph (c) of this subsection;

(e) A particular description of the nature and location of the facilities from which or the place where the wire, electronic or oral communication is to be intercepted, if known;

(f) A particular description of the type of wire, electronic or oral communication sought to be intercepted;

(g) The identity of the person, if known, suspected of committing the crime and whose wire, electronic or oral communications are to be intercepted;

(h) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or are likely to be too dangerous;

(i) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of wire, electronic or oral communication has been first obtained, a description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(j) A statement as to whether any prior application has been made to intercept wire, electronic or oral communications from the same person and, if such prior application exists, a statement of the current status of that application; and

(k) Where the application is for the extension of an existing order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish further testimony or documentary evidence in support of the application.

(3) Upon examination of such application and evidence the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, electronic or oral communications within the state if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause for belief that an individual is committing, has committed or is about to commit a particular crime described in subsection (1)(c) of this section;

(b) There is probable cause for belief that particular communications concerning that crime will be obtained through such interception;

(c) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or are likely to be too dangerous; and

(d) There is probable cause for belief that the facilities from which, or the place where, the wire, electronic or oral communications to be intercepted are being used, or are about to be used, in connection with the commission of that crime are leased to, listed in the name of, or commonly used by the individual suspected.

(4) Each order authorizing or approving the interception of any wire, electronic or oral communication shall specify:

(a) The identity of the person, if known, whose communications are to be intercepted;

(b) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) A particular description of the type of communication sought to be intercepted, and a statement of the particular crime to which it relates;

(d) The identity of the agency authorized to intercept the communications and of the person authorizing the application;

(e) The period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained; and

(f) The name of the applicant, date of issuance, and the signature and title of the issuing judge.

(5) No order entered pursuant to this section shall authorize or approve the interception of any wire, electronic or oral communication for any period longer than is necessary to achieve the objective of authorization, nor in any event longer than 30 days. Extensions of any order may be granted, but only when application for an extension is made in accordance with subsection (1)(k) of this section and the court makes the findings required by subsection (3) of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purpose for which it is granted and in no event for longer than 30 days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception, and must terminate upon attainment of the authorized objective, or in any event in 30 days.

(6) Whenever an order authorizing interception is entered pursuant to this section, the order may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

**SECTION 46.** ORS 133.726 is amended to read:

133.726. (1) Notwithstanding ORS 133.724, under the circumstances described in this section, a law enforcement officer is authorized to intercept an oral communication to which the officer or someone under the direct supervision of the officer is a party, without obtaining an order for the interception of a wire, electronic or oral communication under ORS 133.724.

(2) For purposes of this section and ORS 133.736, a person is a party to an oral communication if the oral communication is made in the person's immediate presence and is audible to the person regardless of whether the communication is specifically directed to the person.

(3) An ex parte order for intercepting an oral communication in any county of this state under this section may be issued by any judge as defined in ORS 133.525 upon written application made upon oath or affirmation of the district attorney or a deputy district attorney authorized by the district attorney for the county in which the order is sought or upon the oath or affirmation of any peace officer as defined in ORS 133.005. The application shall include:

(a) The name of the applicant and the applicant's authority to make the application;

(b) A statement demonstrating that there is probable cause to believe that a person whose oral communication is to be intercepted is engaged in committing, has committed or is about to commit a particular felony, or a misdemeanor under ORS 167.007, and that intercepting the oral communication will yield evidence thereof; and

(c) The identity of the person, if known, suspected of committing the crime and whose oral communication is to be intercepted.

(4) The judge may require the applicant to furnish further testimony or documentary evidence in support of the application.

(5) Upon examination of the application and evidence, the judge may enter an ex parte order, as requested or as modified, authorizing or approving the interception of an oral communication within the state if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause to believe that a person is engaged in committing, has committed or is about to commit a particular felony, or a misdemeanor under ORS 167.007; and

(b) There is probable cause to believe that the oral communication to be obtained will contain evidence concerning that crime.

(6) An order authorizing or approving the interception of an oral communication under this section must specify:

(a) The identity of the person, if known, whose oral communication is to be intercepted;

(b) A statement identifying the particular crime to which the oral communication is expected to relate;

(c) The agency authorized under the order to intercept the oral communication;

(d) The name and office of the applicant and the signature and title of the issuing judge;

(e) A period of time after which the order shall expire; and

(f) A statement that the order authorizes only the interception of an oral communication to which a law enforcement officer or someone under the direct supervision of a law enforcement officer is a party.

