

# Chapter 163

## 1983 REPLACEMENT PART

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**HOMICIDE**

**163.005 Criminal homicide.** (1) A person commits criminal homicide if, without justification or excuse, he intentionally, knowingly, recklessly or with criminal negligence causes the death of another human being.

(2) "Criminal homicide" is murder, manslaughter or criminally negligent homicide.

(3) "Human being" means a person who has been born and was alive at the time of the criminal act. [1971 c.743 §87]

**163.010** [Amended by 1963 c.625 §4; repealed by 1971 c.743 §432]

**163.020** [Amended by 1963 c.625; §5; repealed by 1971 c.743 §432]

**163.030** [Repealed by 1963 c.431 §1]

**163.040** [Repealed by 1971 c.743 §432]

**163.050** [Repealed by 1971 c.743 §432]

**163.060** [Repealed by 1969 c.684 §17]

**163.070** [Repealed by 1971 c.743 §432]

**163.080** [Repealed by 1971 c.743 §432]

**163.090** [Amended by 1953 c.676 §2; repealed by 1957 c.396 §1 (163.091 enacted in lieu of 163.090)]

**163.091** [1957 c.396 §2 (enacted in lieu of 163.090); repealed by 1971 c.743 §432]

**163.095 "Aggravated murder" defined.** As used in ORS 163.105 and this section, "aggravated murder" means murder as defined in ORS 163.115 which is committed under, or accompanied by, any of the following circumstances:

(1)(a) The defendant committed the murder pursuant to an agreement that the defendant receive money or other thing of value for committing the murder.

(b) The defendant solicited another to commit the murder and paid or agreed to pay the person money or other thing of value for committing the murder.

(c) The defendant committed murder after having been convicted previously in any jurisdiction of any homicide, the elements of which constitute the crime of murder as defined in ORS 163.115 or manslaughter in the first degree as defined in ORS 163.118.

(d) There was more than one murder victim in the same criminal episode as defined in ORS 131.505.

(e) The homicide occurred in the course of or as a result of intentional maiming or torture of the victim.

(2)(a) The victim was one of the following and the murder was related to the performance of the victim's official duties in the justice system:

(A) A police officer as defined in ORS 181.610 (6);

(B) A correctional, parole or probation officer or other person charged with the duty of custody, control or supervision of convicted persons;

(C) A member of the Oregon State Police;

(D) A judicial officer as defined in ORS 1.210;

(E) A juror or witness in a criminal proceeding;

(F) An employe or officer of a court of justice; or

(G) A member of the State Board of Parole.

(b) The defendant was confined in a state, county or municipal penal or correctional facility or was otherwise in custody when the murder occurred.

(c) The defendant committed murder by means of an explosive as defined in ORS 164.055 (2)(a).

(d) Notwithstanding ORS 163.115 (1)(b), the defendant personally and intentionally committed the homicide under the circumstances set forth in 163.115 (1)(b).

(e) The murder was committed in an effort to conceal the commission of a crime, or to conceal the identity of the perpetrator of a crime.

(f) The murder was committed after the defendant had escaped from a state, county or municipal penal or correctional facility and before the defendant had been returned to the custody of the facility. [1977 c.370 §1; 1981 c.873 §1]

**163.100** [Amended by 1967 c.372 §12; repealed by 1971 c.743 §432]

**163.103 Pleading, proof and stipulation regarding previous conviction element in aggravated murder case.** (1) In a prosecution for aggravated murder under ORS 163.095 (1)(c), the state shall plead the previous conviction, and shall prove the previous conviction unless the defendant stipulates to that fact prior to trial. If the defendant so stipulates and the trial is by jury:

(a) The court shall accept the stipulation regardless of whether or not the state agrees to it;

(b) The defendant's stipulation to the previous conviction constitutes a judicial admission

to that element of the accusatory instrument. The stipulation shall be made a part of the record of the case, but shall not be offered or received in the presence of the jury;

(c) For the purpose of establishing the prior conviction solely as an element of the crime under ORS 163.095 (1)(c), neither the court nor the state shall reveal to the jury the previous conviction, but the previous conviction is established in the record by the defendant's stipulation; and

(d) The court shall not submit the accusatory instrument or evidence of the previous conviction to the jury.

(2) In a proceeding under ORS 163.095 (1)(c), the state may offer, and the court may receive and submit to the jury, evidence of the previous conviction for impeachment of the defendant or another purpose, other than establishing the conviction as an element of the offense, when the evidence of the previous conviction is otherwise admissible for that purpose. When evidence of the previous conviction has been admitted by the court, the state may comment upon, and the court may give instructions about, the evidence of the previous conviction only to the extent that the comments or instructions relate to the purpose for which the evidence was admitted.

