

2009

LEGISLATIVE UPDATE

House Bills Senate Bills

Signed Into Law by Governor Theodore R. Kulongoski



Oregon Department of Public Safety Standards and Training

With special thanks to the Oregon District Attorney's Association and
the Oregon Association of Chiefs of Police for their contributions on this document

November 2009

Table of Contents

A. TRAFFIC LAWS:	5
INCREASED PENALTY FOR OPERATING MOTORCYCLE WITHOUT ENDORSEMENT	
<i>SB 124</i>	5
FICTITIOUS LICENSES FOR UNDERCOVER USE AND OTHER LICENSING PROVISIONS	
<i>SB 128</i>	5
CRASH NOTIFICATION REQUIREMENT WHEN INJURY/DAMAGE RESULTS	
<i>SB 314</i>	5
ALL TERRAIN VEHICLE SAFETY RESTRAINT REQUIREMENTS.....	
<i>SB 579</i>	6
"MOVE OVER" LAW ADDITIONS/CLARIFICATIONS	
<i>HB 2040</i>	6
EXPUNGMENT FOR DIVERSION OR ARREST WITHOUT CONVICTION.....	
<i>HB 2318</i>	7
DRIVING WHILE USING A CELL PHONE	
<i>HB 2377</i>	7
DOT WRECK CLEAN-UP FOR YOUTH FATALITIES.....	
<i>HB 2553</i>	8
PARKING FACILITY TOWING REQUIREMENTS	
<i>HB 2578</i>	8
B. ALCOHOL AND DRIVING UNDER THE INFLUENCE:	9
LICENSE SUSPENSION FOR MINOR FAILURE TO APPEAR.....	
<i>SB 225</i>	9
FINE INCREASE FOR FURNISHING ALCOHOL.....	
<i>SB 227</i>	9
HARDSHIP PERMIT DELAY INCREASE FOR BREATH TEST REFUSAL	
<i>HB 2238</i>	9
PROVIDING ALCOHOL TO UNDERAGE PERSON LAW CHANGE	
<i>HB 2246</i>	10
DIVERSION PERIOD INELIGIBILITY EXTENSION TO 15 YEARS	
<i>HB 2331</i>	10
ENHANCED FINE FOR DUII WHEN BAC IS OVER .15%	
<i>HB 2426</i>	11
REFUSAL TO SUBMIT TO URINE TEST PENALTY	
<i>HB 2427</i>	11
DUII URINALYSIS ADMISSIBLE AT TRIAL.....	
<i>HB 3051</i>	11
ADDS JUVENILE DUII AS A FELONY PREDICATE.....	
<i>HB 3194</i>	11
INTOXICANTS PROHIBITED FOR YOUTH IN DIVERSION	
<i>HB 3295</i>	12
C. NEW CRIMES AND CHANGES TO EXISTING CRIMES:	12
ADDS TASER TO FELON IN POSSESSION OF WEAPON STATUTE.....	
<i>SB 251</i>	12

INCREASED PENALTY FOR COCKFIGHTING.....	
<i>SB 280</i>	12
PLACEMENT OF FORFEITED ANIMALS AND NEW CRIME.....	
<i>SB 298</i>	12
POSSESSION OF A DOMESTIC ANIMAL PROHIBITION	
<i>SB 299</i>	13
EQUINES ADDED TO ANIMAL ABANDONMENT STATUTES	
<i>SB 398</i>	13
METAL THEFT LEGISLATION	
<i>SB 570</i>	13
REVISED DEFINITION OF "READILY ACCESSIBLE"	
<i>SB 603</i>	14
MARIJUANA AND METHAMPHETAMINE RECLASSIFICATION.....	
<i>SB 728</i>	14
DELIVERY OF MARIJUANA	
CASTING AN ARTIFICIAL LIGHT WHILE HUNTING	
UPDATED FIREARMS DEFINITION	
<i>HB 2285</i>	15
INCREASE IN PROPERTY CRIME VALUE THRESHOLD	
<i>HB 2323</i>	15
SINGLE VENUE ALLOWED FOR STALKING CRIMES IN MULTIPLE JURISDICTIONS	
<i>HB 2340</i>	15
IMPOUNDMENT AND FORFEITURE OF ANIMALS	
<i>HB 2369</i>	16
CRIME OF ENDANGERING AIRCRAFT IN THE SECOND DEGREE.....	
<i>HB 2498</i>	16
INCREASED PENALTY FOR POLICE ANIMAL ASSAULT	
<i>HB 2629</i>	17
PENALTY INCREASE FOR CRIME OF HARASSMENT IN CERTAIN CASES	
CREATES CRIME OF AGGRAVATED HARASSMENT FOR PROPELLING DANGEROUS	
SUBSTANCE	
CREATES CRIME OF AGGRAVATED DWS/DWR WHEN DEATH OR INJURY OCCUR	
PARAMEDIC PERFORMING DUTIES ADDED TO ASSAULT III.....	
<i>HB 3271</i>	17
MURDER OF A PREGNANT WOMAN.....	
<i>HB 3505</i>	18
D. JUVENILE LAW:	18
INTERSTATE COMPACT FOR JUVENILE OFFENDERS	
<i>SB 107</i>	18
AUTHORIZES RELEASE OF JUVENILE OFFENDERS BY COUNTY	
<i>HB 2299</i>	18
E. FORFEITURE:	19
CIVIL FORFEITURE CLEAN UP.....	
<i>SB 356</i>	19
DISABLING A HIDDEN COMPARTMENT FROM A FORFEITED CAR.....	
<i>HB 2403</i>	19
CRIMINAL FORFEITURE	
<i>HB 2502</i>	20

F. CORRECTIONS/SENTENCING ISSUES:	20
LONGER INCARCERATION TERM FOR SUBSTANTIAL QUANTITIES OF METH	
<i>SB 389</i>	20
BALLOT MEASURE 57 SUSPENSION/OTHER PROVISIONS	
<i>HB 3508</i>	20
G. SEXUAL OFFENDERS AND SEX OFFENSES:	21
SEX OFFENDER LONG TERM FACILITY NOTICE REQUIREMENTS	
<i>SB 582</i>	21
SEX OFFENDER REPORTING "CLEAN UP" BILL	
<i>HB 2169</i>	22
SEX OFFENDER REGISTRATION FOR SCHOOL EMPLOYEES AND STUDENTS.....	
<i>HB 2170</i>	22
ALLOWS PETITION FOR RELIEF FROM DUTY TO REPORT AS SEX OFFENDER	
<i>HB 2172</i>	22
SEX OFFENDER REPORTING RELIEF ELIGIBILITY.....	
<i>HB 2173</i>	23
REQUIREMENT TO NOTIFY OSP OF REPORTING RELIEF.....	
<i>HB 2174</i>	23
SEX OFFENDER REPORTING FOR OUT OF STATE CONVICTIONS.....	
<i>HB 2175</i>	23
CHANGE IN BURDEN FOR OBTAINING RELIEF FROM REGISTRY REQUIREMENTS	
<i>HB 2972</i>	23
"MENTALLY INCAPACITATED" DEFINITION CHANGE.....	
<i>HB 2343</i>	24
"KARLY'S LAW" CLARIFICATION RE: REASONABLE SUSPICION OF ABUSE	
<i>HB 2449</i>	24
SEX ABUSE BY ATHLETIC COACH PENALTY.....	
<i>HB 2476</i>	24
INVASION OF PRIVACY NUDITY DEFINITION CHANGE	
<i>HB 2477</i>	25
SEX ABUSE III FOR PROPELLING A DANGEROUS SUBSTANCE	
<i>HB 2478</i>	25
ONLINE COMMUNICATION.....	
<i>HB 2641</i>	25
H. CRIMINAL PROCEDURE/EVIDENCE:	25
ELECTRONIC RECORDING OF CUSTODIAL INTERVIEWS	
<i>SB 309</i>	25
RETENTION OF BIOLOGICAL EVIDENCE REQUIREMENT	
<i>SB 310</i>	26
TESTIMONY VIA ELECTRONIC TRANSMISSION	
<i>SB 380</i>	27
ADMISSION OF ANALYTICAL REPORT.....	
<i>HB 2285</i>	27
FINANCIAL RECORDS IN GRAND JURY	
<i>HB 2333</i>	27

