

New Criminal Laws **Passed in the 2013 Session**

summarized by:
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Table of Contents:

Sentencing

- [SB 39](#) - Allows a Stay of Sentence Pending Appeal - p. 2
- [HB 3277](#) - The DA Automatically Has 90 Days to Present Restitution - p. 3
- [SB 124](#) - Being a Veteran is a New Mitigation Factor - p. 3

Sex Offenses

- [HB 2549](#) - Creates Tiers for Sex Offender Registration - p. 3
- [SB 673](#) - Expands Scope of “Trafficking in Persons” - p. 4
- [HB 3327](#) - A Narrow Range of Sex Cases May Now Be Expunged - p. 5
- [HB 3253](#) - Sex Offenders Must Register Even If It Wasn’t a Crime in Oregon - p. 5
- [SB 30](#) - Authorizes Court to Designate Luring As a Sex Offense - p. 5
- [HB 2334](#) - Adds Attempted Prostitution to Compelling Prostitution - p. 5

Driving

- [HB 2384](#) - Authorizes forfeiture of car for DWS - p. 5
- [SB 82](#) - License Suspension for Poss. Mj < oz. Is Eliminated - p. 6
- [HB 3047](#) - Extends Max Suspension to 20 Years for Not Paying a Traffic Fine - p. 6
- [HB 2773](#) - Narrows Definition of Prior Diversion for DUII Diversion - p. 6
- [HB 2116](#) - New Medical Exemption for Ignition Interlock - p. 7
- [SB 444](#) - New Offense: Smoking in a Motor Vehicle With a Minor Present - p. 7

Drug Offenses

- [HB 2554](#) - Diversion for Unlawful Possession of Prescription Drugs - p. 8
- [HB 3434](#) - Drug Offenses: 1000 Feet Is Measured As a Straight Line - p. 8
- [SB 40](#) - Changes Marijuana Crimes. Adds Possession of Marijuana Product - p. 8

Miscellaneous Crimes

- [SB 482](#) - Adds Spitting at an Officer to Agg Harassment - p. 9
- [SB 834](#) - Initiating a False Report is Now an A Misdemeanor - p. 9
- [SB 6](#) - Increases Punishment for Animal Abuse - p. 9
- [HB 2783](#) - New Offense of Unlawful Tethering - p. 10

Victims Rights

[HB 3281](#) - Investigators Have a Duty to Give Victims' Rights - p. 10

Mental Health

[HB 2594](#) - "Assisted Outpatient Treatment" as Alternative to Commitment - p. 11

[SB 421](#) - Civil Commitment to the PSRB for the Extremely Dangerous - p. 11

[HB 2836](#) - New Standards for Evaluating Juvenile Competency - p. 12

Miscellaneous

[HB 3194](#) - Criminal Justice "Reform" - p. 13

[SB 492](#) - Discovery Statutes Are Made Consistent With the Constitution - p. 14

[HB 2962](#) - Repeals speedy trial statute as of April, 2014. - p. 15

[HB 3467](#) - Mugshot Websites Must Remove Dismissed/Expunged Cases - p. 15

[HB 2553](#) - Max Period From Arraignment to Prelim is Five Judicial Days - p. 15

The New Laws

SB 39 - Allows a Stay of Sentence Pending Appeal

A justice, municipal, or circuit court **may enter an order in a criminal action staying execution of a sentence**, or a portion of a sentence, pending the resolution on appeal.

In determining whether to enter an order staying execution of the sentence, **the trial court shall consider the following factors:**

- (a) The nature of the offense;
- (b) The severity of the sentence;
- (c) The health of the defendant;
- (d) The character and strength of the evidence;
- (e) The defendant's criminal history;
- (f) If the sentence includes a term of incarceration, the likelihood that the defendant will:
 - (A) Appear in court at appropriate times;
 - (B) Comply with conditions of release;
 - (C) Complete, or substantially complete, serving the term of incarceration before the appeal is decided;
- (g) The likelihood that the appellate court will reverse the sentence or judgement of conviction;
- (h) If an appellate court has issued a judgement reversing the sentence, or a portion thereof:

- (A) Whether the reversal or any other relief described in the appellate decision will result in the defendant having completed serving the term of incarceration imposed; and
- (B) Whether the appellate decision remands the case for a new trial.

