

# House Bill 3439

Sponsored by COMMITTEE ON JUDICIARY

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Increases penalty for crime of strangulation when committed knowing victim was pregnant. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both.

Expands types of previous convictions that elevate crime of assault in the fourth degree to Class C felony in certain circumstances to include other degrees of assault, strangulation and menacing.

Provides that child who witnesses assault or strangulation is victim for purposes of determining separately punishable offenses.

Provides that release decision for defendant charged with sex crime or crime constituting domestic violence must include order prohibiting attempted contact with victim and third-party contact with victim while defendant is in custody.

Modifies definition of "physical injury" for purposes of Oregon Criminal Code.

Provides that for two or more domestic violence or abuse offenses between same victim and defendant, trial may take place in any county in which one offense was committed.

Adds threatening to cause physical injury to animal to induce other person to engage in conduct as manner of committing crime of coercion.

Directs Oregon Criminal Justice Commission to classify certain retraining order violations as person Class A misdemeanors for purposes of sentencing guidelines.

Provides that certain translated witness statements in criminal matter are not hearsay. Specifies process to challenge competency of translation.

Appropriates moneys from General Fund to \_\_\_\_\_ for expenses related to domestic violence.

## A BILL FOR AN ACT

1  
2 Relating to crime; creating new provisions; and amending ORS 40.450, 131.315, 135.247, 161.015,  
3 163.160, 163.187 and 163.275.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 163.187 is amended to read:

6 163.187. (1) A person commits the crime of strangulation if the person knowingly impedes the  
7 normal breathing or circulation of the blood of another person by:

8 (a) Applying pressure on the throat or neck of the other person; or

9 (b) Blocking the nose or mouth of the other person.

10 (2) Subsection (1) of this section does not apply to legitimate medical or dental procedures or  
11 good faith practices of a religious belief.

12 (3) Strangulation is a Class A misdemeanor.

13 (4) Notwithstanding subsection (3) of this section, strangulation is a Class C felony if:

14 (a) The crime is committed in the immediate presence of, or is witnessed by, the person's or the  
15 victim's minor child or stepchild or a minor child residing within the household of the person or the  
16 victim;

17 (b) The victim is under 10 years of age;

18 (c) During the commission of the crime, the person used, attempted to use or threatened to use  
19 a dangerous or deadly weapon, as those terms are defined in ORS 161.015, unlawfully against an-  
20 other;

21 *[(d) The person has been previously convicted of violating this section or of committing an equiv-*

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 *alent crime in another jurisdiction;]*

2 [(e)] (d) The person has been previously convicted of violating **this section or** ORS 163.160,  
 3 163.165, 163.175, 163.185 or 163.190, or of committing an equivalent crime in another jurisdiction,  
 4 and the victim in the previous conviction is the same person who is the victim of the current crime;  
 5 [or]

6 [(f)] (e) The person has at least three previous convictions [*of any combination of*] **for violating**  
 7 **this section or** ORS 163.160, 163.165, 163.175, 163.185 or 163.190 or [*of*] **for committing an** equiv-  
 8 alent [*crimes in other jurisdictions.*] **crime in another jurisdiction, in any combination; or**

9 **(f) The person commits the strangulation knowing that the victim is pregnant.**

10 (5) For purposes of subsection (4)(a) of this section, a strangulation is witnessed if the  
 11 strangulation is seen or directly perceived in any other manner by the child.

12 **(6) A child who witnesses a strangulation or in whose immediate presence a strangulation**  
 13 **is committed as described in subsection (4)(a) of this section is a victim for the purposes of**  
 14 **determining separately punishable offenses under ORS 161.067 (2).**

15 **SECTION 2.** ORS 163.160 is amended to read:

16 163.160. (1) A person commits the crime of assault in the fourth degree if the person:

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

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

19 (2) Assault in the fourth degree is a Class A misdemeanor.