CONFESSIONS IN VULNERABLE VICTIM SEX CRIMES	
<i>HB 2441</i>	28
SERVICE OF SUBPOENAS.....	
<i>HB 2502</i>	28
STATUTE OF LIMITATION EXTENSION FOR DNA	
<i>HB 3263</i>	28
"SPECIAL AGENTS" MAY APPLY FOR SEARCH WARRANTS.....	
<i>HB 3348</i>	29
I. CRIME VICTIMS:.....	29
VICTIM NOTIFICATION "AS SOON AS PRACTICABLE" STANDARD	
<i>SB 212</i>	29
STATUTORY FRAMEWORK FOR EXERCISE OF VICTIMS' RIGHTS.....	
<i>SB 233</i>	29
DISCLOSURE OF VICTIMS'/WITNESSES' PERSONAL IDENTIFIERS PROHIBITED.....	
<i>SB 248</i>	30
J. MISCELLANEOUS:.....	30
HUMANE AGENTS TRAINING AND CERTIFICATION	
<i>SB 303</i>	30
PRESCRIPTION DRUG MONITORING DATABASE.....	
<i>SB 355</i>	30
OHSU UNIVERSITY POLICE.....	
<i>SB 658</i>	31
PRODUCTION OF INDUSTRIAL HEMP PRODUCTS	
<i>SB 676</i>	31
DPSST INVESTIGATION INFORMATION EXEMPT FROM DISCLOSURE	
<i>HB 2315</i>	32
PROSECUTOR INFORMATION EXEMPT FROM DISCLOSURE	
<i>HB 2339</i>	32
FIREARM POSSESSION FOR RETIRED PAROLE AND PROBATION OFFICERS.....	
<i>HB 2789</i>	32
DOC REQUIREMENT TO TRAIN DOC OFFICERS.....	
<i>HB 3199</i>	33
OREGON STATE POLICE MEDICAL HEALTH DATABASE	
<i>HB 3466</i>	33.

**NOTE: All bills are effective January 1, 2010
unless otherwise noted in the bill summary.**

2009 LEGISLATIVE UPDATE

A. Traffic Laws:

Increased Penalty for Operating Motorcycle Without Endorsement

SB 124

SB 124 increases the penalty for operating a motorcycle without a motorcycle endorsement from a Class B traffic violation, punishable by a maximum fine of \$360 to a Class A traffic violation, punishable by a maximum fine of \$720. The measure directs the court to suspend or dismiss the fine if the operator completes the necessary training course and obtains a motorcycle endorsement within 120 days of sentencing.

Fictitious Licenses for Undercover Use and Other Licensing Provisions

SB 128

SB 128 includes the following three provisions related to limited term driver permits and fictitious driver licenses:

- Stipulates that a limited term driver permit is valid during an applicant's stay in the United States (but no longer than the period of time for which a driver permit of the same type is issued by the department) or for a maximum period of one year when there is no definite end to an authorized stay.
- Relieves the Department of Transportation from the duty to issue renewal notification for limited-term driver licenses, driver permits or identification cards that are valid for less than one year.
- Authorizes the Department of Transportation to issue or renew a fictitious driver license or identification card for a law enforcement official for use in discharging the undercover criminal investigative duties of a law enforcement agency. The measure stipulates that the fees for issuance or renewal of a fictitious license or ID card are the same for a standard license or ID Card. Further, SB 128 requires the Department of Transportation to keep the true identity of a law enforcement official confidential and only allows the disclosure of information to a law enforcement agency upon request.

Crash Notification Requirement When Injury/Damage Results

SB314

SB 314 requires any driver involved in an accident, resulting in the death or injury of a person or property damage in excess of \$1500, to give notice of the accident immediately to a police officer or law enforcement agency by the quickest means available. In addition, SB 314:

- Requires each driver involved in an accident to report if damage requires the towing of any of the involved vehicles from the scene.
- Allows the Department of Transportation to increase the cost of damage that requires notification every five years based on any increase in the Portland-Salem Consumer Price Index.
- Exempts law enforcement officials performing a lawful intervention technique (PIT maneuver) or accidents occurring with a person committing a criminal offense. The measure also exempts operators of snowmobiles, Class I all-terrain vehicles or Class III all-terrain vehicles.

SB 314 stipulates that a driver or occupant (when the driver is unable to report) who fails to report an accident to a police officer or law enforcement agency based on the provisions of the law commits a Class A traffic violation.

All Terrain Vehicle Safety Restraint Requirements

SB 579

SB 579 requires the parent or legal guardian of children under age 16 to ensure that the child is secured with a safety belt or safety harness when operating or riding on a Class I or Class II all terrain vehicle while on premises open to the public.

- As defined in ORS 801.190, Class I all-terrain vehicles have three or more wheels, weigh 800 pounds or less, and are designed for off-road travel.
- As defined in ORS 801.193, Class II all-terrain vehicles are motor vehicles weighing in excess of 800 pounds that are designed for, capable of, and are actually being operated off a highway over land, water, sand, snow, ice, marsh, swampland, or other natural terrain.

“Move Over” Law Additions/Clarifications

HB 2040

Oregon enacted its “move over” law with the passage of House Bill 2176 in 2003. The measure created the offense of failing to maintain a safe distance from an emergency vehicle or ambulance stopped alongside a roadway while displaying warning lights. HB 2040 adds roadside assistance vehicles (vehicle with warning lights providing repair assistance to motorists with disabled vehicles) and tow vehicles to the list of vehicles that require motorists to “maintain a safe distance”. The measure clarifies that motorists are required to:

- Make a lane change to a lane not adjacent to that of an emergency vehicle, roadside assistance vehicle, tow vehicle or ambulance; or
 - Reduce the speed of the motor vehicle to a speed that is at least five miles per hour under the posted speed limit, if making a lane change is unsafe.
- The offense for failure to maintain a safe distance continues to be a Class B traffic violation.

Expungment for Diversion or Arrest without Conviction

HB 2318

HB 2318 amends ORS 137.225 (statute addressing expungement of traffic offenses) to:

- Allow expungement of a traffic offense in situations where a person was arrested, but not convicted, for a traffic offense.
- Prohibit expungement of a traffic offense in cases where a person successfully completes a diversion program after an arrest for DUII.

Driving While Using a Cell Phone

HB 2377

HB 2377 creates a Class D traffic violation (punishable by a maximum fine of \$90) for operating a motor vehicle while using a mobile communication device. For the purposes of the measure, “mobile communication device” is defined as a text messaging device or a wireless, two-way communication device designed to receive and transmit voice or text communication. HB 2377 designates the violation as a primary offense, meaning that a police officer may stop a driver solely for using a cell phone without using a hands-free accessory. The measure provides exceptions to the law for:

- a person who is summoning medical or other emergency help if no other person in the vehicle is capable of summoning help;
- a person using a mobile communication device for the purpose of farming or agricultural operations;
- a person operating an ambulance or emergency vehicle; or a person 18 years of age or older who is using a hands-free accessory;
- a person operating a motor vehicle while providing public safety services or emergency services as a volunteer;
- a person operating a motor vehicle while acting in the scope of the person’s employment as a public safety officer, as defined in ORS 348.270;
- a person operating a motor vehicle in the scope of the person’s employment if operation of the motor vehicle is necessary for the person’s job;
- a person activating or deactivating the mobile communication device or a function of the device;
- a person who holds a valid amateur radio operator license issued or any other license issued by the Federal Communications Commission and is operating an amateur radio;

- a person who operates a two-way radio device that transmits radio communication transmitted by a station operating on an authorized frequency within the citizens' or family radio service bands in accordance with rules of the Federal Communications Commission;
- a person using a function of the mobile communication device that allows for only one-way voice communication while the person is:
 1. Operating a motor vehicle in the scope of the person's employment;
 2. Providing transit services to persons with disabilities or to senior citizens; or
 3. Participating in public safety or emergency service activities.

