ORS PERTAINING TO LAW ENFORCEMENT

PROPERTY & EVIDENCE

SPONSORED BY OREGON ASSOCIATION OF PROPERTY & EVIDENCE OFFICERS | 2017-2018

QUICK REFERENCE

CHAPTER 1
FOUND PROPERTY

98.005 RIGHTS AND DUTIES OF FINDER OF MONEY OR GOODS

(1) If any person finds money or goods valued at $250 or more, and if the owner of the money or goods is unknown, such person, within 10 days after the date of the finding, shall give notice of the finding in writing to the county clerk of the county in which the money or goods was found. Within 20 days after the date of the finding, the finder of the money or goods shall cause to be published in a newspaper of general circulation in the county a notice of the finding once each week for two consecutive weeks. Each such notice shall state the general description of the money or goods found, the name and address of the finder and final date before which such goods may be claimed.

(2) If no person appears and establishes ownership of the money or goods prior to the expiration of three months after the date of the notice to the county clerk under subsection (1) of this section, the finder shall be the owner of the money or goods. [1973 c.642 §1; 1989 c.522 §1; 2013 c.220 §1]

98.015 LIABILITY OF NONCOMPLYING FINDER

If any person who finds money or goods valued at $250 or more fails to comply with ORS 98.005 (Rights and duties of finder of money or goods), the person shall be liable, upon conviction for violation of ORS 164.065 (Theft of lost, mislaid property), to the county for the money or goods or the full value of the money or goods. The county treasurer shall hold the money or goods or their value for owner thereof and shall publish notice of the finding of the money or goods in the manner provided in ORS 98.005 (Rights and duties of finder of money or goods). If the owner has not reclaimed such money or goods within three months after the date of the first publication of notice by the county treasurer, the owner shall forfeit the rights of the owner to the value of such money or goods and the value of such money or goods shall be placed in the general fund of the county to be used for the payment of the general operating expenses of the county. [1973 c.642 §2; 1989 c.522 §2; 2013 c.220 §2]

98.025 RIGHTS OF OWNER

If an owner of money or goods found by another person appears and establishes a claim to such money or goods within the time period prescribed by ORS 98.005 (Rights and duties of finder of money or goods) or 98.015 (Liability of noncomplying finder), whichever applies, the owner shall have restitution of such money or goods or their value upon payment of all costs and charges incurred in the finding, giving of notice, care and custody of such money or goods. [1973 c.642 §3]

CHAPTER 2
PROPERTY HELD BY LAW ENFORCEMENT

98.245 DISPOSITION OF UNCLAIMED PROPERTY

(1) As used in this section:

(a)"Removing authority" means a sheriff's office, a municipal police department, a state police office, a law enforcement agency created by intergovernmental agreement or a port as defined in ORS 777.005 (Definitions for ORS 777.005 to 777.725 and 777.915 to 777.953) or 778.005 (Definitions). \
(b)"Unclaimed property" means personal property that was seized by a removing authority as evidence, abandoned property, found property or stolen property, and that has remained in the physical possession of that removing authority for a period of more than 60 days following conclusion of all criminal actions related to the seizure of the evidence, abandoned property, found property or stolen property, or conclusion of the investigation if no criminal action is filed.

(2) Notwithstanding ORS 98.302 (Definitions for ORS 98.302 to 98.436) to 98.436 (Short title), and in addition to any other method provided by law, a removing authority may dispose of unclaimed property as follows:

(a) An inventory describing the unclaimed property shall be prepared by the removing authority.
(b) The removing authority shall publish a notice of intent to dispose of the unclaimed property described in the inventory prepared pursuant to paragraph (a) of this subsection. The notice shall be posted in three public places in the jurisdiction of the removing authority, and shall also be published in a newspaper of general circulation in the jurisdiction of the removing authority. The notice shall include a description of the unclaimed property as provided in the inventory, the address and telephone number of the removing authority and a statement in substantially the following form:

_____

The (removing authority) has in its physical possession the unclaimed personal property described below. If you have any ownership interest in any of that unclaimed property, you must file a claim with the (removing authority) within 30 days from the date of publication of this notice, or you will lose your interest in that property.

_____

(c) A copy of the notice described in paragraph (b) of this subsection shall also be sent to any person that the removing authority has reason to believe has an ownership or security interest in any of the unclaimed property described in the notice. A notice sent pursuant to

this paragraph shall be sent by regular mail to the last known address of the person.
(d) Prior to the expiration of the time period stated in a notice issued pursuant to this section, a person may file a claim that presents proof satisfactory to the removing authority issuing the notice that the person is the lawful owner or security interest holder of any property described in that notice. The removing authority shall then return the property to that person.
(e) If a removing authority fails to return property to a person that has timely filed a claim pursuant to paragraph (d) of this subsection, the person may file, within 30 days of the date of the failure to return the property, a petition seeking return of the property to the person. The petition shall be filed in the circuit court for the county in which the removing authority is located. If one or more petitions are filed, the removing authority shall hold the property pending receipt of an order of the court directing disposition of the property or dismissing the petition or petitions with prejudice. If the court grants the petition, the removing authority shall turn the unclaimed property over to the petitioner in accordance with the order.
(f) Unless the removing authority or court upholds the claim or petition under paragraph (d) or (e) of this subsection, title to all unclaimed property described in a notice issued pursuant to this section shall pass to the removing authority free of any interest or encumbrance thereon in favor of any person who has:

(3) A security interest in the property and to whom the removing authority mailed a copy of the notice described in paragraph (b) of this subsection in accordance with paragraph (c) of this subsection; or
(4) Any ownership interest in the property.

(a) The removing authority may transfer good and sufficient title to any subsequent purchaser or transferee, and the title shall be recognized by all courts and governmental agencies. Any department, agency or officer of the state or any political subdivision whose official functions include the issuance of certificates or other evidence of title shall be immune from civil or criminal liability when such issuance is pursuant to a bill of sale issued by the removing authority. [1997 c.480 §2; 2003 c.693 §13]

DEFINITIONS FOR ORS 98.302 TO 98.436

As used in ORS 98.302 (Definitions for ORS 98.302 to 98.436) to 98.436 (Short title) and 98.992 (Penalty for failure to report, pay or deliver property under ORS 98.302 to 98.436), unless the context otherwise requires:

(1)“Administrator” means the Director of the Department of State Lands.
(2)“Apparent owner” means the person whose name appears on the records of the holder as the person entitled to property held, issued or owing by the holder.
(3)“Business association” means a nonpublic corporation, joint stock company, business trust, partnership, investment company or an association for business purposes of two or more individuals, whether or not for profit, including a financial institution, insurance company or utility.
(4)“Domicile” means the state of incorporation of a corporation and the state of the principal place of business of an unincorporated person.

(5)“Financial institution” means a financial institution or a trust company, as those terms are defined in ORS 706.008 (Additional definitions for Bank Act), a safe deposit company, a private banker, a savings and loan association, a building and loan association or an investment company.
(6)“Holder” means a person, wherever organized or domiciled, who is in possession of property belonging to another, a trustee or indebted to another on an obligation.
(7)“Insurance company” means an association, corporation, fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage, including accident, burial, casualty, workers’ compensation, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine, mortgage, surety and wage protection insurance.
(8)“Intangible property” includes:

(a) Credit balances, customer overpayments, security deposits, refunds, credit memos, unpaid wages, unused airline tickets and unidentified remittances;
(b) Stocks and other intangible ownership interests in business associations;
(c) Moneys deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions;
(d) Amounts due and payable under the terms of insurance policies;
(e) Amounts distributed from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance or similar benefits; and
(f) Moneys, checks, drafts, deposits, interest, dividends and income.

(9)“Last-known address” means a description of the location of the apparent owner sufficient for the purpose of delivery of mail.
(10)“Lawful deduction” means a deduction related to the purpose of an account or deposit, for example, to satisfy unpaid utility bills.
(11)“Owner” means a depositor in case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in case of other intangible property, or a person, or the person’s legal representative, having a legal or equitable interest in property.
(12)“Person” means an individual, business association, state or other government or political subdivision or agency, public corporation, public authority, two or more persons having a joint or common interest, or any other legal or commercial entity.
(13)“Service charge” means fees or charges that are limited to a specific situation and that meet basic contractual and notice requirements.
(14)“State” means any state, district, commonwealth, territory, insular possession or any other area subject to the legislative authority of the United States.
(15)“Utility” means a person who owns or operates for public use, any plant, equipment, property, franchise or license for the transmission of communications or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam or gas. [1957 c.670 §3; 1983 c.716 §1; 1993 c.694 §40; 1997 c.416 §1; 1997 c.631 §396; 2003 c.272 §1; 2009 c.294 §14]

98.304 WHEN INTANGIBLE PROPERTY SUBJECT TO CUSTODY OF STATE

Unless otherwise provided in ORS 98.302 (Definitions for ORS 98.302 to 98.436) to 98.436 (Short title) and 98.992 (Penalty for failure to report, pay or deliver property under ORS 98.302 to 98.436)

or by other statute of this state, intangible property is subject to the custody of this state as unclaimed property if the conditions raising a presumption of abandonment under ORS 98.342 (Miscellaneous personal property held for another person) are satisfied, and one or more of the following is true:

(1) The last-known address, as shown on the records of the holder, of the apparent owner is in this state.
(2) The records of the holder do not reflect the identity of the person entitled to the property and it is established that the last-known address of the person entitled to the property is in this state.
(3) The records of the holder do not reflect the address of the apparent owner, and one or more of the following is established:

(a) The last-known address of the person entitled to the property is in this state.
(b) The holder is a domiciliary or a government or political subdivision or agency of this state and has not previously paid or delivered the property to the state of the last-known address of the apparent owner or other person entitled to the property.
(c) The last-known address, as shown on the records of the holder, or the apparent owner is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property and the holder is a domiciliary or a government or political subdivision or agency of this state.