(7) An order under ORS 133.724 or this section is not required when a law enforcement officer intercepts an oral communication to which the officer or someone under the direct supervision of the officer is a party if the oral communication is made by a person whom the officer has probable cause to believe has committed, is engaged in committing or is about to commit:

(a) A crime punishable as a felony under ORS 475.992 or 475.995 **or sections 14 to 38 of this 2005 Act** or as a misdemeanor under ORS 167.007; or

(b) Any other crime punishable as a felony if the circumstances at the time the oral communication is intercepted are of such exigency that it would be unreasonable to obtain a court order under ORS 133.724 or this section.

(8) A law enforcement officer who intercepts an oral communication pursuant to this section may not intentionally fail to record and preserve the oral communication in its entirety. A law enforcement officer, or a person under the direct supervision of the officer, who is authorized under this section to intercept an oral communication is not required to exclude from the interception an oral communication made by a person for whom probable cause does not exist if the officer or person under the officer's direct supervision is a party to the oral communication.

(9) A law enforcement officer may not divulge the contents of an oral communication intercepted under this section before a preliminary hearing or trial in which an oral communication is going to be introduced as evidence against a person except:

(a) To a superior officer or other official with whom the law enforcement officer is cooperating in the enforcement of the criminal laws of this state or the United States;

(b) To a magistrate;

(c) In a presentation to a federal or state grand jury; or

(d) In compliance with a court order.

(10) A law enforcement officer may intercept an oral communication under this section only when acting within the scope of the officer's employment and as a part of assigned duties.

(11) As used in this section, "law enforcement officer" means an officer employed by the United States, this state or a municipal government within this state, or a political subdivision, agency, department or bureau of those governments, to enforce criminal laws.

(12) Violation of subsection (9) of this section is a Class A misdemeanor.

**SECTION 47.** ORS 161.570 is amended to read:

161.570. (1) As used in this section, "nonperson felony" has the meaning given that term in the rules of the Oregon Criminal Justice Commission.

(2) A district attorney may elect to treat a Class C nonperson felony or a violation of ORS 475.992 [(4)(a)] **(3)(a) or section 33 (2) of this 2005 Act** as a Class A misdemeanor. The election must be made by the district attorney orally or in writing at the time of the first appearance of the defendant. If a district attorney elects to treat a Class C felony or a violation of ORS 475.992 [(4)(a)] **(3)(a) or section 33 (2) of this 2005 Act** as a Class A misdemeanor under this subsection, the court shall amend the accusatory instrument to reflect the charged offense as a Class A misdemeanor.

(3) If, at some time after the first appearance of a defendant charged with a Class C nonperson felony or a violation of ORS 475.992 [(4)(a)] **(3)(a) or section 33 (2) of this 2005 Act**, the district attorney and the defendant agree to treat the charged offense as a Class A misdemeanor, the court may allow the offense to be treated as a Class A misdemeanor by stipulation of the parties.

(4) If a Class C felony or a violation of ORS 475.992 [(4)(a)] **(3)(a) or section 33 (2) of this 2005 Act** is treated as a Class A misdemeanor under this section, the court shall clearly denominate the offense as a Class A misdemeanor in any judgment entered in the matter.

(5) If no election or stipulation is made under this section, the case proceeds as a felony.

(6) Before a district attorney may make an election under subsection (2) of this section, the district attorney shall adopt written guidelines for determining when and under what circumstances the election may be made. The district attorney shall apply the guidelines uniformly.

(7) Notwithstanding ORS 161.635, the maximum fine that a court may impose upon conviction of a misdemeanor under this section may not exceed the amount provided in ORS 161.625 for the class of felony receiving Class A misdemeanor treatment.