If the court issues an order staying a term of incarceration, the court may impose conditions to ensure that the sentence, if still appropriate, is served after the appellate case resolves.

Effective January 1, 2014.

[HB 3277](#) - **The DA Automatically Has 90 Days to Present Restitution Information**

The time a DA has to present restitution information to the court is extended from “prior to sentencing” to “within 90 days after entry of judgment”. Also, the court may impose less than the full economic damages as restitution only with consent from the victim; the consent must be written for a C felony. ORS 137.106

Effective immediately.

[SB 124](#) - **Being a Veteran is a New Mitigation Factor**

See [this article](#) by Jess Barton, one of the authors of this bill. ORS 137.090(2) is modified to read: “In determining mitigation, the court may consider evidence regarding the defendant’s status as a servicemember.”

Effectively immediately.

[HB 2549](#) - **Creates Tiers for Sex Offender Registration, Depending on Risk**

The Department of Corrections shall **adopt a sex offender risk assessment tool for use in classifying sex offenders** based on the likelihood that the person will reoffend. Each sex offender will be classified as level 1, 2 or 3, with level 1 representing the lowest risk of reoffending and level 3 the highest and requiring the widest range of notification.

A person required to report as a sex offender is classified as level 3 unless:

- (a) Following risk assessment the person is classified as level 1 or 2; or
 - (b) After filing a petition, the person is reclassified as a level 2.
- (2) A person who is a sexually violent dangerous offender:
- (a) Must be classified as a level 3 sex offender; and
 - (b) Is not eligible for relief from the obligation to report as a sex offender or reclassification as a level 2 offender.

A level 1 or 2 sex offender may petition for relief from reporting. The Board shall relieve the person of the obligation to report if the Board determines that the person is unlikely to commit another sex crime. A person is not eligible for relief if there is a conviction for a person felony or A misdemeanor since the time of the sex crime conviction.

No later than December 1, 2016, existing registrants shall be reclassified (those for whom the sex offense occurs before January 1, 2014).

(b) The Board shall classify an existing registrant as a level 3 sex offender if:

(A) The person was previously designated a predatory sex offender; or

(B) The person is a sexually violent dangerous offender under 137.765.

Effective immediately, pending governor's signature.

[SB 673](#) - Expands Scope of "Trafficking in Persons"

Trafficking in persons, ORS 163.266, is expanded to apply to a person who knowingly recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, or obtain by any means, another person and:

(a) The person **knows or recklessly disregards the fact that force, fraud, or coercion will be used** to cause the other person to engage in a commercial sex act.

(b) The person **knows or recklessly disregards the fact that the other person is under 15** years of age and will be used in a commercial sex act.

"Commercial sex act" means sexual conduct or sexual contact, as defined in ORS 167.002, performed in return for a fee or anything of value.

Effective immediately, pending governor's signature.

[HB 3327](#) - A Narrow Range of Sex Cases May Now Be Expunged

See [this article](#). ORS 137.225, ORS 419A.262

Effective immediately.

[HB 3253](#) - Sex Offenders Must Register Even If It Wasn't a Crime in Oregon.

A person required to register as a sex offender in the state where the conviction occurred must now register in Oregon; “regardless of whether the crime would constitute a sex crime in this state”. ORS 181.594

Effective immediately.

[SB 30](#) - **Authorizes Court to Designate Luring As a Sex Offense**

A court may designate a conviction for Luring a Minor in ORS 167.057 as a registerable sex offense if (1) the offender reasonably believed the victim to be more than 5 years younger or under 16 years old; and (2) registration is necessary for the safety of the community.

Effective immediately.

[HB 2334](#) - **Adds Attempted Prostitution to Compelling Prostitution**

Compelling prostitution now includes compelling *attempted* prostitution; as well as aiding or facilitating *attempted* prostitution by a person under 18. ORS 167.017

Effective immediately.