DOT Wreck Clean-Up for Youth Fatalities

HB 2553

HB 2553 requires the Department of Transportation to pay reasonable costs for the removal of any vehicle, cargo or debris resulting from a motor vehicle accident if the vehicle accident results in the death of a person 18 years of age or younger, the accident occurs on a state highway, no insurance is available and the surviving family members would otherwise be responsible for the cost of the cleanup. The measure does not apply in situations where it is established (by a preponderance of the evidence) that the deceased was engaged in conduct that would constitute a crime or when the vehicle of the deceased was not insured under a motor vehicle liability insurance policy in compliance with ORS 806.060.

Parking Facility Towing Requirements

HB 2578

HB 2578 creates the following new provisions impacting the towing of vehicles from a parking facility:

- Requires a tower who tows a vehicle at the request of an owner of a parking facility to take at least one photograph of the vehicle and record the time and date of the photograph, requires the photograph to show the vehicle left or parked in violation of ORS 98.810 and requires the tower to keep the photograph in electronic or printed form for two years.
- Prohibits a tower from towing a vehicle without first contacting the owner of the facility or the owner's agent at the time of the tow. The measure also prohibits a tower from towing a vehicle if the parking facility owner or agent is an employee of a tower.
- Allows a tower to park a tow vehicle within 1,000 feet of a parking facility if the tower provides notice of the hours during which monitoring occurs on signs that are clearly readable by an operator of a motor vehicle in each parking stall or at each entrance to the parking facility.
- Allows a tower to tow a motor vehicle if the motor vehicle: Blocks or prevents access by emergency vehicles, blocks or prevents entry to the premises, blocks a parked motor vehicle, violates a prominently posted parking prohibition or parks

without permission in a parking facility used for residents of an apartment when there are more residential units than there are parking spaces, the landlord has issued parking tags or other devices that identify vehicles that are authorized to be parked on the premises and there are signs posted that are clearly readable by an operator of a motor vehicle in each parking stall or at each entrance to the parking facility prohibiting or restricting public parking on the parking facility.

- Requires the tower to release the motor vehicle at no charge when the owner or operator of the motor vehicle is present at the time of the tow unless the hookup is complete. If the hookup is complete, the tower shall release the motor vehicle and may charge the owner or operator of the motor vehicle a fee that does not exceed the charge to hook up for that type of tow as published.

B. Alcohol and Driving Under the Influence:

License Suspension for Minor Failure to Appear

SB 225

SB 225 requires a court to suspend a minor's drivers license if the minor, at least 13 years of age but less than 21 years, is cited for attempting to purchase alcohol or possessing alcohol and later fails to appear in court. The measure provides that person's age at the time of the offense, not at time of conviction, governs the imposition of the license suspension. SB 225 closes a loophole in the statutory language that allows a person cited under the statute to defer or avoid trial until after his or her 21st birthday in order to avoid receiving a license suspension as part of a conviction.

Fine Increase for Furnishing Alcohol

SB 227

SB 227 increases the fine for knowingly furnishing alcohol to a minor or someone who is visibly intoxicated from \$350 to at least \$500 for a first conviction, from \$500 to at least \$1,000 for a second conviction and from \$1000 to at least \$1500 for a third conviction. The measure allows the court to waive at least \$200 but not more than one-third of the fine if the violator performs at least 30 hours of community service. Except for the community service exception, SB 227 prevents the court from waiving or suspending the mandatory minimum sentence and allows the court to require restitution for any damage to property where the alcoholic liquor was illegally consumed or require participation in volunteer service to a community service agency.

Hardship Permit Delay Increase for Breath Test Refusal

HB 2238

HB 2238 increases the penalty for refusing to take a breath test by increasing the period of time a person is ineligible to receive a hardship permit from one year to three years. The determination regarding a delay in eligibility for a hardship permit is based on the following factors:

- Whether the person is presently participating in a driving while under the influence of intoxicants diversion program in this state or in any similar alcohol or drug rehabilitation program in this or another jurisdiction; or
- Whether within the five years preceding the date of arrest any of the following occurred:
 1. Suspension of the person's driving privileges under ORS 813.410 became effective;
 2. The person was convicted of driving while under the influence of intoxicants in violation of ORS 813.010 or the statutory counterpart to ORS 813.010 in another jurisdiction, as described in ORS 813.430;
 3. The person was convicted of driving while under the influence of intoxicants in violation of a municipal ordinance in this state or another jurisdiction, as described in ORS 813.430; or
 4. The person commenced participating in a driving while under the influence of intoxicants diversion program in this state or in any similar alcohol or drug rehabilitation program in this or another jurisdiction, as described in ORS 813.430.

Providing Alcohol to Underage Person Law Change

HB 2246

HB 2246 establishes that a parent or guardian may provide alcohol to an underage person only if they are accompanying the underage person and they are in a private residence. In all other instances, a person in control of property may not allow any person under age 21 to consume alcohol on the property and may not allow someone who is underage and who has consumed alcohol to remain on the property. HB 2246 provides an exemption from these requirements for sacramental wine that is given or provided as part of a religious rite or service.

Diversion Period Ineligibility Extension to 15 Years

HB 2331

HB 2331 allows a person to enter a diversion program if fifteen years have passed since the person's last diversion. Further, the measure provides that a person is not eligible for another diversion if the person has been convicted of a crime involving a motor vehicle in the fifteen years preceding their second or subsequent diversion. Currently, if a person has not participated in a diversion

program within ten years of an offense date, he or she may be eligible to enter a diversionary program for driving under the influence of intoxicants. HB 2331 extends the period of ineligibility to fifteen years.

Enhanced Fine for DUII when BAC is over .15%

HB 2426

HB 2426 imposes an increased minimum fine of \$2,000 for a person convicted of driving under the influence of intoxicants (DUII) with a blood alcohol level (BAC) of .15 percent or greater. The passage of this measure, specifically the increased fine for a BAC of .15 percent or greater, may be essential for the state to continue receiving 410 Grant funds from the federal government.

Refusal to Submit to Urine Test Penalty

HB 2427

HB 2427 adds refusal to submit to a urine test to the offense of refusal to take a test for intoxicants when requested by a police officer in accordance with ORS 813.131 and 813.132. The penalty for refusal to submit to a urine test is a traffic offense punishable by a \$500 to \$1000 fine. Adding this requirement to the statute is important in cases involving substances other than alcohol when a Drug Recognition Expert (DRE) is conducting an investigation for driving under the influence of intoxicants. As part of a 12-step DRE evaluation, an officer must request a urine sample. If a defendant refuses to provide a sample, the conclusions of the DRE examination may not be admissible in court.

DUII Urinalysis Admissible at Trial

HB 3051

HB 3051 stipulates that a valid chemical analysis of a person's urine (performed in a licensed or accredited laboratory) is admissible at a trial as evidence and that it may be used with other evidence to determine whether a person was driving under the influence of intoxicants. Under the Implied Consent Law, a person is deemed to have given consent to a blood, breath or urine test when, after being arrested for driving while under the influence of intoxicants (DUII), an officer believes that the person is under the influence of a controlled substance or an inhalant. HB 3051 clarifies that urinalysis evidence is admissible in court if the testing is performed by a licensed or accredited laboratory.

