

Chapter 163

1989 EDITION

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HOMICIDE

163.005 Criminal homicide. (1) A person commits criminal homicide if, without justification or excuse, the person 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163.010 [Amended by 1963 c.625 §4, repealed by 1971 c.743 §432]

163.020 [Amended by 1963 c.625, §5, repealed by 1971 c.743 §432]

163.030 [Repealed by 1963 c.431 §1]

163.040 [Repealed by 1971 c.743 §432]

163.050 [Repealed by 1971 c.743 §432]

163.060 [Repealed by 1969 c.684 §17]

163.070 [Repealed by 1971 c.743 §432]

163.080 [Repealed by 1971 c.743 §432]

163.090 [Amended by 1953 c.676 §2; repealed by 1957 c.396 §1 (163.091 enacted in lieu of 163.090)]

163.091 [1957 c.396 §2 (enacted in lieu of 163.090); repealed by 1971 c.743 §432]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 employee or officer of a court of justice; or

(G) A member of the State Board of Parole and Post-Prison Supervision.

(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 ORS 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 Sentencing options for aggravated murder. Notwithstanding the provisions of ORS chapter 144, ORS 421.165 and 421.450 to 421.490:

(1)(a) When a defendant is convicted of aggravated murder as defined by ORS 163.095, the defendant shall be sentenced, pursuant to ORS 163.150, to death, life imprisonment without the possibility of release or parole or life imprisonment.

(b) A person sentenced to life imprisonment without the possibility of release or parole under this section shall not have that sentence suspended, deferred or commuted by any judicial officer, and the State Board of Parole and Post-Prison Supervision may not parole the prisoner nor reduce the period of confinement in any manner whatsoever. The Department of Corrections or any executive official may not permit the prisoner to participate in any sort of release or furlough program.

(c) If sentenced to life imprisonment, 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) At any time after 20 years from the date of imposition of a minimum period of confinement pursuant to paragraph (c) of subsection (1) of this section, the State Board

of Parole and Post-Prison Supervision, 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 board expense.

(3) If, upon hearing all of the evidence, the board, upon a unanimous vote of all five members, 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.

(4) 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; 1985 c.3 §1, 1987 c.158 §23; 1987 c.803 §20, 1989 c.720 §1]

163.110 [Repealed by 1971 c.743 §432]

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

(a) When 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;

(b) When 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; or

(c) By abuse when a person, recklessly under circumstances manifesting extreme indifference to the value of human life, causes the death of a child under 14 years of age or a dependent person, as defined in ORS 163.205, and the person has previously engaged in a pattern or practice of assault or torture of the victim or another child under 14 years of age or a dependent person.

(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) A person convicted of murder shall be punished by imprisonment for life.

(b) When a defendant is convicted of murder under this section, the court shall order that the defendant shall be confined for a minimum of 10 years without possibility of parole, release on work release or any form of temporary leave or employment at a forest or work camp.

(c) When a defendant is convicted of murder under this section, the court, in addition to the minimum required by paragraph (b) of this subsection, may order that the defendant shall be confined for a minimum

term of up to an additional 15 years without possibility of parole, release on work release or any form of temporary leave or employment at a forest or work camp.

(d) The minimum term set forth in paragraph (b) or (c) of this subsection may be set aside by a unanimous vote of the State Board of Parole and Post-Prison Supervision. [1971 c.743 §88; 1975 c.577 §1; 1979 c.2 §1, 1981 c.873 §5; 1985 c.763 §1; 1989 c.985 §1]

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, the person causes the death of another person.