[HB 2384](#) - **Authorizes forfeiture of car for DWS**

SECTION 2:

(1) **A vehicle may be seized for forfeiture if the person operating the motor vehicle is arrested or issued a citation for criminal driving while suspended or revoked** under ORS 811.182 or aggravated driving while suspended or revoked under ORS 163.196, and the person, within 3 years prior to the arrest or issuance of the citation, has been convicted of:

- (a) Criminal driving while suspended or revoked under ORS 811.182; or
- (b) Aggravated driving while suspended or revoked under ORS 163.196;

(2) All seizure and forfeiture proceedings under this section shall be conducted in accordance with ORS chapter 131A

SECTION 3:

A law enforcement agency, as defined in ORS 136.595, may not seize a vehicle for

forfeiture under ORS 131.602 (132) or (133) or section 2 of this 2013 Act, unless the agency has adopted policies and procedures for seizure, including policies relating to when a police officer may seize a motor vehicle for forfeiture under ORS 131.602 (132) or (133) or section 2 of this 2013 Act.

Effective January 1, 2014.

[SB 82](#) - License Suspension for Poss. Mj < oz Is Eliminated

A license suspension may no longer be imposed for possession of less than an ounce of marijuana unless:

- (1) The person is under 18
- (2) The judge decides it's necessary for the safety of the community. ORS 809.265

Effective immediately.

[HB 3047](#) - Extends Max Suspension to 20 Years for Not Paying a Traffic Fine

The maximum period of suspension for failure to pay fines for a traffic offense is extended from 10 to 20 years. The suspension ends prior to the 20 year max when the person presents evidence to the DMV that the fine has been paid. ORS 809.415 and ORS 809.416(2)

Effective immediately.

[HB 2773](#) - Narrows Definition of Prior Diversion for DUI Diversion

Amends the DUI diversion statute to allow diversion when there has been prior treatment or diversion for an MIP or possession of less than an ounce of marijuana. Applies to DUI diversion petitions filed after 1-1-14.

“A defendant is not ineligible for diversion under this paragraph by reason of participation in a diversion program or any similar alcohol or drug rehabilitation program as a result of the charge for the present offense, a charge for violation of ORS 471.430 or a charge for violation of ORS 475.864 (3).”

Effective January 1, 2014.

[HB 2116](#) - New Medical Exemption for Ignition Interlock

Added to ORS 813.602(3): “A court may exempt a person from the condition in a diversion agreement to install and use an ignition interlock device if the court determines that the person meets the requirements for a medical exemption in accordance with rules adopted by the department under this section. A person granted a medical exemption under this paragraph shall carry proof of the medical exemption with the person while operating any vehicle.”

Effective January 1, 2014.

[SB 444](#) - **New Offense: Smoking in a Motor Vehicle With a Minor Present**

Added to the Oregon Vehicle Code:

A person commits the offense of smoking in a motor vehicle **if the person smokes in a motor vehicle while a person under 18 years of age is in the motor vehicle.**

“Smokes” means to inhale, exhale, burn or carry a lighted cigarette, cigar, pipe, weed, plant, regulated narcotic or other combustible substance.

A police officer **may enforce this section only if the police officer has already stopped and detained the driver** operating the motor vehicle for a separate traffic violation or other offense.

Smoking in a motor vehicle is a **Class D traffic violation for the first offense**, and a **Class C traffic violation for a second** or subsequent offense.

Effective January 1, 2013.

[HB 2554](#) - **Diversion for Unlawful Possession of Prescription Drugs**

Unlawful possession of a prescription drug is now included in the list of offenses for which DA diversion is available, effective immediately. ORS 475.245
Effective immediately.

[HB 3434](#) - **1000 Feet Is Measured As a Straight Line**

For the purposes of the drug statutes (within a 1000 feet of a school, etc.), 1000 feet is “a straight line measurement in a radius extending for 1,000 feet or less in every direction

from a specified location or from any point on the boundary line of a specified unit of property.” ORS 430.590, ORS 475.005

Effective January 1, 2014.