(4) The last-known address, as shown on the records of the holder, of the apparent owner is in a foreign nation and the holder is a domiciliary or a government or political subdivision or agency of this state.
(5) The transaction out of which the property arose occurred in this state, and:

(a) There is no known address of the apparent owner or other person entitled to the property;
(b) The last-known address of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheats or custodial taking of the property or its escheats or unclaimed property law is not applicable to the property; or
(c) The holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property. [1983 c.716 §28; 1993 c.694 §1]

98.336 PROPERTY HELD BY GOVERNMENT AND PUBLIC AUTHORITIES

(1) Intangible property, including uncashed warrants and wages represented by unpresented payroll checks, held for the owner by a court, state or other government, governmental subdivision or agency, public corporation, or public authority, that has remained unclaimed by the owner for more than two years is presumed abandoned.
(2) Tangible property held for the owner by a court, state or other government, governmental subdivision or agency, law enforcement agency, public corporation or public authority that has remained unclaimed by the owner for more than two years is presumed abandoned. [1957 c.670 §10; 1983 c.716 §6; 1987 c.708 §3; 1993 c.694 §4; 2001 c.302 §5]

CHAPTER 3
TIME LIMITATIONS

131.125 TIME LIMITATIONS

(1) A prosecution for aggravated murder, murder, attempted murder or aggravated murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of manslaughter may be commenced at any time after the commission of the attempt, conspiracy or solicitation to commit aggravated murder or murder, or the death of the person killed.
(2) A prosecution for any of the following felonies may be commenced within 12 years after the commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime before the victim attains 30 years of age:

(a) Rape in the first degree under ORS 163.375 (Rape in the first degree).
(b) Sodomy in the first degree under ORS 163.405 (Sodomy in the first degree).
(c) Unlawful sexual penetration in the first degree under ORS 163.411 (Unlawful sexual penetration in the first degree).
(d) Sexual abuse in the first degree under ORS 163.427 (Sexual abuse in the first degree).

(3) A prosecution for any of the following felonies may be commenced within six years after the commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime before the victim attains 30 years of age or within 12 years after the offense is reported to a law enforcement agency or the Department of Human Services, whichever occurs first:

(a) Strangulation under ORS 163.187 (Strangulation) (4).
(b) Criminal mistreatment in the first degree under ORS 163.205 (Criminal mistreatment in the first degree).
(c) Rape in the third degree under ORS 163.355 (Rape in the third degree).
(d) Rape in the second degree under ORS 163.365 (Rape in the second degree).
(e) Sodomy in the third degree under ORS 163.385 (Sodomy in the third degree).
(f) Sodomy in the second degree under ORS 163.395 (Sodomy in the second degree).
(g) Unlawful sexual penetration in the second degree under ORS 163.408 (Unlawful sexual penetration in the second degree).
(h) Sexual abuse in the second degree under ORS 163.425 (Sexual abuse in the second degree).
(i) Using a child in a display of sexual conduct under ORS 163.670 (Using child in display of sexually explicit conduct).
(j) Encouraging child sexual abuse in the first degree under ORS 163.684 (Encouraging child sexual abuse in the first degree).
(k) Incest under ORS 163.525 (Incest).
(L) Promoting prostitution under ORS 167.012 (Promoting prostitution).
(m) Compelling prostitution under ORS 167.017 (Compelling prostitution).
(n) Luring a minor under ORS 167.057 (Luring a minor).

(4) A prosecution for any of the following misdemeanors may be commenced within four years after the commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime before the victim attains 22 years of age or within four years after the offense is reported to a law enforcement agency or the Department of Human Services, whichever occurs first:

(a) Strangulation under ORS 163.187 (Strangulation) (3).
(b) Sexual abuse in the third degree under ORS 163.415 (Sexual abuse in the third degree).
(c) Exhibiting an obscene performance to a minor under ORS 167.075 (Exhibiting an obscene performance to a minor).
(d) Displaying obscene materials to minors under ORS 167.080 (Displaying obscene materials to minors).

(5) In the case of crimes described in subsection (3)(i) of this section, the victim is the child engaged in sexual conduct. In the case of the crime described in subsection (3)(k) of this section, the victim is the party to the incest other than the party being prosecuted. In the case of crimes described in subsection (3)(L) and (m) of this section, the victim is the child whose acts of prostitution are promoted or compelled.
(6) A prosecution for arson in any degree may be commenced within six years after the commission of the crime.
(7) A prosecution for any of the following felonies may be commenced within six years after the commission of the crime if the victim at the time of the crime was 65 years of age or older:

(a) Theft in the first degree under ORS 164.055 (Theft in the first degree).
(b) Aggravated theft in the first degree under ORS 164.057 (Aggravated theft in the first degree).
(c) Extortion under ORS 164.075 (Extortion).
(d) Robbery in the third degree under ORS 164.395 (Robbery in the third degree).
(e) Robbery in the second degree under ORS 164.405 (Robbery in the second degree).
(f) Robbery in the first degree under ORS 164.415 (Robbery in the first degree).
(g) Forgery in the first degree under ORS 165.013 (Forgery in the first degree).
(h) Fraudulent use of a credit card under ORS 165.055 (Fraudulent use of a credit card) (4)(b).
(i) Identity theft under ORS 165.800 (Identity theft).

(8) Except as provided in subsection (9) of this section or as otherwise expressly provided by law, prosecutions for other offenses must be commenced within the following periods of limitations after their commission:

(a) For any other felony, three years.
(b) For any misdemeanor, two years.
(c) For a violation, six months.

(9) If the period prescribed in subsection (8) of this section has expired, a prosecution nevertheless may be commenced as follows:

(a) If the offense has as a material element either fraud or the breach of a fiduciary obligation, prosecution may be commenced within one year after discovery of the offense

by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is not a party to the offense, but in no case shall the period of limitation otherwise applicable be extended by more than three years;
(b) If the offense is based upon misconduct in office by a public officer or employee, prosecution may be commenced at any time while the defendant is in public office or employment or within two years thereafter, but in no case shall the period of limitation otherwise applicable be extended by more than three years; or
(c) If the offense is an invasion of personal privacy under ORS 163.700 (Invasion of personal privacy in the second degree) or 163.701 (Invasion of personal privacy in the first degree), prosecution may be commenced within one year after discovery of the offense by the person aggrieved by the offense, by a person who has a legal duty to represent the person aggrieved by the offense or by a law enforcement agency, but in no case shall the period of limitation otherwise applicable be extended by more than three years.

(10) Notwithstanding subsections (2) and (3) of this section, if the defendant is identified after the period described in subsection (2) or (3) of this section on the basis of DNA (deoxyribonucleic acid) sample comparisons, a prosecution for:

(a) Rape in the first degree, sodomy in the first degree, unlawful sexual penetration in the first degree or sexual abuse in the first degree may be commenced at any time after the commission of the crime.
(b) Rape in the second degree, sodomy in the second degree or unlawful sexual penetration in the second degree may be commenced within 25 years after the commission of the crime.

(11) Notwithstanding subsection (10) of this section, if a prosecution for a felony listed in subsection (10) of this section would otherwise be barred by subsection (2) or (3) of this section, the prosecution must be commenced within two years of the DNA-based identification of the defendant.
(12)(a) Notwithstanding subsection (2) of this section, if a prosecuting attorney obtains corroborating evidence of the crimes of rape in the first degree, sodomy in the first degree, unlawful sexual penetration in the first degree or sexual abuse in the first degree, after the period described in subsection (2) of this section, the prosecution may be commenced at any time after the commission of the crime.

(b) The corroborating evidence described in paragraph (a) of this subsection must consist of one of the following:
(A) Physical evidence other than a DNA sample, including but not limited to audio, video or other electronic recordings, text messages, guest book logs, telephone recordings and photographs.
(B) A confession, made by the defendant, to the crime the victim reported.
(C) An oral statement, made by the victim to another person in temporal proximity to the commission of the crime, corroborating the victim's report of the crime to a law enforcement agency.
(D) A written statement, created by the victim in temporal proximity to the commission of the crime and subsequently delivered to another person or to a law enforcement agency, corroborating the victim's report of the crime to a law

enforcement agency.

(E) A report made by a different victim to a law enforcement agency, made either before or after the victim's report, alleging that the defendant committed another crime of the same or similar character such that the two crimes could be charged in the same charging instrument under ORS 132.560 (Joinder of counts and charges).

(13)(a) A prosecuting attorney commencing a prosecution pursuant to subsection (12) of this section shall present any evidence reasonably tending to negate the guilt of the defendant to the grand jury considering the indictment for the offense.