Adds Juvenile DUII as a Felony Predicate

HB 3194

HB 3194 includes prior juvenile adjudications for driving under the influence of intoxicants as a predicate for felony driving under the influence. The measure specifies that a person who has three prior convictions for driving under the influence within ten years, including prior juvenile adjudications, is a Class C felony.

Intoxicants Prohibited for Youth in Diversion

HB 3295

HB 3295 requires diversion programs for persons less than 18 years of age to include an agreement that the youth will not use intoxicants during the diversion program.

C. New Crimes and Changes to Existing Crimes:

Adds Taser to Felon in Possession of Weapon Statute

SB 251

Modifies the crime of felon in possession of a restricted weapon to include electromuscular disruption technology (Tasers).

Increased Penalty for Cockfighting

SB 280

SB 280 includes the following provisions related to cockfighting, animal fighting and forfeiture:

- Increases the penalty for participating in a cockfight from a Class A misdemeanor to a Class C felony.
- Increases the penalty for the crime of involvement in animal fighting from a Class A misdemeanor to a Class C felony.
- Adds participating in cockfighting to the list of crimes subject to criminal forfeiture.

Placement of Forfeited Animals and New Crime

SB 298

SB 298 creates a new crime of encouraging animal abuse by knowingly allowing a person who forfeited an animal because of abuse to possess the animal. The measure designates the new violation as a Class C misdemeanor.

In addition, SB 298 includes the following additional provisions related to the placement of forfeited animals:

- Prohibits returning a forfeited animal to a person in the same household.
- Requires written acknowledgment of the rights and responsibilities of a person receiving a forfeited animal.

Possession of a Domestic Animal Prohibition

SB 299

SB 299 allows a court to remove all domestic animals from the residence of a person who has been convicted of unlawfully possessing domestic animals and includes the following additional provisions:

- Adds sexual assault and animal fighting offenses to offenses that prevent a person from possessing a domestic animal for five years after conviction.
- Adds dog fighting and cockfighting offenses to offenses that bar possession of a domestic animal for 15 years after conviction.
- Designates unlawful possession as a Class C misdemeanor.

Equines added to Animal Abandonment Statutes

SB 398

SB 398 adds equines (defined as horses, ponies, donkeys, mules, hinnies or zebras or hybrids), to the crime of animal abandonment and establishes the violation as a Class B misdemeanor. SB 398 also changes the standard of care that constitutes animal abandonment from failure to provide continued care to failure to provide minimum care, a term that is already defined in statute.

Metal Theft Legislation

SB 570

SB 570 makes a number of changes in ORS designed to address the continuing metal theft epidemic throughout Oregon. The measure includes the following key sections/components:

- Defines key terms for purposes of the measure including “scrap metal business”, “commercial metal property”, “metal property”, “transaction”, etc.
- Creates new crimes for Unlawfully Altering Metal Property, Making a False Statement on a Metal Property Record and Unlawfully Purchasing or Receiving Metal Property.
- Creates a new crime for Unlawfully Transporting Metal Property and outlines metal transportation certificate provisions/regulations.
- Requires scrap metal businesses to cooperate with law enforcement and to separate, protect, tag and hold property they suspect is lost or stolen.
- Provides exemptions from the requirement of the measure for recyclers of beverage containers or metal food containers, auto dealers, towers and dismantlers who do not purchase, receive or transport private metal property.

- Requires scrap metal businesses to create and maintain metal purchase/transport records for one year and required scrap metal businesses to create and maintain a commercial account before purchasing or receiving metal property from a commercial seller.
- Increases the sentence for Theft in the First Degree or Aggravated Theft in the First Degree when damage to property as the result of the theft involves a “disproportionate impact”.
- Authorizes the installation or tracking of a mobile tracking device for Unlawfully Transporting Metal Property.
- Establishes a defense to a charge of “Theft by Receiving”.
- Creates immunity for a landowner when an injury or damage occurs as a result of the theft of metal property.
- Requires each county District Attorney to create a written plan of action that ensures effective communication between law enforcement and the business community.

Revised Definition of “readily accessible”

SB 603

SB 603 clarifies the definition of “readily accessible” for purposes of unlawful possession of a firearm. The measure clarifies that a person may transport a firearm in a vehicle that does not have a trunk, so long as firearm is in a locked box, locked center console or locked glove compartment. Further, the measure provides an affirmative defense to the charge of violating ORS 166.250 (1)(c)(C) if a person has been granted relief from the prohibition from owning a firearm under ORS 166.274.

Marijuana and Methamphetamine Reclassification

SB 728

SB 728 establishes that a person who manufactures or delivers a controlled substance in Schedule IV and who thereby causes death to any person is guilty of a Class C felony where the controlled substance plays “a substantial role” in the death. In addition SB 728 requires the State Board of Pharmacy to:

- classify marijuana as a controlled substance in Schedule II, III, IV or V
- classify methamphetamine as a controlled substance in Schedule 1
- classify methamphetamine its salts, isomers and salts of its isomers as a controlled substance in Schedule II for purposes of currently accepted medical use in treatment in the United States and currently accepted medical use with severe restrictions within the meaning of 21 U.S.C. 812(b)(2).

The measure requires the State Board of Pharmacy to classify marijuana and methamphetamine no later than 180 days after the effective date of the bill.

**Delivery of Marijuana
Casting an Artificial Light while Hunting
Updated Firearms Definition**

HB 2285

HB 2285 includes a number of various changes to law including:

- **Marijuana Penalty Clarification:** clarifies that delivery of more than an ounce of marijuana, for no consideration, is a Class C felony.
- **Artificial Light from a Vehicle while Hunting:** authorizes a peace officer to cite an individual for using artificial light from a vehicle while in possession of a bow and arrow, rifle or other firearm.
- **Updated Firearm Definition:** Clarifies the definition of a firearm to mean any weapon designed to expel a projectile by the action of powder (including guns **without** a firing pin). This provision also clarifies what constitutes a firearm for the crimes of felon in possession, unlawful possession of a weapon, first degree theft and unlawful paramilitary activity.

Increase in Property Crime Value Threshold

HB 2323

HB 2323 increases the value threshold of certain property crimes as follows:

- **Crime of theft** by increasing the threshold to less than \$100 for Theft 3 (previously set at less than \$50), to between \$100 up to \$1000 for Theft 2 (previously more than \$50 and less than \$200 for Theft by receiving and under \$750 in any other case) and to \$1000 or above for Theft 1 (previously \$200 or more in cases of theft by receiving and \$750 or more in any other case)
- **Theft of services** by increasing the threshold to less than \$100 for a Class C misdemeanor, less than \$1000 for a Class A misdemeanor, \$1000 or more for a Class C felony and leaves the threshold of \$10,000 for a Class B felony.
- **Criminal mischief** by increasing the threshold of damage to above \$500 for criminal mischief in the second degree, and to above \$1000 for criminal mischief in the first degree.
- **Fraudulent use of a credit card** by increasing the value of property or services obtained to less than \$1000 for a Class A misdemeanor and \$1000 or more for a Class C felony

Single Venue Allowed for Stalking Crimes in Multiple Jurisdictions

HB 2340

HB 2340 includes the following provisions relating to the venue for criminal prosecutions involving stalking or violations of a court stalking order:

- Provides that where violations of a stalking order have occurred in multiple counties, incidents may be tried together in one of the counties where the violations occurred.

Impoundment and Forfeiture of Animals

HB 2369

HB 2369 adds the crimes of animal fighting, dog fighting and cockfighting to the list of animal mistreatment crimes that may result in impoundment and forfeiture of the animals. The measure also adds these crimes to the list of circumstances where peace officers may provide emergency food, water and medical care to an animal for its own protection. The measure may provide a cost savings in cases involving seizures of large numbers of fighting birds or fighting dogs because it allows for the animals to be impounded on the premises where they are found.