[SB 40](#) - **Changes Marijuana Crimes. Adds Possession of Marijuana Product.**

Manufacture of marijuana is now a Class B felony. ORS 475.856

It is unlawful for any person knowingly or intelligently to possess marijuana or **marijuana product**.

- Unlawful possession of four ounces or more is a Class C felony.
- Unlawful possession of one ounce or more, but less than four ounces, is a Class B misdemeanor.
- Unlawful possession of less than one ounce is a specific fine violation with a presumptive fine of \$650.

The crime of possession of less than one ounce of marijuana within 1000 feet a school is deleted.

There is a new crime of **possession of marijuana product**. Marijuana product has the meaning given the term “marijuana” in ORS 475.005 (16), but does not include the leaves, stems and flowers.

- Unlawful possession of **one-quarter ounce or more of marijuana product is a Class C felony.**
- Unlawful possession of **less than one-quarter ounce of marijuana product is a Class B misdemeanor.**

Effective immediately.

[SB 482](#) - **Adds Spitting at an Officer to Agg Harassment**

It is a C felony aggravated harassment to spit at a public safety officer, assuming the spit makes contact with the officer. ORS 166.070.

Effective immediately.

[SB 834](#) - **Initiating a False Report is Now an A Misdemeanor**

Initiating a false report, ORS 162.375, is raised from a C misdemeanor to an A misdemeanor. Also, the court is now required to order repayment of the costs incurred in responding to and investigating the false report.

Effectively immediately.

SB 6 - Increases Punishment for Animal Abuse

Animal Abuse I is a level 7, C felony if the defendant (1) has previously been convicted of Animal Abuse or an equivalent offense; (2) the abuse occurred in front of a minor child; or (3) the abuse involved 40 or more animals. It is a level 6, C felony if the abuse involved more than 9 animals and none of the conditions above apply.

Animal Abuse II is a level 7, C felony if the defendant (1) has twice previously been convicted of Animal Abuse or equivalent offenses; (2) the abuse occurred in front of a minor child and the defendant has previously been convicted of a crime of domestic violence; or (3) the abuse involved 40 or more animals. It is a level 6, C felony if the abuse involved more than 10 animals and none of the conditions above apply.

Also, new procedures and rules are set up for impounding and forfeiting a defendant's animals prior to trial and barring a person from possessing animals after trial.

Effective immediately.

HB 2783 - New Offense of Unlawful Tethering

Unlawful tethering is a **Class B violation**.

A person commits unlawful tethering if the person **tethers a domestic animal in the person's custody or control**:

- (a) With a tether that is not a reasonable length given the size of the animal and the available space and that allows the domestic animal to become entangled in a manner that risks its health or safety;
- (b) With a collar that pinches or chokes the domestic animal when pulled;
- (c) For more than 10 hours in a 24 hour period; or
- (d) For more than 15 hours in a 24 hour period if the tether is attached to a running line, pulley or trolley system.

It is **not unlawful to tether a domestic animal if**: the animal is in the presence of the

person in control of the animal; pursuant to the requirements of a recreational area; for the purpose of engaging in an activity requiring licensure (i.e. hunting); for transportation purposes; or if the animal is kept for herding, protecting livestock, or dogsledding. ORS 167.310 - ORS 167.351

Animal neglect in the first degree under ORS 167.330 includes tethering a domestic animal in the person's custody or control if the tethering results in serious physical injury or death (Class A misdemeanor).

Animal neglect in the second degree under 167.325 includes tethering a domestic animal in the person's custody or control if the tethering results in physical injury (Class B misdemeanor).

The bill also amends the definitions of "adequate bedding" and "adequate shelter" under ORS 167.310.

Effective January 1, 2014.

[HB 3281](#) - **Investigators Have a Duty to Give Victims' Rights**

In response to Johnson v DPSST, a case where a defense investigator was found not to have any duty to tell the victim about their rights when making contact, the legislature creates such a duty. Now anyone making contact on behalf of the defense has to tell the victim about the rights listed in ORS 135.970. Technically the law is effective on 1-1-14, but it ought to be carried out immediately.