(b) The failure to present evidence reasonably tending to negate guilt as required by paragraph (a) of this subsection does not affect the validity of an indictment or prosecution. Oregon Laws 2015, provides:

Sec. 3. The amendments to ORS 131.125 (Time limitations) by section 1 of this 2015 Act apply to offenses committed before, on or after the effective date of this 2015 Act [January 1, 2016] but do not operate to revive a prosecution barred by the operation of ORS 131.125 (Time limitations) before the effective date of this 2015 Act. [2015 c.417 §3]

Note: Section 2, chapter 120, Oregon Laws 2016, provides:

Sec. 2. The amendments to ORS 131.125 (Time limitations) by section 1 of this 2016 Act apply to offenses committed before, on or after the effective date of this 2016 Act [January 1, 2017] but do not operate to revive a prosecution barred by the operation of ORS 131.125 (Time limitations) before the effective date of this 2016 Act. [2016 c.120 §2]

131.135 WHEN PROSECUTION COMMENCED

A prosecution is commenced when a warrant or other process is issued, provided that the warrant or other process is executed without unreasonable delay. [1973 c.836 §7]

131.145 WHEN TIME STARTS TO RUN

(1) For the purposes of ORS 131.125 (Time limitations), time starts to run on the day after the offense is committed.

(2) Except as provided in ORS 131.155 (Tolling of statute), the period of limitation does not run during:

(a) Any time when the accused is not an inhabitant of or usually resident within this state; or

(b) Any time when the accused hides within the state so as to prevent process being served upon the accused.

(3) If, when the offense is committed, the accused is out of the state, the action may be commenced within the time provided in ORS 131.125 (Time limitations) after the coming of the accused into the state. [1973 c.836 §8; 1987 c.158 §19]

131.155 TOLLING OF STATUTE

Notwithstanding ORS 131.145 (When time starts to run), in no case shall the period of limitation otherwise applicable be extended by more than three years. [1973 c.836 §9]

CHAPTER 4
PROCEDURES AFTER ARREST

133.455 RECEIPTS FOR PROPERTY TAKEN FROM PERSON IN CUSTODY

(1) Whenever any jailer, peace officer or health officer takes or receives any money or other valuables from any person in custody for safekeeping or for other purposes, the officer or jailer receiving such valuables or money forthwith shall tender one of duplicate receipts for the property being surrendered to the person in custody. If possible, the person in custody shall countersign both the original and duplicate receipts. If the person is unable to sign the receipts or receive the duplicate thereof, the same shall be signed by and delivered to the person when reasonably possible. A file of the original receipts shall be kept for at least six months after the money or valuables have been returned to the person in custody, the agent or representative of the person or other person entitled to the same.

(2) A person violating any of the provisions of subsection (1) of this section commits a Class B misdemeanor. [Formerly 142.210]

133.475 NOTICE TO OWNER

If no one claims the vehicle or other conveyance, as provided in ORS 133.470 (Sale of seized property), the taking of the same with description thereof shall be advertised in some daily newspaper published in the city or county where taken or, if there is no daily newspaper published in such county or city, in a newspaper having weekly circulation in the city or county once a week for two weeks and by notice posted in three public places near the place of seizure. The legal owner, in the case of a motor vehicle, if licensed by the State of Oregon, as shown by the name and address of the legal owner in the records of the Department of Transportation, shall be notified by mail. If no claimant appears within 10 days after the last publication of the advertisement, the property shall be sold and the proceeds, after deducting the expenses and costs, shall be paid into the general fund of the county. [Formerly 142.110]

CHAPTER 5
SEARCH AND SEIZURE | DISPOSITION OF THINGS SEIZED

133.525 DEFINITIONS FOR ORS

As used in ORS 133.525 (Definitions for ORS 133.525 to 133.703) to 133.703 (Identity of informants), unless the context requires otherwise:

(1)"Judge" means any judge of the circuit court, the Court of Appeals, the Supreme Court, any justice of the peace or municipal judge authorized to exercise the powers and perform the duties of a justice of the peace.
(2)"Police officer" means:

(a) A member of the Oregon State Police;
(b) A sheriff or municipal police officer, a police officer commissioned by a university under ORS 352.121 (University police departments and officers) or 353.125 (Creation of police department and commission of police officers) or an authorized tribal police officer as defined in ORS 181A.680 (Definitions for ORS 181A.680 to 181A.692);
(c) An investigator of a district attorney's office if the investigator is or has been certified as a peace officer in this or any other state;
(d) An investigator of the Criminal Justice Division of the Department of Justice;

133.525 PERMISSIBLE OBJECTS OF SEARCH AND SEIZURE

The following are subject to search and seizure under ORS 133.525 (Definitions for ORS 133.525 to 133.703) to 133.703 (Identity of informants):

(1) Evidence of or information concerning the commission of a criminal offense;
(2) Contraband, the fruits of crime, or things otherwise criminally possessed;
(3) Property that has been used, or is possessed for the purpose of being used, to commit or conceal the commission of an offense; and
(4) A person for whose arrest there is probable cause or who is unlawfully held in concealment. [1973 c.836 §82]

133.537 PROTECTION OF THINGS SEIZED

(1) In all cases of seizure, an agency that seizes property shall take reasonable steps to safeguard and protect the things seized against loss, damage and deterioration.
(2) Notwithstanding subsection (1) of this section, an agency that seizes property is not liable for loss, damage or deterioration resulting from any reasonable actions taken to secure or develop evidence. [1991 c.540 §2]

Note: 133.537 (Protection of things seized) was added to and made a part of 133.525 (Definitions for ORS 133.525 to 133.703) to 133.703 (Identity of informants) by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

133.539 OBTAINING INFORMATION FROM PORTABLE ELECTRONIC DEVICES

(1) As used in this section:

(a)(A) "Forensic imaging" means using an electronic device to download or transfer raw data from a portable electronic device onto another medium of digital storage.

(B)"Forensic imaging" does not include photographing or transcribing information observable from the portable electronic device by normal unaided human senses.

(b)"Location information service" means a global positioning service or other mapping, locational or directional information service.
(c)"Portable electronic device" means any device designed to be easily moved from one location to another and that contains electronic data or that enables access to, or use of, an electronic communication service as defined in 18 U.S.C. 2510, remote computing service as defined in 18 U.S.C. 2711 or location information service.
(d)"Raw data" means data collected from a source that has not been subsequently altered or manipulated after collection.

(2) A law enforcement agency may not use forensic imaging to obtain information contained in a portable electronic device except:

(a) Pursuant to a search warrant issued under ORS 133.525 (Definitions for ORS 133.525 to 133.703) to 133.703 (Identity of informants); or
(b) As authorized by lawful consent.

(3) Information obtained in violation of this section:

(a) Is not admissible in and may not be disclosed in a judicial proceeding, administrative proceeding, arbitration proceeding or other adjudicatory proceeding, against either the owner of the portable electronic device or a person with a reasonable expectation of privacy in the contents of the device; and
(b) May not be used to establish reasonable suspicion or probable cause to believe that an offense has been committed.

(4) A portable electronic device that has been forensically imaged pursuant to subsection (2) of this section may be returned as described in ORS 133.633 (Motion for return or restoration of things seized) and 133.643 (Ground for motion for return or restoration of things seized).
(5) Subsection (2) of this section does not apply to:

(a) A correctional facility, youth correction facility or state hospital, as those terms are defined in ORS 162.135 (Definitions for ORS 162.135 to 162.205), when the facility or state

hospital obtains information from a portable electronic device in an otherwise lawful manner.

(b) A parole and probation officer, juvenile community supervision officer as defined in ORS 420.905 (Definitions for ORS 420.905 to 420.915), community corrections agency or agency that supervises youth or youth offenders, when the officer or agency obtains information from a portable electronic device in an otherwise lawful manner. [2015 c.613 §1]

Note: 133.539 (Obtaining information from portable electronic devices) was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 133 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

133.595 LIST OF THINGS SEIZED

Except as provided in ORS 133.619 (Execution of warrant authorizing mobile tracking device), promptly upon completion of the search, the officer shall make a list of the things seized, and shall deliver a receipt embodying the list to the person from whose possession they are taken, or the person in apparent control of the premises or vehicle from which they are taken. If the vehicle or premises are unoccupied or there is no one present in apparent control, the executing officer shall leave the receipt suitably affixed to the vehicle or premises. [1973 c.836 §88; 1989 c.983 §5]

133.623 HANDLING AND DISPOSITION OF THINGS SEIZED

(1) The provisions of subsections (2), (3) and (4) of this section apply to all cases of seizure, except for a seizure made under a search warrant.
(2) If an officer makes an arrest in connection with the seizure, the officer shall, as soon thereafter as is reasonably possible, make a written list of the things seized and furnish a copy of the list to the defendant.
(3) If no claim to rightful possession has been established under ORS 133.633 (Motion for return or restoration of things seized) to 133.663 (Disputed possession rights), the things seized may be disposed of in accordance with ORS 98.245 (Disposition of unclaimed property) or the court may order that the things be delivered to the officials having responsibility under the applicable laws for selling, destroying or otherwise disposing of contraband, forfeited or unclaimed goods in official custody. If the responsible officials are state officials and the property is forfeited, the clear proceeds shall be deposited with the State Treasury in the Common School Fund.
(4) If things seized in connection with an arrest are not needed for evidentiary purposes, and if a person having a rightful claim establishes identity and right to possession beyond a reasonable doubt to the satisfaction of the seizing officer, the officer may summarily return the things seized to their rightful possessor. If the things seized are perishable and it is not possible to return them to their rightful possessor, the seizing officer may dispose of the items as justice and the necessities of the case require. [1973 c.836 §109; 1987 c.858 §1; 1997 c.480 §3]

133.633 MOTION FOR RETURN OR RESTORATION OF THINGS SEIZED

(1) Within 90 days after actual notice of any seizure, or at such later date as the court in its discretion may allow:

(a) An individual from whose person, property or premises things have been seized may move the appropriate court to return things seized to the person or premises from which they were seized.
(b) Any other person asserting a claim to rightful possession of the things seized may move the appropriate court to restore the things seized to the movant.

