Chapter 167

1985 REPLACEMENT PART

Offenses Against Public Health, Decency and Animals

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PROSTITUTION AND RELATED OFFENSES

167.002 Definitions for ORS 167.002 to 167.027. As used in ORS 167.002 to 167.027, unless the context requires otherwise:

(1) "Place of prostitution" means any place where prostitution is practiced.

(2) "Prostitute" means a male or female person who engages in sexual conduct or sexual contact for a fee.

(3) "Prostitution enterprise" means an arrangement whereby two or more prostitutes are organized to conduct prostitution activities.

(4) "Sexual conduct" means sexual intercourse or deviate sexual intercourse.

(5) "Sexual contact" means any touching of the sexual organs or other intimate parts of a person not married to the actor for the purpose of arousing or gratifying the sexual desire of either party. [1971 c.743 §249; 1973 c 699 §5]

167.005 [Repealed by 1971 c 743 §432]

167.007 Prostitution. (1) A person commits the crime of prostitution if:

(a) The person engages in or offers or agrees to engage in sexual conduct or sexual contact in return for a fee; or

(b) The person pays or offers or agrees to pay a fee to engage in sexual conduct or sexual contact.

(2) Prostitution is a Class A misdemeanor. [1971 c 743 §250; 1973 c 52 §1, 1973 c.699 §6]

167.010 [Repealed by 1971 c 743 §432]

167.012 Promoting prostitution. (1) A person commits the crime of promoting prostitution if, with intent to promote prostitution, the person knowingly:

(a) Owns, controls, manages, supervises or otherwise maintains a place of prostitution or a prostitution enterprise; or

(b) Induces or causes a person to engage in prostitution or to remain in a place of prostitution; or

(c) Receives or agrees to receive money or other property, other than as a prostitute being compensated for personally rendered prostitution services, pursuant to an agreement or understanding that the money or other property is derived from a prostitution activity; or

(d) Engages in any conduct that institutes, aids or facilitates an act or enterprise of prostitution.

(2) Promoting prostitution is a Class C felony. [1971 c 743 §251]

167.015 [Repealed by 1971 c 743 §432]

167.017 Compelling prostitution. (1) A person commits the crime of compelling prostitution if the person knowingly:

(a) Uses force or intimidation to compel another to engage in prostitution; or

(b) Induces or causes a person under 18 years of age to engage in prostitution; or

(c) Induces or causes the spouse, child or stepchild of the person to engage in prostitution.

(2) Compelling prostitution is a Class B felony. [1971 c.743 §252]

167.020 [Repealed by 1971 c.743 §432]

167.022 [1971 c.743 §253; repealed by 1979 c 248 §1]

167.025 [Repealed by 1971 c 743 §432]

167.027 Evidence required to show place of prostitution. (1) On the issue of whether a place is a place of prostitution as defined in ORS 167.002, its general repute and repute of persons who reside in or frequent the place shall be competent evidence.

(2) Notwithstanding ORS 136.655, in any prosecution under ORS 167.012 and 167.017, spouses are competent and compellable witnesses for or against either party. [1971 c 743 §254]

167.030 [Repealed by 1971 c 743 §432]

167.035 [Repealed by 1971 c 743 §432]

167.040 [Repealed by 1971 c.743 §432]

167.045 [1953 c.641 §§1, 7, 1955 c 636 §6, repealed by 1971 c 743 §432]

167.050 [1953 c.641 §7, 1955 c 636 §7, 1963 c 353 §1, repealed by 1971 c 743 §432]

167.055 [1955 c 636 §9, 1963 c 513 §1, repealed by 1971 c 743 §432]

OBSCENITY AND RELATED OFFENSES

167.060 Definitions for ORS 167.060 to 167.095. As used in ORS 167.060 to 167.095, unless the context requires otherwise:

(1) "Advertising purposes" means purposes of propagandizing in connection with the commercial sale of a product or type of product, the commercial offering of a service, or the commercial exhibition of an entertainment.

(2) "Displays publicly" means the exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character dis-

tinguished by normal unaided vision viewing it from a public thoroughfare, depot or vehicle.

(3) "Furnishes" means to sell, give, rent, loan or otherwise provide.

(4) "Minor" means an unmarried person under 18 years of age.

(5) "Nudity" means uncovered, or less than opaquely covered, post-pubertal human genitals, pubic areas, the post-pubertal human female breast below a point immediately above the top of the areola, or the covered human male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple only or the nipple and areola only are covered.

(6) "Obscene performance" means a play, motion picture, dance, show or other presentation, whether pictured, animated or live, performed before an audience and which in whole or in part depicts or reveals nudity, sexual conduct, sexual excitement or sadomasochistic abuse, or which includes obscenities or explicit verbal descriptions or narrative accounts of sexual conduct.

(7) "Obscenities" means those slang words currently generally rejected for regular use in mixed society, that are used to refer to genitals, female breasts, sexual conduct or excretory functions or products, either that have no other meaning or that in context are clearly used for their bodily, sexual or excretory meaning.

(8) "Public thoroughfare, depot or vehicle" means any street, highway, park, depot or transportation platform, or other place, whether indoors or out, or any vehicle for public transportation, owned or operated by government, either directly or through a public corporation or authority, or owned or operated by any agency of public transportation that is designed for the use, enjoyment or transportation of the general public.

(9) "Sadomasochistic abuse" means flagellation or torture by or upon a person who is nude or clad in undergarments or in revealing or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(10) "Sexual conduct" means human masturbation, sexual intercourse, or any touching of the genitals, pubic areas or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(11) "Sexual excitement" means the condition of human male or female genitals or the breasts of the female when in a state of sexual stimulation, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity. [1971 c 743 §255]

167.062 Sadomasochistic abuse or sexual conduct in live show. (1) It is unlawful for any person to knowingly engage in sadomasochistic abuse or sexual conduct in a live public show.

(2) Violation of subsection (1) of this section is a Class A misdemeanor.