20 (3) Notwithstanding subsection (2) of this section, assault in the fourth degree is a Class C fel-  
 21 ony if the person commits the crime of assault in the fourth degree and:

22 [(a) *The person has previously been convicted of assaulting the same victim;*]

23 [(b) *The person has previously been convicted at least three times under this section or under*  
 24 *equivalent laws of another jurisdiction and all of the assaults involved domestic violence, as defined*  
 25 *in ORS 135.230;*]

26 [(c)] (a) The assault is committed in the immediate presence of, or is witnessed by, the person's  
 27 or the victim's minor child or stepchild or a minor child residing within the household of the person  
 28 or victim; [or]

29 **(b) The person has been previously convicted of violating this section or ORS 163.165,**  
 30 **163.175, 163.185, 163.187 or 163.190, or of committing an equivalent crime in another jurisdic-**  
 31 **tion, and the victim in the previous conviction is the same person who is the victim of the**  
 32 **current crime;**

33 **(c) The person has at least three previous convictions for violating this section or ORS**  
 34 **163.165, 163.175, 163.185, 163.187 or 163.190 or for committing an equivalent crime in another**  
 35 **jurisdiction, in any combination; or**

36 (d) The person commits the assault knowing that the victim is pregnant.

37 (4) For the purposes of subsection (3) of this section, an assault is witnessed if the assault is  
 38 seen or directly perceived in any other manner by the child.

39 **(5) A child who witnesses an assault or in whose immediate presence an assault is com-**  
 40 **mitted as described in subsection (3)(a) of this section is a victim for the purposes of deter-**  
 41 **mining separately punishable offenses under ORS 161.067 (2).**

42 **SECTION 3.** ORS 135.247 is amended to read:

43 135.247. (1) When a release assistance officer or a release assistance deputy makes a release  
 44 decision under ORS 135.235 involving a defendant charged with a sex crime or a crime constituting  
 45 domestic violence, the release assistance officer or deputy shall include in the decision an order that

1 the defendant be prohibited from contacting **or attempting to contact** the victim, **either directly**  
 2 **or through a third party**, while the defendant is in custody. The release assistance officer or  
 3 deputy shall provide the defendant with a written copy of the order.

4 (2) When a defendant who is charged with a sex crime or a crime that constitutes domestic vi-  
 5 olence is arraigned, the court shall enter an order continuing an order issued under subsection (1)  
 6 of this section or, if no such order has been entered, enter an order prohibiting the defendant from  
 7 contacting **or attempting to contact** the victim, **either directly or through a third party**, while  
 8 the defendant is in custody.

9 (3) Except as provided in subsection (4) of this section, an order described in subsection (1) or  
 10 (2) of this section:

11 (a) Shall apply at any time during which the defendant is held in custody on the charge; and

12 (b) Shall remain valid until the defendant is sentenced for the crime, the charge is dismissed or  
 13 the defendant is acquitted of the crime.

14 (4) Upon petition of the victim, the court may enter an order terminating an order entered under  
 15 subsection (1) or (2) of this section if the court finds, after a hearing on the petition, that termi-  
 16 nating the order is in the best interests of the parties and the community.

17 (5) As used in this section:

18 (a) “Domestic violence” has the meaning given that term in ORS 135.230.

19 (b) “Sex crime” has the meaning given that term in ORS 181.805.

20 **SECTION 4.** ORS 161.015 is amended to read:

21 161.015. As used in chapter 743, Oregon Laws 1971, and ORS 166.635, unless the context requires  
 22 otherwise:

23 (1) “Dangerous weapon” means any weapon, device, instrument, material or substance which  
 24 under the circumstances in which it is used, attempted to be used or threatened to be used, is  
 25 readily capable of causing death or serious physical injury.

26 (2) “Deadly weapon” means any instrument, article or substance specifically designed for and  
 27 presently capable of causing death or serious physical injury.

28 (3) “Deadly physical force” means physical force that under the circumstances in which it is  
 29 used is readily capable of causing death or serious physical injury.

30 (4) “Peace officer” means:

31 (a) A member of the Oregon State Police;

32 (b) A sheriff, constable, marshal, municipal police officer or reserve officer as defined in ORS  
 33 133.005, or a police officer commissioned by a university under ORS 352.383 or 353.125;

34 (c) An investigator of the Criminal Justice Division of the Department of Justice or investigator  
 35 of a district attorney’s office;

36 (d) A humane special agent as defined in ORS 181.435;

37 (e) A liquor enforcement inspector exercising authority described in ORS 471.775 (2);

38 (f) An authorized tribal police officer as defined in section 1, chapter 644, Oregon Laws 2011;  
 39 and

40 (g) Any other person designated by law as a peace officer.