Effective January 1, 2014.

[HB 2594](#) - **"Assisted Outpatient Treatment" as Alternative to Commitment**

A judge may now order assisted outpatient treatment (AOT) as an alternative to civil commitment. AOT may only be ordered if:

- (1) The person needs treatment for a mental disorder, is unwilling to get such treatment and lacks decisional competency; and
- (2) Is incapable of surviving safely in the community; and
- (3) Treatment is required to prevent a predictable deterioration to being dangerous to self, others or unable to care for basic needs (ie, actually committable).

AOT is not a civil commitment for the purposes of any collateral consequences. AOT does

not allow either forced medication or for a person to be taken into custody. The bill comes with \$100,000.00 in funding. ORS 426.070, ORS 426.130, ORS 426.237

Effective January 1, 2014, pending governor's signature.

[SB 421](#) - **Civil Commitment to the PSRB for the Extremely Dangerous Person**

This bill was designed to address the permanently unfit defendant accused of murder or other equally serious offenses. But the constitution prevents the bill from referring to either specific crimes or the fitness to proceed statute.

The bill actually allows an adult to be committed to the Psychiatric Security Review Board (instead of the Oregon Health Authority) if:

- (1) There is an "extreme risk that the person will inflict grave or potentially lethal physical injury on other persons"; and
- (2) Unless committed, the person will continue to represent such an extreme risk in the foreseeable future; and
- (3) The extreme risk is caused by a mental disorder; and
- (4) The mental disorder is treatment resistant; meaning that the person has exhausted all reasonable psychiatric treatment (or is refusing treatment) and continues to be significantly impaired in decision making ability and ability to be aware of and control extremely dangerous behavior.
- (5) As a result of the mental disorder, the person has
 - (a) caused the death of another person; or
 - (b) caused serious physical injury with a dangerous weapon; or
 - (c) caused physical injury with a gun or explosive; or
 - (d) engaged in oral/genital contact with a child under 14
 - (e) forcibly compelled sex, oral/genital contact or anal or genital penetration
 - (f) caused property damage or physical danger by fire or explosion (but not an accidental cooking or smoking fire); and
- (6) The person is exhibiting "symptoms or behaviors" substantially similar to those that preceded the qualifying act in (5) above.

If the person meets all the conditions above, he or she may be committed to the State Hospital under the supervision of the psychiatric security review board for a period not to exceed 24 months. The commitment period may be re-upped every 24 months. ORS chapter 426

Effective immediately, pending governor's signature.

[HB 2836](#) - **New Standards for Evaluating Juvenile Competency**

SECTION 1: **A court may find that a youth is unfit to proceed** in a proceeding initiated by a petition alleging jurisdiction under ORS 419C.005, if, as a result of mental disease or defect or another condition, the youth is unable:

- (a) To understand the nature of the proceedings against the youth;
- (b) To assist and cooperate with the counsel for the youth; or
- (c) To participate in the defense of the youth.

The issue of fitness to proceed must be raise by written motion.

SECTION 2: Provides **guidelines for evaluations** ordered under section 1.

SECTION 3: Requires that the **Oregon Health Authority develop training standards** for evaluators and guidelines for the conduct of evaluations.

SECTION 4: **Only under narrow circumstances may a youth may be removed from the youth's current placement** for the purpose of an evaluation.

...

SECTION 8: If the court finds that the youth is unfit to proceed and is unlikely to regain fitness in the foreseeable future, the court shall dismiss the petition without prejudice. **If there is a substantial probability that the youth will regain fitness in the foreseeable future, the court shall order that the youth receive restorative services** under section 10.

SECTION 9: The Oregon Health Authority shall administer a **program to provide restorative services**.

SECTION 10: The Oregon Health Authority shall arrange for the provision of restorative services within 30 days of receiving a court order under section 8.