(2) The appropriate court to consider such motion is:

(a) The court having ultimate trial jurisdiction over any crime charged in connection with the seizure;
(b) If no crime is charged in connection with the seizure, the court to which the warrant was returned; or
(c) If the seizure was not made under a warrant and no crime is charged in connection with the seizure, any court having authority to issue search warrants in the county in which the seizure was made.

(3) The movant shall serve a copy of the motion upon the district attorney or the city attorney, whichever is appropriate, of the jurisdiction in which the property is in custody.
(4) No filing, appearance or hearing fees may be charged for filing or hearing a motion under this section.
(5)(a) The things seized that are the subject of a motion for return under this section may include raw data obtained from the forensic imaging of a portable electronic device or of a computer.

(b) As used in this subsection, "forensic imaging," "portable electronic device" and "raw data" have the meanings given those terms in ORS 133.539 (Obtaining information from portable electronic devices). [1973 c.836 §110; 1999 c.37 §1; 2005 c.22 §102; 2015 c.613 §2]

133.643 GROUND FOR MOTION FOR RETURN OR RESTORATION OF THINGS SEIZED

A motion for the return or restoration of things seized shall be based on the ground that the movant has a valid claim to rightful possession thereof, because:

(1) The things had been stolen or otherwise converted, and the movant is the owner or rightful possessor;
(2) The things seized were not in fact subject to seizure under ORS 131.550 (Definitions for ORS 131.550 to 131.600) to 131.600 (Record keeping and reporting requirements) or 133.525 (Definitions for ORS 133.525 to 133.703) to 133.703 (Identity of informants);
(3) The movant, by license or otherwise, is lawfully entitled to possess things otherwise subject to seizure under ORS 133.525 (Definitions for ORS 133.525 to 133.703) to 133.703 (Identity of informants);
(4) Although the things seized were subject to seizure under ORS 133.525 (Definitions for ORS 133.525 to 133.703) to 133.703 (Identity of informants), the movant is or will be entitled to their return or restoration upon the court's determination that they are no longer needed for evidentiary purposes; or
(5) The parties in the case have stipulated that the things seized may be returned to the movant. [1973 c.836 §111; 2001 c.104 §44; 2001 c.666 §§22,23; 2005 c.830 §20]

133.653 POSTPONEMENT OF RETURN OR RESTORATION

(1) In granting a motion for return or restoration of things seized, the court shall postpone execution of the order until such time as the things in question need no longer remain available for evidentiary use.
(2) An order granting a motion for return or restoration of things seized shall be reviewable on appeal in regular course. An order denying such a motion or entered under ORS 133.663 (Disputed possession rights) shall be reviewable on appeal upon certification by the court having custody of the things in question that they are no longer needed for evidentiary purposes.
(3)(a) An order granting a motion for return of raw data obtained from the forensic imaging of a portable electronic device or of a computer shall include a provision that a law enforcement agency may not retain a copy of the raw data to be returned.

(b) As used in this subsection, "forensic imaging," "portable electronic device" and "raw data" have the meanings given those terms in ORS 133.539 (Obtaining information from portable electronic devices). [1973 c.836 §112; 2015 c.613 §3]

133.663 DISPUTED POSSESSION OF RIGHTS

(1) If, upon consideration of a motion for return or restoration of things seized, it appears to the court that the things should be returned or restored, but there is a substantial question whether they should be returned to the person from whose possession they were seized or to some other person, or a substantial question among several claimants to rightful possession, the court may:

(a) Return the things to the person from whose possession they were seized; or
(b)(A) Impound the things seized and set a further hearing, ensuring that all persons with a possible possessory interest in the things in question receive due notice and an opportunity to be heard; and

(B) Upon completion of the hearing provided for in subparagraph (A) of this paragraph, enter an order for the return or restoration of the things seized.

(2) If there is no substantial question whether the things should be returned to the person from whose possession they were seized, they must be returned to the person upon the release of the defendant from custody.
(3) Instead of conducting the hearing provided for in subsection (1)(b)(A) of this section and returning or restoring the property, the court, in its discretion, may leave the several claimants to appropriate civil process for the determination of the claims. [1973 c.836 §113; 2005 c.22 §103]

133.723 RECORDS CONFIDENTIAL

The application for any order under ORS 133.724 (Order for interception of communications) and any supporting documents and testimony in connection therewith shall remain confidential in the custody of the court, and these materials shall not be released or information concerning them in any manner disclosed except upon written order of the court and as required under ORS 135.805 (Applicability) to 135.873 (Protective orders). No person having custody of any records maintained under ORS 133.721 (Definitions for ORS 41.910 and 133.721 to 133.739) to 133.739 (Civil damages

for willful interception, disclosure or use of communications) shall disclose or release any materials or information contained therein except upon written order of the court and as required under ORS 135.805 (Applicability) to 135.873 (Protective orders). [Formerly 141.740; 1979 c.716 §13]

133.733 PROCEDURE FOR INTRODUCTION AS EVIDENCE

The contents of any wire, electronic or oral communication intercepted under ORS 133.724 (Order for interception of communications), or evidence derived therefrom, shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court of this state unless each party, not less than 10 days before the trial, hearing or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This 10-day period may be waived by the judge if the judge finds that it was not possible to furnish the party with the above information 10 days before the trial, hearing or proceeding and that the party will not be prejudiced by the delay in receiving such information. [1979 c.716 §9; 1989 c.983 §10]

CHAPTER 6
BIOLOGICAL EVIDENCE

RELATED SENATE BILLS: 960, 1571, 1600

133.705 DEFINITIONS FOR ORS 133.705 TO 133.717

As used in ORS 133.705 (Definitions for ORS 133.705 to 133.717) to 133.717 (Provision of notice or order to defendant):

(1)"Biological evidence" means an individual's blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids or other identified biological material. "Biological evidence" includes the contents of a sexual assault forensic evidence kit.

(2)"Convicted" includes a finding of guilty or responsible except for insanity and a finding that a person is within the jurisdiction of the juvenile court under ORS 419C.005 (Jurisdiction).

(3)"Covered offense" means:

(a) Aggravated murder under ORS 163.095 ("Aggravated murder" defined);
(b) Murder under ORS 163.115 (Murder);
(c) Manslaughter in the first degree under ORS 163.118 (Manslaughter in the first degree);
(d) Manslaughter in the second degree under ORS 163.125 (Manslaughter in the second degree);
(e) Aggravated vehicular homicide under ORS 163.149 (Aggravated vehicular homicide);
(f) Rape in the first degree under ORS 163.375 (Rape in the first degree);
(g) Sodomy in the first degree under ORS 163.405 (Sodomy in the first degree); or
(h) Unlawful sexual penetration in the first degree under ORS 163.411 (Unlawful sexual penetration in the first degree).

(4)"Custodian" means a law enforcement agency as defined in ORS 131.550 (Definitions for ORS 131.550 to 131.600), or any other person or public body as defined in ORS 174.109 ("Public body" defined), that is charged with the collection, preservation or retrieval of evidence in connection with a criminal investigation or criminal prosecution. "Custodian" does not include a court.
(5)"DNA" means deoxyribonucleic acid.
(6)"DNA profile" means the unique identifier of an individual that is derived from DNA.
(7)"Sentence" means a term of incarceration in a correctional or juvenile detention facility, a period of probation, parole or post-prison supervision and the period of time during which a person is under the jurisdiction of the Psychiatric Security Review Board.
(8)"Supervisory authority" has the meaning given that term in ORS 144.087 ("Supervisory authority" defined).
(9)"Victim" has the meaning given that term in ORS 131.007 ("Victim" defined). [2011 c.275 §2]

Note: 133.705 (Definitions for ORS 133.705 to 133.717) to 133.717 (Provision of notice or order to defendant) were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 133 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

133.707 CUSTODIAN'S OBLIGATION TO PRESERVE BIOLOGICAL EVIDENCE

(1) A custodian shall preserve biological evidence in accordance with ORS 133.705 (Definitions for ORS 133.705 to 133.717) to 133.717 (Provision of notice or order to defendant) if the evidence:

(a) Is collected as part of a criminal investigation into a covered offense; or
(b) Is otherwise in the possession of the custodian and reasonably may be used to incriminate or exculpate any person for a covered offense.

