Chapter 163

1957 REPLACEMENT PART

Crimes Against Persons

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HOMICIDE

163.010 First degree murder. (1) Any person who purposely, and of deliberate and premeditated malice, or in the commission of or attempt to commit rape, arson, robbery or burglary, kills another, is guilty of murder in the first degree.

(2) Any person who, without lawful excuse or justification, purposely kills any peace officer of this state or any municipal corporation or political subdivision thereof, when the officer is acting in the line of duty and is known to such person to be an officer so acting, is guilty of murder in the first degree.

(3) Every person convicted of murder in the first degree shall be punished with death, except when the trial jury in its verdict recommends life imprisonment, in which case the penalty shall be life imprisonment.

Note: This section was amended by 1957 c.315 §3; but the 1957 amendment has not been compiled above because the amendment does not become effective unless sections 37 and 38 of Article I of the Oregon Constitution are repealed at the regular general election in 1958.

163.020 Second degree murder. (1) Any person who kills another purposely and maliciously but without deliberation and premeditation, or in the commission or attempt to commit any felony other than rape, arson, robbery or burglary, is guilty of murder in the second degree.

(2) Any person who kills another by an act imminently dangerous to others, and evincing a depraved mind, regardless of human life, although without any design to effect the death of any particular individual, is guilty of murder in the second degree.

(3) Any person who by previous engagement or appointment fights a duel and in so doing inflicts a wound upon another, whereof the person so injured dies, is guilty of murder in the second degree.

(4) Every person convicted of murder in the second degree shall be punished by life imprisonment in the penitentiary.

Note: This section was amended by 1957 c.315 §4; but the 1957 amendment has not been compiled above because the amendment does not become effective unless sections 37 and 38 of Article I of the Oregon Constitution are repealed at the regular general election in 1958.

163.030 Causing death of railroad passenger or employe as murder. Any person who, within this state, wilfully or maliciously places any obstruction upon any railroad track, roadbed or streetcar track, or misplaces, removes, obstructs, detaches, damages or destroys any rail, switch, frog, guard rail, cattle guard or any other part of a railroad track, roadbed or streetcar track thereby causing the death of any passenger or employe of the railroad or street railway, is guilty of murder and upon conviction shall be punished accordingly.

163.040 Manslaughter generally. (1) Any person who, without malice express or implied, without deliberation, and upon a sudden heat of passion caused by a provocation apparently sufficient to make the passion irresistible, voluntarily kills another, is guilty of manslaughter.

(2) Any person who, in the commission of any unlawful act, or a lawful act without due caution or circumspection, involuntarily kills another, is guilty of manslaughter. The provisions of this subsection shall not apply to the killing of any person where the proximate cause of such killing is an act or omission defined as negligent homicide in ORS 163.091.

(3) Every killing of a human being by the act, procurement or culpable negligence of another, when the killing is not murder in the first or second degree, or is not justifiable or excusable or negligent homicide as provided in ORS 163.091, is manslaughter.

163.050 Procuring or assisting another to commit suicide. Any person who purposely and deliberately procures another to commit self-murder or assists another in the commission thereof, is guilty of manslaughter.

163.060 Abortion producing death of child or mother. If any person administers to any woman pregnant with a child any medicine, drug or substance whatever, or uses or employs any instrument or other means, with intent thereby to destroy such child, unless the same is necessary to preserve the life of such mother, such person shall, in case the death of such child or mother is thereby produced, be deemed guilty of manslaughter.

163.070 Physician acting while intoxicated and producing death. Any physician who, while in a state of intoxication and without a design to effect death, administers any poison, drug or medicine, or does any other act to another person which produces the death of such person, is guilty of manslaughter.

163.080 Penalty for manslaughter. Every person convicted of manslaughter shall be punished by imprisonment in the penitentiary for not more than 15 years and by a fine not exceeding $5,000.