(3) When the defendant stipulates to the prior conviction required as an element of aggravated murder under ORS 163.095 (1)(c), if the jury finds the defendant guilty upon instruction regarding the balance of the elements of the crime, the court shall enter a judgment of guilty of aggravated murder. [1981 c.873 §3]

**163.105 Minimum sentence for aggravated murder; review by State Board of Parole.** Notwithstanding the provisions of ORS chapter 144, ORS 421.165 and 421.450 to 421.490:

(1) When a defendant is convicted of murder defined as aggravated murder pursuant to ORS 163.095 (1), the court shall order that the defendant shall be confined for a minimum of 30 years without possibility of parole, release on work release or any form of temporary leave or employment at a forest or work camp.

(2) When a defendant is convicted of murder defined as aggravated murder pursuant to ORS 163.095 (2), the court shall order that the defendant shall be confined for a minimum of 20 years without possibility of parole, release on work release or any form of temporary leave or employment at a forest or work camp.

(3) At any time after 20 years from the date of imposition of a minimum period of confinement pursuant to subsection (1) of this section, or at any time after 15 years from the date of imposition of a minimum period of confinement pursuant to subsection (2) of this section, the State Board of Parole, upon the petition of a prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period of time. The sole issue shall be whether or not the prisoner is likely to be rehabilitated within a reasonable period of time. The proceeding shall be conducted in the manner prescribed for a contested case hearing under ORS 183.310 to 183.550 except that:

(a) The prisoner shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and

(b) The prisoner shall have the right, if the prisoner is without sufficient funds to employ an attorney, to be represented by legal counsel, appointed by the board, at state expense.

(4) If, upon hearing all the evidence, the board finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement should be changed to life imprisonment with the possibility of parole, or work release, it shall enter an order to that effect and the order shall convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole or work release. Otherwise, the board shall deny the relief sought in the petition.

(5) In the case of a prisoner sentenced pursuant to ORS 163.095 (1), the board may grant relief under subsection (4) of this section only upon a unanimous affirmative vote of the entire board. In the case of a prisoner sentenced pursuant to ORS 163.095 (2), the board may grant the relief upon the affirmative vote of at least four members of the board.

(6) Not less than two years after the denial of the relief sought in a petition under this section, the prisoner may petition again for a change in the terms of confinement. Further petitions for a change may be filed at intervals of not less than two years thereafter. [1977 c.370 §2; 1981 c.873 §4]

**163.110** [Repealed by 1971 c.743 §432]

**163.115 Murder; affirmative defense to certain felony murders; sentence required.** (1) Except as provided in ORS 163.118 and 163.125, criminal homicide constitutes murder when:

(a) It is committed intentionally, except that it is an affirmative defense that, at the time of the homicide, the defendant was under the influence of an extreme emotional disturbance; or

(b) It is committed by a person, acting either alone or with one or more persons, who commits or attempts to commit any of the following crimes and in the course of and in furtherance of the crime the person is committing or attempting to commit, or during the immediate flight therefrom, the person, or another participant if there be any, causes the death of a person other than one of the participants:

(A) Arson in the first degree as defined in ORS 164.325;

(B) Criminal mischief in the first degree by means of an explosive as defined in ORS 164.365;

(C) Burglary in the first degree as defined in ORS 164.225;

(D) Escape in the first degree as defined in ORS 162.165;

(E) Kidnapping in the second degree as defined in ORS 163.225;

(F) Kidnapping in the first degree as defined in ORS 163.235;

(G) Robbery in the first degree as defined in ORS 164.415;

(H) Any felony sexual offense in the first degree defined in this chapter; or

(I) Compelling prostitution as defined in ORS 167.017.

(2) It is an affirmative defense to a charge of violating paragraph (b) of subsection (1) of this section that the defendant:

(a) Was not the only participant in the underlying crime; and

(b) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid in the commission thereof; and

(c) Was not armed with a dangerous or deadly weapon; and

(d) Had no reasonable ground to believe that any other participant was armed with a dangerous or deadly weapon; and

(e) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death.

(3) A person convicted of murder shall be punished by imprisonment for life. [1971 c.743 §88; 1975 c.577 §1; 1979 c.2 §1; 1981 c.873 §5]

**163.116** [1979 c.2 §3; repealed by 1981 c.873 §9]

**163.117 Aiding commission of suicide not murder.** It is a defense to a charge of murder that the defendant's conduct consisted of causing or aiding, without the use of duress or deception, another person to commit suicide. Nothing contained in this section shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter or any other crime. [1981 c.873 §8]

**163.118 Manslaughter in the first degree.** (1) Criminal homicide constitutes manslaughter in the first degree when:

(a) It is committed recklessly under circumstances manifesting extreme indifference to the value of human life; or

(b) It is committed intentionally by a defendant under the influence of extreme emotional disturbance as provided in ORS 163.135. The fact that the homicide was committed under the influence of extreme emotional disturbance constitutes a mitigating circumstance reducing the homicide which would otherwise be murder to manslaughter in the first degree and need not be proved in any prosecution.

(2) Manslaughter in the first degree is a Class A felony. [1975 c.577 §2; 1981 c.873 §6]

**Note:** 163.118 was enacted into law by the Legislative Assembly but was not added to or made a part of the Oregon Criminal Code of 1971 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**163.120** [Repealed by 1971 c.743 §432]

**163.125 Manslaughter in the second degree.** (1) Criminal homicide constitutes manslaughter in the second degree when:

(a) It is committed recklessly; or

(b) A person intentionally causes or aids another person to commit suicide.