(2) When a custodian is required to preserve biological evidence under subsection (1) of this section, the custodian shall preserve the evidence in an amount and manner that is sufficient to develop a DNA profile. Except as otherwise provided in ORS 133.705 (Definitions for ORS 133.705 to 133.717) to 133.717 (Provision of notice or order to defendant), the biological evidence must be preserved:

(a) If the covered offense is aggravated murder, murder, rape in the first degree, sodomy in the first degree or unlawful sexual penetration in the first degree, for 60 years from the date each person is convicted of the offense or until each person convicted of the offense has died, whichever is earlier.
(b) If the covered offense is aggravated vehicular homicide, manslaughter in the first degree or manslaughter in the second degree, until each person convicted of the offense has served the person's sentence.
(c) If no person is convicted of the covered offense or the law enforcement agency investigating the covered offense closes the case for a reason other than the conviction of a person, until the expiration of the statute of limitations.

(3) A custodian is not required to preserve physical evidence solely because the physical evidence contains biological evidence if the physical evidence is of such a size, bulk or physical character as to render retention impracticable. When the retention of physical evidence is impracticable, the custodian shall remove and preserve portions of the physical evidence likely to contain biological evidence in a quantity sufficient to permit future DNA testing before returning or disposing of the physical evidence.
(4) Upon the conclusion of any trial or hearing involving a covered offense, the court shall return any biological evidence in the possession of the court to the custodian responsible for preserving the biological evidence under ORS 133.705 (Definitions for ORS 133.705 to 133.717) to 133.717 (Provision of notice or order to defendant), unless the evidence was collected by the defense. If the evidence was collected by the defense, the court shall return the evidence to the attorney for the defendant.
(5) If a custodian is required to preserve biological evidence under ORS 133.705 (Definitions for ORS 133.705 to 133.717) to 133.717 (Provision of notice or order to defendant) and the custodian is unable to produce the evidence in a judicial proceeding, the individual to whom the custodian has delegated the duty to preserve the evidence shall prepare, sign and file with the court a sworn

affidavit that indicates that the custodian is unable to produce the evidence and describes the efforts taken to locate the evidence.
(6) If a court finds that biological evidence was destroyed in violation of ORS 133.705 (Definitions for ORS 133.705 to 133.717) to 133.717 (Provision of notice or order to defendant), the court, after determining whether the evidence was destroyed maliciously, may impose appropriate sanctions and order appropriate remedies. The court may not order the reversal of a conviction under this subsection on the sole grounds that the biological evidence is no longer available.
(7)(a) The Attorney General shall adopt rules establishing:

(A) Standards for the proper collection, retention, preservation and cataloging of biological evidence applicable to criminal investigations into, and criminal prosecutions for, covered offenses; and

(B) A standard form for use by custodians in providing the written notice described in ORS 133.709 (Notice of intent to dispose) (1).

(b) The Attorney General shall consult with the Department of State Police and custodians before adopting rules under this subsection. [2009 c.489 §1; 2011 c.275 §1]

Note: See note under 133.705 (Definitions for ORS 133.705 to 133.717).

133.709 NOTICE OF INTENT TO DISPOSE

(1)(a) A custodian may seek to dispose of biological evidence before the period of time specified in ORS 133.707 (Custodian's obligation to preserve biological evidence) (2), by providing written notice, in the form developed under ORS 133.707 (Custodian's obligation to preserve biological evidence) (7), to the district attorney having jurisdiction over the prosecution of the covered offense. Upon receipt of the notice, the district attorney shall determine whether to object to the disposal of any of the biological evidence identified in the custodian's notice.

(b) If the district attorney objects to the disposal of any of the biological evidence identified in the custodian's notice, the district attorney shall provide written notice of the objection to the custodian that identifies the biological evidence that the district attorney determines must be preserved. The custodian shall preserve any biological evidence identified by the district attorney in the notice until the period of time specified in ORS 133.707 (Custodian's obligation to preserve biological evidence) (2) has elapsed.
(c) If the district attorney does not object to the disposal of all or a portion of the biological evidence identified in the custodian's notice, the district attorney shall provide written notice of the intent to dispose of biological evidence, identifying the biological evidence that the district attorney has determined may be disposed of, to:

(A) The defendant;
(B) The most recent attorney of record for the defendant; and
(C) The Department of Justice.

(2) If evidence that is subject to ORS 133.707 (Custodian's obligation to preserve biological evidence) is the property of the victim, the victim may request that the district attorney determine

whether the property may be returned to the victim. The request must be in writing and must identify the property that the victim seeks to have returned. If the district attorney:

(a) Objects to the return of any of the property to the victim, the district attorney shall notify the victim of that determination.
(b) Does not object to the return of all or a portion of the property, the district attorney shall provide written notice of the intent to dispose of biological evidence, identifying the property the district attorney has determined may be returned, to:

(A) The victim;
(B) The defendant;
(C) The most recent attorney of record for the defendant; and
(D) The Department of Justice.

(3)(a) Not later than 120 days after the date the district attorney provides written notice to the defendant under subsection (1)(c) or (2)(b) of this section, the defendant may file a motion to preserve biological evidence in the convicting court. The defendant shall provide a copy of the motion to the district attorney and the custodian. If the motion is timely filed, the court shall enter an order as provided in ORS 133.715 (Order).

(b) If the defendant fails to file a motion to preserve biological evidence before the expiration of the 120-day period specified in paragraph (a) of this subsection, the district attorney shall file with the court a copy of the notice of intent to dispose of biological evidence sent to the defendant under subsection (1)(c) or (2)(b) of this section. Following the filing of the notice, the court shall, without hearing, enter an order authorizing the disposal of the biological evidence described in the notice. The court shall provide a copy of the order to the custodian, the district attorney and each person or entity described in subsection (1)(c) or (2)(b) of this section, as applicable.
(c) The 120-day period specified in this subsection begins on the date the notice is mailed. [2011 c.275 §3]

133.713 INVENTORY

(1) Upon written request by the defendant, the district attorney shall provide the defendant with an inventory of biological evidence that has been preserved under ORS 133.705 (Definitions for ORS 133.705 to 133.717) to 133.717 (Provision of notice or order to defendant) and is related to the covered offense for which the defendant was convicted.
(2) A defendant or, if the defendant is represented by an attorney, the defendant's attorney has the right to reasonably review biological evidence that is the subject of a written notice of intent to dispose of biological evidence under ORS 133.709 (Notice of intent to dispose) for the purpose of preparing a motion to preserve biological evidence. [2011 c.275 §5]

Note: See note under 133.705 (Definitions for ORS 133.705 to 133.717).

133.715 ORDER

(1) Upon receipt of a timely motion to preserve biological evidence under ORS 133.709 (Notice of intent to dispose) (3), the court shall:

(a) Conduct a hearing to resolve the motion; or
(b) Enter an order directing the custodian to preserve the biological evidence.

(2)(a) In determining whether to order the preservation of biological evidence, the court shall consider, in addition to other factors the court considers appropriate, the following factors:

(A) Whether the identification of the offender was a disputed issue;
(B) Whether other biological evidence in the case contains DNA in an amount that is sufficient to develop a DNA profile and will not be disposed of;
(C) If the biological evidence has not previously been tested, whether it is possible to perform testing on the biological evidence;
(D) Whether the defendant has served all of the sentence imposed; and
(E) Whether the defendant has exhausted the defendant's appellate or post-conviction rights.

(b) If the defendant has not exhausted the defendant's appellate and post-conviction rights, there is a presumption that the biological evidence should be preserved.
(c) In making the determination described in this subsection, except as otherwise provided in paragraph (b) of this subsection, the court may assign the weight the court deems appropriate to the factors described in paragraph (a) of this subsection and to any other factor the court determines is appropriate.
(d) For purposes of subparagraph (2)(a)(A) of this section, the court need not presume that identification of the offender is not a disputed issue solely because the defendant has pleaded guilty or no contest to the crime, has confessed to the crime or has made an admission.

(3) If the court enters an order authorizing the disposal of biological evidence, the order may not authorize disposal to occur sooner than 45 days after the date the order is entered. The court shall provide a copy of the order to the custodian, the district attorney and the defendant.
(4) Either the state or the defendant may appeal from an order entered under this section in the manner provided in ORS chapter 19 for appeals from judgments. Notwithstanding ORS 19.330 (Stays generally), the filing of a notice of appeal automatically stays an order entered under this section. [2011 c.275 §4]

Note: See note under 133.705 (Definitions for ORS 133.705 to 133.717).

133.717 PROVISION OF NOTICE OR ORDER TO DEFENDANT

When a provision of ORS 133.705 (Definitions for ORS 133.705 to 133.717) to 133.717 (Provision of notice or order to defendant) requires a district attorney or the court to provide written notice or an order to the defendant and the defendant:

(1) Is incarcerated for any offense in a Department of Corrections institution, the notice must be sent by regular United States mail in an envelope prominently displaying the words “Legal Mail.”

(2) Is supervised by a supervisory authority for any offense, the notice must be sent by regular United States mail to the defendant’s last-known address on record with the supervisory authority.

(3) Is no longer supervised by a supervisory authority, the notice must be sent by certified mail to the defendant’s last-known address. [2011 c.275 §6]

Note: See note under 133.705 (Definitions for ORS 133.705 to 133.717).