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

163.150 Sentencing for aggravated murder; proceedings; issues for jury; review by Supreme Court; effect of plea of guilty or no contest. (1)(a) Upon a finding that the defendant is guilty of aggravated murder, the court, except as otherwise provided in subsection (3) of this section, shall conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to life imprisonment, as described in ORS 163.105 (1)(c), life imprisonment without the possibility of release or parole, as described in ORS 163.105 (1)(b), or death. The proceeding shall be conducted in the trial court before the trial jury as soon as practicable. If the defendant has pleaded guilty, the

sentencing proceeding shall be conducted before a jury impaneled for that purpose. In the proceeding, evidence may be presented as to any matter that the court deems relevant to sentence; however, neither the state nor the defendant shall be allowed to introduce repetitive evidence that has previously been offered and received during the trial on the issue of guilt. The court shall instruct the jury that all evidence previously offered and received may be considered for purposes of the sentencing hearing. This subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the State of Oregon. The state and the defendant or the counsel of the defendant shall be permitted to present arguments for or against a sentence of death and for or against a sentence of life imprisonment with or without the possibility of release or parole.

(b) Upon the conclusion of the presentation of the evidence, the court shall submit the following issues to the jury:

(A) Whether the conduct of the defendant that caused the death of the deceased was committed deliberately and with the reasonable expectation that death of the deceased or another would result;

(B) Whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society;

(C) If raised by the evidence, whether the conduct of the defendant in killing the deceased was unreasonable in response to the provocation, if any, by the deceased, and

(D) If constitutionally required, considering the extent to which the defendant's character and background, and the circumstances of the offense may reduce the defendant's moral culpability or blameworthiness for the crime, whether a sentence of death be imposed

(c) In determining the issues in paragraph (b) of this subsection, the court shall instruct the jury to consider any mitigating circumstances offered in evidence, including but not limited to the defendant's age, the extent and severity of the defendant's prior criminal conduct and the extent of the mental and emotional pressure under which the defendant was acting at the time the offense was committed

(d) The state must prove each issue submitted under subparagraphs (A) to (C) of paragraph (b) of this subsection beyond a reasonable doubt, and the jury shall return a special verdict of "yes" or "no" on each issue considered.

(e) The court shall charge the jury that it may not answer any issue "yes," under paragraph (b) of this subsection unless it agrees unanimously.

(f) If the jury returns an affirmative finding on each issue considered under paragraph (b) of this subsection, the trial judge shall sentence the defendant to death.

(g) The judgment of conviction and sentence of death shall be subject to automatic and direct review by the Supreme Court. The review by the Supreme Court shall have priority over all other cases, and shall be heard in accordance with rules promulgated by the Supreme Court.

(2)(a) Upon the conclusion of the presentation of the evidence, the court shall also instruct the jury that if it reaches a negative finding on any issue under paragraph (b) of subsection (1) of this section, the trial court shall sentence the defendant to life imprisonment without the possibility of release or parole, as described in ORS 163.105 (1)(b), unless 10 or more members of the jury further find that there are sufficient mitigating circumstances to warrant life imprisonment, in which case the trial court shall sentence the defendant to life imprisonment as described in ORS 163.105 (1)(c).

(b) If the jury returns a negative finding on any issue under paragraph (b) of subsection (1) of this section and further finds that there are sufficient mitigating circumstances to warrant life imprisonment, the trial court shall sentence the defendant to life imprisonment in the custody of the Department of Corrections as provided in ORS 163.105 (1)(c)

(3)(a) When the defendant is found guilty of aggravated murder upon a plea of guilty or no contest prior to the introduction of evidence before the trier of fact, and the state advises the court on the record that the state declines to present evidence for purposes of sentencing the defendant to death, the court

(A) Shall not conduct a sentencing proceeding as described in subsection (1) of this section, and a sentence of death shall not be ordered

(B) Shall conduct a sentencing proceeding to determine whether the defendant shall be sentenced to life imprisonment without the possibility of release or parole as described in ORS 163.105 (1)(b) or life imprisonment as described in ORS 163.105 (1)(c) If the defendant waives all rights to a jury sentencing proceeding, the court shall conduct the sentencing proceeding as the trier of fact. The procedure for the sentencing proceeding, whether before a court or a jury, shall follow the procedure of paragraph (a) of subsection (1) and subsection (2) of this section, as modified by this subsection which prohibits a sentence of death when the state declines to present evidence.