(2) Manslaughter in the second degree is a Class B felony. [1971 c.743 §89; 1975 c.577 §3]

**163.130** [Repealed by 1971 c.743 §432]

**163.135 Extreme emotional disturbance as affirmative defense to murder; notice of expert testimony; right of state to psychiatric examination.** (1) It is an affirmative defense to murder for purposes of ORS 163.115 (1)(a) that the homicide was committed under the influence of extreme emotional disturbance when such disturbance is not the result of the person's own intentional, knowing, reckless or criminally negligent act, and for which disturbance there is a reasonable explanation. The reasonableness of the explanation for the disturbance shall be determined from the standpoint of an ordinary person in the actor's

situation under the circumstances as the actor reasonably believes them to be. Extreme emotional disturbance does not constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the first degree or any other crime.

(2) The defendant shall not introduce in the defendant's case in chief expert testimony regarding extreme mental or emotional disturbance under this section unless the defendant gives notice of the defendant's intent to do so.

(3) The notice required shall be in writing and shall be filed at the time the defendant pleads not guilty. The defendant may file such notice at any time after the defendant pleads but before trial when just cause for failure to file the notice at the time of the defendant's plea is made to appear to the satisfaction of the court.

(4) If the defendant fails to file notice the defendant shall not be entitled to introduce evidence for the purpose of proving extreme mental or emotional disturbance under ORS 163.115 unless the court, in its discretion, permits such evidence to be introduced where just cause for failure to file notice is made to appear.

(5) After the defendant files notice as provided in this section, the state shall have the right to have at least one psychiatrist of its selection examine the defendant in the same manner and subject to the same provisions as provided in ORS 161.315. [1971 c.743 §90; 1977 c.235 §1; 1981 c.873 §7]

163.140 [Repealed by 1971 c.743 §432]

**163.145 Criminally negligent homicide.** (1) A person commits the crime of criminally negligent homicide when, with criminal negligence, he causes the death of another person.

(2) Criminally negligent homicide is a Class C felony. [1971 c.743 §91]

## ASSAULT AND RELATED OFFENSES

### 163.160 Assault in the fourth degree.

(1) A person commits the crime of assault in the fourth degree if he:

(a) Intentionally, knowingly or recklessly causes physical injury to another; or

(b) With criminal negligence causes physical injury to another by means of a deadly weapon.

(2) Assault in the fourth degree is a Class A misdemeanor. [1977 c.297 §5]

### 163.165 Assault in the third degree.

(1) A person commits the crime of assault in the third degree if he:

(a) Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon;

(b) Recklessly causes serious physical injury to another under circumstances manifesting extreme indifference to the value of human life; or

(c) Recklessly causes physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life.

(2) Assault in the third degree is a Class C felony. [1971 c.743 §92; 1977 c.297 §3]

### 163.175 Assault in the second degree.

(1) A person commits the crime of assault in the second degree if he:

(a) Intentionally or knowingly causes serious physical injury to another; or

(b) Intentionally or knowingly causes physical injury to another by means of a deadly or dangerous weapon; or

(c) Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life.

(2) Assault in the second degree is a Class B felony. [1971 c.743 §93; 1975 c.626 §1; 1977 c.297 §2]

### 163.185 Assault in the first degree. (1)

A person commits the crime of assault in the first degree if he intentionally causes serious physical injury to another by means of a deadly or dangerous weapon.

(2) Assault in the first degree is a Class A felony. [1971 c.743 §94; 1975 c.626 §2; 1977 c.297 §1]

**163.190 Menacing.** (1) A person commits the crime of menacing if by word or conduct he intentionally attempts to place another person in fear of imminent serious physical injury.

(2) Menacing is a Class A misdemeanor. [1971 c.743 §95]

**163.195 Recklessly endangering another person.** (1) A person commits the crime of recklessly endangering another person if he recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.

(2) Recklessly endangering another person is a Class A misdemeanor. [1971 c.743 §96]

**163.197 Hazing.** (1) No fraternity, sorority or other student organization organized or operating on a college or university campus for purposes of participating in student activities of the college or university, nor any member of such an organization, shall intentionally haze any member, potential member or person pledged to be a member of the organization, as a condition or precondition of attaining membership in the organization or of attaining any office or status therein.

(2) As used in this section, "haze" means to subject a person to bodily danger or physical harm or a likelihood of bodily danger or physical harm, or to require, encourage, authorize or permit that the person be subjected to any of the following:

- (a) Calisthenics;
- (b) Total or substantial nudity on the part of the person;
- (c) Compelled ingestion of any substance by the person;
- (d) Wearing or carrying of any obscene or physically burdensome article by the person;
- (e) Physical assaults upon or offensive physical contact with the person;
- (f) Participation by the person in boxing matches or other physical contests;
- (g) Transportation and abandonment of the person;
- (h) Confinement of the person to unreasonably small, unventilated, unsanitary or unlighted areas;
- (i) Assignment of pranks to be performed by the person; or
- (j) Compelled personal servitude by the person.