CHAPTER 7
RESTITUTION

137.106 RESTITUTION TO VICTIMS

(1)(a) When a person is convicted of a crime, or a violation as described in ORS 153.008 (Violations described), that has resulted in economic damages, the district attorney shall investigate and present to the court, at the time of sentencing or within 90 days after entry of the judgment, evidence of the nature and amount of the damages. The court may extend the time by which the presentation must be made for good cause. If the court finds from the evidence presented that a victim suffered economic damages, in addition to any other sanction it may impose, the court shall enter a judgment or supplemental judgment requiring that the defendant pay the victim restitution in a specific amount that equals the full amount of the victim's economic damages as determined by the court. The lien, priority of the lien and ability to enforce the specific amount of restitution established under this paragraph by a supplemental judgment relates back to the date of the original judgment that is supplemented.

(b) Notwithstanding paragraph (a) of this subsection, a court may order that the defendant pay the victim restitution in a specific amount that is less than the full amount of the victim's economic damages only if:

(A) The victim or, if the victim is an estate, successor in interest, trust or other entity, an authorized representative of the victim consents to the lesser amount, if the conviction is not for a person felony; or
(B) The victim or, if the victim is an estate, successor in interest, trust or other entity, an authorized representative of the victim consents in writing to the lesser amount, if the conviction is for a person felony.

(c) As used in this subsection, "person felony" has the meaning given that term in the rules of the Oregon Criminal Justice Commission.

(2) After the district attorney makes a presentation described in subsection (1) of this section, if the court is unable to find from the evidence presented that a victim suffered economic damages, the court shall make a finding on the record to that effect.
(3) No finding made by the court or failure of the court to make a finding under this section limits or impairs the rights of a person injured to sue and recover damages in a civil action as provided in ORS 137.109 (Effect of restitution order on other remedies of victim).
(4)(a) If a judgment or supplemental judgment described in subsection (1) of this section includes restitution, a court may delay the enforcement of the monetary sanctions, including restitution, only if the defendant alleges and establishes to the satisfaction of the court the defendant's inability to pay the judgment in full at the time the judgment is entered. If the court finds that the defendant is unable to pay, the court may establish or allow an appropriate supervising authority to establish a payment schedule, taking into consideration the financial resources of the defendant and the burden that payment of restitution will impose, with due regard to the other obligations of

the defendant. The supervising authority shall be authorized to modify any payment schedule established under this section.

(b) As used in this subsection, "supervising authority" means any state or local agency that is authorized to supervise the defendant.

(5) If the defendant objects to the imposition, amount or distribution of the restitution, the court shall allow the defendant to be heard on such issue at the time of sentencing or at the time the court determines the amount of restitution.
(6)(a) At least 10 days prior to the presentation described in subsection (1) of this section, the district attorney shall:

(A) Disclose to the defendant the names of any witnesses that may be called during the presentation; and
(B) Provide the defendant with copies of, or allow the defendant to inspect, any exhibits that will be used or introduced during the presentation.

(b) If the court finds that the district attorney has violated the requirements of this subsection, the court shall grant a continuance to allow additional time for preparation upon request of the defendant. Any additional time granted under this paragraph may not count toward the 90-day time limitation described in subsection (1) of this section. [1977 c.371 §2; 1983 c.724 §1; 1993 c.533 §1; 1997 c.313 §23; 1999 c.1051 §124; 2003 c.670 §1; 2005 c.564 §2; 2007 c.425 §1; 2007 c.482 §1; 2013 c.388 §1; 2015 c.9 §2]

137.107 AUTHORITY OF COURT TO AMEND PART OF JUDGMENT RELATING TO RESTITUTION

At any time after entry of a judgment upon conviction of a crime, the court may amend that part of the judgment relating to restitution if, in the original judgment, the court included language imposing, recommending or requiring restitution but failed to conform the judgment to the requirements of ORS 18.048 (Judgment in criminal action that contains money award) or any other law governing the form of judgments in effect before January 1, 2004. [1997 c.526 §2; 2003 c.576 §163]

Note: 137.107 (Authority of court to amend part of judgment relating to restitution) was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

CHAPTER 8
APPEALS

138.020 WHO MAY APPEAL

Either the state or the defendant may as a matter of right appeal from a judgment in a criminal action in the cases prescribed in ORS 138.010 (Mode of review) to 138.310 (Notice to court below when public defense services executive director certifies costs, expenses or compensation), and not otherwise.

138.071 TIME WITHIN WHICH APPEAL MUST BE TAKEN

(1) Except as provided in this section, a notice of appeal must be served and filed not later than 30 days after the judgment or order appealed from was entered in the register.
(2) If a motion for new trial or motion in arrest of judgment is timely served and filed, a notice of appeal must be served and filed within 30 days from the earlier of the following dates:

(a) The date of entry of the order disposing of the motion; or
(b) The date on which the motion is deemed denied.

(3) A defendant cross-appealing shall serve and file the notice of cross-appeal within 10 days of the expiration of the time allowed in subsection (1) of this section.
(4)(a) When an appeal is pending and the trial court enters an amended, corrected or supplemental judgment, or an amended or corrected order that is appealable under ORS 138.035 (Appeal by defendant) or 138.045 (Appeal by state) or any other statutory provision:

(A) If the appellant intends to assign error to any part of the amended, corrected or supplemental judgment, or amended or corrected order that is appealable, the appellant shall file an amended notice of appeal from such judgment or order not later than 30 days after the appellant receives notice that such judgment or order has been entered.

(B) If the appellant does not intend to assign error to any part of the amended, corrected or supplemental judgment, or amended or corrected order that is appealable, the appellant need only file a notice of intent to proceed with the appeal not later than 30 days after the appellant receives notice that such judgment or order has been entered. The notice of intent to proceed is not jurisdictional.

(b) As used in this subsection, “appellant” means the attorney of record in the appellate court for the appellant or, if the appellant is not represented by an attorney, the appellant personally.

(5)(a) Upon motion of a defendant, the Court of Appeals shall grant the defendant leave to file a notice of appeal after the time limits described in subsections (1) to (4) of this section if:

(A) The defendant, by clear and convincing evidence, shows that the failure to file a timely notice of appeal is not attributable to the defendant personally; and
(B) The defendant shows a colorable claim of error in the proceeding from which the appeal is taken.

(b) A defendant is not entitled to relief under this subsection for failure to file timely notice of cross-appeal when the state appeals pursuant to ORS 138.045 (Appeal by state) (1)(d).
(c) The request for leave to file a notice of appeal after the time limits prescribed in subsections (1) to (3) of this section must be filed no later than 90 days after entry of the order or judgment being appealed. The request for leave to file a notice of appeal after the time limit prescribed in subsection (4) of this section must be filed no later than 90 days after the party receives notice that the order or judgment has been entered. A request for leave under this subsection must be accompanied by the notice of appeal, may be filed by mail and is deemed filed on the date of mailing if the request is mailed as provided in ORS 19.260 (Filing by mail or delivery).
(d) The court may not grant relief under this subsection unless the state has notice and opportunity to respond to the defendant's request for relief.
(e) The denial of a motion under paragraph (a) of this subsection is a bar to post-conviction relief under ORS 138.510 (Persons who may file petition for relief) to 138.680 (Short title) on the same ground, unless the court provides otherwise. [1971 c.565 §21 (enacted in lieu of 138.070); 1977 c.752 §3; 1985 c.282 §1; 1985 c.734 §§17,17a; 1987 c.852 §1; 2001 c.870 §7; 2003 c.288 §2; 2007 c.547 §2; 2009 c.11 §10; 2013 c.153 §2; 2017 c.529 §7]

138.081 SERVICE AND FILING OF NOTICE OF APPEAL

(1) An appeal shall be taken by causing a notice of appeal in the form prescribed by ORS 19.250 (Contents of notice of appeal) to be served:

(a)(A) When the defendant appeals, on the district attorney for the county in which the judgment is entered or, if the appeal is under ORS 221.360 (Appeal on issue of constitutionality of charter provision or ordinance), on the plaintiff's attorney; or

(B) When the state appeals, on the attorney of record for the defendant or, if the defendant has no attorney of record, on the defendant;

(b) On the trial court transcript coordinator if a transcript is required in connection with the appeal; and
(c) On the trial court administrator.

(2)(a) If the state cannot effect service on the defendant as provided in subsection (1)(a)(B) of this section, the trial court may order alternative service in accordance with ORCP 7 D(6) on proof of the state's due diligence in attempting to effect service.

(b) Alternative service is not perfected until the time established by the court for response expires and the state files with the appellate court the affidavit or declaration of alternative service.

(3) The notice of appeal signed by the appellant, along with proof of service of the notice, must be filed with the administrator of the court to which the appeal is taken. Proof of service of the notice of appeal may either be part of, or accompany, the original notice when filed. [1971 c.565 §23 (enacted in lieu of 138.080); 1985 c.734 §18; 1997 c.389 §9; 2001 c.870 §8; 2017 c.529 §8]

CHAPTER 9
POST-CONVICTION RELIEF

138.510 PERSONS WHO MAY FILE PETITION FOR RELIEF

(1) Except as otherwise provided in ORS 138.540 (Petition for relief as exclusive remedy for challenging conviction), any person convicted of a crime under the laws of this state may file a petition for post-conviction relief pursuant to ORS 138.510 (Persons who may file petition for relief) to 138.680 (Short title).
(2) A petition for post-conviction relief may be filed by one person on behalf of another person who has been convicted of aggravated murder and sentenced to death only if the person filing the petition demonstrates by a preponderance of the evidence that:

(a) The person sentenced to death is unable to file a petition on the person's own behalf due to mental incapacity or because of a lack of access to the court; and
(b) The person filing the petition has a significant relationship with the person sentenced to death and will act in the best interest of the person on whose behalf the petition is being filed.