Crime of Endangering Aircraft in the Second Degree

HB 2498

HB 2498 provides that a person commits:

- The **crime of endangering aircraft in the first degree** if the person knowingly
 1. Throws an object at, or drops an object upon, an aircraft;
 2. Discharges a bow and arrow, gun, airgun or firearm at or toward an aircraft;
 3. Tampers with an aircraft or a part, system, machine or substance used to operate an aircraft in such a manner as to impair the safety, efficiency or operation of an aircraft without the consent of the owner, operator or possessor of the aircraft; or
 4. Places, sets, arms or causes to be discharged a spring gun, trap, explosive device or explosive material with the intent of damaging, destroying or discouraging the operation of an aircraft.
- The **crime of endangering aircraft in the second degree** if the person knowingly possesses a firearm or deadly weapon in a restricted access area of a commercial service airport that has at least 2 million passenger boardings per calendar year.
- For purposes of the measure, “restricted access area” means an area of a commercial service airport that is designated as restricted in the airport security program approved by the federal Transportation Security Administration and is marked at points of entry with signs giving notice that access to the area is restricted.
- This penalty does not apply to a person authorized under federal law or an airport security program to possess a firearm or deadly weapon in a restricted access area.

Declares an emergency; effective on passage. Signed June 17, 2009

Increased Penalty for Police Animal Assault

HB 2629

HB 2629 imposes an addition fine for committing the crimes of interfering with, or assaulting, a police animal. Currently, interfering with a police animal is a

Class A misdemeanor and assaulting a police animal is a Class C felony. In the event a defendant is convicted of either crime, this measure requires a judge to impose an additional \$500 fine for a misdemeanor and an additional \$1,000 fine for a felony.

Penalty Increase for Crime of Harassment in Certain Cases
Creates Crime of Aggravated Harassment for Propelling Dangerous Substance
Creates Crime of Aggravated DWS/DWR when Death or Injury Occur
Paramedic Performing Duties Added to Assault III

HB 3271

HB 3271 includes the following components:

- Elevates the **penalties for harassment** from a Class B misdemeanor to a Class A misdemeanor if:

The perpetrator had a previous conviction for harassment and the victim is the same as in the original offense or a family member of the victim of the original offense;

The victim is protected by a stalking order;

The victim is under 18 years old and is more than three years younger than the perpetrator; or

The perpetrator threatened to kill the victim or a family member. Further, the measure clarifies that the crime occurs either in the county where the threat originated or was received.

- Creates the **crime of aggravated harassment** (a Class C felony) as knowingly propelling saliva, blood, urine, semen, feces or other dangerous substances at a staff member defined under ORS 163.165 (corrections officer, youth authority staff member or volunteer) or public safety officer (emergency medical technician, firefighter, parole or probation or police officer) **NOTE:** In creating this new crime of Aggravated Harassment, the Legislature deleted this identical conduct as an existing theory of Assault 3.

- Creates the **crime of aggravated driving while suspended or revoked** defined as causing the serious injury or death of another person while having a suspended or revoked license resulting from a conviction of a criminal offense involving the use of a motor vehicle.

Lastly, HB 3271 **adds a new theory to Assault III**. It now includes intentionally, knowingly or recklessly causing physical injury to a paramedic while they are performing their duties.

Murder of a Pregnant Woman

HB 3505

HB 3505 requires a person, who is at least 15 years old, who is convicted of intentional **murder** against a known pregnant victim, to be sentenced to life imprisonment without the possibility of release or parole or to life imprisonment

(30 years minimum). The measure allows a sentence of life imprisonment with the possibility of release or parole if 10 or more members of the jury finds there are sufficient mitigating circumstances to warrant the reduced sentence. HB 3505 further stipulates that a sentence of life imprisonment without the possibility of release or parole in these cases may not be suspended, deferred or commuted by any judicial officer, and the State Board of Parole and Post-Prison Supervision may neither parole the prisoner nor reduce the period of confinement in any manner whatsoever. In addition, The Department of Corrections or any executive official may not permit the prisoner to participate in any sort of release or furlough program. The measure outlines additional sentencing policy related to the crime.

HB 3505 also classifies the crime of **assault in the second degree** as assault in the first degree if the defendant commits the assault knowing the victim is pregnant and classifies the crime of **assault in the fourth degree** as a Class C felony if the defendant knows victim is pregnant.

D. Juvenile Law:

Interstate Compact for Juvenile Offenders

SB 107

This bill enacts the Interstate Compact for Juvenile Offenders, which governs the supervision of juvenile offenders and runaways. This compact replaces the original compact that Oregon has been a member of since 1959. The compact sets forth how states work together when juvenile offenders are supervised and returned to their state of origin.

Declares an emergency; effective on passage. Signed August, 4, 2009

Authorizes Release of Juvenile Offenders by County

HB 2299

HB 2299 allows a county to adopt standards for releasing juvenile offenders when the county's juvenile detention facility's capacity is exceeded. The measure also allows the county's juvenile department director to release juvenile offenders in order to reduce the facility's population to capacity and establishes a procedure for the release of juvenile offenders sent pursuant to contract by one county to another county's juvenile facility or regional facility. Finally, HB 2299 stipulates that the measure does not create a cause of action.

E. Forfeiture:

Civil Forfeiture Clean Up

SB 356

SB 356 re-enacts Oregon's civil forfeiture laws in order to ensure that any parts of the law that were in constitutional limbo after the Court of Appeals decision on Ballot Measure 3 are not challenged on the grounds that a law once found unconstitutional does not automatically become constitutional by a later court ruling, but requires legislative action. SB 356 includes the following language that identifies the purpose of the measure as it relates to civil forfeiture:

“The Legislative Assembly adopts the provisions of sections 1 to 51 of this 2009 Act as the sole and exclusive law of the state governing civil forfeiture of real and personal property based on prohibited conduct. Sections 1 to 51 of this 2009 Act supersede all charter provisions, ordinances, regulations and other enactments adopted by cities and counties relating to civil forfeitures. All forfeitures under the provisions of sections 1 to 51 of this 2009 Act are subject to the limitations of section 10, Article XV of the Oregon Constitution.”

Declares an emergency; effective on passage. Signed April 28, 2009

Disabling a Hidden Compartment From a Forfeited Car

HB 2403

HB 2403 allows a law enforcement agency to remove a hidden compartment from a vehicle that has been forfeited and to be reimbursed for expense associated with removal out of proceeds of selling the vehicle. The measure makes changes to both the civil (Chapter 475A) and criminal (Chapter 131) forfeiture statutes and requires the following:

- Requires law enforcement to disable the hidden compartment of a vehicle that is lawfully seized when the compartment is used or intended to be used to facilitate the commission of a criminal offense.
- If the vehicle is forfeited and retained for law enforcement purposes then law enforcement will deduct what it would cost to disable the vehicle then distribute proceeds based on value of the vehicle.
- If the vehicle is forfeited and sold then law enforcement is required to disable the compartment and can deduct the cost of disabling the vehicle then distribute the proceeds.
- If the vehicle is forfeited and the cost of disabling the compartment exceeds the value of the vehicle then the vehicle can be salvaged or scrapped and those proceeds distributed.
- Provides that law enforcement is not liable for the diminution in value as a result of disabling the compartment.

- Provides that law enforcement is required to disable a hidden compartment when the vehicle is to be returned to the owner and/or person the vehicle seized from.

Criminal Forfeiture

HB 2502

This bill allows the State to distribute restitution to victims from proceeds of criminal forfeiture as long as the Court includes an order of restitution in the criminal judgment.