(3) It is unlawful for any person to knowingly direct, manage, finance or present a live public show in which the participants engage in sadomasochistic abuse or sexual conduct.

(4) Violation of subsection (3) of this section is a Class C felony.

(5) As used in ORS 167.002, 167.007, 167.087 and this section unless the context requires otherwise:

(a) "Live public show" means a public show in which human beings, animals, or both appear bodily before spectators or customers.

(b) "Public show" means any entertainment or exhibition advertised or in some other fashion held out to be accessible to the public or member of a club, whether or not an admission or other charge is levied or collected and whether or not minors are admitted or excluded. [1973 c.699 §§2, 3]

167.065 Furnishing obscene materials to minors. (1) A person commits the crime of furnishing obscene materials to minors if, knowing or having good reason to know the character of the material furnished, the person furnishes to a minor:

(a) Any picture, photograph, drawing, sculpture, motion picture, film or other visual representation or image of a person or portion of the human body that depicts nudity, sadomasochistic abuse, sexual conduct or sexual excitement; or

(b) Any book, magazine, paperback, pamphlet or other written or printed matter, however reproduced, or any sound recording which contains matter of the nature described in paragraph (a) of this subsection, or obscenities, or explicit verbal descriptions or narrative accounts of sexual conduct, sexual excitement or sadomasochistic abuse.

(2) Furnishing obscene materials to minors is a Class A misdemeanor. Notwithstanding ORS 161.635 and 161.655, a person convicted under this section may be sentenced to pay a fine, fixed

by the court, not exceeding $10,000. [1971 c 743 §256]

167.070 Sending obscene materials to minors. (1) A person commits the crime of sending obscene materials to minors if, within this state, the person knowingly arranges for or dispatches for delivery to a minor, whether the delivery is to be made within or outside this state, by mail, delivery service or any other means, any of the materials enumerated in ORS 167.065.

(2) Unless the defendant knows or has good reason to know that the person to whom the materials are sent is a minor, it is a defense to a prosecution under this section that the defendant caused to be printed on the outer package, wrapper or cover of the materials to be delivered, in words or substance, "This package (wrapper) (publication) contains material that, by Oregon law, cannot be furnished to a minor."

(3) Sending obscene materials to minors is a Class A misdemeanor. Notwithstanding ORS 161.635 and 161.655, a person convicted under this section may be sentenced to pay a fine, fixed by the court, not exceeding $10,000. [1971 c.743 §257]

167.075 Exhibiting an obscene performance to a minor. (1) A person commits the crime of exhibiting an obscene performance to a minor if the minor is unaccompanied by the parent or lawful guardian of the minor, and for a monetary consideration or other valuable commodity or service, the person knowingly or recklessly:

(a) Exhibits an obscene performance to the minor; or

(b) Sells an admission ticket or other means to gain entrance to an obscene performance to the minor; or

(c) Permits the admission of the minor to premises whereon there is exhibited an obscene performance.

(2) No employe is liable to prosecution under this section or under any city or home-rule county ordinance for exhibiting or possessing with intent to exhibit any obscene motion picture provided the employe is acting within the scope of regular employment at a showing open to the public.

(3) 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.

(4) Exhibiting an obscene performance to a minor is a Class A misdemeanor. Notwithstanding ORS 161.635 and 161.655, a person convicted under this section may be sentenced to pay a fine, fixed by the court, not exceeding $10,000. [1971 c.743 §258]

167.080 Displaying obscene materials to minors. (1) A person commits the crime of displaying obscene materials to minors if, being the owner, operator or manager of a business or acting in a managerial capacity, the person knowingly or recklessly permits a minor who is not accompanied by the parent or lawful guardian of the minor to enter or remain on the premises, if in that part of the premises where the minor is so permitted to be, there is visibly displayed:

(a) Any picture, photograph, drawing, sculpture or other visual representation or image of a person or portion of the human body that depicts nudity, sexual conduct, sexual excitement or sadomasochistic abuse; or

(b) Any book, magazine, paperback, pamphlet or other written or printed matter, however reproduced, that reveals a person or portion of the human body that depicts nudity, sexual conduct, sexual excitement or sadomasochistic abuse.

(2) Displaying obscene materials to minors is a Class A misdemeanor. Notwithstanding ORS 161.635 and 161.655, a person convicted under this section may be sentenced to pay a fine, fixed by the court, not exceeding $10,000. [1971 c.743 §259]

167.085 Defenses in prosecutions under ORS 167.065 to 167.080. In any prosecution under ORS 167.065 to 167.080, it is an affirmative defense for the defendant to prove:

(1) That the defendant was in a parental or guardianship relationship with the minor; or

(2) That the defendant was a bona fide school, museum or public library, or was acting in the course of employment as an employe of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization; or

(3) That the defendant was charged with the sale, showing, exhibition or display of an item, those portions of which might otherwise be contraband forming merely an incidental part of an otherwise nonoffending whole, and serving some legitimate purpose therein other than titillation.

(4) That the defendant had reasonable cause to believe that the person involved was not a minor. [1971 c.743 §260]

167.087 Disseminating obscene material. (1) A person commits the crime of disseminating obscene material if the persons knowingly makes, exhibits, sells, delivers or provides, or offers or agrees to make, exhibit, sell, deliver or provide, or has in possession with intent to exhibit, sell, deliver or provide any obscene writing, picture, motion picture, films, slides, drawings or other visual reproduction.

(2) As used in subsection (1) of this section, matter 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.

(3) In any prosecution for a violation of this section, it shall be relevant on the issue of knowledge to prove the advertising, publicity, promotion, method of handling or labeling of the matter, including any statement on the cover or back of any book or magazine.

(4) No employe is liable to prosecution under this section or under any city or home-rule county ordinance for exhibiting or possessing with intent to exhibit any obscene motion picture provided the employe is acting within the scope of regular employment at a showing open to the public.

(5) As used in this section, "employe" means an employe as defined in ORS 167.075 (3).