(b) Nothing in this subsection shall preclude the court from sentencing the defendant to life imprisonment, as described in ORS 163.105 (1)(c), or life imprisonment without the possibility of release or parole, as described in ORS 163.105 (1)(b), pursuant to a stipulation of sentence or stipulation of sentencing facts agreed to and offered by both parties if the defendant waives all rights to a jury sentencing proceeding

(4) If any part of subsection (2) of this section is held invalid and as a result thereof a defendant who has been sentenced to life imprisonment without possibility of release or parole will instead be sentenced to life imprisonment in the custody of the Department of Corrections as provided in ORS 163.105 (2), 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. Subsection (2) of this section shall apply only to trials commencing on or after July 19, 1989.

(5) Notwithstanding paragraph (a) of subsection (1) of this section, the following shall apply:

(a) If a reviewing court finds prejudicial error in the sentencing proceeding only, the court may set aside the sentence of death and remand the case to the trial court. No error in the sentencing proceeding shall result in reversal of the defendant's conviction for aggravated murder. Upon remand and at the election of the state, the trial court shall either

(A) Sentence the defendant to imprisonment for life in the custody of the Department of Corrections as provided in ORS 163.105 (1)(c); or

(B) Impanel a new sentencing jury for the purpose of conducting a new sentencing proceeding.

(b) The new sentencing proceeding shall be governed by the provisions of subsections (1) and (2) of this section. A transcript of all testimony and all exhibits and other evidence properly admitted in the prior trial and sentencing proceeding shall be admissible in the new sentencing proceeding. Either party may recall any witness who testified at the prior trial or sentencing proceeding and may present additional relevant evidence.

(c) The provisions of this section are procedural and shall apply to any defendant sentenced to death

after December 6, 1984. [1985 c 3 §3; 1987 c.320 §86; 1987 c 557 §1; 1989 c 720 §2; 1989 c.790 §135b]

ASSAULT AND RELATED OFFENSES

163.160 Assault in the fourth degree. (1) A person commits the crime of assault in the fourth degree if the person:

(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 the person.

(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 the person:

(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 the person 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 the person 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 the person 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, the person 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 the lawful custodian of the person.

(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, the person:

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

(b) Secretly confines the person in a place where the person 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) The sole purpose of the person 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 the person 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 or in violation of a valid joint custody order with intent to hold the other person permanently or for a protracted period.

(2) Expenses incurred by a lawful custodial parent or a parent enforcing a valid joint custody order 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; 1987 c.795 §7]

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 or in violation of a valid joint custody order 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 or a parent enforcing a valid joint custody order 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; 1987 c.795 §8]

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 other person has a legal right to engage, by means of instilling in the other person a fear that, if the other person refrains from the conduct compelled or induced or engages in conduct contrary to the compulsion or inducement, the actor or another will:

(a) Unlawfully cause physical injury to some person; or

(b) Unlawfully cause damage to property; or

(c) Engage in conduct constituting a crime; or

(d) Falsely 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 falsely or provide false information or withhold testimony or information with respect to another's legal claim or defense; or

(g) Unlawfully 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.

(2) Coercion is a Class C felony. [1971 c.743 §102, 1983 c.546 §4, 1985 c.338 §1]

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 the victim 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 the sole purpose of the defendant 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 rea-

son 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 15 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 the person 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 the defendant 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 the defendant 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 the incapacity of the victim to consent because the victim 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 the defendant did not know of the facts or conditions responsible for the victim'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 the female is under 14 years of age.

(2) Rape in the second degree is a Class B felony. [1971 c.743 §110, 1989 c.359 §1]

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;

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

(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; or

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

(2) Rape in the first degree is a Class A felony. [1971 c.743 §111; 1989 c.359 §2]

163.385 Sodomy in the third degree. (1) A person commits the crime of sodomy in the third degree if the person 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 the victim is under 14 years of age.