163.090 [Amended by 1953 c.676 §2; repealed by 1957 c.396 §1 (ORS 163.091 enacted in lieu of ORS 163.090)]

163.091 Negligent homicide if death caused by gross negligence in driving motor vehicle or by driving vehicle defectively equipped or loaded. When the death of any person ensues within one year as the proximate result of injuries caused by:

(1) The driving of any motor vehicle or combination of motor vehicles in a grossly negligent manner; or

(2) The driving of a vehicle or combination of vehicles which is known or should have been known by the driver to be defectively equipped; or

(3) The driving of a vehicle or combination of vehicles which is known or should

have been known by the driver to be defectively loaded;

the person driving such vehicle or combination of vehicles is guilty of negligent homicide, and, upon conviction, shall be punished by imprisonment in the county jail for not more than one year, or in the state penitentiary for not more than three years, or by a fine of not to exceed $2,500, or by both such fine and imprisonment. [1957 c.396 §2 (enacted in lieu of ORS 163.090)]

163.100 Justifiable homicide. The killing of a human being is justifiable when committed:

(1) By public officers or those acting in their aid and assistance and by their command:

(a) In obedience to the judgment of a competent court.

(b) When necessarily committed in overcoming resistance to the execution of legal process or to the discharge of a legal duty.

(c) When necessarily committed in retaking persons charged with or convicted of crime who have escaped or been rescued.

(d) When necessarily committed in arresting a person fleeing from justice who has committed a felony.

(2) By any person:

(a) To prevent the commission of a felony upon him or upon his or her husband, wife, parent, child, master, mistress or servant.

(b) To prevent the commission of a felony upon his property, or upon property in his possession, or upon or in any dwelling house where he is.

(c) In the attempt, by lawful ways and means, to arrest a person who has committed a felony or in the lawful attempt to suppress a riot or preserve the peace.

163.110 Excusable homicide. The killing of a human being is excusable when committed:

(1) By accident or misfortune in lawfully correcting a child or servant, or in doing any other lawful act, by lawful means, with usual and ordinary caution and without any unlawful intent.

(2) By accident or misfortune in the heat of passion, upon a sudden and sufficient provocation, or upon a sudden combat, without premeditation or undue advantage being taken, and without any dangerous weapon or thing being used, and not done in a cruel or unusual manner.

163.120 Evidence needed to prove malice and premeditation. Evidence of malice other than the mere proof of the killing is required to constitute murder in the first degree, unless the killing was effected in the commission or attempt to commit a felony. Deliberation and premeditation, when necessary to constitute murder in the first degree, shall be evidenced by poisoning, lying in wait, or some other proof that the design was formed and matured in cool blood and not hastily upon the occasion.

163.130 Conviction of murder on confession. If upon an indictment for murder the defendant is convicted upon his own confession in open court, the court shall hear the proof and determine the degree of murder and give judgment accordingly.

163.140 Verdict when killing justifiable or excusable. Whenever, on a trial of a person indicted for murder or manslaughter, it appears that the alleged killing was committed under circumstances or in cases where it is justifiable or excusable, the jury must give a general verdict of not guilty.

163.150 to 163.200 [Reserved for expansion]

RAPE, MAYHEM, ASSAULT AND ROBBERY

163.210 Rape; penetration needed. (1) Any person over the age of 16 years who carnally knows any female child under the the age of 16 years, or any person who forcibly ravishes any female, is guilty of rape, and shall be punished upon conviction by imprisonment in the penitentiary for not more than 20 years.

(2) Proof of actual penetration into the body is sufficient to sustain an indictment for rape.

163.220 Penalty for rape of sister, daughter or wife's daughter. A person convicted of raping his sister, of the whole or half-blood, or his daughter or the daughter of his wife, shall be punished by imprisonment in the penitentiary for life or any lesser period.

163.230 Mayhem. Any person who purposely and maliciously, or in the commission or attempt to commit a felony, cuts, tears out or disables the tongue, puts out or destroys the eye, cuts, slits or tears off an

ear, cuts, slits or mutilates the nose or lip, or cuts off or disables the limb or member of another, shall be punished upon conviction by imprisonment in the penitentiary for not more than 20 years.

163.240 Assault while armed with dangerous weapon. Any person who assaults, or assaults and beats another with a cowhide, whip, stick or like thing, having at the time in his possession a pistol, dirk or other deadly weapon, with intent to intimidate and prevent such other person from resisting or defending himself, shall be punished upon conviction by imprisonment in the penitentiary for not more than 10 years.