**SECTION 48.** ORS 161.705 is amended to read:

161.705. [(1)] Notwithstanding ORS 161.525, the court may enter judgment of conviction for a Class A misdemeanor and make disposition accordingly when:

(1)(a) A person is convicted of any Class C felony; [or]

(b) A person is convicted of a Class B felony pursuant to [ORS 475.992 (2)(a)] **section 31 (2) of this 2005 Act**; [or]

(c) A person is convicted of the Class B felony of possession of marijuana pursuant to [ORS 475.992 (4)(a)] **section 33 (2) of this 2005 Act**; or

(d) A person convicted of any of the felonies described in paragraphs (a) to (c) of this subsection, or of a Class A felony pursuant to ORS 166.720, has successfully completed a sentence of probation; and

[(e)] (2) The court, considering the nature and circumstances of the crime and the history and character of the defendant, believes that it would be unduly harsh to sentence the defendant for a felony.

[(2) *This section does not apply, however, in cases subject to ORS 475.995.*]

**SECTION 49.** ORS 165.663 is amended to read:

165.663. Any police officer may apply to the circuit court in which judicial district the targeted telephone is located for an ex parte order or extension of an order authorizing the installation and use of a pen register or a trap and trace device. The application shall:

(1) Be in writing under oath;

(2) Include the identity of the applicant and the identity of the law enforcement agency conducting the investigation;

(3) Contain a statement demonstrating that there is probable cause to believe that an individual is committing, has committed or is about to commit:

(a) A particular felony of murder, kidnapping, arson, robbery, bribery, extortion or other crime dangerous to life and punishable as a felony;

(b) A crime punishable as a felony under ORS 475.992 or 475.995 **or sections 14 to 38 of this 2005 Act**;

(c) A crime under ORS 166.720 that includes as part of the pattern of racketeering activity at least one incident of conduct that constitutes a felony; or

(d) Any conspiracy to commit a crime described in paragraphs (a) to (c) of this subsection; and

(4) Contain a statement demonstrating that use of a pen register or trap and trace device will yield evidence relevant to the crime.

**SECTION 50.** ORS 165.667 is amended to read:

165.667. (1) Upon application made under ORS 133.545, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device if the court finds that there is probable cause to believe that:

(a) An individual is committing, has committed or is about to commit:

(A) A particular felony of murder, kidnapping, arson, robbery, bribery, extortion or other crime dangerous to life and punishable as a felony;

(B) A crime punishable as a felony under ORS 475.992 or 475.995 **or sections 14 to 38 of this 2005 Act**;

(C) A crime under ORS 166.720 that includes as part of the pattern of racketeering activity at least one incident of conduct that constitutes a felony; or

(D) Any conspiracy to commit a crime described in subparagraphs (A) to (C) of this paragraph; and

- (b) Use of a pen register or trap and trace device will yield evidence relevant to the crime.
- (2) The order shall:
  - (a) Specify the identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;
  - (b) Specify the identity, if known, of the person who is the subject of the criminal investigation;
  - (c) Specify the number and, if known, physical location of the telephone number to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order;
  - (d) Contain a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates;
  - (e) Direct, upon the request of the applicant, the furnishing of information, facilities and technical assistance necessary to accomplish the installation of the pen register or trap and trace device;
  - (f) Authorize the installation and use of a pen register or a trap and trace device for a period not to exceed 30 days, which may be extended by application and order for a period not to exceed an additional 30 days;
  - (g) Direct that the order and application be sealed until otherwise ordered by the court; and
  - (h) Direct the person owning or leasing the line to which the pen register or the trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not to disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber or to any other person, unless or until otherwise ordered by the court.

**SECTION 51.** ORS 181.085 is amended to read:

181.085. (1) The Department of State Police is authorized to:

- (a) Store blood and buccal samples received under authority of this section, ORS 137.076, 161.325 and 419C.473 (1) and section 2, chapter 852, Oregon Laws 2001, and other physical evidence obtained from analysis of such samples;
  - (b) Analyze such samples for the purpose of establishing the genetic profile of the donor or otherwise determining the identity of persons or contract with other qualified public or private laboratories to conduct that analysis;
  - (c) Maintain a criminal identification database containing information derived from blood and buccal analyses;
  - (d) Utilize such samples to create statistical population frequency databases, provided that genetic profiles or other such information in a population frequency database shall not be identified with specific individuals; and
  - (e) Adopt rules establishing procedures for obtaining, transmitting and analyzing blood and buccal samples and for storing and destroying blood and buccal samples and other physical evidence and criminal identification information obtained from such analysis. Procedures for blood and buccal analyses may include all techniques which the department determines are accurate and reliable in establishing identity, including but not limited to, analysis of DNA (deoxyribonucleic acid), antigen antibodies, polymorphic enzymes or polymorphic proteins.
- (2) If the department is unable to analyze all samples due to lack of funds, the department shall analyze samples in the following order:
- (a) The department shall first analyze samples from persons convicted of:
    - (A) Rape, sodomy, unlawful sexual penetration, sexual abuse, public indecency, incest or using a child in a display of sexually explicit conduct, as those offenses are defined in ORS 163.355 to 163.427, 163.465 (1)(c), 163.525 and 163.670;
    - (B) Burglary in the second degree, as defined in ORS 164.215;
    - (C) Promoting or compelling prostitution, as defined in ORS 167.012 and 167.017;
    - (D) Burglary in the first degree, as defined in ORS 164.225;
    - (E) Assault in the first, second or third degree, as defined in ORS 163.165, 163.175 and 163.185;
    - (F) Kidnapping in the first or second degree, as defined in ORS 163.225 and 163.235;

(G) Stalking, as defined in ORS 163.732;  
(H) Robbery in the first, second or third degree, as defined in ORS 164.395, 164.405 and 164.415;  
(I) Manslaughter in the first or second degree, as defined in ORS 163.118 and 163.125;  
(J) Criminally negligent homicide, as defined in ORS 163.145;  
(K) Conspiracy or attempt to commit any felony listed in subparagraphs (A) to (J) of this paragraph; or

(L) Murder, aggravated murder or an attempt to commit murder or aggravated murder.

(b) After analyzing samples from persons described in paragraph (a) of this subsection, the department shall analyze samples from persons convicted of a felony under ORS 475.992, 475.993, 475.995 or 475.999 **or sections 14 to 38 of this 2005 Act.**

(c) After analyzing samples from persons described in paragraphs (a) and (b) of this subsection, the department shall analyze samples from persons convicted of any other felony.

(3) Notwithstanding subsection (2) of this section, the department may analyze a sample from a lower priority before all samples in higher priorities are analyzed if required in a particular case for law enforcement purposes.

(4) The department may not transfer or disclose any sample, physical evidence or criminal identification information obtained, stored or maintained under authority of this section, ORS 137.076, 161.325 or 419C.473 (1) except:

(a) To a law enforcement agency as defined in ORS 181.010, a district attorney or the Criminal Justice Division of the Department of Justice for the purpose of establishing the identity of a person in the course of a criminal investigation or proceeding;

(b) To a party in a criminal prosecution or juvenile proceeding pursuant to ORS 419C.005 if discovery or disclosure is required by a separate statutory or constitutional provision; or

(c) To a court or grand jury in response to a lawful subpoena or court order when the evidence is not otherwise privileged and is necessary for criminal justice purposes.

(5) The department may not transfer or disclose any sample, physical evidence or criminal identification information under subsection (4) of this section unless the public agency or person receiving the sample, physical evidence or criminal identification information agrees to destroy the sample, physical evidence or criminal identification information if notified by the department that a court has reversed the conviction, judgment or order that created the obligation to provide the blood or buccal sample.

(6) Any public agency that receives a sample, physical evidence or criminal identification information under authority of subsection (4) of this section may not disclose it except as provided in subsection (4) of this section.

(7) Notwithstanding subsections (4) and (6) of this section, any person who is the subject of a record within a criminal identification database maintained under the authority of this section may, upon request, inspect that information at a time and location designated by the department. The department may deny inspection if it determines that there is a reasonable likelihood that such inspection would prejudice a pending criminal investigation. In any case, the department is not required to allow the person or anyone acting on the person's behalf to test any blood or buccal sample or other physical evidence. The department shall adopt procedures governing the inspection of records and samples and challenges to the accuracy of records. The procedures shall accommodate the need to preserve the materials from contamination and destruction.

(8)(a) Whenever a court reverses the conviction, judgment or order that created an obligation to provide a blood or buccal sample under ORS 137.076 (2), 161.325 or 419C.473 (1), the person who provided the sample may request destruction of the sample and any criminal identification record created in connection with that sample.