(3) Subsection (1) of this section does not apply to curricular activities or to athletic teams of or within the college or university.

(4) A fraternity, sorority or other student organization that violates this section commits a violation punishable by a fine of not more than \$1,000.

(5) A member of a fraternity, sorority or other student organization, who personally violates this section commits a violation punishable by a fine of not more than \$250. [1983 c.202 §2]

**163.200 Criminal mistreatment in the second degree.** (1) A person commits the crime of criminal mistreatment in the second degree if, with criminal negligence and in violation of a legal duty to provide care for another

person, he withholds necessary and adequate food, physical care or medical attention from that person.

(2) Criminal mistreatment in the second degree is a Class A misdemeanor. [1973 c.627 §2]

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

(a) The person violates a legal duty to provide care for another person by intentionally or knowingly withholding necessary and adequate food, physical care or medical attention from that other person; or

(b) The person, having assumed the permanent or temporary care, custody or responsibility for the supervision of a dependent person, intentionally or knowingly causes physical injury or injuries to the dependent person.

(2) As used in this section, "dependent person" means a person who because of either age or a physical or mental disability is dependent upon another to provide for the person's physical needs.

(3) Criminal mistreatment in the first degree is a Class C felony. [1973 c.627 §3; 1981 c.486 §1]

**163.208 Assaulting a public safety officer.** (1) A person commits the crime of assaulting a public safety officer if the person intentionally or knowingly causes physical injury to another person, knowing the other person to be a peace officer, corrections officer or firefighter, and while such other person is acting in the course of official duty.

(2) Assaulting a public safety officer is a Class A misdemeanor. A person convicted under this section shall be sentenced to not less than seven days of imprisonment and shall not be granted bench parole, probation or suspension of sentence before serving at least seven days of the sentence. [1981 c.783 §2]

**163.210** [Repealed by 1971 c.743 §432]

## KIDNAPPING AND RELATED OFFENSES

**163.215 Definitions for ORS 163.215 to 163.257.** As used in ORS 163.215 to 163.257, unless the context requires otherwise:

(1) "Without consent" means that the taking or confinement is accomplished by force, threat or deception, or, in the case of a person under 16 years of age or who is otherwise incapable of giving consent, that the taking or confinement is accomplished without the consent of his lawful custodian.

(2) "Lawful custodian" means a parent, guardian or other person responsible by authority of law for the care, custody or control of another.

(3) "Relative" means a parent, ancestor, brother, sister, uncle or aunt. [1971 c.743 §97]

163.220 [Repealed by 1971 c.743 §432]

**163.225 Kidnapping in the second degree.** (1) A person commits the crime of kidnapping in the second degree if, with intent to interfere substantially with another's personal liberty, and without consent or legal authority, he:

(a) Takes the person from one place to another; or

(b) Secretly confines the person in a place where he is not likely to be found.

(2) It is a defense to a prosecution under subsection (1) of this section if:

(a) The person taken or confined is under 16 years of age; and

(b) The defendant is a relative of that person; and

(c) His sole purpose is to assume control of that person.

(3) Kidnapping in the second degree is a Class B felony. [1971 c.743 §98]

163.230 [Repealed by 1971 c.743 §432]

**163.235 Kidnapping in the first degree.** (1) A person commits the crime of kidnapping in the first degree if he violates ORS 163.225 with any of the following purposes:

(a) To compel any person to pay or deliver money or property as ransom; or

(b) To hold the victim as a shield or hostage; or

(c) To cause physical injury to the victim; or

(d) To terrorize the victim or another person.

(2) Kidnapping in the first degree is a Class A felony. [1971 c.743 §99]

163.240 [Repealed by 1971 c.743 §432]

**163.245 Custodial interference in the second degree.** (1) A person commits the crime of custodial interference in the second degree if, knowing or having reason to know that the person has no legal right to do so, the person takes, entices or keeps another person from the other person's lawful custodian with intent to hold the other person permanently or for a protracted period.

(2) Expenses incurred by a lawful custodial parent in locating and regaining physical custody of the person taken, enticed or kept in violation of this section are "pecuniary damages" for purposes of restitution under ORS 137.103 to 137.109.

(3) Custodial interference in the second degree is a Class C felony. [1971 c.743 §100; 1981 c.774 §1]

163.250 [Repealed by 1971 c.743 §432]

163.255 [1955 c.530 §1; repealed by 1971 c.743 §432]

**163.257 Custodial interference in the first degree.** (1) A person commits the crime of custodial interference in the first degree if the person violates ORS 163.245 and:

(a) Causes the person taken, enticed or kept from the lawful custodian to be removed from the state; or

(b) Exposes that person to a substantial risk of illness or physical injury.

(2) Expenses incurred by a lawful custodial parent in locating and regaining physical custody of the person taken, enticed or kept in violation of this section are "pecuniary damages" for purposes of restitution under ORS 137.103 to 137.109.