Declares an emergency; effective on passage. Signed June 26, 2009

F. Corrections/Sentencing Issues:

Longer Incarceration Term for Substantial Quantities of Meth

SB 389

SB 389 explicitly repeals ORS 137.721(1) in order to conform the statute to section 6 of Ballot Measure 57 that was passed in November of 2008. The measure clarifies that the sentence for a person convicted of possession of substantial quantities of a controlled substance, or for delivery to a minor, is not limited to the presumptive 19-month sentence. Section 6 of Ballot Measure 57 prohibited a court from imposing a sentence of optional probation or granting a downward sentence disposition or duration for offenders who are convicted of manufacturing and delivering a controlled substance if the person had one or more prior convictions for manufacture or delivery.

Ballot Measure 57 Suspension/Other Provisions

HB 3508

HB 3508 makes a number of changes in sentencing and includes the following key elements:

1. **Measure 57 Phase-In:** The bill retains all the provisions of Ballot Measure 57 until 2/15/10, at which time the repeat property crime enhancements will be suspended through the end of the biennium. All remaining portions of M57 remain in effect. The bill adds the crime of Aggravated Identity Theft of an Elderly Victim to Ballot Measure 57 and requires the Oregon District Attorneys Association to report Ballot Measure 57 charging and conviction data to the Criminal Justice Commission by 1/15/2010.

2. **Earned Time Provisions:** The measure increases the maximum amount of earned time that offenders convicted of nonviolent crimes may earn from 20% to

30%. The earned time provision sunsets in two years but is designed to apply retroactively. This provision includes a streamlined process for resentencing that ensures notice and an opportunity for the victim to be heard.

3. **Community Corrections:** HB 3508 establishes a 60 day cap on probation revocations for technical violations; earned time incentive to gain inactive probation status at 50% of the term, and conforming when offenders on post prison supervision may be transferred to inactive status.

4. **Criminal Aliens:** The bill streamlines the commutation process by relieving the current statutory notice requirements for a class of offenders who have ICE holds, are convicted of nonviolent offenses and have six months remaining on their DOC sentence.

5. **Parole Board Hearings:** Allows the Parole Board to defer release hearing for up to 10 years. Currently, the statute requires release hearings for eligible offenders every two years.

6. **Kidnapping:** Adds to crime of **Kidnapping in the First Degree** if kidnapping was done to further the commission or attempted commission of Rape I, Sodomy I or Sexual Penetration I of a victim under the age of 12.

7. **Assault 3/DUII:** Enhances sentence for **Assault 3** to Class B felony if the assault resulted from the operation of a motor vehicle and the defendant was DUII.

8. **Delivery of Marijuana:** Delivery of marijuana to a person under 18 and at least three years older than the person under 18 is designated a crime category 8 for sentencing purposes. Delivery of any Schedule I, II or III controlled substance (other than marijuana) to a minor is a level 8 offense.

Declares an emergency; effective on passage. Signed July 1, 2009

G. Sexual Offenders and Sex Offenses:

Sex Offender Long Term Facility Notice Requirements

SB 582

SB 582 removes the sunset provision in Section 13 of the elder abuse law (Chapter 671) enacted in 2005 in order to continue to require the Department of Human Services, area agency or sex offender to give notice to a long term care facility or residential facility when a person seeking admission is convicted of a sex crime. In addition, the removal of the sunset continues to allow a long term care facility to refuse admission to a sex offender and to discharge a resident for failure to give notice.

Sex Offender Reporting “Clean Up” Bill

HB 2169

HB 2169 clarifies the sex offender reporting requirements by:

- Requiring the person required to report as a sex offender to provide the information necessary to complete the sex offender registration form and sign the form as required.
- Requires the police agency or supervising agency to photograph the person when they initially report and when they annually report. The measure allows agencies to take additional photos of the person or any identifying scars, marks or tattoos located on the person when the person reports.
- Requires the police agency or supervising agency to fingerprint the person if the person’s fingerprints are not included in the record file of the OSP bureau of criminal identification.

HB 2169 establishes that a person commits the crime of failure to report as a sex offender in addition to current provisions of law if they also fail to:

- sign the sex offender registration form as required
- submit to fingerprinting
- submit to having a photograph taken of their face, identifying scars, marks or tattoos.

Sex Offender Registration for School Employees and Students

HB 2170

HB 2170 addresses a gap in the sex offender reporting requirements for persons who were convicted in another jurisdiction, who move into the state of Oregon and attend school, or who get a job at an institution of higher learning (they are not currently required to report). This measure will now require these individuals to register within 10 days of the first day of school or the 14th day of employment. Thereafter they have to report after any change in school attendance or employment.

Allows Petition for Relief from Duty to Report as Sex Offender

HB 2172

HB 2172 requires that a petition for relief from the requirement to report as a sex offender must be filed in the circuit court of the county in which the person was convicted of, or found to be within the jurisdiction of the juvenile court based on,

the sex crime. For persons convicted of the sex crime in another state, the petition must be filed in the circuit court of the county in which the person resides.

Sex Offender Reporting Relief Eligibility

HB 2173

HB 2173 narrows the class of offenders that are eligible for relief from sex offender reporting requirements to those persons with no more than one conviction listed under ORS 181.830 (1). HB 2173 specifies that a person who is convicted of more than one offense under ORS 181.830 (1) may be eligible for relief if the convictions involve the same victim and, at the time offenses were committed, the defendant did not have any prior convictions for sex offenses.

Requirement to Notify OSP of Reporting Relief

HB 2174

HB 2174 requires a person who is granted relief by the court from the requirement to report as a sex offender to send a certified copy of the court order to the Department of State Police.

Sex Offender Reporting for Out of State Convictions

HB 2175

HB 2175 clarifies that a person residing in Oregon and convicted of a sex offense or an adjudicated delinquent convicted of a sex offense in another state court, federal court, military court, tribal court of federally recognized tribe, court of District of Columbia or United States' territory must report in Oregon as a sex offender. The measure clarifies current reporting requirements for juveniles and adult offenders and allows for prosecution for failure to report as a sex offender following a change of address in either the county in which a person previously resided and reported or in the county in which person now resides. HB 2175 requires the State of Oregon to make a diligent effort to ensure the sending state notifies the juvenile of Oregon's sex-offender reporting requirements prior to allowing an out-of-state juvenile offender to reside and be supervised in Oregon.

Change in Burden for Obtaining Relief from Registry Requirements

HB 2972

The DA now has 90 days from receipt of the affidavit to notify the applicant/defendant of the State's objection to their request for sex offender registration relief. At the contested hearing, the defendant has the burden to prove to the court that the defendant meets the eligibility for relief requirements in ORS

181.830 by a preponderance of the evidence. The victim may voluntarily testify at the hearing. The defendant may not compel the victim to testify unless the court issues an order allowing the victim to be subpoenaed by the defendant. The court may not issue such order unless defendant can demonstrate that victim's testimony is material and favorable to his request for relief.

Declares an emergency; effective on passage. Signed June 17, 2009

“Mentally Incapacitated” Definition Change

HB 2343

HB 2343 changes the definition of “mentally incapacitated” as it applies to sex offenses by removing language that refers to “how” the victim became incapacitated. This measure removes the question of how a person who is assaulted became incapacitated as a factor in determining an offender's level of guilt and focuses instead on the person's ability to consent to sexual activity.

“Karly's Law” Clarification re: Reasonable Suspicion of Abuse

HB 2449

HB 2449 amends “Karly's Law,” enacted by the 2007 Legislature and codified at ORS 419B.023, to clarify what is meant by an investigator having a “reasonable suspicion” that a child's injury is the result of abuse, thereby triggering certain investigative protocol requirements. The new language reads, “. . . and the person **is certain or** has a reasonable suspicion that the injury **is or** may be the result of abuse, the person shall. . . .”

