

B-Engrossed
House Bill 2940

Ordered by the House June 21
Including House Amendments dated April 8 and June 21

Sponsored by Representatives GELSER, BREWER; Representatives BARKER, DEMBROW, KOTEK, MATTHEWS, OLSON, READ, SPRENGER, TOMEI (Presession 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, **under specified circumstances**, 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.*]

Provides for increased time limitations for commencing prosecution of crime of strangulation.

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

Appropriates moneys from General Fund to Department of Corrections for purposes of incarcerating, supervising and providing services to offenders convicted of crime of strangulation.

[*Declares emergency, effective on passage.*]

A BILL FOR AN ACT

1
2 Relating to strangulation; creating new provisions; amending ORS 131.125, 133.055 and 163.187; and
3 appropriating money.

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

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

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

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

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

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

12 (3) Strangulation is a Class A misdemeanor.

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

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

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

18 (c) **During the commission of the crime, the person used, attempted to use or threatened**
19 **to use a dangerous or deadly weapon, as those terms are defined in ORS 161.015, unlawfully**
20 **against another;**

21 (d) **The person has been previously convicted of violating this section or of committing**
22 **an equivalent crime in another jurisdiction;**

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 (e) The person has been previously convicted of violating ORS 163.160, 163.165, 163.175,
2 163.185 or 163.190 or of committing an equivalent crime in another jurisdiction, and the vic-
3 tim in the previous conviction is the same person who is the victim of the current con-
4 viction; or

5 (f) The person has at least three previous convictions of any combination of ORS 163.160,
6 163.165, 163.175, 163.185 or 163.190 or of equivalent crimes in other jurisdictions.

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

9 **SECTION 2.** ORS 131.125 is amended to read:

10 131.125. (1) A prosecution for aggravated murder, murder, attempted murder or aggravated
11 murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of
12 manslaughter may be commenced at any time after the commission of the attempt, conspiracy or
13 solicitation to commit aggravated murder or murder, or the death of the person killed.

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

18 (a) **Strangulation under ORS 163.187 (4).**

19 [(a)] (b) Criminal mistreatment in the first degree under ORS 163.205.

20 [(b)] (c) Rape in the third degree under ORS 163.355.

21 [(c)] (d) Rape in the second degree under ORS 163.365.

22 [(d)] (e) Rape in the first degree under ORS 163.375.

23 [(e)] (f) Sodomy in the third degree under ORS 163.385.

24 [(f)] (g) Sodomy in the second degree under ORS 163.395.

25 [(g)] (h) Sodomy in the first degree under ORS 163.405.

26 [(h)] (i) Unlawful sexual penetration in the second degree under ORS 163.408.

27 [(i)] (j) Unlawful sexual penetration in the first degree under ORS 163.411.

28 [(j)] (k) Sexual abuse in the second degree under ORS 163.425.

29 [(k)] (L) Sexual abuse in the first degree under ORS 163.427.

30 [(L)] (m) Using a child in a display of sexual conduct under ORS 163.670.

31 [(m)] (n) Encouraging child sexual abuse in the first degree under ORS 163.684.

32 [(n)] (o) Incest under ORS 163.525.

33 [(o)] (p) Promoting prostitution under ORS 167.012.

34 [(p)] (q) Compelling prostitution under ORS 167.017.

35 [(q)] (r) Luring a minor under ORS 167.057.

36 (3) A prosecution for any of the following misdemeanors may be commenced within four years
37 after the commission of the crime or, if the victim at the time of the crime was under 18 years of
38 age, anytime before the victim attains 22 years of age or within four years after the offense is re-
39 ported to a law enforcement agency or the Department of Human Services, whichever occurs first:

40 (a) **Strangulation under ORS 163.187 (3).**

41 [(a)] (b) Sexual abuse in the third degree under ORS 163.415.

42 [(b)] (c) Furnishing sexually explicit material to a child under ORS 167.054.

43 [(c)] (d) Exhibiting an obscene performance to a minor under ORS 167.075.