(3) Custodial interference in the first degree is a Class B felony. [1971 c.743 §101; 1981 c.774 §2]

163.260 [Amended by 1955 c.366 §1; repealed by 1971 c.743 §432]

163.270 [Amended by 1955 c.371 §1; 1957 c.640 §1; repealed by 1971 c.743 §432]

## COERCION

**163.275 Coercion.** (1) A person commits the crime of coercion when the person compels or induces another person to engage in conduct from which the other person has a legal right to abstain, or to abstain from engaging in conduct in which the person has a legal right to engage, by means of instilling in the person a fear that, if the demand is not complied with, the actor or another will:

(a) Cause physical injury to some person; or

(b) Cause damage to property; or

(c) Engage in other conduct constituting a crime; or

(d) Accuse some person of a crime or cause criminal charges to be instituted against the person; or

(e) Cause or continue a strike, boycott or other collective action injurious to some person's business, except that such a threat shall not be

deemed coercive when the act or omission compelled is for the benefit of the group in whose interest the actor purports to act; or

(f) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(g) Use or abuse the person's position as a public servant by performing some act within or related to official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

(h) Inflict any other harm which would not benefit the actor.

(2) Coercion is a Class C felony. [1971 c.743 §102; 1983 c.546 §4]

**163.280** [Amended by 1957 c.640 §2; repealed by 1971 c.743 §432]

**163.285 Defense to coercion.** In any prosecution for coercion committed by instilling in the victim a fear that he or another person would be charged with a crime, it is a defense that the defendant reasonably believed the threatened charge to be true and that his sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of the threatened charge. [1971 c.743 §103]

**163.290** [Repealed by 1971 c.743 §432]

**163.300** [Repealed by 1971 c.743 §432]

## SEXUAL OFFENSES

**163.305 Definitions.** As used in chapter 743, Oregon Laws 1971, unless the context requires otherwise:

(1) "Deviate sexual intercourse" means sexual conduct between persons consisting of contact between the sex organs of one person and the mouth or anus of another.

(2) "Forcible compulsion" means physical force that overcomes earnest resistance; or a threat, express or implied, that places a person in fear of immediate or future death or physical injury to self or another person, or in fear that the person or another person will immediately or in the future be kidnapped.

(3) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person incapable of appraising the nature of the conduct of the person.

(4) "Mentally incapacitated" means that a person is rendered incapable of appraising or controlling the conduct of the person at the time of the alleged offense because of the influence of a controlled or other intoxicating substance

administered to the person without the consent of the person or because of any other act committed upon the person without the consent of the person.

(5) "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(6) "Sexual contact" means any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(7) "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight; emission is not required. [1971 c.743 §104; 1975 c.461 §1; 1977 c.844 §1; 1979 c.744 §7; 1983 c.500 §1]

**Note:** The Legislative Counsel has not, pursuant to 173.160, undertaken to substitute specific ORS references for the words "this Act" in 163.305. Chapter 743, Oregon Laws 1971, enacted into law and amended ORS sections which may be found by referring to the 1971 Comparative Section Table located in volume 6A of Oregon Revised Statutes.

**163.310** [Renumbered 166.180]

**163.315 Incapacity to consent.** A person is considered incapable of consenting to a sexual act if he is:

- (1) Under 18 years of age; or
- (2) Mentally defective; or
- (3) Mentally incapacitated; or
- (4) Physically helpless. [1971 c.743 §105]

**163.320** [Renumbered 166.190]

**163.325 Ignorance or mistake as a defense.** (1) In any prosecution under ORS 163.355 to 163.445 in which the criminality of conduct depends on a child's being under the age of 16, it is no defense that the defendant did not know the child's age or that he reasonably believed the child to be older than the age of 16.

(2) When criminality depends on the child's being under a specified age other than 16, it is an affirmative defense for the defendant to prove that he reasonably believed the child to be above the specified age at the time of the alleged offense.

(3) In any prosecution under ORS 163.355 to 163.445 in which the victim's lack of consent is based solely upon his incapacity to consent because he is mentally defective, mentally incapacitated or physically helpless, it is an affirmative defense for the defendant to prove that at the time of the alleged offense he did not know of the facts or conditions responsible for the vic-

tim's incapacity to consent. [1971 c.743 §106]

163.330 [Repealed by 1971 c.743 §432]

163.335 [1971 c.743 §107; repealed by 1977 c.844 §2]

163.340 [Repealed by 1971 c.743 §432]

**163.345 Age as a defense in certain cases.** In any prosecution under ORS 163.355, 163.365, 163.385 or 163.395 in which the victim's lack of consent was due solely to incapacity to consent by reason of being less than a specified age, it is a defense that the actor was less than three years older than the victim at the time of the alleged offense. [1971 c.743 §108]

**163.355 Rape in the third degree.** (1) A male commits the crime of rape in the third degree if he has sexual intercourse with a female under 16 years of age.