(b) Upon receipt of a written request for destruction pursuant to this section and a certified copy of the court order reversing the conviction, judgment or order, the department shall destroy any sample received from the person, any physical evidence obtained from that sample and any criminal identification records pertaining to the person, unless the department determines that the person has otherwise become obligated to submit a blood or buccal sample as a result of a separate

conviction, juvenile adjudication or finding of guilty except for insanity for an offense listed in ORS 137.076 (1). When the department destroys a sample, physical evidence or criminal identification record under this paragraph, the department shall notify any public agency or person to whom the sample, physical evidence or criminal identification information was transferred or disclosed under subsection (4) of this section of the reversal of the conviction, judgment or order.

(c) The department is not required to destroy an item of physical evidence obtained from a blood or buccal sample if evidence relating to another person subject to the provisions of ORS 137.076, 161.325, 181.085, 419A.260 and 419C.473 (1) would thereby be destroyed. Notwithstanding this subsection, no sample, physical evidence or criminal identification record is affected by an order to set aside a conviction under ORS 137.225.

(9) As used in this section, "convicted" includes a juvenile court finding of jurisdiction based on ORS 419C.005.

**SECTION 52.** ORS 342.143 is amended to read:

342.143. (1) No teaching, personnel service or administrative license shall be issued to any person until the person has attained the age of 18 years and has furnished satisfactory evidence of proper educational training.

(2) The Teacher Standards and Practices Commission may also require an applicant for a teaching, personnel service or administrative license to furnish evidence satisfactory to the commission of good moral character, mental and physical health, and such other evidence as it may deem necessary to establish the applicant's fitness to serve as a teacher.

(3) Without limiting the powers of the Teacher Standards and Practices Commission under subsection (2) of this section and notwithstanding ORS 670.280:

(a) No teaching, personnel service or administrative license or registration as a public charter school teacher shall be issued to any person who:

(A) Has been convicted of a crime listed in ORS 163.095, 163.115, 163.185, 163.235, 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 163.435, 163.445, 163.465, 163.515, 163.525, 163.547, 163.575, 163.670, 163.675 (1985 Replacement Part), 163.680 (1993 Edition), 163.684, 163.686, 163.687, 163.688, 163.689, 164.325, 164.415, 166.005, 166.087, 167.007, 167.012, 167.017, 167.062, 167.065, 167.070, 167.075, 167.080, 167.087, 167.090, 475.995 or 475.999 **or section 15, 16, 17, 20, 21, 22, 25, 27, 30, 31, 32, 33 (4), 35 or 37 of this 2005 Act;**

(B) Has been convicted under ORS 161.405 of an attempt to commit any of the crimes listed in subparagraph (A) of this paragraph; or

(C) Has been convicted in another jurisdiction of a crime that is substantially equivalent, as defined by rule, to any of the crimes listed in subparagraphs (A) and (B) of this paragraph.

(b) The Teacher Standards and Practices Commission may refuse to issue a license or registration to any person who has been convicted of a crime involving the illegal use, sale or possession of controlled substances.

(4) In denying the issuance of a license or registration under this section, the commission shall follow the procedure set forth in ORS 342.176 and 342.177.

(5) The Department of Education shall provide school districts and public charter schools a copy of the list contained in subsection (3) of this section.

**SECTION 53.** ORS 419C.239 is amended to read:

419C.239. (1) A formal accountability agreement shall:

(a) Be completed within a period of time not to exceed one year;

(b) Be voluntarily entered into by all parties;

(c) Be revocable by the youth at any time by a written revocation;

(d) Be revocable by the juvenile department in the event the department has reasonable cause to believe the youth has failed to carry out the terms of the formal accountability agreement or has committed a subsequent offense;

(e) Not be used as evidence against the youth at any adjudicatory hearing;

(f) Be executed in writing and expressed in language understandable to the persons involved;

(g) Be signed by the juvenile department, the youth, the youth's parent or parents or legal guardian, and the youth's counsel, if any;

(h) Become part of the youth's juvenile department record; and

(i) When the youth has been charged with having committed the youth's first violation of a provision under [ORS 475.992 prohibiting delivery for no consideration of less than five grams of marijuana or prohibiting possession of less than one ounce of marijuana] **section 31 (3)(b) or 33 (3) of this 2005 Act** and unless the juvenile department determines that it would be inappropriate in the particular case:

(A) Require the youth to participate in a diagnostic assessment and an information or treatment program as recommended by the assessment. The agencies or organizations providing assessment or programs of information or treatment must be the same as those designated by the court under ORS 419C.443 (1) and must meet the standards set by the Director of Human Services. The parent of the youth shall pay the cost of the youth's participation in the program based upon the ability of the parent to pay.