(2) Sodomy in the second degree is a Class B felony. [1971 c.743 §113; 1989 c.359 §3]

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;

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

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

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

(2) Sodomy in the first degree is a Class A felony. [1971 c.743 §114, 1989 c.359 §4]

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 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, 1989 c.359 §5]

163.410 [Repealed by 1971 c.743 §432]

163.411 Sexual penetration with a foreign object in the first degree. (1) Except 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;

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

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

(2) Sexual penetration with a foreign object in the first degree is a Class A felony. [1981 c.549 §3; 1989 c.359 §6]

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 the per-

son 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) The person 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 the person 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 the person performs:

(a) An act of sexual intercourse; or

(b) An act of deviate sexual intercourse; or

(c) An act of exposing the genitals of the person with the intent of arousing the sexual desire of the person 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 [1979 c.706 §3; repealed by 1985 c.557 §10]

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

163.483 [1979 c.706 §2; 1983 c.740 §30; repealed by 1985 c.557 §10]

163.485 [1979 c.706 §4; repealed by 1985 c.557 §10]

163.490 [Repealed by 1971 c.743 §432]

163.495 [1979 c.706 §5; 1987 c.158 §25; 1987 c.864 §14; renumbered 163.676 in 1987]

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, stepchildren 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 the person 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 the person marries or en-

gages in sexual intercourse or deviate sexual intercourse with a person whom the person knows to be related to the person, 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, the person 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, the person 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, the person 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) Bongs;

(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.

163.605 [1971 c.743 §287; repealed by 1985 c.366 §1]

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]

VISUAL RECORDING OF SEXUAL CONDUCT BY CHILDREN

163.665 Definitions for ORS 163.670 to 163.690. As used in ORS 163.670 to 163.690, "sexually explicit conduct" means actual or simulated:

(1) Sexual intercourse or deviant sexual intercourse;

(2) Genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex or between humans and animals;

(3) Penetration of the vagina or rectum by any object;

(4) Masturbation;

(5) Sadistic or masochistic abuse; or

(6) Lewd exhibition of the genitals or anus. [1985 c.557 §2; 1987 c.864 §1]

163.670 Using child in display of sexually explicit conduct. (1) A person commits the crime of using a child in a display of sexually explicit conduct if the person employs, authorizes, permits, compels, and or induces a child under 18 years of age to participate or engage in sexually explicit conduct for any person to observe or to record in a photograph or other visual recording.

(2) Violation of subsection (1) of this section is a Class A felony. [1985 c.557 §3; 1987 c.864 §3]

163.673 Dealing in depictions of child's sexual conduct. (1) A person commits the crime of dealing in depictions of a child's sexual conduct if the person knowingly:

(a) Develops, duplicates, publishes, prints, disseminates, exchanges, displays, finances, attempts to finance, or sells any photograph or other visual recording that depicts a child under 18 years of age in an act of sexually explicit conduct; or

(b) Possesses such matter with the intent to develop, duplicate, publish, print, disseminate, exchange, display or sell it.

(2) Dealing in depictions of a child's sexual conduct is a Class B felony. [1987 c.864 §4]

163.675 [1985 c.557 §4; repealed by 1987 c.864 §15]

163.676 Exemption from prosecution under ORS 163.673. (1) No employee is liable to prosecution under ORS 163.673 or under any city or home rule county ordinance for exhibiting or possessing with intent to exhibit any obscene matter or performance provided the employee is acting within the scope of regular employment at a showing open to the public.

(2) As used in this section, "employee" 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. [Formerly 163.495]

163.677 Transporting child pornography into state. (1) A person commits the crime of transporting child pornography into Oregon if the person knowingly brings into this state, or causes to be brought or sent into this state, for sale or distribution, any photograph or other visual recording that depicts a child under 18 years of age engaged in sexually explicit conduct.