(6) Disseminating obscene material is a Class A misdemeanor. [1973 c.699 §4]

167.089 Exemption from prosecution under ORS 167.087. No employe of a bona fide school, museum or public library, acting within the scope of regular employment, is liable to prosecution for violation of ORS 167.087 or any city or home-rule county ordinance for disseminating writings, films, slides, drawings, or other visual reproductions which are claimed to be obscene. [1975 c.272 §2]

167.090 Publicly displaying nudity or sex for advertising purposes. (1) A person commits the crime of publicly displaying nudity or sex for advertising purposes if, for advertising purposes, the person knowingly:

(a) Displays publicly or causes to be displayed publicly a picture, photograph, drawing, sculpture or other visual representation or image of a person or portion of the human body that depicts nudity, sadomasochistic abuse, sexual conduct or sexual excitement, or any page, poster or other written or printed matter bearing such representation or a verbal description or narrative account of such items or activities, or any obscenities; or

(b) Permits any display described in this section on premises owned, rented or operated by the person.

(2) Publicly displaying nudity or sex for advertising purposes is a Class A misdemeanor. [1971 c 743 §261]

167.095 Defenses in prosecutions under ORS 167.090. In any prosecution for violation of ORS 167.090, it shall be an affirmative defense for the defendant to prove:

(1) That the public display, even though in connection with a commercial venture, was primarily for artistic purposes or as a public service; or

(2) That the public display was of nudity, exhibited by a bona fide art, antique or similar gallery or exhibition, and visible in a normal display setting. [1971 c.743 §262]

167.100 Application of ORS 167.060 to 167.100. ORS 167.060 to 167.100 shall be applicable and uniform throughout the state and all political subdivisions and municipalities therein, and no local authority shall enact any ordinances, rules or regulations in conflict with the provisions thereof. [1971 c.743 §262a]

167.105 [Repealed by 1971 c.743 §432]

167.110 [Repealed by 1971 c.743 §432]

167.115 [Repealed by 1971 c.743 §432]

GAMBLING OFFENSES

167.117 Definitions for ORS 167.117 to 167.162. As used in ORS 167.117 to 167.162, unless the context requires otherwise:

(1) "Bingo or lotto" means a game, played with cards bearing lines of numbers, in which a player covers or uncovers a number selected from a container, and which is won by a player who is present during the game and who first covers or uncovers the selected numbers in a designated combination, sequence or pattern.

(2) "Bookmaking" means promoting gambling by unlawfully accepting bets from members of the public as a business, rather than in a casual

or personal fashion, upon the outcomes of future contingent events.

(3) "Contest of chance" means any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein.

(4) "Gambling" means that a person stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under the control or influence of the person, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome. "Gambling" does not include:

(a) Bona fide business transactions valid under the law of contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including but not limited to contracts of indemnity or guaranty and life, health or accident insurance.

(b) Engaging in contests of chance under the following conditions:

(A) The contest is played for some token other than money;

(B) An individual contestant may not purchase more than $25 worth of tokens for use in the contest during any 24-hour period;

(C) The tokens may be exchanged only for property other than money;

(D) Except when the tokens are exchanged for a beverage or merchandise to be consumed on the premises, the tokens are not redeemable on the premises where the contest is conducted or within 50 miles thereof; and

(E) Except for charitable, fraternal or religious organizations, no person who conducts the contest as owner, agent or employe profits in any manner from operation of the contest.

(c) Social games.

(d) Bingo or lotto operated by a charitable, fraternal or religious organization when no person other than the organization or a player profits in any manner from the operation of the lottery and when the organization has complied with the provisions of ORS 465.100 (2).

As used in this section, "charitable, fraternal or religious organization" means any person organized and existing for charitable, benevolent, eleemosynary, humane, patriotic, religious, philanthropic, recreational, social, educational, civic, fraternal or other nonprofit purposes, and who is also exempt from payment of federal income taxes because of its charitable, fraternal or religious purposes. The fact that contributions to an organization profiting from the contest do not qualify for charitable deduction for tax purposes or that the organization is not otherwise exempt from payment of federal income taxes pursuant to the Internal Revenue Code of 1954, as amended, constitutes prima facie evidence that the organization is not a bona fide charitable, fraternal or religious organization.

(5) "Gambling device" means any device, machine, paraphernalia or equipment that is used or usable in the playing phases of unlawful gambling, whether it consists of gambling between persons or gambling by a person involving the playing of a machine. Lottery tickets, policy slips and other items used in the playing phases of lottery and policy schemes are not gambling devices within this definition. Amusement devices which do not return to the operator or player thereof anything but free additional games or plays shall not be considered to be gambling devices.

(6) "Lottery" or "policy" means an unlawful gambling scheme in which:

(a) The players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other medium, one or more of which chances are to be designated the winning ones; and

(b) The winning chances are to be determined by a drawing or by some other method; and

(c) The holders of the winning chances are to receive something of value.

(7) "Numbers scheme or enterprise" means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome of a future contingent event otherwise unrelated to the particular scheme.

(8) "Player" means a person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of the particular gambling activity. A person who gambles at a social game of chance on equal terms with the other participants therein is a person who does not otherwise render material assistance to the establishment, conduct or operation thereof by

performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises therefor and supplying cards or other equipment used therein. A person who engages in bookmaking is not a player.

(9) "Profits from gambling" means that a person, other than as a player, accepts or receives money or other property pursuant to an agreement or understanding with another person whereby the person participates or is to participate in the proceeds of gambling.

(10) "Promotes gambling" means that a person, acting other than as a player, engages in conduct that materially aids any form of gambling. Conduct of this nature includes, but is not limited to, conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases or toward any other phase of its operation. A person promotes gambling if, having control or right of control over premises being used with the knowledge of the person for purposes of gambling, the person permits the gambling to occur or continue or makes no effort to prevent its occurrence or continuation.