(2) Rape in the third degree is a Class C felony. [1971 c.743 §109]

**163.365 Rape in the second degree.**

(1) A male who has sexual intercourse with a female commits the crime of rape in the second degree if:

(a) The female is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness; or

(b) The female is under 14 years of age.

(2) Rape in the second degree is a Class B felony. [1971 c.743 §110]

**163.375 Rape in the first degree.** (1) A person who has sexual intercourse with a female commits the crime of rape in the first degree if:

(a) The female is subjected to forcible compulsion by the male; or

(b) The female is under 12 years of age; or

(c) The female is under 16 years of age and is the male's sister, of the whole or half blood, his daughter or his wife's daughter.

(2) Rape in the first degree is a Class A felony. [1971 c.743 §111]

**163.385 Sodomy in the third degree.**

(1) A person commits the crime of sodomy in the third degree if he engages in deviate sexual intercourse with another person under 16 years of age or causes that person to engage in deviate sexual intercourse.

(2) Sodomy in the third degree is a Class C felony. [1971 c.743 §112]

**163.395 Sodomy in the second degree.**

(1) A person who engages in deviate sexual intercourse with another person or causes another to engage in deviate sexual intercourse commits the

crime of sodomy in the second degree if:

(a) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness; or

(b) The victim is under 14 years of age.

(2) Sodomy in the second degree is a Class B felony. [1971 c.743 §113]

**163.405 Sodomy in the first degree.**

(1) A person who engages in deviate sexual intercourse with another person or causes another to engage in deviate sexual intercourse commits the crime of sodomy in the first degree if:

(a) The victim is subjected to forcible compulsion by the actor; or

(b) The victim is under 12 years of age; or

(c) The victim is under 16 years of age and is the actor's brother or sister, of the whole or half blood, his son or daughter or his spouse's son or daughter.

(2) Sodomy in the first degree is a Class A felony. [1971 c.743 §114]

**163.408 Sexual penetration with a foreign object in the second degree.** (1)

Except as permitted under ORS 163.412, a person commits the crime of sexual penetration with a foreign object in the second degree if the person penetrates the vagina, anus or penis of another with any object not a part of the actor's body, and:

(a) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness; or

(b) The victim is under 14 years of age.

(2) Sexual penetration with a foreign object in the second degree is a Class B felony. [1981 c.549 §2]

163.410 [Repealed by 1971 c.743 §432]

**163.411 Sexual penetration with a foreign object in the first degree.** (1) Ex-

cept as permitted under ORS 163.412, a person commits the crime of sexual penetration with a foreign object in the first degree if the person penetrates the vagina, anus or penis of another with any object not a part of the actor's body, and:

(a) The victim is subjected to forcible compulsion; or

(b) The victim is under 12 years of age.

(2) Sexual penetration with a foreign object in the first degree is a Class A felony. [1981 c.549 §3]

**163.412 Exceptions to sexual penetration with foreign object prohibition.** Nothing in ORS 163.408 or 163.411 prohibits a penetration described in either of those sections when:

(1) The penetration is part of a medically recognized treatment or diagnostic procedure; or

(2) The penetration is accomplished by a peace officer or a corrections officer acting in official capacity, or by medical personnel at the request of such an officer, in order to search for weapons, contraband or evidence of crime. [1981 c.549 §4]

**163.415 Sexual abuse in the second degree.** (1) A person commits the crime of sexual abuse in the second degree if he subjects another person to sexual contact; and

(a) The victim does not consent to the sexual contact; or

(b) The victim is incapable of consent by reason of being under 18 years of age, mentally defective, mentally incapacitated or physically helpless.

(2) In any prosecution under subsection (1) of this section it is an affirmative defense for the defendant to prove that:

(a) The victim's lack of consent was due solely to incapacity to consent by reason of being under 18 years of age; and

(b) The victim was more than 14 years of age; and

(c) The defendant was less than four years older than the victim.

(3) Sexual abuse in the second degree is a Class A misdemeanor. [1971 c.743 §115; 1979 c.489 §1]

**163.420** [Repealed by 1971 c.743 §432]

**163.425 Sexual abuse in the first degree.** (1) A person commits the crime of sexual abuse in the first degree when that person:

(a) Subjects another person to sexual contact; and

(A) The victim is less than 12 years of age; or

(B) The victim is subjected to forcible compulsion by the actor; or

(b) Subjects another person to sexual intercourse, deviate sexual intercourse or, except as provided in ORS 163.412, penetration of the vagina, anus or penis with any object not a part of the actor's body, and the victim does not consent thereto.

(2) Sexual abuse in the first degree is a Class C felony. [1971 c.743 §116; 1983 c.564 §1]

**163.430** [Amended by 1967 c.359 §683; repealed by 1971 c.743 §432]

**163.435 Contributing to the sexual delinquency of a minor.** (1) A person 18 years of age or older commits the crime of contributing to the sexual delinquency of a minor if:

(a) Being a male, he engages in sexual intercourse with a female under 18 years of age; or

(b) Being a female, she engages in sexual intercourse with a male under 18 years of age; or

(c) He engages in deviate sexual intercourse with another person under 18 years of age or causes that person to engage in deviate sexual intercourse.