(2) Transporting pornographic material into Oregon is a Class B felony. [1987 c.864 §5]

163.680 Paying for viewing child's sexual conduct. (1) It is unlawful for any person to pay or give anything of value to observe sexually explicit conduct by a child known by the person to be under 18 years of age, or to pay or give anything of value to obtain or view a photograph, motion picture, videotape or other visual reproduction of sexually explicit conduct by a child under 18 years of age.

(2) Violation of subsection (1) of this section is a Class C felony. [1985 c.557 §5; 1987 c.158 §26, 1987 c.864 §9]

163.683 Defense to ORS 163.680. It is an affirmative defense in any prosecution under ORS 163.680 alleging the obtaining or viewing of a photograph, motion picture, videotape or other visual reproduction of sexually explicit conduct by a child that the production of the photograph, motion picture, videotape or other visual reproduction did not violate laws prohibiting production of such visual reproductions in the jurisdiction

where it was produced and that, if imported into the United States, was done so lawfully. [1987 c.864 §11]

163.685 Bona fide law enforcement or educational activities as defense. It is a defense to any prosecution under ORS 163.670 that the sexually explicit conduct involved was defined in ORS 163.665 (3) and was a legitimate medical procedure for the purpose of medical diagnosis or treatment. It is a defense to any prosecution under ORS 163.673 and 163.677 or 163.680 that the defendant, at the time of engaging in the conduct prohibited therein, did so in the course of bona fide law enforcement activities or in the course of bona fide educational activities, including, but not limited to, studies and lectures in the field of medicine, psychotherapy, sociology or criminology, or for bona fide treatment of sexual offenders. ORS 163.670 does not prohibit the photographing or other visual recording of accepted medical procedures for purposes of diagnosis, treatment or medical education. ORS 163.680 does not prohibit the observing of sexually explicit conduct of a child, or the obtaining or viewing of a photograph or other visual recording of sexual conduct of a child, when the observing, obtaining or viewing is done in the course of bona fide law enforcement activity, or other activity necessary to the proper functioning of the criminal justice system, or when done as a part of a bona fide treatment program for sexual offenders. [1985 c.557 §6; 1987 c.864 §12]

163.690 Lack of knowledge of age of child as affirmative defense. It is an affirmative defense to any prosecution under ORS 163.673, 163.677 and 163.693 or ORS 163.680 that the defendant, at the time of engaging in the conduct prohibited therein, did not know and did not have reason to know that the relevant sexually explicit conduct was that of a child under 18 years of age. [1985 c.557 §7; 1987 c.864 §13]

163.693 Failure to report child pornography. (1) A person commits the crime of failure to report child pornography if the person, in the course of processing or producing a photograph or other visual recording, either commercially or privately, has reasonable cause to believe that the photograph or other visual recording being processed or produced, or submitted for processing or production, depicts a child under 18 years of age engaged in sexually ex-

PLICIT CONDUCT, fails to report that fact to the appropriate law enforcement agency.

(2) Failure to report child pornography is a Class A misdemeanor. [1987 c.864 §7]

Note: 163.693 and 163.695 were enacted into law by the Legislative Assembly but were 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.

163.695 Forfeiture of materials and conveyances. (1) The following materials shall be forfeited to the state in the same manner and with like effect as provided in ORS 471.660 and 471.665:

(a) All visual or printed matter that depicts a child under 18 years of age engaged in sexually explicit conduct.

(b) All raw materials, equipment and other tangible personal property of any kind used or intended to be used to manufacture or process any visual or printed matter that depicts a child under 18 years of age engaged in sexually explicit conduct.

(c) All conveyances, including aircraft, boats, vehicles or vessels that are used or intended to be used by or with the knowledge of the owner, operator or person in charge thereof to transport or in any way to facilitate the transportation of visual or printed matter dealt with, transported or possessed in violation of ORS 163.673 and 163.677.

(2) 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 the violation of ORS 163.673 and 163.677. [1987 c.864 §8]

Note: See note under 163.693.

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 employee 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]

CRIMES AND PUNISHMENTS