(B) Monitor the youth's progress in the program which shall be the responsibility of the diagnostic assessment agency or organization. It shall make a report to the juvenile department stating the youth's successful completion or failure to complete all or any part of the program specified by the diagnostic assessment. The form of the report shall be determined by agreement between the juvenile department and the diagnostic assessment agency or organization. The juvenile department shall make the report a part of the record of the case.

(2) Notwithstanding any other provision of law, the following information contained in a formal accountability agreement under ORS 419C.230 is not confidential and is not exempt from disclosure:

(a) The name and date of birth of the youth;

(b) The act alleged; and

(c) The portion of the agreement providing for the disposition of the youth.

**SECTION 54.** ORS 419C.420 is amended to read:

419C.420. If a youth is cited or summoned for a violation under ORS 471.430 or [475.992 (2)(b) or (4)(f)] **section 31 (3) or 33 (3) of this 2005 Act** and fails to appear, the court may adjudicate the citation or petition and enter a disposition without a hearing.

**SECTION 55.** ORS 419C.443 is amended to read:

419C.443. (1) Except when otherwise provided in subsection (3) of this section, when a youth offender has been found to be within the jurisdiction of the court under ORS 419C.005 for a first violation of the provisions under [ORS 475.992 prohibiting delivery for no consideration of less than five grams of marijuana or prohibiting possession of less than one ounce of marijuana] **section 31 (3)(b) or 33 (3) of this 2005 Act**, the court shall order an evaluation and designate agencies or organizations to perform diagnostic assessment and provide programs of information and treatment. The designated agencies or organizations must meet the standards set by the Director of Human Services. Whenever possible, the court shall designate agencies or organizations to perform the diagnostic assessment that are separate from those that may be designated to carry out a program of information or treatment. The parent of the youth offender shall pay the cost of the youth offender's participation in the program based upon the ability of the parent to pay. The petition shall be dismissed by the court upon written certification of the youth offender's successful completion of the program from the designated agency or organization providing the information and treatment.

(2) Monitoring the youth offender's progress in the program shall be the responsibility of the diagnostic assessment agency or organization. It shall make a report to the court stating the youth offender's successful completion or failure to complete all or any part of the program specified by the diagnostic assessment. The form of the report shall be determined by agreement between the court and the diagnostic assessment agency or organization. The court shall make the report a part of the record of the case.

(3) The court is not required to make the disposition required by subsection (1) of this section if the court determines that the disposition is inappropriate in the case or if the court finds that the

youth offender has previously entered into a formal accountability agreement under ORS 419C.239 (1)(i).

**SECTION 56.** ORS 475.245 is amended to read:

475.245. Whenever any person pleads guilty to or is found guilty of possession of a controlled substance under ORS 475.992 [(4)] **(3) or section 18, 23, 28, 33 or 38 of this 2005 Act** or of a property offense that is motivated by a dependence on a controlled substance, the court, without entering a judgment of guilt and with the consent of the district attorney and the accused, may defer further proceedings and place the person on probation. Upon violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against the person. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

**SECTION 57.** ORS 475.245, as amended by section 10, chapter 834, Oregon Laws 2001, is amended to read:

475.245. Whenever any person pleads guilty to or is found guilty of possession of a controlled substance under ORS 475.992 [(4)] **(3) or section 18, 23, 28, 33 or 38 of this 2005 Act**, the court, without entering a judgment of guilt and with the consent of the district attorney and the accused, may defer further proceedings and place the person on probation. Upon violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against the person. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. There may be only one discharge and dismissal under this section with respect to any person.

**SECTION 58.** ORS 475.967 is amended to read:

475.967. (1) A person commits the crime of possession of a precursor substance with intent to manufacture a controlled substance if the person possesses one or more precursor substances with the intent to manufacture a controlled substance in violation of ORS 475.992 (1) **or section 14, 15, 19, 20, 24, 25, 34 or 35 of this 2005 Act.**

(2) Possession of a precursor substance with intent to manufacture a controlled substance is a Class B felony.