(2) Contributing to the sexual delinquency of a minor is a Class A misdemeanor. [1971 c.743 §117]

**163.440** [Repealed by 1971 c.743 §432]

**163.445 Sexual misconduct.** (1) A person commits the crime of sexual misconduct if he engages in sexual intercourse or deviate sexual intercourse with an unmarried person under 18 years of age.

(2) Sexual misconduct is a Class C misdemeanor. [1971 c.743 §118]

**163.450** [Repealed by 1971 c.743 §432]

**163.455** [1971 c.743 §119; repealed by 1983 c.546 §1]

**163.460** [Repealed by 1971 c.743 §432]

**163.465 Public indecency.** (1) A person commits the crime of public indecency if while in, or in view of, a public place he performs:

(a) An act of sexual intercourse; or

(b) An act of deviate sexual intercourse; or

(c) An act of exposing his genitals with the intent of arousing the sexual desire of himself or another person.

(2) Public indecency is a Class A misdemeanor. [1971 c.743 §120]

**163.470** [Repealed by 1971 c.743 §432]

**163.475** [1975 c.176 §2; 1977 c.822 §1; repealed by 1981 c.892 §98]

**163.477 Definitions for ORS 163.477 to 163.495.** As used in ORS 163.477 to 163.495:

(1) Sexual conduct or a sexual performance is obscene if:

(a) It depicts or describes in a patently offensive manner sadomasochistic abuse or sexual conduct;

(b) The average person applying contemporary state standards would find the work, taken as a whole, appeals to the prurient interest in sex; and

(c) Taken as a whole, it lacks serious literary, artistic, political or scientific value.

(2) "Sexual conduct" has the meaning given that term in ORS 167.060 (10).

(3) "Sexual performance" means sexual conduct in a play, dance or show, or sexual conduct performed for the purpose of recording it in a photograph, motion picture or other visual representation. [1979 c.706 §3]

**163.480** [Amended by 1963 c.406 §1; repealed by 1971 c.743 §432]

**163.483 Using a child in an obscene sexual performance.** (1) A person commits the crime of using a child in an obscene sexual performance if a person knowingly:

(a) Employs, authorizes or induces a child under 16 years of age to engage in an obscene sexual performance; or

(b) Produces, directs, aids or facilitates an obscene sexual performance by a child under 16 years of age.

(2) Using a child in an obscene sexual performance is a Class C felony. [1979 c.706 §2; 1983 c.740 §30]

**163.485 Promoting an obscene sexual performance by a child.** (1) A person commits the crime of promoting an obscene sexual performance by a child if he knowingly manufactures, sells, distributes, exhibits or disseminates any photograph, motion picture or other visual representation or image of a child under 16 years of age engaging in sexual conduct, as defined in ORS 167.060 (10), which is obscene.

(2) Promoting an obscene sexual performance by a child is a Class C felony. [1979 c.706 §4]

**163.490** [Repealed by 1971 c.743 §432]

**163.495 Exemption from prosecution under ORS 163.477 to 163.495.** (1) No employe is liable to prosecution under ORS 163.477 to 163.495 or under any city or home rule county ordinance for exhibiting or possessing with intent to exhibit any obscene matter or performance provided the employe is acting within the scope of regular employment at a showing open to the public.

(2) As used in this section, "employe" means any person regularly employed by the owner or operator of a motion picture theater if the person has no financial interest other than salary or

wages in the ownership or operation of the motion picture theater, no financial interest in or control over the selection of the motion pictures shown in the theater, and is working within the motion picture theater where the person is regularly employed, but does not include a manager of the motion picture theater. [1979 c.706 §5]

**163.500** [Repealed by 1971 c.743 §432]

## OFFENSES AGAINST FAMILY

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

(1) "Descendant" includes persons related by descending lineal consanguinity, step-children and lawfully adopted children.

(2) "Support" includes, but is not limited to, necessary and proper shelter, food, clothing, medical attention and education. [1971 c.743 §170]

**163.515 Bigamy.** (1) A person commits the crime of bigamy if he knowingly marries or purports to marry another person at a time when either is lawfully married.

(2) Bigamy is a Class C felony. [1971 c.743 §171]

**163.525 Incest.** (1) A person commits the crime of incest if he marries or engages in sexual intercourse or deviate sexual intercourse with a person whom he knows to be related to him, either legitimately or illegitimately, as an ancestor, descendant or brother or sister of either the whole or half blood.

(2) Incest is a Class C felony. [1971 c.743 §172]

**163.535 Abandonment of a child.** (1) A person commits the crime of abandonment of a child if, being a parent, lawful guardian or other person lawfully charged with the care or custody of a child under 15 years of age, he deserts the child in any place with intent to abandon it.

(2) Abandonment of a child is a Class C felony. [1971 c.743 §173]

**163.545 Child neglect.** (1) A person having custody or control of a child under 10 years of age commits the crime of child neglect if, with criminal negligence, he leaves the child unattended in or at any place for such period of time as may be likely to endanger the health or welfare of such child.