163.250 Assault with dangerous weapon. Any person, who is armed with a dangerous weapon and assaults another with such weapon, shall be punished upon conviction by imprisonment in the penitentiary for not more than 10 years, or by imprisonment in the county jail not less than one month nor more than one year, or by a fine of not less than $100 nor more than $1,000.

163.255 Assault and battery while unarmed by means of force likely to produce great bodily injury. Any person, not being armed with a dangerous weapon, who assaults another or who commits any assault and battery upon another by means of force likely to produce great bodily injury shall be punished upon conviction by imprisonment in the penitentiary for not more than five years. [1955 c.530 §1]

163.260 Assault and battery while unarmed. Any person, not being armed with a dangerous weapon, who assaults another or who commits any assault and battery upon another, shall be punished upon conviction by imprisonment in the county jail for not more than one year, or by a fine of not more than $500, or both. [Amended by 1955 c.366 §1]

163.270 Assult with intent to rob or commit rape or mayhem. Any person who assaults another with intent to rob or to commit rape upon the person assaulted, or to commit any of the crimes specified in ORS 163.230, shall be punished upon conviction by imprisonment in the penitentiary for a term not exceeding the maximum punishment provided by law for conviction of the respective greater crimes. [Amended by 1955 c.371 §1; 1957 c.640 §1]

163.280 Assault with intent to kill; assault and robbery while armed with a dangerous weapon. Any person who assaults another with intent to kill the person assaulted, or any person, being armed with a dangerous weapon, who assaults another and who robs, steals or takes from the person assaulted any money or other property which may be the subject of larceny, shall be punished upon conviction by imprisonment in the penitentiary for life or for any lesser term. The lesser punishment provided by this section shall be exercised only in those cases in which, in the judgment of the court, leniency should be shown. [Amended by 1957 c.640 §2]

163.290 Robbery or theft while not armed with dangerous weapon. Any person, not being armed with a dangerous weapon, who by force and violence, or by assault, or by putting in fear of force and violence or assault, robs, steals, or takes from the person of another any money or other property which may be the subject of larceny, shall be punished upon conviction by imprisonment in the penitentiary for not more than 15 years.

163.300 Attempt to kill or injure by poisoning or like means. Any person who attempts to kill or injure another by poisoning, or other like means not constituting an assault with such intent, shall be punished upon conviction by imprisonment in the penitentiary for not more than 15 years.

163.310 Penalty for negligently wounding another. Any person who, as a result of his failure to use ordinary care under the circumstances, wounds any other person with a bullet or shot from any firearm, or with an arrow from any bow, shall be punished by imprisonment in the county jail for a period not to exceed six months, or by a fine not to exceed $500, or both. In addition, any person so convicted shall forfeit any license to hunt, obtained under the laws of this state, and shall be ineligible to obtain a license to hunt for a period of 10 years following the date of his conviction.

163.320 Pointing firearm at another; courts having jurisdiction over action. Any person over the age of 12 years who, with or without malice, purposely points or aims any loaded or empty pistol, gun, revolver or other firearm, at or toward any other person within range of the firearm, except in

self-defense, shall be fined upon conviction in any sum not less than $10 nor more than $500, or be imprisoned in the county jail not less than 10 days nor more than six months, or both. Justices of the peace and district courts have jurisdiction concurrent with the circuit court of the trial of violations of this section. When any person is charged before a justice of the peace with violation of this section, the court shall, upon motion of the district attorney, at any time before trial, act as a committing magistrate, and if probable cause be established, hold such person to the grand jury.

163.330 Train robbery or larceny; assault of passenger or member of crew. Any person who boards, stops or impedes, or attempts to board, stop or impede, the progress or operation of any railroad train with the intent to commit robbery on such train, or to commit larceny in or from any express, baggage or mail car of such train, or who, with intent to commit any such robbery or larceny, assaults, or threatens bodily violence to any passenger on the train, any member of the train crew of or any person in such express, baggage or mail car, upon conviction, shall be imprisoned in the penitentiary for not more than 40 years.

163.340 Management of water craft; injury to property and endangering life. Any person in control or management of a steamboat or other water craft who wilfully conducts or manages the steamboat or other water craft in such manner as to injure or destroy the property of another, thereby endangering human life, shall be punished upon conviction by imprisonment in the penitentiary for not exceeding five years, or by fine of not less than $500 and not exceeding $1,000, or both.