(11) "Slot machine" means a gambling device that as a result of the insertion of a coin or other object operates, either completely automatically, or with the aid of some physical act by the player, in such a manner that, depending upon elements of chance, it may eject something of value or otherwise entitle the player to something of value. A device so constructed or readily adaptable or convertible to such use is no less a slot machine because it is not in working order or because some mechanical act of manipulation or repair is required to accomplish its adaptation, conversion or workability. Nor is it any less a slot machine because apart from its use or adaptability as such it may also sell or deliver something of value on the basis other than chance.

(12) "Social game" means:

(a) A game, other than a lottery, between players in a private home where no house player, house bank or house odds exist and there is no house income from the operation of the social game; and

(b) If authorized pursuant to ORS 167.121, a game, other than a lottery, between players in a private business, private club or place of public accommodation where no house player, house bank or house odds exist and there is no house income from the operation of the social game.

(13) "Something of value" means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein.

(14) "Unlawful" means not specifically authorized by law. [1971 c 669 §3a, 1971 c.743 §263; 1973 c.788 §1; 1974 s s. c 7 §1; 1975 c.421 §1; 1977 c 850 §1, 1983 c 813 §1]

167.119 [1973 c.788 §3, repealed by 1974 s s. c 7 §2]

167.120 [Amended by 1955 c.514 §1, 1969 c 404 §1, repealed by 1971 c.743 §432]

167.121 Local regulation of social games. Counties and cities may, by ordinance, authorize the playing or conducting of a social game in a private business, private club or in a place of public accommodation. Such ordinances may provide for regulation or licensing of the social games authorized. [1974 s s c 7 §3]

Note: 167.121 was enacted into law by the Legislative Assembly but was not added to or made a part of 167 117 to 167.162 by legislative action. See Preface to Oregon Revised Statutes for further explanation

167.122 Promoting gambling in the second degree. (1) A person commits the crime of promoting gambling in the second degree if the person knowingly promotes or profits from unlawful gambling.

(2) Promoting gambling in the second degree is a Class A misdemeanor. [1971 c 743 §264]

167.125 [Amended by 1969 c 404 §2, repealed by 1971 c.743 §432]

167.127 Promoting gambling in the first degree. (1) A person commits the crime of promoting gambling in the first degree if the person violates ORS 167.122 by engaging in bookmaking to the extent that the person receives or accepts in any one day more than five bets totaling more than $500 or by receiving in connection with a lottery or numbers scheme or enterprise:

(a) Money or written records from a person other than a player whose chances or plays are represented by such money or records; or

(b) More than $500 in any one day of money played in the scheme or enterprise.

(2) Promoting gambling in the first degree is a Class C felony. [1971 c 743 §265]

167.130 [Repealed by 1971 c 743 §432]

167.132 Possession of gambling records in the second degree. (1) A person commits the crime of possession of gambling records in the second degree if, with knowledge of the contents thereof, the person possesses any writing, paper, instrument or article:

(a) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise; or

(b) Of a kind commonly used in the operation, promotion or playing of a lottery or numbers scheme or enterprise.

(2) Possession of gambling records in the second degree is a Class A misdemeanor. [1971 c.743 §266]

167.135 [Repealed by 1971 c.743 §432]

167.137 Possession of gambling records in the first degree. (1) A person commits the crime of possession of gambling records in the first degree if, with knowledge of the contents thereof, the person possesses any writing, paper, instrument or article:

(a) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise, and constituting, reflecting or representing more than five bets totaling more than $500; or

(b) Of a kind commonly used in the operation, promotion or playing of a lottery or numbers scheme or enterprise, and constituting, reflecting or representing more than 500 plays or chances therein.

(2) Possession of gambling records in the first degree is a Class C felony. [1971 c.743 §267]

167.140 [Repealed by 1971 c.743 §432]

167.142 Defense to possession of gambling records. In any prosecution under ORS 167.132 or 167.137 it is a defense if the writing, paper, instrument or article possessed by the defendant is neither used nor intended to be used in the operation or promotion of a bookmaking scheme or enterprise, or in the operation, promotion or playing of a lottery or numbers scheme or enterprise. [1971 c.743 §268]

167.145 [Repealed by 1971 c.743 §432]

167.147 Possession of a gambling device; defense. (1) A person commits the crime of possession of a gambling device if, with knowledge of the character thereof, the person manufactures, sells, transports, places or possesses, or conducts or negotiates a transaction affecting or designed to affect ownership, custody or use of:

(a) A slot machine; or

(b) Any other gambling device, believing that the device is to be used in promoting unlawful gambling activity.

(2) Possession of a gambling device is a Class A misdemeanor.

(3) It is a defense to a charge of possession of a gambling device if the slot machine or gambling device which caused the charge to be brought was manufactured prior to 1958 and was not operated for purposes of unlawful gambling. [1971 c.743 §269; 1977 c 264 §1, 1983 c.403 §1]

167.150 [Repealed by 1961 c.579 §2]

167.151 [1961 c.579 §1, 1963 c.480 §1; repealed by 1971 c.743 §432]

167.152 [1955 c.494 §1; repealed by 1971 c.743 §432]

167.153 Proving occurrence of sporting event in prosecutions of gambling offenses. In any prosecution under ORS 167.117 and 167.122 to 167.147 in which it is necessary to prove the occurrence of a sporting event, the following shall be admissible in evidence and shall be prima facie evidence of the occurrence of the event:

(1) A published report of its occurrence in a daily newspaper, magazine or other periodically printed publication of general circulation; or

(2) Evidence that a description of some aspect of the event was written, printed or otherwise noted at the place in which a violation of ORS 167.117 and 167.122 to 167.147 is alleged to have been committed. [1971 c.743 §270]

167.155 [Repealed by 1961 c 503 §3]

167.157 [1969 c.169 §1; repealed by 1971 c.743 §432]

167.158 Lottery prizes forfeited to county; exception; action by county to recover. (1) Except for bingo or lotto operated by a charitable, fraternal or religious organization, all sums of money and every other valuable thing drawn as a prize in any lottery or pretended lottery, by any person within this state, are forfeited to the use of the county in which it is found, and may be sued for and recovered by a civil action.

