

**A-Engrossed**  
**House Bill 2940**

Ordered by the House April 8  
Including House Amendments dated April 8

Sponsored by Representatives GELSER, BREWER; Representatives BARKER, DEMBROW, KOTEK, MATTHEWS, OLSON, READ, SPRENGER, TOMEI (Pre-session filed.)

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Increases penalty for crime of strangulation to maximum of five years' imprisonment, \$125,000 fine, or both. Directs Oregon Criminal Justice Commission to classify crime of strangulation as crime category 8 on sentencing guidelines grid if defendant has previous conviction for strangulation, or otherwise as crime category 4.

**Authorizes peace officer, under certain circumstances, to arrest person who allegedly commits strangulation against person's family or household member.**

Declares emergency, effective on passage.

**A BILL FOR AN ACT**

1  
2 Relating to strangulation; creating new provisions; amending ORS 133.055, 163.187 and 166.470; and  
3 declaring an emergency.

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

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

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

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

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

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

12 (3) Strangulation is a Class [A *misdemeanor*] **C felony**.

13 **(4)(a) The Oregon Criminal Justice Commission shall classify strangulation as crime**  
14 **category 4 of the sentencing guidelines grid of the commission.**

15 **(b) Notwithstanding paragraph (a) of this subsection, the commission shall classify**  
16 **strangulation as crime category 8 of the sentencing guidelines grid of the commission if the**  
17 **person has a previous conviction for strangulation.**

18 **(5) As used in this section, "previous conviction" means:**

19 **(a) A conviction that was entered prior to imposing sentence on the current crime, pro-**  
20 **vided that the conviction is based on a crime committed in a separate criminal episode.**

21 **(b) A conviction under Oregon law or the equivalent laws of another jurisdiction.**

22 **SECTION 2.** ORS 166.470, as amended by section 8, chapter 826, Oregon Laws 2009, is amended  
23 to read:

24 166.470. (1) Unless relief has been granted under ORS 166.274 or section 5, chapter 826, Oregon  
25 Laws 2009, or 18 U.S.C. 925(c) or the expunction laws of this state or an equivalent law of another

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 jurisdiction, a person may not intentionally sell, deliver or otherwise transfer any firearm when the  
2 transferor knows or reasonably should know that the recipient:

3 (a) Is under 18 years of age;

4 (b) Has been convicted of a felony;

5 (c) Has any outstanding felony warrants for arrest;

6 (d) Is free on any form of pretrial release for a felony;

7 (e) Was committed to the Oregon Health Authority under ORS 426.130;

8 (f) After January 1, 1990, was found to be mentally ill and subject to an order under ORS 426.130  
9 that the person be prohibited from purchasing or possessing a firearm as a result of that mental  
10 illness;

11 (g) Has been convicted of a misdemeanor involving violence or found guilty except for insanity  
12 under ORS 161.295 of a misdemeanor involving violence within the previous four years. As used in  
13 this paragraph, "misdemeanor involving violence" means a misdemeanor **conviction for an offense**  
14 described in ORS 163.160, 163.187, 163.190, 163.195 or 166.155 (1)(b); or

15 (h) Has been found guilty except for insanity under ORS 161.295 of a felony.

16 (2) A person may not sell, deliver or otherwise transfer any firearm that the person knows or  
17 reasonably should know is stolen.

18 (3) Subsection (1)(a) of this section does not prohibit:

19 (a) The parent or guardian, or another person with the consent of the parent or guardian, of a  
20 minor from transferring to the minor a firearm, other than a handgun; or

21 (b) The temporary transfer of any firearm to a minor for hunting, target practice or any other  
22 lawful purpose.

23 (4) Violation of this section is a Class A misdemeanor.

24 **SECTION 3.** ORS 166.470, as amended by sections 8 and 11, chapter 826, Oregon Laws 2009, is  
25 amended to read:

26 166.470. (1) Unless relief has been granted under ORS 166.274 or 18 U.S.C. 925(c) or the  
27 expunction laws of this state or an equivalent law of another jurisdiction, a person may not inten-  
28 tionally sell, deliver or otherwise transfer any firearm when the transferor knows or reasonably  
29 should know that the recipient:

30 (a) Is under 18 years of age;

31 (b) Has been convicted of a felony;

32 (c) Has any outstanding felony warrants for arrest;

33 (d) Is free on any form of pretrial release for a felony;

34 (e) Was committed to the Oregon Health Authority under ORS 426.130;

35 (f) After January 1, 1990, was found to be mentally ill and subject to an order under ORS 426.130  
36 that the person be prohibited from purchasing or possessing a firearm as a result of that mental  
37 illness;

38 (g) Has been convicted of a misdemeanor involving violence or found guilty except for insanity  
39 under ORS 161.295 of a misdemeanor involving violence within the previous four years. As used in  
40 this paragraph, "misdemeanor involving violence" means a misdemeanor **conviction for an offense**  
41 described in ORS 163.160, 163.187, 163.190, 163.195 or 166.155 (1)(b); or

42 (h) Has been found guilty except for insanity under ORS 161.295 of a felony.