163.350 to 163.400 [Reserved for expansion]

DEFAMATION, EXTORTION AND COERCION

163.410 Libel and slander; penalty for publishing or broadcasting defamatory matter. (1) Any person who wilfully, by any means other than words orally spoken, except as provided in this section, publishes or causes to be published false and scandalous matter concerning another, with intent to injure or defame such other person, or any person who wilfully uses or utters over, through or by means of the radio, commonly called broadcasting, false and scandalous matter concerning another, with intent to injure or defame such other person, shall be punished upon conviction by imprisonment in the county jail for not less than three months nor more than one year, or by a fine of not less than $100 nor more than $500.

(2) Any allusion to any person or family, with intent to injure, defame or maliciously annoy the person or family, comes within the provisions of this section.

(3) Any person who violates this section shall be prosecuted whether the party injured desires to prosecute or not.

163.420 Truth as defense in libel actions; presumption of malice. (1) In all criminal prosecutions for libel the truth may be given in evidence. If it appears to the jury that the matter charged as libelous is true and was published with good motives and justifiable ends, the defendant must be found not guilty.

(2) An injurious publication is presumed to have been malicious if no justifiable end or good motive is shown for making it.

163.430 Defamation of insurance companies, associations or fraternal societies. Any person who, verbally or otherwise makes, publishes, prints, distributes, circulates, or causes the same to be done, or in any way aids, abets or encourages the making, printing, publishing, distributing or circulating of any pamphlet, circular, article, literature, comparison or statement of any kind of any insurance company, as defined in ORS 736.005, association or fraternal society doing business in this state, which contains any false or malicious criticism or statement designed to injure such company in its reputation or business, shall be punished upon conviction by a fine of not more than $100.

163.440 Defamation of banks and trust companies. Any person who wilfully and knowingly makes, circulates or transmits to another any statement or rumor, written, printed, or by word of mouth, which is untrue in facts and is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any bank or trust company, as defined in ORS 706.030 and ORS 706.060, respectively, or national bank doing business in this state, or who knowingly counsels, aids or procures another to start, transmit or circulate any such statement or rumor, shall be punished upon conviction by imprisonment in the

county jail for a period of not less than one year, or by a fine of not less than $1,000 nor more than $5,000, or both.

163.450 Defamation of savings and loan association. Any person who wilfully and knowingly makes, utters, circulates or transmits to another any statement untrue in fact, derogatory to the financial condition of any savings and loan association, as defined in ORS 722.005, in this state, with intent to injure such financial institution, or who wilfully and knowingly by counsel aids, procures or induces another to originate, make, utter, transmit or circulate, any such statement or rumor with like intent, is guilty of a felony and shall be punished upon conviction by a fine of not more than $2,500 or by imprisonment in the penitentiary for a period not exceeding two years, or both.

163.460 Publishing of picture importing that person is convict or criminal. Any person, firm, or corporation who prints or publishes in any newspaper, magazine or periodical in this state, any photograph or picture of any person which bears thereon a number which such person might bear if convicted and sentenced to imprisonment, or which might tend to indicate to the public that he is a criminal or that he is or has been an inmate of a penal institution, unless he is or has been an inmate of a penal institution, is guilty of the crime of malicious publication and shall be punished upon conviction by a fine of not less than $50 nor more than $1,000, or by imprisonment in the county jail for a period of not less than 30 days nor more than one year, or both.

163.470 Statements designed to injure former convicts. Any person who knowingly and wilfully and orally or in writing communicates to another any statement concerning any person convicted of a felony who is then on conditional pardon or parole or finally discharged, with the purpose and intent to deprive the convicted person of employment, or to prevent him from procuring the same, or makes or threatens to make such communication with the purpose and intent to extort from him any money or article of value, shall be punished upon conviction by imprisonment in the county jail not longer than six months or by a fine not greater than $100, or both. Justice, municipal and district courts shall have original jurisdiction in the trial of such cases.

163.480 Threatening injury or accusation of crime; intent to extort. Any person who verbally or by any written or printed communication, threatens any injury to the person or property of another, or that of any person standing in the relation of parent or child, husband or wife, or sister or brother to the other person, or threatens to accuse another of any crime with intent thereby to extort any pecuniary advantage or property from him, or with intent to compel him to do any act against his will, shall be punished upon conviction by imprisonment in the penitentiary for not more than two years, or by imprisonment in the county jail for not less than three months nor more than one year.