(2) Nothing contained in ORS 465.010 to 465.070 shall interfere with the duty of officers to take possession of property as provided by subsection (1) of this section. [1971 c.743 §271; 1977 c.850 §3]

167.160 [Repealed by 1961 c.503 §3]

167.162 Gambling device as public nuisance; defense; seizure and destruction. (1) A gambling device is a public nuisance. Any peace officer shall summarily seize any such device that the peace officer finds and deliver it to the cus-

tody of the sheriff, who shall hold it subject to the order of the court having jurisdiction.

(2) Whenever it appears to the court that the gambling device has been possessed in violation of ORS 167.147, the court shall adjudge forfeiture thereof and shall order the sheriff to destroy the device and to deliver any coins taken therefrom to the county treasurer, who shall deposit them to the general fund of the county. However, when the defense provided by ORS 167.147 (3) is raised by the defendant, the gambling device or slot machine shall not be forfeited or destroyed until after a final judicial determination that the defense is not applicable. If the defense is applicable, the gambling device or slot machine shall be returned to its owner.

(3) The seizure of the gambling device or operating part thereof constitutes sufficient notice to the owner or person in possession thereof. The sheriff shall make return to the court showing that the sheriff has complied with the order.

(4) Whenever, in any proceeding in court for the forfeiture of any gambling device except a slot machine seized for a violation of ORS 167.147, and such forfeiture is decreed, the court shall have exclusive jurisdiction to remit or mitigate the forfeiture.

(5) In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until the claimant proves (a) that the claimant has an interest in such gambling device, as owner or otherwise, which the claimant acquired in good faith, (b) that the claimant had at no time any knowledge or reason to believe that it was being or would be used in violation of law relating to gambling.

(6) In any proceeding in court for the forfeiture of any gambling device except a slot machine seized for a violation of law relating to gambling, the court may in its discretion order delivery thereof to any claimant who shall establish the right to the immediate possession thereof, and shall execute, with one or more sureties, or by a surety company, approved by the court, and deliver to the court, a bond in such sum as the court shall determine, running to the State of Oregon, and conditioned to return such gambling device at the time of trial, and conditioned further that, if the gambling device be not returned at the time of trial, the bond may in the discretion of the court stand in lieu of and be forfeited in the same manner as such gambling device. [1971 c.743 §272; 1977 c.264 §2]

167.165 [Repealed by 1963 c.340 §1 (167.170 enacted in lieu of 167.165)]

167.170 [1963 c.340 §2 (enacted in lieu of 167 165); repealed by 1971 c 743 §432]

OFFENSES INVOLVING CONTROLLED SUBSTANCES

167.202 [1971 c 743 §273, 1974 s.s. c.67 §1; repealed by 1977 c.745 §3 (167.203 enacted in lieu of 167.202)]

167.203 Definitions for ORS 167.212 to 167.252. As used in ORS 167.212 to 167.252, unless the context requires otherwise:

(1) "Apothecary" means a pharmacist, as defined by ORS 689.005, and where the context so requires, the owner of a store or other place of business where controlled substances are compounded or dispensed by a licensed pharmacist.

(2) "Controlled substance" and "manufacture" have the meaning given those terms by ORS 475.005.

(3) "Official written order" means an order written on a form provided for that purpose by the United States Commissioner of Internal Revenue, under any laws of the United States making provision therefor, if such order form is not provided, then on an official form provided for that purpose by the State Board of Pharmacy.

(4) "Practitioner" has the meaning given that term by ORS 475.005.

(5) "Wholesaler" means a person who supplies controlled substances that the wholesaler has not produced or prepared, on official written orders, but not on prescriptions.

(6) "Unlawfully" means in violation of any provision of ORS 475.005 to 475.285 and 475.991 to 475.995. [1977 c 745 §33 (enacted in lieu of 167.202), 1979 c.777 §44]

167.205 [Amended by 1961 c.333 §1; repealed by 1971 c.743 §432]

167.207 [1971 c.743 §274; 1973 c.680 §1; 1974 s s c.67 §2, repealed by 1977 c.745 §54]

167.210 [Repealed by 1971 c.743 §432]

167.212 Tampering with drug records. (1) A person commits the crime of tampering with drug records if the person knowingly:

(a) Alters, defaces or removes a controlled substance label affixed by a manufacturer, wholesaler or apothecary, except that it shall not be unlawful for an apothecary to remove or deface such a label for the purpose of filling prescriptions;

(b) Affixes a false or forged label to a package or receptacle containing controlled substances;

(c) Makes or utters a false or forged prescription or false or forged official written order for controlled substances; or

(d) Makes a false statement in any controlled substance prescription, order, report or record required by ORS 475.005 to 475.285 and 475.991 to 475.995.

(2) Tampering with drug records is a Class C felony. [1971 c.743 §275, 1977 c 745 §34]

167.215 [Repealed by 1971 c.743 §432]

167.217 [1971 c.743 §276; 1973 c.680 §2; 1974 s.s. c.67 §3; repealed by 1977 c 745 §54]

167.220 [Amended by 1957 c.403 §8; 1961 c.261 §2; repealed by 1971 c 743 §432]

167.222 Frequenting a place where controlled substances are used. (1) A person commits the offense of frequenting a place where controlled substances are used if the person keeps, maintains, frequents, or remains at a place, while knowingly permitting persons to use controlled substances in such place or to keep or sell them in violation of ORS 475.005 to 475.285 and 475.991 to 475.995.

(2) Frequenting a place where controlled substances are used is a Class A misdemeanor.

(3) Notwithstanding subsection (2) of this section, if the conviction is for knowingly maintaining, frequenting or remaining at a place where one avoirdupois ounce of the dried leaves, stems, and flowers of the plant Cannabis family Moraceae is found at the time of an arrest under this section, frequenting a place where controlled substances are used is a violation punishable by a fine of not more than $100.