**SECTION 59.** Section 19, chapter 666, Oregon Laws 2001, as amended by section 5, chapter 696, Oregon Laws 2001, section 52, chapter 14, Oregon Laws 2003, section 4, chapter 383, Oregon Laws 2003, section 11, chapter 577, Oregon Laws 2003, and section 16, chapter 801, Oregon Laws 2003, is amended to read:

**Sec. 19.** The crimes to which section 1 (11)(b), chapter 666, Oregon Laws 2001, applies are:

- (1) Bribe giving, as defined in ORS 162.015.
- (2) Bribe receiving, as defined in ORS 162.025.
- (3) Public investment fraud, as defined in ORS 162.117.
- (4) Bribing a witness, as defined in ORS 162.265.
- (5) Bribe receiving by a witness, as defined in ORS 162.275.
- (6) Simulating legal process, as defined in ORS 162.355.
- (7) Official misconduct in the first degree, as defined in ORS 162.415.
- (8) Custodial interference in the second degree, as defined in ORS 163.245.
- (9) Custodial interference in the first degree, as defined in ORS 163.257.
- (10) Buying or selling a person under 18 years of age, as defined in ORS 163.537.
- (11) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.
- (12) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.
- (13) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.
- (14) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(34) Computer crime, as defined in ORS 164.377.

(35) Robbery in the third degree, as defined in ORS 164.395.

(36) Robbery in the second degree, as defined in ORS 164.405.

(37) Robbery in the first degree, as defined in ORS 164.415.

(38) Unlawful labeling of a sound recording, as defined in ORS 164.868.

(39) Unlawful recording of a live performance, as defined in ORS 164.869.

(40) Unlawful labeling of a videotape recording, as defined in ORS 164.872.

(41) A violation of ORS 164.877.

(42) Endangering aircraft, as defined in ORS 164.885.

(43) Interference with agricultural operations, as defined in ORS 164.887.

(44) Forgery in the second degree, as defined in ORS 165.007.

(45) Forgery in the first degree, as defined in ORS 165.013.

(46) Criminal possession of a forged instrument in the second degree, as defined in ORS 165.017.

(47) Criminal possession of a forged instrument in the first degree, as defined in ORS 165.022.

(48) Criminal possession of a forgery device, as defined in ORS 165.032.

(49) Criminal simulation, as defined in ORS 165.037.

(50) Fraudulently obtaining a signature, as defined in ORS 165.042.

(51) Fraudulent use of a credit card, as defined in ORS 165.055.

(52) Negotiating a bad check, as defined in ORS 165.065.

(53) Possessing a fraudulent communications device, as defined in ORS 165.070.

(54) Unlawful factoring of a payment card transaction, as defined in ORS 165.074.

(55) Falsifying business records, as defined in ORS 165.080.

(56) Sports bribery, as defined in ORS 165.085.

(57) Sports bribe receiving, as defined in ORS 165.090.

(58) Misapplication of entrusted property, as defined in ORS 165.095.

(59) Issuing a false financial statement, as defined in ORS 165.100.

(60) Obtaining execution of documents by deception, as defined in ORS 165.102.

(61) A violation of ORS 165.543.

(62) Cellular counterfeiting in the third degree, as defined in ORS 165.577.

(63) Cellular counterfeiting in the second degree, as defined in ORS 165.579.