163.490 Compelling another to join or refrain from joining an organization. No person by threats, intimidation or coercion, shall prevent or attempt to prevent, or compel or attempt to compel, another to join, belong to, or refrain from belonging to any labor or other lawful organization. Violation of this section is punishable upon conviction by a fine of not more than $100 or by imprisonment in the county jail not exceeding six months, or both.

163.500 Compelling employe to board or buy at particular place. Any person or corporation who compels by threats or intimidation, or threats of discharge, or uses any means to compel an employe against his will to board at any particular hotel, boardinghouse, or other place where lodgings or board may be provided, or requires an employe to purchase goods and supplies at any particular store, shall be punished upon conviction by a fine of not less than $25 nor more than $100, or by imprisonment in the county jail for not less than 10 nor more than 30 days, or both.

163.510 to 163.600 [Reserved for expansion]

KIDNAPPING; CRIMES INVOLVING CHILDREN

163.610 Seizing, confining or kidnapping another. Every person who without lawful authority forcibly seizes and confines, inveigles or kidnaps another, with intent to cause such other person to be secretly confined or imprisoned in this state against his or her will, or to cause such other person to be sent out of the state against his or her will, shall be punished by imprisonment in

the penitentiary for not more than 25 years or by a fine not exceeding $10,000, or both.

163.620 Kidnapping for ransom. Whoever knowingly transports, or causes to be transported, or aids or abets in transporting, or unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts or carries away, by any means whatsoever, any person within this state with intent to hold such person for ransom or reward, or holds such person for ransom or reward, shall be punished upon conviction:

(1) By imprisonment for life if the verdict of the jury so recommends and the kidnaped person has not been liberated unharmed prior to the imposition of the sentence.

(2) By imprisonment in the penitentiary for not more than 25 years if the life imprisonment penalty does not apply or is not imposed.

163.630 Conspiracy to kidnap for ransom. If two or more persons enter into an agreement, confederation or conspiracy to violate ORS 163.620, and do any overt act toward carrying out such agreement, confederation or conspiracy, each such person shall be punished as provided in ORS 163.620.

163.635 Prisoners in penitentiary or correctional institution taking, holding or killing hostages. (1) A prisoner in the Oregon State Penitentiary or Oregon State Correctional Institution who wilfully holds a person as a hostage within such institution shall be punished upon conviction by imprisonment in the state penitentiary for a period of not more than 20 years.

(2) If a person is being held as a hostage in the Oregon State Penitentiary or Oregon State Correctional Institution by a prisoner and is killed as a result thereof, any prisoner who wilfully participated in the killing of such person, is guilty of murder in the first degree.

(3) This section does not apply to persons confined in the MacLaren School for Boys, Hillcrest School of Oregon, or in any county or city jail. [1955 c.308 §1]

163.640 Taking away child with intent to detain from parent. Every person who maliciously, forcibly or fraudulently takes or entices away any child or minor under the age of 16 years, with intent to detain and conceal such child from its parent, guardian or other person having the lawful charge of such child, shall be punished upon conviction by imprisonment in the penitentiary for not more than 25 years or during the natural life of such person, or by a fine not exceeding $10,000, or by both such fine and imprisonment.

163.650 Cruelty to child by one not child's parent. Any person, not being a parent of the child, who knowingly and wilfully cruelly mistreats and maltreats a child under the age of 16 years, shall be punished upon conviction by a fine of not more than $1,000, or by imprisonment in the county jail for a period not to exceed one year, or both.

163.660 Concealment of dead child by unmarried mother. (1) Any unmarried woman who conceals the death of any issue of her body so that it may not be known whether the issue was born alive or dead, or was murdered, shall be punished upon conviction by imprisonment in the penitentiary for not more than one year, or by imprisonment in the county jail for not less than three months nor more than one year.

(2) When a woman is indicted for the murder of her bastard infant she may be charged in the same indictment with the crime defined in this section. If she is found not guilty of the charge of murder she may be found guilty of the crime defined in this section and punished accordingly.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 2,1957.

Sam R. Haley
Legislative Counsel