(4) As used in this section, "frequents" means repeatedly or habitually visits, goes to or resorts to. [1971 c.743 §277; 1974 s.s. c.43 §1; 1977 c.745 §35; 1979 c.641 §1]

167.225 [Repealed by 1971 c 743 §432]

167.227 [1969 c.655 §2; repealed by 1971 c.743 §432]

167.228 [1971 c.743 §278; repealed by 1977 c.745 §54]

167.230 [Repealed by 1971 c.743 §432]

167.232 [1971 c.743 §278a; repealed by 1977 c.745 §54]

167.235 [Amended by 1967 c.527 §1; repealed by 1971 c.743 §432]

167.237 [1967 c.527 §2; repealed by 1971 c.743 §432]

167.238 Prima facie evidence permitted in prosecutions of drug offenses. (1) Proof of unlawful manufacture, cultivation, transportation or possession of a controlled substance is prima facie evidence of knowledge of its character.

(2) Proof of possession of a controlled substance not in the container in which it was originally delivered, sold or dispensed, when a prescription or order of a practitioner is required under the provisions of ORS 475.005 to 475.285 and 475.991 to 475.995, is prima facie evidence that the possession is unlawful unless the possessor also has in possession a label prepared by the pharmacist for the drug dispensed or the possessor is authorized by ORS 475.005 to 475.285 and 475.991 to 475.995 to possess the controlled substance. [1971 c.743 §279; 1977 c 745 §36]

167.240 [Repealed by 1971 c.743 §432]

167.242 Exemption from application of drug laws as defense in prosecutions of drug offenses. In any prosecution under ORS 167.212 and 167.222, or in a forfeiture proceeding under ORS 167.247, any exception, excuse, proviso or exemption contained in ORS 475.005 to 475.285 and 475.991 to 475.995 shall be an affirmative defense. [1971 c.743 §280; 1977 c.745 §37]

167.245 [Amended by 1955 c.504 §1; 1959 c.322 §1; repealed by 1971 c.743 §432]

167.247 Search, seizure and forfeiture of conveyance in which drugs unlawfully transported or possessed. (1) A district attorney or peace officer charged with the enforcement of ORS 167.212 and 167.222, having personal knowledge or reasonable information that controlled substances are being unlawfully transported or possessed in any boat, vehicle or other conveyance, may search the same without warrant and without an affidavit being filed. If controlled substances are found in or upon such conveyance, the district attorney or peace officer may seize them, arrest any person in charge of the conveyance and as soon as possible take the arrested person and the seized controlled substances before any court in the county in which the seizure is made. The district attorney or peace officer shall also, without delay, make and file a complaint for any crime justified by the evidence obtained.

(2) Any boat, vehicle or other conveyance used by or with the knowledge of the owner, operator or person in charge thereof for the unlawful transportation or concealment of controlled substances shall be forfeited to the state in the same manner and with like effect as provided in ORS 471.660 and 471.665. However, a conveyance is not subject to forfeiture for a violation of ORS 475.992 (3).

(3) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of ORS 475.005 to 475.285 and 475.991 to 475.995.

(4) No conveyance is subject to forfeiture under this section by reason of any act or omission committed or omitted without the knowledge or consent of the owner. [1971 c.743 §281; 1977 c 745 §38]

167.250 [Amended by 1959 c.322 §2; repealed by 1971 c.743 §432]

167.252 Acquittal or conviction under federal law as precluding state prosecution. No person shall be prosecuted under ORS 167.203 to 167.222 if the person has been acquitted or convicted under the federal narcotic laws of the same act or omission which it is alleged constitutes a violation of ORS 167.203 to 167.222. [1971 c.743 §282]

167.255 [Repealed by 1959 c.322 §3]

167.260 [Repealed by 1959 c.322 §3]

167.265 [Repealed by 1959 c.322 §3]

167.270 [Repealed by 1959 c.322 §3]

167.275 [Repealed by 1959 c.322 §3]

167.280 [Repealed by 1959 c 322 §3]

167.285 [Repealed by 1959 c 322 §3]

167.290 [Repealed by 1959 c 322 §3]

167.295 [Amended by 1963 c.314 §1, repealed by 1971 c.743 §432]

167.300 [Repealed by 1971 c.743 §432]

OFFENSES AGAINST ANIMALS

167.310 Definitions for ORS 167.310 to 167.340. (1) As used in ORS 167.310 to 167.340.

(a) "Animal" means any nonhuman mammal, bird, reptile, amphibian or fish.

(b) "Good animal husbandry" includes, but is not limited to the dehorning of cattle, the docking of horses, sheep or swine, and the castration or neutering of livestock, according to accepted practices of veterinary medicine or animal husbandry.

(c) "Livestock" means any horse, mule, burro, dairy or beef animal, goat, sheep, swine or rabbit, regardless of age.

(d) "Pet or domestic animal" means any animal that is owned or possessed by a person, other than livestock or poultry.

(e) "Physical injury" has the meaning provided in ORS 161.015.

(f) "Possess" has the meaning provided in ORS 161.015.

(g) "Serious physical injury" has the meaning provided in ORS 161.015.

(2) As used in ORS 167.325 and 167.330, "minimum care" means care sufficient to preserve the health and well-being of an animal and, except for emergencies or circumstances beyond the reasonable control of the owner, includes, but is not limited to, the following requirements:

(a) Food of sufficient quantity and quality to allow for normal growth or maintenance of body weight.

(b) Open or adequate access to potable water in sufficient quantity to satisfy the animal's needs. Snow or ice is not an adequate water source.

(c) In the case of pet or domestic animals, access to a barn, dog house or other inclosed structure sufficient to protect the animal from wind, rain, snow or sun and which has adequate bedding to protect against cold and dampness.

(d) Veterinary care deemed necessary by a reasonably prudent person to relieve distress from injury, neglect or disease.