(2) Child neglect is a Class A misdemeanor. [1971 c.743 §174]

**163.555 Criminal nonsupport.** (1) A person commits the crime of criminal nonsupport if, being the parent, lawful guardian or other person lawfully charged with the support of a child under 18 years of age, born in or out of wedlock, he refuses or neglects without lawful excuse to provide support for such child.

(2)(a) It is no defense to a prosecution under this section that either parent has contracted a subsequent marriage, that issue has been born of a subsequent marriage, that the defendant is the parent of issue born of a prior marriage or that the child is being supported by another person or agency.

(b) In a prosecution for failing to provide necessary and proper medical attention, it is a defense that the medical attention was provided by treatment by prayer through spiritual means alone by adherents of a bona fide religious denomination that relies exclusively on this form of treatment in lieu of medical attention. Nothing in this subsection shall affect the jurisdiction of the juvenile court in proceedings instituted under ORS chapter 419.

(3) Criminal nonsupport is a Class C felony. [1971 c.743 §175]

**163.565 Evidence of paternity; confidentiality between husband and wife not applicable; spouses competent and compellable witnesses.** (1) Proof that a child was born to a woman during the time a man lived and cohabited with her, or held her out as his wife, is prima facie evidence that he is the father of the child. This subsection does not exclude any other legal evidence tending to establish the parental relationship.

(2) No provision of law prohibiting the disclosure of confidential communications between husband and wife apply to prosecutions for criminal nonsupport. A husband or wife is a competent and compellable witness for or against either party. [1971 c.743 §176]

**163.575 Endangering the welfare of a minor.** (1) A person commits the crime of endangering the welfare of a minor if the person knowingly:

(a) Induces, causes or permits an unmarried person under 18 years of age to witness an act of sexual conduct or sadomasochistic abuse as defined by ORS 167.060; or

(b) Permits a person under 18 years of age to enter or remain in a place where unlawful activity involving controlled substances is maintained or conducted; or

(c) Induces, causes or permits a person under 18 years of age to participate in gambling as defined by ORS 167.117; or

(d) Sells, or causes to be sold, tobacco in any form to a person under 18 years of age; or

(e) Sells to a person under 18 years of age any device in which tobacco, marijuana, cocaine or any controlled substance, as defined in ORS 475.005, is burned and the principal design and use of which is directly or indirectly to deliver tobacco smoke, marijuana smoke, cocaine smoke or smoke from any controlled substance into the human body including but not limited to:

(A) Pipes, water pipes, hookahs, wooden pipes, carburetor pipes, electric pipes, air driven pipes, corncob pipes, meerscham pipes and ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls;

(B) Carburetion tubes and devices, including carburetion masks;

(C) Bongos;

(D) Chillums;

(E) Ice pipes or chillers;

(F) Cigarette rolling papers and rolling machines; and

(G) Cocaine free basing kits.

(2) Endangering the welfare of a minor is a Class A misdemeanor. [1971 c.743 §177; 1973 c.827 §20; 1979 c.744 §8; 1981 c.838 §1; 1983 c.740 §31]

**163.580 Posting of signs concerning sale of smoking devices.** (1) Any person who sells any of the smoking devices listed in ORS 163.575 (1)(e) shall display a sign clearly stating that the sale of such devices to persons under 18 years of age is prohibited by law.

(2) Any person who violates this section commits a violation. [1981 c.838 §2]

**Note:** 163.580 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 163 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## DEFAMATION

**163.605 Criminal defamation.** (1) A person commits the crime of criminal defamation if with intent to defame another person he knowingly:

(a) Publishes or causes to be published false and scandalous durable matter concerning such other person; or

(b) Publishes or causes to be published false and scandalous matter concerning such other

person by means of a radio or television broadcast.

(2) It shall be a defense to any prosecution under this section that:

(a) The matter published was true and was published with good motives and for justifiable ends; or

(b) The publication is protected by an absolute or qualified privilege.

(3) Criminal defamation is a Class A misdemeanor. [1971 c.743 §287]

**163.610** [Repealed by 1971 c.743 §432]

**163.620** [Repealed by 1971 c.743 §432]

**163.630** [Repealed by 1971 c.743 §432]

**163.635** [1955 c.308 §1; repealed by 1971 c.743 §432]

**163.640** [Repealed by 1971 c.743 §432]

**163.650** [Repealed by 1971 c.743 §432]

**163.660** [Repealed by 1971 c.743 §432]

## MISCELLANEOUS

**163.705 Polygraph examination of victims in certain criminal cases prohibited.** No district attorney or other law enforcement officer or investigator involved in the investigation or prosecution of crimes, or any employe thereof, shall require any complaining witness in a case involving the use of force, violence, duress, menace or threat of physical injury in the commission of any sex crime under ORS 163.305 to 163.575, to submit to a polygraph examination as a prerequisite to filing an accusatory pleading. [1981 c.877 §1]