(7) The youth may not be continued in restorative services for longer than whichever of the following, measured from the date the petition is filed, is shorter:

- (a) Three years; or
- (b) The period of time that is equal to the maximum commitment the court could have imposed if the petition had been adjudicated.

SECTION 11: A youth **may not be removed from his or her current placement solely**

for the purpose of receiving restorative services unless it is necessary, in the best interests of the youth, and, if the youth is in the custody of the Department of Human Services, reasonable efforts were made to eliminate the need for removal and make it possible for the youth to return to his or her placement. If the youth is removed for the purposes of receiving restorative treatment, the youth shall be returned immediately thereafter.

Effective immediately. pending governor's signature.

[HB 3194](#) - **Criminal Justice “Reform”**

Marijuana no longer qualifies for substantial quantities penalties or CDO. For sentences imposed after July 31st. ORS 475.900

Felony DWS has been reduced from level 6 to level 4, unless the suspension resulted from murder, manslaughter, crim neg hom or an assault that causes serious physical injury. For sentences imposed after July 31st. ORS 811.182

Rob III and ID Theft no longer qualify for a 24 month repo sentence. But they still qualify for the 18 month repeat property offender sentence. Sec 5. Sec 7 sunsets this provision in 2023. For sentences after July 31st. ORS 137.717

ORS 475.933 is repealed. No more **repeat drug offender sentences**. For sentences after July 31st. Thus, judges again have discretion to give probation on level 8 DCS/MCS cases. Repeal sunsets in 2023.

More **transitional leave** – from 30 days to 90 days. For sentences after July 31st. Sunsets in 2023. ORS 421.168

Earned discharge for supervision. Up to 50% reduction for supervision good time. But no lower than 6 months. ORS 137.124

A **risk and needs assessment** is now a general condition of probation. ORS 137.540

Harassment now includes **sexting** of person under 18. ORS 166.065

Reentry courts for post prison supervision. (secs 28 to 38) ORS 144.101

Oregon **Center for Policing** Excellence (sec 49)

Effective immediately, pending governor's signature.

[SB 492](#) - **Discovery Statutes Are Made Consistent With the Constitution**

ORS 135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873, the district attorney shall disclose to a represented defendant the following material and information within the possession or control of the district attorney: . . .

“ . . . (g) Any material or information that tends to:

- (A) Exculpate the defendant;
- (B) Negate or mitigate the defendant’s guilt or punishment; or
- (C) Impeach a person the district attorney intends to call as a witness at the trial.

(2)(a) The disclosure required by subsection (1)(g) of this section shall occur without delay after arraignment and prior to the entry of any guilty plea pursuant to an agreement with the state. If the existence of the material or information is not known at that time, the disclosure shall be made upon discovery without regard to whether the represented defendant has entered or agreed to enter a guilty plea.

(b) Nothing in subsection (1)(g) of this section:

- (A) Expands any obligation under a statutory provision or the Oregon or United States Constitution to disclose, or right to disclosure of, personnel or internal affairs files of law enforcement officers.
- (B) Imposes any obligation on the district attorney to provide material or information beyond the obligation imposed by the Oregon and United States Constitutions.”

Effective January 1, 2014.

[HB 2962](#) - **Repeals speedy trial statute as of April, 2014.**

ORS 135.747, the speedy trial statute, is repealed on April 1, 2014.

Effective immediately.

[HB 3467](#) - **Mugshot Websites Must Remove Dismissed and Expunged Cases**

A mugshot website is required to remove all information about a case, without charging a fee, if notified in writing with documentation that all charges:

- “(A) Were resolved through acquittal or otherwise without a conviction;
- (B) Were reduced to violations; or
- (C) Following conviction, were expunged or set aside pursuant to court order.” ORS 646.608

Effective January 1, 2014.

[HB 2553](#) - **Max Period From Arraignment to Prelim is Five Judicial Days**

The single word “judicial” is added to ORS 135.070 to clarify that the period from arraignment to preliminary hearing may be no longer than five *judicial* days for an in-custody defendant. Which also clarifies that the 30 day max for an out-of-custody defendant is actual, not judicial, days.

Effective immediately.