(e) Pet or domestic animals shall not be confined to an area without adequate space for exercise necessary for the health of the animal or which does not allow access to a dry place for the animal to rest. The air temperature in a confinement area must be suitable for the animal involved. Confinement areas must be kept reasonably clean and free from excess waste or other contaminants which could affect the animal's health. [1985 c.662 §1]

Note: 167 310 to 167 355 was enacted into law by the Legislative Assembly but was not added to or made a part of the Oregon Criminal Code of 1971 or any series therein by legislative action See Preface to Oregon Revised Statutes for further explanation.

167.315 Animal abuse in the second degree. (1) A person commits the crime of animal abuse in the second degree if, except as otherwise authorized by law, the person intentionally, knowingly or recklessly causes physical injury to an animal.

(2) Any practice of good animal husbandry is not a violation of this section.

(3) Animal abuse in the second degree is a Class B misdemeanor. [1985 c 662 §2]

Note: See note under 167.310

167.320 Animal abuse in the first degree. (1) A person commits the crime of animal abuse in the first degree if, except as otherwise authorized by law, the person intentionally, knowingly or recklessly:

(a) Causes serious physical injury to an animal; or

(b) Cruelly causes the death of an animal.

(2) Any practice of good animal husbandry is not a violation of this section.

(3) Animal abuse in the first degree is a Class A misdemeanor. [1985 c 662 §3]

Note: See note under 167.310.

167.325 Animal neglect in the second degree. (1) A person commits the crime of animal neglect in the second degree if, except as otherwise authorized by law, the person intentionally, knowingly, recklessly or with criminal negligence fails to provide minimum care for an animal in such person's custody or control.

(2) Animal neglect in the second degree is a Class B misdemeanor. [1985 c.662 §4]

Note: See note under 167.310.

167.330 Animal neglect in the first degree. (1) A person commits the crime of animal neglect in the first degree if, except as otherwise authorized by law, the person intentionally, knowingly, recklessly or with criminal negligence:

(a) Fails to provide minimum care for an animal in such person's custody or control; and

(b) Such failure to provide care results in serious physical injury or death to the animal.

(2) Animal neglect in the first degree is a Class A misdemeanor. [1985 c.662 §5]

Note: See note under 167.310.

167.335 Exemption for livestock, rodeo animals and commercially grown poultry. Unless gross negligence can be shown, the provisions of ORS 167.315 to 167.330 shall not apply to the treatment of livestock being transported by owner or common carrier, animals involved in rodeos or similar exhibitions or commercially grown poultry. [1985 c.662 §6]

Note: See note under 167 310.

167.340 Animal abandonment. (1) A person commits the crime of animal abandonment if the person intentionally, knowingly, recklessly or with criminal negligence leaves a domesticated animal at a location without providing for the animal's continued care.

(2) It is no defense to the crime defined in subsection (1) of this section that the defendant abandoned the animal at or near an animal shelter, veterinary clinic or other place of shelter if the defendant did not make reasonable arrangements for the care of the animal.

(3) Animal abandonment is a Class C misdemeanor. [1985 c.662 §8]

Note: See note under 167.310.

167.345 Authority to enter premises; search warrant; notice of impoundment of animal. If there is probable cause to believe that any animal is being subjected to treatment in violation of ORS 167.315 to 167.340, a peace officer, after obtaining a search warrant in the manner authorized by law, may enter the premises where the animal is being held, provide food and water and impound such animal. If after reasonable search the owner or person having custody of such animal cannot be found and notified of the impoundment, such notice shall be conspicuously posted on such premises and within 72 hours after the impoundment such notice shall be sent by certified mail to the address, if any, at which the animal was impounded. [Formerly 167 860]

Note: See note under 167 310

167.350 Forfeiture of rights in mistreated animal; costs; disposition of animal. (1) In addition to and not in lieu of any other sentence it may impose, a court may require a defendant convicted under ORS 167.315 to 167.330 and 167.340 to forfeit any rights of the defendant in the animal subjected to abuse, neglect or abandonment, and to repay the reasonable costs incurred by any person or agency prior to judgment in caring for each animal subjected to abuse, neglect or abandonment.

(2) When the court orders the defendant's rights in the animal to be forfeited, the court may further order that those rights be given over to an appropriate person or agency demonstrating a willingness to accept and care for the animal or to the county or an appropriate animal care agency for further disposition in accordance with accepted practices for humane treatment of animals. This subsection shall not constitute or authorize any limitation upon the right of the person or agency to whom rights are granted to resell or otherwise make disposition of the animal. A transfer of rights under this subsection constitutes a transfer of ownership. [Formerly 167 862]

Note: See note under 167.310.

167.355 Involvement in animal fighting. (1) A person commits the crime of involvement in animal fighting if the person:

(a) Owns or trains an animal with the intention that the animal engage in an exhibition of fighting; or

(b) Promotes, conducts, participates in or is present as a spectator at an exhibition of fighting or preparations thereto; or

(c) Keeps or uses, or in any way is connected with or interested in the management of, or

receives money for the admission of any person to any place kept or used for the purpose of an exhibition of fighting; or

(d) Knowingly suffers or permits any place over which the person has possession or control to be occupied, kept or used for the purpose of an exhibition of fighting.

(2) For purposes of this section:

(a) "Animal" means any mammal, bird, reptile, amphibian or fish.

(b) "Exhibition of fighting" means a public or private display of combat between two or more animals in which the fighting, killing, maiming or injuring of animals is a significant feature. "Exhibition of fighting" does not include demonstrations of the hunting or tracking skills of an animal or the lawful use of animals for hunting, tracking or self-protection.

(3) Nothing in this section applies to or prohibits any customary practice of breeding or rearing game cocks even though those cocks may be subsequently used in cock fighting exhibitions outside the State of Oregon.

(4) Involvement in animal fighting is a Class A misdemeanor. [Formerly 167.865]

Note: See note under 167.310.