41 (5) “Person” means a human being and, where appropriate, a public or private corporation, an  
 42 unincorporated association, a partnership, a government or a governmental instrumentality.

43 (6) “Physical force” includes, but is not limited to, the use of an electrical stun gun, tear gas  
 44 or mace.

45 (7) “Physical injury” means **physical trauma**, impairment of physical condition or substantial

1 pain.

2 **(8) “Physical trauma” includes but is not limited to fractures, cuts, punctures, bruises,**  
 3 **discoloration, burns, swelling and other wounds, that a reasonable person could conclude**  
 4 **cause impairment of physical condition or substantial pain.**

5 [(8)] (9) “Serious physical injury” means physical injury which creates a substantial risk of  
 6 death or which causes serious and protracted disfigurement, protracted impairment of health or  
 7 protracted loss or impairment of the function of any bodily organ.

8 [(9)] (10) “Possess” means to have physical possession or otherwise to exercise dominion or  
 9 control over property.

10 [(10)] (11) “Public place” means a place to which the general public has access and includes,  
 11 but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not consti-  
 12 tuting rooms or apartments designed for actual residence, and highways, streets, schools, places of  
 13 amusement, parks, playgrounds and premises used in connection with public passenger transporta-  
 14 tion.

15 **SECTION 5.** ORS 161.015, as amended by section 46, chapter 644, Oregon Laws 2011, section  
 16 17, chapter 54, Oregon Laws 2012, section 10, chapter 67, Oregon Laws 2012, and section 24, chapter  
 17 180, Oregon Laws 2013, is amended to read:

18 161.015. As used in chapter 743, Oregon Laws 1971, and ORS 166.635, unless the context requires  
 19 otherwise:

20 (1) “Dangerous weapon” means any weapon, device, instrument, material or substance which  
 21 under the circumstances in which it is used, attempted to be used or threatened to be used, is  
 22 readily capable of causing death or serious physical injury.

23 (2) “Deadly weapon” means any instrument, article or substance specifically designed for and  
 24 presently capable of causing death or serious physical injury.

25 (3) “Deadly physical force” means physical force that under the circumstances in which it is  
 26 used is readily capable of causing death or serious physical injury.

27 (4) “Peace officer” means:

28 (a) A member of the Oregon State Police;

29 (b) A sheriff, constable, marshal, municipal police officer or reserve officer as defined in ORS  
 30 133.005, or a police officer commissioned by a university under ORS 352.383 or 353.125;

31 (c) An investigator of the Criminal Justice Division of the Department of Justice or investigator  
 32 of a district attorney’s office;

33 (d) A humane special agent as defined in ORS 181.435;

34 (e) A liquor enforcement inspector exercising authority described in ORS 471.775 (2); and

35 (f) Any other person designated by law as a peace officer.

36 (5) “Person” means a human being and, where appropriate, a public or private corporation, an  
 37 unincorporated association, a partnership, a government or a governmental instrumentality.

38 (6) “Physical force” includes, but is not limited to, the use of an electrical stun gun, tear gas  
 39 or mace.

40 (7) “Physical injury” means **physical trauma**, impairment of physical condition or substantial  
 41 pain.

42 **(8) “Physical trauma” includes but is not limited to fractures, cuts, punctures, bruises,**  
 43 **discoloration, burns, swelling and other wounds, that a reasonable person could conclude**  
 44 **cause impairment of physical condition or substantial pain.**

45 [(8)] (9) “Serious physical injury” means physical injury which creates a substantial risk of

1 death or which causes serious and protracted disfigurement, protracted impairment of health or  
 2 protracted loss or impairment of the function of any bodily organ.

3 [(9)] (10) "Possess" means to have physical possession or otherwise to exercise dominion or  
 4 control over property.

5 [(10)] (11) "Public place" means a place to which the general public has access and includes,  
 6 but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not consti-  
 7 tuting rooms or apartments designed for actual residence, and highways, streets, schools, places of  
 8 amusement, parks, playgrounds and premises used in connection with public passenger transporta-  
 9 tion.