(3) A petition pursuant to ORS 138.510 (Persons who may file petition for relief) to 138.680 (Short title) must be filed within two years of the following, unless the court on hearing a subsequent petition finds grounds for relief asserted which could not reasonably have been raised in the original or amended petition:

(a) If no appeal is taken, the date the judgment or order on the conviction was entered in the register.
(b) If an appeal is taken, the date the appeal is final in the Oregon appellate courts.
(c) If a petition for certiorari to the United States Supreme Court is filed, the later of:
(A) The date of denial of certiorari, if the petition is denied; or
(B) The date of entry of a final state court judgment following remand from the United States Supreme Court.

(4) A one-year filing period shall apply retroactively to petitions filed by persons whose convictions and appeals became final before August 5, 1989, and any such petitions must be filed within one year after November 4, 1993. A person whose post-conviction petition was dismissed prior to November 4, 1993, cannot file another post-conviction petition involving the same case.
(5) The remedy created by ORS 138.510 (Persons who may file petition for relief) to 138.680 (Short title) is available to persons convicted before May 26, 1959.
(6) In any post-conviction proceeding pending in the courts of this state on May 26, 1959, the person seeking relief in such proceedings shall be allowed to amend the action and seek relief under ORS 138.510 (Persons who may file petition for relief) to 138.680 (Short title). If such person does not choose to amend the action in this manner, the law existing prior to May 26, 1959, shall govern the case. [1959 c.636 §§1,16,17; 1989 c.1053 §18; 1993 c.517 §1; 1999 c.1055 §7]

138.520 RELIEF WHICH COURT MAY GRANT

The relief which a court may grant or order under ORS 138.510 (Persons who may file petition for relief) to 138.680 (Short title) shall include release, new trial, modification of sentence, and such other relief as may be proper and just. The court may also make supplementary orders to the relief granted, concerning such matters as rearrangement, retrial, custody and release on security. [1959 c.636 §2; 1999 c.1051 §258]

POST-CONVICTION MOTION FOR DNA TESTING

138.690 MOTION

A person may file in the circuit court in which the judgment of conviction was entered a motion requesting the performance of DNA (deoxyribonucleic acid) testing on specific evidence if the person has been convicted of aggravated murder or a felony in which DNA evidence could exist and is relevant to establishing an element of the offense. [2001 c.697 §1; 2005 c.759 §1; 2007 c.800 §1; 2015 c.564 §1]

Note: 138.690 (Motion) to 138.698 (Effect of setting aside conviction on plea agreement) were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 138 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

138.692 AFFIDAVIT

(1)(a) When a person files a motion under ORS 138.690 (Motion) requesting the performance of DNA (deoxyribonucleic acid) testing on evidence, the motion must be supported by an affidavit. The affidavit must:

(A) Contain a statement that the person is innocent of the offense for which the person was convicted;
(B) Identify the evidence to be tested with as much specificity as is reasonably practicable and a theory of defense that the DNA testing would support. The evidence must have been secured in connection with the prosecution, including the investigation, that resulted in the conviction of the person; and
(C) Include the results of any previous DNA test of the evidence if a previous DNA test was conducted by either the prosecution or the defense.

(b) Consistent with the statement of innocence described in paragraph (a)(A) of this subsection, the person must present a prima facie showing that DNA testing of the evidence would, assuming exculpatory results, lead to a finding that the person is actually innocent of the offense for which the person was convicted.

(2) The state shall answer the motion requesting the performance of DNA testing and may refute the basis for the motion.

(3) Upon the motion of a party or the court's own motion, the court may allow the testimony of witnesses if the testimony will assist the court in making its determination to grant or deny the motion requesting the performance of DNA testing. The court may not allow testimony from the victim of the offense without the consent of the victim.
(4) The court shall order the DNA testing requested in a motion under subsection (1) of this section if the court finds that:

(a) The requirements of subsection (1) of this section have been met;
(b) Unless the parties stipulate otherwise, the evidence to be tested has been subject to a chain of custody sufficient to establish that the evidence has not been altered in any material aspect;
(c) The motion is made for the purpose of demonstrating the innocence of the person of the offense and not to delay the execution of the sentence or administration of justice; and
(d) There is a reasonable possibility, assuming exculpatory results, that the testing would lead to a finding that the person is actually innocent of the offense for which the person was convicted.

(5) In granting a motion under this section, the court may impose reasonable conditions designed to protect the interests of the state in the integrity of the evidence and the testing process.
(6) Unless both parties agree or the court finds compelling circumstances otherwise, the court shall order the Department of State Police to conduct the DNA testing. The court may order a second test upon a showing that the state police failed to follow appropriate DNA protocols and that failure reasonably affected the accuracy of the DNA test.
(7) The costs of DNA tests ordered under this section must be paid by:

(a) The person making the motion for DNA testing if the person is not incarcerated or, if the person is incarcerated, if the person is financially able to pay; or
(b) The state if counsel at state expense has been appointed under ORS 138.694 (Appointed counsel).

(8) The laboratory conducting the DNA test shall provide a copy of the results of the test to the person filing the motion and to the state.
(9) Notwithstanding the fact that an appeal of the conviction or a petition for post-conviction relief in the underlying case is pending at the time a motion is filed under ORS 138.690 (Motion), the circuit court shall consider the motion. If the court grants the motion, the court shall notify the court considering the appeal or post-conviction petition of that fact. When a court receives notice under this subsection, the court shall stay the appeal or post-conviction proceedings pending the outcome of the motion filed under ORS 138.690 (Motion) and any further proceedings resulting from the motion.
(10) The court shall make findings when issuing an order under this section. [2001 c.697 §2; 2005 c.759 §2; 2007 c.800 §2; 2015 c.564 §2]

138.696 TEST RESULTS

(1) If DNA (deoxyribonucleic acid) testing ordered under ORS 138.692 (Affidavit) produces inconclusive evidence or evidence that is unfavorable to the person requesting the testing:

(a) The court shall forward the results to the State Board of Parole and Post-Prison

Supervision; and
(b) The Department of State Police shall compare the evidence to DNA evidence from unsolved crimes in the Combined DNA Index System.

(2) If DNA testing ordered under ORS 138.692 (Affidavit) produces exculpatory evidence, the person who requested the testing may file in the court that ordered the testing a motion for a new trial based on newly discovered evidence. Notwithstanding the time limit established in ORCP 64 F, a person may file a motion under this subsection at any time during the 60-day period that begins on the date the person receives the test results.
(3) Upon receipt of a motion filed under subsection (2) of this section and notwithstanding the time limits in ORCP 64 F, the court shall hear the motion pursuant to ORCP 64. [2001 c.697 §3; 2003 c.288 §3; 2015 c.564 §4]

138.698 EFFECT OF SETTING ASIDE CONVICTION ON PLEA AGREEMENT

When a conviction has been set aside as the result of evidence obtained through DNA (deoxyribonucleic acid) testing conducted under ORS 138.692 (Affidavit), the prosecution of any offense that was dismissed or not charged pursuant to a plea agreement that resulted in the conviction that has been set aside may be commenced within the later of:

(1) The period of limitation established for the offense under ORS 131.125 (Time limitations) to 131.155 (Tolling of statute); or

(2) Notwithstanding ORS 131.125 (Time limitations) and 131.155 (Tolling of statute), two years after the date the conviction was set aside. [2005 c.759 §3]

Note: See note under 138.690 (Motion).

CHAPTER 10
RECOVERY OF STOLEN PROPERTY

142.010 OFFICER'S CUSTODY OF STOLEN PROPERTY IS SUBJECT TO ORDER OF MAGISTRATE OR COURT

When property alleged to have been the subject of a theft comes into the custody of a peace officer, the peace officer shall hold it subject to the order of the magistrate or court, as provided in ORS 142.020 (Delivery of stolen property to owner). [Amended by 1971 c.743 §334]

142.020 DELIVERY OF STOLEN PROPERTY TO OWNER

(1) On satisfactory proof of the title of the owner of the property, the magistrate who examines the charge against the person accused of the crime shall order it to be delivered to the owner, or the duly authorized agent of the owner, on the paying by the owner of the reasonable and necessary expenses incurred in its preservation, which shall be ascertained and certified by the magistrate.
(2) If property that is the subject of a theft has not been delivered to the owner, the court before which a trial is had for the stealing thereof may, on like proof and condition, order its delivery to the owner or the agent of the owner. [Amended by 1971 c.743 §335]

142.030 RIGHTS AND AUTHORITY CONFERRED BY ORDER OF DELIVERY

The order provided for in ORS 142.020 (Delivery of stolen property to owner) entitles the owner or the agent of the owner to demand and receive the possession of the property from the officer having it in custody and authorizes such officer to deliver it accordingly; but it does not affect the rights of third persons.

142.040 DISPOSAL OF UNCLAIMED MONEY OR PROPERTY

If stolen property is not claimed by the owner within 60 days from the conviction of the person charged with the theft, the officer having it in custody shall, if it is money, pay it into the county treasury. If it is other property, the officer may dispose of the property in accordance with ORS 98.245 (Disposition of unclaimed property) or sell it as upon an execution and, after paying the expenses of the sale and preservation of the property, which shall be ascertained and certified by the clerk of the court, pay the proceeds into the county treasury. [Amended by 1971 c.743 §336; 1997 c.480 §4]

142.050 TITLE OF PURCHASER AT SALE

A sale of property pursuant to ORS 142.040 (Disposal of unclaimed money or property) conveys a good title to the purchaser as against any person.