167.405 [Repealed by 1971 c.743 §432]

167.410 [Repealed by 1971 c 743 §432]

167.415 [Repealed by 1971 c 743 §432]

167.420 [Repealed by 1971 c.743 §432]

167.425 [Repealed by 1971 c.743 §432]

167.430 [Amended by 1961 c 648 §8; repealed by 1971 c 743 §432]

167.505 [Amended by 1959 c 530 §3, repealed by 1971 c.743 §432]

167.510 [Amended by 1959 c 530 §4, repealed by 1971 c 743 §432]

167.515 [Repealed by 1971 c.743 §432]

167.520 [Repealed by 1971 c 743 §432]

167.525 [Repealed by 1971 c 743 §432]

167.530 [Repealed by 1971 c.743 §432]

167.535 [Amended by 1959 c.530 §5; repealed by 1971 c 743 §432]

167.540 [Repealed by 1971 c.743 §432]

167.545 [Repealed by 1971 c.743 §432]

167.550 [Amended by 1959 c.426 §8; repealed by 1971 c 743 §432]

167.555 [Repealed by 1971 c 743 §432]

167.605 [Amended by 1963 c 201 §1, repealed by 1971 c 743 §432]

167.610 [Repealed by 1971 c 743 §432]

167.615 [Repealed by 1971 c 743 §432]

167.620 [Repealed by 1971 c 743 §432]

167.625 [Repealed by 1971 c.743 §432]

167.630 [Repealed by 1971 c.743 §432]

167.635 [Repealed by 1971 c 743 §432]

167.640 [Repealed by 1971 c.743 §432]

167.645 [Repealed by 1971 c.743 §432]

167.705 [Amended by 1959 c.503 §6, repealed by 1971 c 743 §432]

167.710 [Repealed by 1971 c 743 §432]

167.715 [Repealed by 1971 c.743 §432]

167.720 [Repealed by 1971 c.743 §432]

167.725 [Repealed by 1971 c 743 §432]

167.730 [Repealed by 1971 c.743 §432]

167.735 [Repealed by 1971 c.743 §432]

167.740 [Amended by 1965 c.370 §1, repealed by 1971 c.743 §432]

167.745 [1959 c 200 §1; repealed by 1971 c 743 §432]

MISCELLANEOUS

167.810 Creating a hazard. (1) A person commits the crime of creating a hazard if:

(a) The person intentionally maintains or leaves in a place accessible to children a container with a compartment of more than one and one-half cubic feet capacity and a door or lid which locks or fastens automatically when closed and which cannot easily be opened from the inside; or

(b) Being the owner or otherwise having possession of property upon which there is a well, cistern, cesspool, excavation or other hole of a depth of four feet or more and a top width of 12 inches or more, the owner intentionally fails or refuses to cover or fence it with a suitable protective construction.

(2) Creating a hazard is a Class B misdemeanor. [1971 c.743 §284]

167.820 Concealing birth of an infant. (1) A person commits the crime of concealing the birth of an infant if the person conceals the corpse of a newborn child with intent to conceal the fact of its birth or to prevent a determination of whether it was born dead or alive.

(2) Concealing the birth of an infant is a Class A misdemeanor. [1971 c 743 §286]

167.830 Employment of minors in place of public entertainment. (1) Except as provided in ORS 167.840, any person operating or conducting a place of public amusement or entertainment, who employs or allows a child under the age of 18 years to conduct or assist in conducting any public dance, including but not

limited to dancing by the child as a public performance, or to assist in or furnish music for public dancing, shall be punished upon conviction by a fine of not more than $100.

(2) Fines imposed under this section shall be paid into the school fund of the county wherein the offense was committed. [1971 c.743 §292]

Note: 167.830, 167.840 and 167.870 were enacted into law by the Legislative Assembly but were 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.

167.840 Application of ORS 167.830 limited. (1) ORS 167.830 does not apply if:

(a) Alcoholic beverages are not permitted to be dispensed or consumed in the place of public amusement or entertainment open to the individuals attending the public dance;

(b) Alcoholic beverages are not permitted to be dispensed or consumed in any place connected by an entrance to the place of public amusement or entertainment;

(c) Applicable laws, regulations and ordinances for the protection of children under the age of 18 years are observed in the conduct of the dance; and

(d) At least one responsible adult is present at all times during the public dance to see that applicable laws, regulations and ordinances for the protection of children under 18 years of age are observed.

(2) ORS 167.830 does not apply if the child has the written permission of the judge of the juvenile court, for the county in which the child resides, to conduct or assist in conducting the public dance. The judge of the juvenile court shall grant such permission only if:

(a) The parents or legal guardians of the child have consented to the child's participation in such activity; and

(b) The judge has found that participation in such activity will not be inconsistent with the health, safety and morals of the child.

(3) This section is not intended to make lawful any activity that is prohibited within a political subdivision of this state by ordinance or other regulation of the political subdivision.

(4) The requirements of this section are in addition to, and not in lieu of, the requirements of ORS 653.315. [1971 c 743 §293]

Note: See note under 167.830.

167.850 [1971 c.743 §226; repealed by 1985 c.662 §15]

167.860 [1971 c.596 §1; 1973 c.836 §345; 1985 c 662 §7; renumbered 167.345]

167.862 [1983 c.648 §1, 1985 c.662 §9; renumbered 167 350]

167.865 [1977 c.539 §2; renumbered 167.355]

167.870 Exhibiting person in trance. (1) A person commits the crime of exhibiting a person in trance if, for the purpose of entertainment, the person exposes to public view any person in a state of trance, sleep or entire or partial unconsciousness, which was induced by hypnotism, mesmerism or any other form of the exertion of the will power or suggestion of another person over such subject, or consents to or aids or abets such exhibition either in person or through agents, servants of the person or otherwise, or hypnotizes any person for the purpose of being so exposed to view.

(2) Exhibiting a person in trance is a Class A misdemeanor. [1973 c.316 §1]

Note: See note under 167.830.