10 **SECTION 6.** ORS 131.315 is amended to read:

11 131.315. (1) If conduct constituting elements of an offense or results constituting elements of an  
 12 offense occur in two or more counties, trial of the offense may be held in any of the counties con-  
 13 cerned.

14 (2) If a cause of death is inflicted on a person in one county and the person dies therefrom in  
 15 another county, trial of the offense may be held in either county.

16 (3) If the commission of an offense commenced outside this state is consummated within this  
 17 state, trial of the offense shall be held in the county in which the offense is consummated or the  
 18 interest protected by the criminal statute in question is impaired.

19 (4) If an offense is committed on any body of water located in, or adjacent to, two or more  
 20 counties or forming the boundary between two or more counties, trial of the offense may be held in  
 21 any nearby county bordering on the body of water.

22 (5) If an offense is committed in or upon any railroad car, vehicle, aircraft, boat or other  
 23 conveyance in transit and it cannot readily be determined in which county the offense was com-  
 24 mitted, trial of the offense may be held in any county through or over which the conveyance passed.

25 (6) If an offense is committed on the boundary of two or more counties or within one mile  
 26 thereof, trial of the offense may be held in any of the counties concerned.

27 (7) A person who commits theft, burglary or robbery may be tried in any county in which the  
 28 person exerts control over the property that is the subject of the crime.

29 (8) If the offense is an attempt or solicitation to commit a crime, trial of the offense may be held  
 30 in any county in which any act that is an element of the offense is committed.

31 (9) If the offense is criminal conspiracy, trial of the offense may be held in any county in which  
 32 any act or agreement that is an element of the offense occurs.

33 (10) A person who in one county commits an inchoate offense that results in the commission of  
 34 an offense by another person in another county, or who commits the crime of hindering prosecution  
 35 of the principal offense, may be tried in either county.

36 (11) A criminal nonsupport action may be tried in any county in which the dependent child is  
 37 found, irrespective of the domicile of the parent, guardian or other person lawfully charged with  
 38 support of the child.

39 (12) If the offense is theft, forgery or identity theft and the offense consists of an aggregate  
 40 transaction involving more than one county, trial of the offense may be held in any county in which  
 41 one of the acts of theft, forgery or identity theft was committed.

42 (13) When a prosecution is for violation of the Oregon Securities Law, the trial of the offense  
 43 may be held in the county in which:

44 (a) The offer to purchase or sell securities took place or where the sale or purchase of securities  
 45 took place; or

1 (b) Any act that is an element of the offense occurred.

2 (14) When a prosecution under ORS 165.692 and 165.990 or 411.675 and 411.990 (2) and (3) in-  
3 volves Medicaid funds, the trial of the offense may be held in the county in which the claim was  
4 submitted for payment or in the county in which the claim was paid.

5 (15)(a) If the offense is stalking under ORS 163.732 and involves contacts as defined in ORS  
6 163.730 in more than one county, trial of the offense may be held in any county in which a contact  
7 occurred.

8 (b) If the offense is violating a court's stalking protective order under ORS 163.750, trial of the  
9 offense may be held in the county in which the defendant engaged in conduct prohibited by the order  
10 or in the county in which the order was issued.

11 **(16) If there are two or more offenses involving domestic violence as defined in ORS**  
12 **135.230, abuse as defined in ORS 107.705 or 419B.005 or abuse of an elderly person as those**  
13 **terms are defined in ORS 124.050, and each offense is alleged to have occurred between the**  
14 **same defendant and victim and could otherwise be properly joined under ORS 132.560, trial**  
15 **of the offenses may be held in any county in which one of the offenses was committed.**

16 **SECTION 7.** ORS 163.275 is amended to read:

17 163.275. (1) A person commits the crime of coercion when the person compels or induces another  
18 person to engage in conduct from which the other person has a legal right to abstain, or to abstain  
19 from engaging in conduct in which the other person has a legal right to engage, by means of in-  
20 stilling in the other person a fear that, if the other person refrains from the conduct compelled or  
21 induced or engages in conduct contrary to the compulsion or inducement, the actor or another will:

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

23 **(b) Unlawfully cause physical injury to some animal;**

24 [(b)] (c) Unlawfully cause damage to property;

25 [(c)] (d) Engage in conduct constituting a crime;

26 [(d)] (e) Falsely accuse some person of a crime or cause criminal charges to be instituted against  
27 the person;

28 [(e)] (f) Cause or continue a strike, boycott or other collective action injurious to some person's  
29 business, except that such a threat is not deemed coercive when the act or omission compelled is  
30 for the benefit of the group in whose interest the actor purports to act;

31 [(f)] (g) Testify falsely or provide false information or withhold testimony or information with  
32 respect to another's legal claim or defense; or

33 [(g)] (h) Unlawfully use or abuse the person's position as a public servant by performing some  
34 act within or related to official duties, or by failing or refusing to perform an official duty, in such  
35 manner as to affect some person adversely.