44 [(d)] (e) Displaying obscene materials to minors under ORS 167.080.

45 (4) In the case of crimes described in subsection [(2)(L)] (2)(m) of this section, the victim is the

1 child engaged in sexual conduct. In the case of the crime described in subsection [(2)(n)] **(2)(o)** of
2 this section, the victim is the party to the incest other than the party being prosecuted. In the case
3 of crimes described in subsection [(2)(o) and (p)] **(2)(p) and (q)** of this section, the victim is the child
4 whose acts of prostitution are promoted or compelled.

5 (5) A prosecution for arson in any degree may be commenced within six years after the com-
6 mission of the crime.

7 (6) Except as provided in subsection (7) of this section or as otherwise expressly provided by
8 law, prosecutions for other offenses must be commenced within the following periods of limitations
9 after their commission:

10 (a) For any other felony, three years.

11 (b) For any misdemeanor, two years.

12 (c) For a violation, six months.

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

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

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

24 (c) If the offense is an invasion of personal privacy under ORS 163.700, prosecution may be
25 commenced within one year after discovery of the offense by the person aggrieved by the offense,
26 by a person who has a legal duty to represent the person aggrieved by the offense or by a law
27 enforcement agency, but in no case shall the period of limitation otherwise applicable be extended
28 by more than three years.

29 (8) Notwithstanding subsection (2) of this section, if the defendant is identified after the period
30 described in subsection (2) of this section on the basis of DNA (deoxyribonucleic acid) sample com-
31 parisons, a prosecution for:

32 (a) Rape in the first degree, sodomy in the first degree, unlawful sexual penetration in the first
33 degree or sexual abuse in the first degree may be commenced at any time after the commission of
34 the crime.

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

37 (9) Notwithstanding subsection (8) of this section, if a prosecution for a felony listed in sub-
38 section (8) of this section would otherwise be barred by subsection (2) of this section, the prose-
39 cution must be commenced within two years of the DNA-based identification of the defendant.

40 **SECTION 3.** ORS 133.055 is amended to read:

41 133.055. (1) A peace officer may issue a criminal citation to a person if the peace officer has
42 probable cause to believe that the person has committed a misdemeanor or has committed any felony
43 that is subject to misdemeanor treatment under ORS 161.705. The peace officer shall deliver a copy
44 of the criminal citation to the person. The criminal citation shall require the person to appear at
45 the court of the magistrate before whom the person would be taken pursuant to ORS 133.450 if the

1 person were arrested for the offense.

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

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

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

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

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

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

16 (D) The potential for future assaults.

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

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

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28 IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE OR ABUSE, you can ask the district
29 attorney to file a criminal complaint. You also have the right to go to the circuit court and file a
30 petition requesting any of the following orders for relief: (a) An order restraining your attacker from
31 abusing you; (b) an order directing your attacker to leave your household; (c) an order preventing
32 your attacker from entering your residence, school, business or place of employment; (d) an order
33 awarding you or the other parent custody of or parenting time with a minor child or children; (e)
34 an order restraining your attacker from molesting or interfering with minor children in your cus-
35 tody; (f) an order awarding you other relief the court considers necessary to provide for your or
36 your children's safety, including emergency monetary assistance. Such orders are enforceable in
37 every state.

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

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

44 Similar relief may also be available in tribal courts.

45 For further information you may contact: _____.

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SECTION 4. In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Corrections, for the biennium beginning July 1, 2011, out of the General Fund, the amount of \$100,095 for the purposes of incarcerating, supervising and providing services to offenders convicted of a felony under ORS 163.187.

SECTION 5. (1) The amendments to ORS 163.187 by section 1 of this 2011 Act apply to conduct occurring on or after the effective date of this 2011 Act.

(2) The amendments to ORS 131.125 by section 2 of this 2011 Act apply to offenses committed before, on or after the effective date of this 2011 Act, but do not operate to revive a prosecution barred by the operation of ORS 131.125 before the effective date of this 2011 Act.