Sex Abuse by Athletic Coach Penalty

HB 2476

HB 2476 enhances the penalty for sex abuse in the second degree when the offender is 21 years or older and is the athletic coach of the minor victim. This measure makes the following two changes to the law related to sex abuse:

- Establishes that conduct that currently constitutes sex abuse in the second degree, a level 7 crime on the sentencing grid block, becomes a level 8 offense if the offender is 21 years or older and is the victim's coach.
- Establishes that conduct that currently constitutes sex abuse in the third degree becomes sex abuse in the second degree if the offender was the victim's coach and 21 years or older (a level 7 Class C felony instead of a Class A misdemeanor.)

Invasion of Privacy Nudity Definition Change

HB 2477

This bill clarifies the definition of nudity to include any uncovered or less than opaquely covered part of a person's genitalia or female breast. In changing the definition of nudity, the measure removes the requirement that the victim be "post-pubescent". Under current statute, a person could not be convicted of invasion of privacy if the victim is a pre-pubescent child. HB 2477 also provides that ORS 163.700 does not apply to a visual recording of a person under 12 years of age if:

- The person who makes or records the visual recording is the father, mother, sibling, grandparent, aunt, uncle or first cousin, by blood, adoption or marriage, of the person under 12 years of age; and
- The visual recording is made or recorded for a purpose other than arousing or gratifying the sexual desire of the person or another person.

Sex Abuse III for Propelling a Dangerous Substance

HB 2478

HB 2478 establishes that a person commits the crime of sexual abuse in the third degree if the person intentionally propels any dangerous substance (blood, urine, semen or feces) at a victim without the consent of the victim for the purpose of arousing or gratifying the sexual desire of the person or another person.

Online Communication

HB 2641

HB 2641 modifies the definition of online communication for purposes of online sexual corruption of a child to include communication that occurs via telephone text messaging, electronic mail, personal or instant messaging, chat rooms, bulletin boards or any other transmission of information by wire, radio, optical cable, cellular system, electromagnetic system or other similar means. The new definition applies to communications that occur on or after the effective date of the Act.

H. Criminal Procedure/Evidence:

Electronic Recording of Custodial Interviews

SB 309

SB 309 includes the following key provisions regarding the requirement to electronically record custodial interrogations in specific situations. The measure:

- Requires the electronic recordation of a custodial interview conducted by a law enforcement agency in a law enforcement facility if the interview is in connection with aggravated murder or crimes listed in ORS 137.700 or 137.707.
- Establishes that the requirement to record does not apply to statements made before a grand jury, in open court, a custodial interrogation conducted in another state in compliance with the laws of that state, a custodial interrogation conducted by federal law enforcement in compliance with the laws of the United States, a spontaneous statement of the defendant, or if good cause is shown for not electronically recording.
- Establishes that “good cause” for not electronically recording includes:
 1. The refusal of the defendant to have the interrogation recorded.
 2. The malfunction of equipment.
 3. The recording would jeopardize the safety of any person or the confidentiality of an informant.
- SB 309 allows unrecorded statements into evidence but requires that the judge give the jury instructions concerning the fact that the statement was not recorded.
- Requires the state to provide the defendant with an electronic copy of the statement, but not a written transcript of the tape.
- Allows the recordation into evidence in any pre-trial or post-trial proceedings.
- Defines a “law enforcement facility” as a courthouse or a building where a police or sheriff’s office is located.
- Applies to minors, nonnative English speakers and murder cases on January 1, 2010, and to all other person felonies on July 1, 2011.
- Does not apply to police departments of five or fewer sworn officers.

Retention of Biological Evidence Requirement

SB 310

SB 310 requires police agencies to preserve biological evidence in an amount that is sufficient to develop a DNA profile:

- that is collected as part of a criminal investigation into a covered offense;
- that reasonably may be used to incriminate or exculpate any person for a covered offense;
- that is in the possession of the custodian before any person is convicted of a covered offense.

The measure clarifies that a custodian is not required to preserve evidence solely because the physical evidence contains biological evidence if the physical evidence is of such a size, bulk or physical character as to render retention impracticable. When the retention of physical evidence is impracticable, the custodian is required to remove and preserve portions of the physical evidence likely to contain biological evidence in a quantity sufficient to permit future DNA testing before returning or disposing of the physical evidence. SB 310 defines the following terms for purposes of the measure:

- “Biological evidence” as a sample of an individual’s blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids or other identifiable

biological material or an item that contains such material, whether the material or item is stored or cataloged separately or the material is present upon other evidence. "Biological evidence" includes the contents of a sexual assault forensic evidence kit.

- "Convicted" includes a finding of guilty or responsible except for insanity, or a finding that a person is within the jurisdiction of the juvenile court under ORS 419C.005.
- "Covered offense" means: aggravated murder, murder, manslaughter in the first or second degree, criminally negligent homicide, aggravated vehicular homicide or a sex crime listed in ORS 181.594.
- "Custodian" means a law enforcement agency as defined in ORS 131.550 or any other person or public body as defined in ORS 174.109 that is charged with the collection, storage or retrieval of biological evidence in connection with a criminal investigation or criminal prosecution. "Custodian" does not include a court.

The provisions of HB 3263 sunset on January 2, 2012.

Declares an emergency; effective on passage. Signed June 24, 2009

Testimony via Electronic Transmission

SB 380

SB 380 stipulates that a witness in a criminal proceeding may not appear before a jury by simultaneous electronic transmission without the written consent of the parties and the agreement of the court. Prior to the passage of this measure, testimony via electronic transmission was explicitly prohibited in criminal trials even when all parties agreed to allow it. Trials suffered delays in situations where a witness wasn't available to testify in the courtroom and the judge lacked the statutory authority to grant an appearance by a witness by electronic transmission.

Admission of Analytical Report

HB 2285

Eliminates the sunset in ORS 475.235 which provides that a certified copy of a forensic laboratory report signed by an analyst is prima facie evidence of the test results unless the defendant provides notice of an objection, in which case the state must produce the analyst at trial.

Financial Records in Grand Jury

HB 2333

Provides that the grand jury may receive financial records with an affidavit of authentication, rather than requiring the appearance of the custodian of the

records. It further provides that where a defendant intends to object to the admission of an analytical report which would otherwise be admissible as prima facie proof of the analytical results contained therein, the defendant must provide notice of the objection by filing written notice with the court, and serving a copy on the district attorney, not less than 15 days prior to trial.

Confessions in Vulnerable Victim Sex Crimes

HB 2441

HB 2441 modifies the law that requires corroboration before a confession is admissible and creates an exception for sex crimes against vulnerable victims when a confession is deemed trustworthy and the victim is incompetent to testify. HB 2441 requires the following:

- Requires that a confession be made to a peace officer, federal officer, or Department of Human Services (DHS) investigator acting in their official capacity.
- Requires the state to file a notice of intention to rely on the confession alone within 60 days of arraignment, or the defendant's entry of an initial plea, unless the court finds good cause.
- Requires the court to establish that the confession is trustworthy based on sufficient evidence including the following factors: evidence demonstrating the truthfulness of portions of the confession, evidence that the defendant had the opportunity to commit the crime, the method of interrogation used to solicit the confession and whether the defendant is a vulnerable person.

Service of Subpoenas

HB 2502

This bill authorizes service of an Oregon subpoena duces tecum or other criminal process for the seizure or production of documents outside the State of Oregon. Service outside the state is allowed as long as the criminal matter is triable in Oregon and the exercise of jurisdiction over the recipient does not violate the United States or Oregon constitutions.

Declares an emergency, effective on passage. Signed June 26, 2009

Statute of Limitation Extension for DNA

HB 3263

HB 3263 extends the statute of limitations indefinitely for certain crimes in cases where a defendant is identified on the basis of DNA sample comparisons (DNA sample was taken at the time of the offense and at a later point the offender is identified on the basis of that sample). The extension applies to rape in the first

degree, sodomy in the first degree, unlawful sexual penetration in the first degree or sexual abuse in the first degree.