36 (2) Coercion is a Class C felony.

37 **SECTION 8. The Oregon Criminal Justice Commission shall classify contempt of court**  
38 **for violating a restraining order issued under ORS 107.700 to 107.735 that was proven beyond**  
39 **a reasonable doubt as a person Class A misdemeanor under the rules of the commission.**

40 **SECTION 9.** ORS 40.450 is amended to read:

41 40.450. As used in ORS 40.450 to 40.475, unless the context requires otherwise:

42 (1) A "statement" is:

43 (a) An oral or written assertion; or

44 (b) Nonverbal conduct of a person, if intended as an assertion.

45 (2) A "declarant" is a person who makes a statement.

1 (3) "Hearsay" is a statement, other than one made by the declarant while testifying at the trial  
2 or hearing, offered in evidence to prove the truth of the matter asserted.

3 (4) A statement is not hearsay if:

4 (a) The declarant testifies at the trial or hearing and is subject to cross-examination concerning  
5 the statement, and the statement is:

6 (A) Inconsistent with the testimony of the witness and was given under oath subject to the  
7 penalty of perjury at a trial, hearing or other proceeding, or in a deposition;

8 (B) Consistent with the testimony of the witness and is offered to rebut an inconsistent state-  
9 ment or an express or implied charge against the witness of recent fabrication or improper influence  
10 or motive; or

11 (C) One of identification of a person made after perceiving the person.

12 (b) The statement is offered against a party and is:

13 (A) That party's own statement, in either an individual or a representative capacity;

14 (B) A statement of which the party has manifested the party's adoption or belief in its truth;

15 (C) A statement by a person authorized by the party to make a statement concerning the sub-  
16 ject;

17 (D) A statement by the party's agent or servant concerning a matter within the scope of the  
18 agency or employment, made during the existence of the relationship; or

19 (E) A statement by a coconspirator of a party during the course and in furtherance of the con-  
20 spiracy.

21 (c) The statement is made in a deposition taken in the same proceeding pursuant to ORCP 39  
22 I.

23 **(d) The statement is an English translation of another statement in a foreign language**  
24 **made by a witness in a criminal matter and the declarant is an interpreter, provided that the**  
25 **original foreign language statement is otherwise admissible.**

26 **SECTION 10. Section 11 of this 2015 Act is added to and made a part of ORS 40.450 to**  
27 **40.475.**

28 **SECTION 11. (1) A defendant in a criminal proceeding may file written notice challenging**  
29 **the competency of the English translation of an original foreign language statement that is**  
30 **otherwise admissible under ORS 40.450 (4)(d) at least 15 days before trial. The defendant shall**  
31 **serve a copy of the notice on the district attorney.**

32 **(2) Upon receiving the written notice described in subsection (1) of this section, the court**  
33 **shall hold a hearing prior to the trial on the issue of the competency of the translation of**  
34 **the original foreign language statement. If the translated statement is an audio recording**  
35 **or in writing, the court shall determine competency without requiring the attendance of the**  
36 **interpreter at the hearing.**

37 **(3) If the court finds, at a hearing under this section, that the translation of the original**  
38 **foreign language statement is competent, the translated statement is authenticated for the**  
39 **purposes of ORS 40.505.**

40 **SECTION 12. In addition to and not in lieu of any other appropriation, there is appro-**  
41 **priated to \_\_\_\_\_, for the biennium beginning July 1, 2015, out of the General Fund, the**  
42 **amount of \$\_\_\_\_\_, which shall be used for the purposes of funding services for victims of**  
43 **domestic violence, enforcing laws related to domestic violence and providing training on do-**  
44 **mestic violence issues.**