43 (2) A person may not sell, deliver or otherwise transfer any firearm that the person knows or  
44 reasonably should know is stolen.

45 (3) Subsection (1)(a) of this section does not prohibit:

1 (a) The parent or guardian, or another person with the consent of the parent or guardian, of a  
2 minor from transferring to the minor a firearm, other than a handgun; or

3 (b) The temporary transfer of any firearm to a minor for hunting, target practice or any other  
4 lawful purpose.

5 (4) Violation of this section is a Class A misdemeanor.

6 **SECTION 4.** ORS 133.055 is amended to read:

7 133.055. (1) A peace officer may issue a criminal citation to a person if the peace officer has  
8 probable cause to believe that the person has committed a misdemeanor or has committed any felony  
9 that is subject to misdemeanor treatment under ORS 161.705. The peace officer shall deliver a copy  
10 of the criminal citation to the person. The criminal citation shall require the person to appear at  
11 the court of the magistrate before whom the person would be taken pursuant to ORS 133.450 if the  
12 person were arrested for the offense.

13 (2)(a) Notwithstanding the provisions of subsection (1) of this section, when a peace officer re-  
14 sponds to an incident of domestic disturbance and has probable cause to believe that an assault has  
15 occurred between family or household members, as defined in ORS 107.705, or to believe that one  
16 such person has placed the other in fear of imminent serious physical injury, the officer shall arrest  
17 and take into custody the alleged assailant or potential assailant.

18 (b) When the peace officer makes an arrest under paragraph (a) of this subsection, the peace  
19 officer is not required to arrest both persons.

20 (c) When a peace officer makes an arrest under paragraph (a) of this subsection, the peace of-  
21 ficer shall make every effort to determine who is the assailant or potential assailant by considering,  
22 among other factors:

23 (A) The comparative extent of the injuries inflicted or the seriousness of threats creating a fear  
24 of physical injury;

25 (B) If reasonably ascertainable, the history of domestic violence between the persons involved;

26 (C) Whether any alleged crime was committed in self-defense; and

27 (D) The potential for future assaults.

28 **(d) As used in this subsection, "assault" includes conduct constituting strangulation un-  
29 der ORS 163.187.**

30 (3) Whenever any peace officer has reason to believe that a family or household member, as  
31 defined in ORS 107.705, has been abused as defined in ORS 107.705 or that an elderly person or a  
32 person with a disability has been abused as defined in ORS 124.005, that officer shall use all rea-  
33 sonable means to prevent further abuse, including advising each person of the availability of a  
34 shelter or other services in the community and giving each person immediate notice of the legal  
35 rights and remedies available. The notice shall consist of handing each person a copy of the fol-  
36 lowing statement:

37 \_\_\_\_\_  
38  
39 IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE OR ABUSE, you can ask the district  
40 attorney to file a criminal complaint. You also have the right to go to the circuit court and file a  
41 petition requesting any of the following orders for relief: (a) An order restraining your attacker from  
42 abusing you; (b) an order directing your attacker to leave your household; (c) an order preventing  
43 your attacker from entering your residence, school, business or place of employment; (d) an order  
44 awarding you or the other parent custody of or parenting time with a minor child or children; (e)  
45 an order restraining your attacker from molesting or interfering with minor children in your cus-

1 today; (f) an order awarding you other relief the court considers necessary to provide for your or  
2 your children's safety, including emergency monetary assistance. Such orders are enforceable in  
3 every state.

4 You may also request an order awarding support for minor children in your care or for your  
5 support if the other party has a legal obligation to support you or your children.

6 You also have the right to sue for losses suffered as a result of the abuse, including medical and  
7 moving expenses, loss of earnings or support, and other out-of-pocket expenses for injuries sustained  
8 and damage to your property. This can be done without an attorney in the small claims department  
9 of a court if the total amount claimed is under \$7,500.

10 Similar relief may also be available in tribal courts.

11 For further information you may contact: \_\_\_\_\_  
12 \_\_\_\_\_

13  
14 **SECTION 5. The amendments to ORS 163.187 by section 1 of this 2011 Act apply to con-**  
15 **duct occurring on or after the effective date of this 2011 Act.**

16 **SECTION 6. This 2011 Act being necessary for the immediate preservation of the public**  
17 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**  
18 **on its passage.**  
19 \_\_\_\_\_