- (64) Cellular counterfeiting in the first degree, as defined in ORS 165.581.
- (65) Identity theft, as defined in ORS 165.800.
- (66) A violation of ORS 166.190.
- (67) Unlawful use of a weapon, as defined in ORS 166.220.
- (68) A violation of ORS 166.240.
- (69) Unlawful possession of a firearm, as defined in ORS 166.250.
- (70) A violation of ORS 166.270.
- (71) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer, as defined in ORS 166.272.
- (72) A violation of ORS 166.275.
- (73) Unlawful possession of armor piercing ammunition, as defined in ORS 166.350.
- (74) A violation of ORS 166.370.
- (75) Unlawful possession of a destructive device, as defined in ORS 166.382.
- (76) Unlawful manufacture of a destructive device, as defined in ORS 166.384.
- (77) Possession of a hoax destructive device, as defined in ORS 166.385.
- (78) A violation of ORS 166.410.
- (79) Providing false information in connection with a transfer of a firearm, as defined in ORS 166.416.
- (80) Improperly transferring a firearm, as defined in ORS 166.418.
- (81) Unlawfully purchasing a firearm, as defined in ORS 166.425.
- (82) A violation of ORS 166.429.
- (83) A violation of ORS 166.470.
- (84) A violation of ORS 166.480.
- (85) A violation of ORS 166.635.
- (86) A violation of ORS 166.638.
- (87) Unlawful paramilitary activity, as defined in ORS 166.660.
- (88) A violation of ORS 166.720.
- (89) Prostitution, as defined in ORS 167.007.
- (90) Promoting prostitution, as defined in ORS 167.012.
- (91) Compelling prostitution, as defined in ORS 167.017.
- (92) Exhibiting an obscene performance to a minor, as defined in ORS 167.075.
- (93) Unlawful gambling in the second degree, as defined in ORS 167.122.
- (94) Unlawful gambling in the first degree, as defined in ORS 167.127.
- (95) Possession of gambling records in the second degree, as defined in ORS 167.132.
- (96) Possession of gambling records in the first degree, as defined in ORS 167.137.
- (97) Possession of a gambling device, as defined in ORS 167.147.
- (98) Possession of a gray machine, as defined in ORS 167.164.
- (99) Cheating, as defined in ORS 167.167.
- (100) Tampering with drug records, as defined in ORS 167.212.
- (101) A violation of ORS 167.262.
- (102) Research and animal interference, as defined in ORS 167.312.
- (103) Animal abuse in the first degree, as defined in ORS 167.320.
- (104) Aggravated animal abuse in the first degree, as defined in ORS 167.322.
- (105) Animal neglect in the first degree, as defined in ORS 167.330.
- (106) Interfering with an assistance, a search and rescue or a therapy animal, as defined in ORS 167.352.
- (107) Involvement in animal fighting, as defined in ORS 167.355.
- (108) Dogfighting, as defined in ORS 167.365.
- (109) Participation in dogfighting, as defined in ORS 167.370.
- (110) Unauthorized use of a livestock animal, as defined in ORS 167.385.
- (111) Interference with livestock production, as defined in ORS 167.388.
- (112) A violation of ORS 167.390.

- (113) A violation of ORS 471.410.
- (114) Failure to report missing precursor substances, as defined in ORS 475.955.
- (115) Illegally selling drug equipment, as defined in ORS 475.960.
- (116) Providing false information on a precursor substances report, as defined in ORS 475.965.
- (117) Unlawful delivery of an imitation controlled substance, as defined in ORS 475.991.
- (118) A violation of ORS 475.992, if it is a felony or a Class A misdemeanor.
- (119) A violation of ORS 475.993, if it is a felony or a Class A misdemeanor.
- (120) A violation of ORS 475.994.
- (121) A violation of ORS 475.995, if it is a felony or a Class A misdemeanor.
- (122) A violation of ORS 475.999 [(1)(a)] (2).
- (123) Misuse of an identification card, as defined in ORS 807.430.
- (124) Unlawful production of identification cards, licenses, permits, forms or camera cards, as defined in ORS 807.500.
- (125) Transfer of documents for the purposes of misrepresentation, as defined in ORS 807.510.
- (126) Using an invalid license, as defined in ORS 807.580.
- (127) Permitting misuse of a license, as defined in ORS 807.590.
- (128) Using another's license, as defined in ORS 807.600.
- (129) Criminal driving while suspended or revoked, as defined in ORS 811.182, when it is a felony.
- (130) Driving while under the influence of intoxicants, as defined in ORS 813.010, when it is a felony.
- (131) Unlawful distribution of cigarettes, as defined in ORS 323.482.
- (132) A violation of ORS 180.440 (2).
- (133) An attempt, conspiracy or solicitation to commit a crime in subsections (1) to (132) of this section if the attempt, conspiracy or solicitation is a felony or a Class A misdemeanor.

**SECTION 60. This 2005 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect on its passage.**

**Passed by Senate July 20, 2005**

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Secretary of Senate

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President of Senate

**Passed by House July 27, 2005**

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Speaker of House

**Received by Governor:**

.....M.,....., 2005

**Approved:**

.....M.,....., 2005

.....  
Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2005

.....  
Secretary of State