“Special Agents” may apply for search warrants

HB 3348

Changes existing language to provide that in addition to district attorneys and police officers, a “special agent employed under ORS 131.805” may apply for a search warrant and may sign a judge’s name on duplicate original warrants. This would apply to special agents employed by the Governor.

Declares an emergency; effective on passage. Signed June 17, 2009

I. Crime Victims:

Victim Notification “as soon as practicable” Standard

SB 212

SB 212 rewrites the criteria for programs distributing victim assistance funds to city and county offices for victim services. The measure adds a requirement that notice be given to victims of their rights as soon as practicable. ORS 147.227 governs the distribution of Criminal Fine and Assessment Account Funds to city and county offices for victim services. The District Attorney Based Victim Assistance programs and the Oregon District Attorney’s Association worked together to rewrite the language to better reflect current practice. The only substantive change to the statute is the requirement that victims be notified of their rights as soon as practicable.

Declares an emergency; effective on passage. Signed May 26, 2009

Statutory Framework for Exercise of Victims’ Rights

SB 233

SB 233 creates a statutory framework for victims to exercise their constitutional rights as set forth in Sections 42 and 43, Article I of the Constitution of the State of Oregon. The measure authorizes the Attorney General to adopt rules to establish a non-judicial process to determine if violations have occurred and to make nonbinding recommendations for achieving full compliance with victims’

rights laws in the future. SB 233 clarifies when a district attorney and when a probation department will notify a victim of a probation hearing.

Declares an emergency; effective on passage. Signed May 26, 2009
Disclosure of Victims'/Witnesses' Personal Identifiers Prohibited

SB 248

SB 248 creates a default prohibition on disclosure of personal information of victims and witnesses to youth offenders in juvenile proceedings. Requires defense attorney to request protected information from either a district attorney's office or from a juvenile department. SB 248 conforms ORS 419C.276 to the comparable adult non-disclosure statute outlined in ORS 135.815. Under current law, a victim or witness must request that their personal information be kept from the offender; the court does not do so automatically.

J. Miscellaneous:

Humane Agents Training and Certification

SB 303

SB 303 allows Humane Society special agents who carry a Governor's commission to be considered police officers and to be certified by DPSST. The measure adds a "nonprofit animal care agency that has maintained an investigation department for five years and has had officers commissioned as special agents by the Governor" to the definition of law enforcement unit for purposes of public safety standards and training. SB 303 clarifies that any training provided to the Humane Society by the Department of Public Safety Standards and Training (DPSST) will be paid for by the animal care agency.

Prescription Drug Monitoring Database

SB 355

SB 355 requires the State Board of Pharmacy to establish and maintain an electronic database to collect and centrally store pharmacy records for controlled substances (Schedule II, III, IV) that are dispensed throughout the state. The measure specifies conditions under which the Board can disclose data to individuals, researchers, certified practitioners and pharmacists, law enforcement agencies, health professional regulatory boards, and other state reporting programs. SB 355 stipulates that providers are not required to utilize information in the database when making prescribing decisions and imposes an annual \$25 licensing fee on each individual licensed by the board who is authorized to prescribe or dispense controlled substances. The measure creates the Prescription

Monitoring Program Advisory Commission to provide guidance to the Board and establishes the membership and roles of Commission.

Declares an emergency; effective on passage. Signed July 23, 2009

OHSU University Police

SB 658

The bill authorizes the Oregon Health and Science University (OHSU) to commission special campus security officers to be known as university police. University police officers would have all the powers and authority given by statute to peace officers and police officers of this state with the exception of the ability to carry firearms. The bill requires university police officers to be trained and certified by the Department of Public Safety Standards and Training at the expense of OHSU. This new classification and training would enable university police officers to respond to emergencies, investigate crimes, submit requests for warrants to judges and prepare cases for prosecutors. The bill also specifies that OHSU is a criminal justice agency and a law enforcement unit.

Production of Industrial Hemp Products

SB 676

SB 676 authorizes the production, possession and commerce in industrial hemp commodities and products. The measure identifies that industrial hemp is an agricultural product that is subject to regulation by the Oregon Department of Agriculture (ODA) and includes the following requirements:

- Requires that all growers and handlers have an industrial hemp license issued by ODA.
- Requires that growers and handlers engaged in the production of agriculture hemp seed must have a production permit in addition to the license.
- Establishes permit application requirements and a three-year non-transferable permit length.
- Authorizes ODA to make an inspection or audit records to ensure compliance.
- Authorizes ODA to inspect and take composite samples of any industrial hemp crop during the growth phase.
- Authorizes ODA to detain, seize, or embargo a crop if it contains an average concentration exceeding 0.3 percent of tetrahydrocannabinol on a dry weight basis. Authorizes a grower to retain seeds from each hemp crop to ensure a sufficient supply of seeds the following year.
- Authorizes ODA to issue agriculture hemp seed production permits and authorizes ODA to charge growers and handlers a reasonable fee.
- Authorizes ODA to revoke or refuse to issue an industrial hemp license or an agriculture hemp seed production permit in addition to a civil penalty for violating a permit or license requirement, condition, rule, or order issued by ODA.
- Limits civil penalty to \$2,500.

DPSST Investigation Information Exempt from Disclosure

HB 2315

HB 2315 exempts from disclosure, unless the public interest requires otherwise, the records of the Department of Public Safety Standards and Training relating to an ongoing investigation of the fitness of a public safety officer or private security officer to hold his or her position. The measure also exempts from disclosure records in the possession of the department that the department received from a public body in connection with an investigation if these records are not subject to disclosure when in the hands of the public body. Finally, the measure requires the department to issue a report when an investigation is completed regarding a private security officer or a public safety officer.

Declares an emergency; effective on passage. Signed May 26, 2009

Prosecutor Information Exempt from Disclosure

HB 2339

HB 2339 is designed to protect persons who prosecute criminals by allowing them to request that their address and electronic mail information be undisclosed on certain documents that are readily available to the public. The measure applies to district attorneys, deputy district attorneys, the Attorney General or an assistant attorney general, the United States Attorney for the District of Oregon or an assistant United States attorney for the District of Oregon and city attorneys who engage in the prosecution of criminal matters. HB 2339 requires the person requesting the exemption from disclosure to file a claim in writing, using the prescribed form, with the public body to which the exemption applies. The measure limits requestors to 10 documents held by a county clerk's office. The exemption continues unless and until a written request is submitted by the person originally seeking the exemption that discontinues the exemption.

Firearm Possession for Retired Parole and Probation Officers

HB 2789

HB 2789 clarifies the definition of parole and probation officers for the purpose of carrying firearms by providing that retired parole and probation officers are exempt from being prosecuted for unlawful possession of a firearm and by clarifying that parole and probation officers may carry a firearm prior to having one year of experience on the job.

Declares an emergency; effective on passage. Signed June 17, 2009

DOC Requirement to Train DOC Officers

HB 3199

HB 3199 requires the Department of Corrections to provide training for basic certification of corrections officers employed by the Department of Corrections. Further, the measure requires DOC to develop proposed training standards for basic certification of state corrections officers that must be reviewed by the Corrections Policy Committee and adopted by the Board on Public Safety Standards and Training through rule. The training standards must meet the minimum training standards for the basic training of other corrections officers in Oregon (city and county). HB 3199 requires DPSST to conduct periodic audits of the training provided by the Department of Corrections in order to ensure compliance with the adopted training standards and, if it complies with the standards, to accredit the DOC training. No later than March 1, 2011, DPSST is required to report to the Legislative Assembly regarding the efficacy of the DOC basic training program. The provisions of HB 3199 sunset on January 2, 2014.

Oregon State Police Medical Health Database

HB 3466

OSP will maintain a medical health database within LEDS. DPSST will provide at least one hour of training on this database as part of the 24 hours of mental health and crises intervention training provided in the 16 week Basic Police Course.