142.060 CREDITING AND APPROPRIATING PROCEEDS OF SALE PAID INTO COUNTY TREASURY

Money paid into the county treasury pursuant to ORS 142.040 (Disposal of unclaimed money or property) shall be credited and appropriated as a fine imposed upon a person convicted of theft; but the owner of the property, at any time within six years of the conviction, upon making satisfactory proof of ownership before the county court of the county, may, by the order of such court, have the proceeds repaid to the owner from the county treasury. [Amended by 1971 c.743 §337]

CHAPTER 11
PAROLE AND PROBATION

144.404 DEPARTMENT OF CORRECTIONS AUTHORITY TO RECEIVE, HOLD AND DISPOSE OF PROPERTY.

The Department of Corrections is authorized to receive, hold and dispose of contraband, things otherwise criminally possessed or possessed in violation of parole or post-prison supervision conditions, or unclaimed goods seized by a parole and probation officer during the arrest of a suspected parole or post-prison supervision violator or during the search of the suspected violator or of the premises, vehicle or other property of the suspected violator. [1991 c.286 §1]

144.405 DUTY OF OFFICER UPON SEIZURE; DISPOSITION OF PROPERTY IF NO CLAIM TO RIGHTFUL POSSESSION IS ESTABLISHED.

(1) Upon seizing property in execution of duty, a parole and probation officer shall, as soon thereafter as is reasonably possible, make a written list of the things seized and furnish a copy to the suspected parole or post-prison supervision violator. The list shall contain a notice informing the person of the right to contest the seizure by filing a petition and shall contain such other information as the Department of Corrections, by rule, may require.
(2) If no claim of rightful possession has been established under ORS 144.405 to 144.409, the Department of Corrections may order the sale, destruction or other disposition of the things seized. The department may enter into agreements with other state and local officials responsible under applicable laws for selling, destroying or otherwise disposing of contraband or unclaimed goods in official custody for ultimate disposition of the things seized. The clear proceeds, if any, generated by the disposition of things seized shall be deposited in the State Treasury to the credit of the General Fund.
(3) If things seized by a parole and probation officer in execution of duty are not needed for evidentiary purposes, and if a person having a rightful claim establishes identity and right to possession to the satisfaction of the Department of Corrections, the department may summarily return the things seized to their rightful possessor.
(4) If the things seized are contraband, the fruits of crime or things otherwise criminally possessed, the Department of Corrections may:

(a) Relinquish custody of the things seized to appropriate law enforcement officials for disposition; or
(b) Hold and safeguard the things seized until directed by appropriate law enforcement officials that the things in question are no longer needed for purposes of criminal prosecution. [1991 c.286 §2]

144.406 PETITION FOR RETURN OF THINGS SEIZED.

(1) Within 30 days after actual notice of any seizure, or at such later date as the Department of Corrections in its discretion may allow:

(a) An individual from whose person, property or premises things have been seized may petition the department to return the things seized to the person or premises from which they were seized.
(b) Any other person asserting a claim to rightful possession of the things seized may petition the department to restore the things seized to the person.

(2) Petitions for return or restoration of things seized shall be served on the manager of the local field services office having supervision over the suspected parole or post-prison supervision violator.
(3) Service of a petition for the return or restoration of things seized shall be made by certified or registered mail, return receipt requested. [1991 c.286 §3]

Note: See note under 144.404 (Department of Corrections authority to receive, hold and dispose of property).

144.407 GROUNDS FOR VALID CLAIM TO RIGHTFUL POSSESSION.

A petition for the return or restoration of things seized shall be based on the ground that the petitioner has a valid claim to rightful possession because:

(1) The things had been stolen or otherwise converted and the petitioner is the owner or rightful possessor;
(2) The things seized were not, in fact, subject to seizure in connection with the suspected parole or post-prison supervision violation;
(3) Although the things seized were subject to seizure in connection with a suspected parole or post-prison supervision violation, the petitioner is or will be entitled to their return or restoration upon a determination by the Department of Corrections or the State Board of Parole and Post-Prison Supervision that they are no longer needed for evidentiary purposes, do not constitute a parole or post-prison supervision violation or may be lawfully possessed by the petitioner; or
(4) The suspected parole or post-prison supervision violator and the department have stipulated that the things seized may be returned to the petitioner. [1991 c.286 §4]

CHAPTER 12
DEATH INVESTIGATIONS

146.103 REMOVAL OF BODY, EFFECTS OR WEAPONS PROHIBITED WITHOUT CONSENT.

(1) In a death requiring an investigation, no person shall move a human body or body suspected of being human, or remove any of the effects of the deceased or instruments or weapons related to the death without the permission of a medical examiner, deputy medical examiner or the district attorney.
(2) No person shall move or remove any of the items specified in subsection (1) of this section if the medical examiner or district attorney objects.
(3) A medical examiner, district attorney or deputy medical examiner shall take custody of or exercise control over the body, the effects of the deceased and any weapons, instruments, vehicles, buildings or premises which the medical examiner, district attorney or deputy medical examiner has reason to believe were involved in the death, in order to preserve evidence relating to the cause and manner of death.
(4) In a death requiring investigation, no person shall undress, embalm, cleanse the surface of the body or otherwise alter the appearance or the state of the body without the permission of the medical examiner or the district attorney. [1973 c.408 §14]

146.125 DISPOSITION OF PERSONAL PROPERTY.

(1) The medical examiner, medical-legal death investigator, district attorney or sheriff may temporarily retain possession of any property found on the body or in the possession of the deceased which in the opinion of the medical examiner, medical-legal death investigator, district attorney or sheriff may be useful in establishing the cause or manner of death or may be used in further proceedings.
(2) When a medical examiner, medical-legal death investigator, district attorney or sheriff assumes control or custody of money or personal property found on the body or in the possession of the deceased, the medical examiner, medical-legal death investigator, district attorney or sheriff shall:

(a) Make a verified inventory of such money or property.
(b) File the inventory in the district medical examiner's office.
(c) Deposit the money with the county treasurer to the credit of the county general fund.

(3) If personal property is not retained by the medical examiner, medical-legal death investigator, district attorney or sheriff, and is not claimed within 30 days, the inventory shall be filed with the board of county commissioners to be disposed of as follows:

(a) If the property has value, the board may order it sold and after deducting the cost of sale, shall deposit the proceeds of the sale with the county treasurer to the credit of the county general fund.

(b) If the property has no value in the judgment of the board, the board may order the sheriff to destroy such property.

(4) Any expenses incurred by the county in transporting or disposing of the body may be deducted from the money or proceeds of the sale of personal property before it is delivered to a claimant.
(5) If it appears that the person whose death required investigation died wholly intestate and without heirs, the county whose official has control or custody of the property shall notify an estate administrator of the Department of State Lands appointed under ORS 113.235 (Appointment of estate administrators by Director of Department of State Lands) within 15 days after the death.
(6) If a legally qualified personal representative, spouse, or next of kin:

(a) Claims the money of the deceased, the treasurer shall, subject to the provisions of subsection (4) of this section, deliver such money to the claimant.
(b) Within 30 days, claims the personal property of the deceased, the property shall be delivered to such claimant subject to the provisions of subsections (1) and (5) of this section.

(7) If money of the deceased is not claimed within seven years and is presumed abandoned as provided by ORS 98.302 (Definitions for ORS 98.302 to 98.436) to 98.436 (Short title) and 98.992 (Penalty for failure to report, pay or deliver property under ORS 98.302 to 98.436), the board of county commissioners shall order the money paid as required by law. [1973 c.408 §20; 1977 c.582 §5; 2003 c.395 §19; 2017 c.151 §19]

CHAPTER 13
GAMBLING OFFENSES

167.162 GAMBLING DEVICE AS PUBLIC NUISANCE

(1) A gambling device is a public nuisance. Any peace officer shall summarily seize any such device that the peace officer finds and deliver it to the custody of the law enforcement agency that employs the officer, which shall hold it subject to the order of the court having jurisdiction.

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

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

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

(5) In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until the claimant proves that the claimant:

(a) Has an interest in the gambling device, as owner or otherwise, that the claimant acquired in good faith.

(b) At no time had any knowledge or reason to believe that it was being or would be used in violation of law relating to gambling.

(6) In any proceeding in court for the forfeiture of any gambling device except a slot machine seized for a violation of law relating to gambling, the court may in its discretion order delivery thereof to any claimant who shall establish the right to the immediate possession thereof, and shall execute, with one or more sureties, or by a surety company, approved by the court, and deliver to the court, a bond in such sum as the court shall determine, running to the State of Oregon, and conditioned to return such gambling device at the time of trial, and conditioned further that, if the gambling device be not returned at the time of trial, the bond may in the discretion of the court stand in lieu of and be forfeited in the same manner as such gambling device. [1971 c.743 §272; 1977 c.264 §2; 1999 c.59 §32; 2003 c.576 §391; 2005 c.22 §117; 2009 c.835 §9]

CHAPTER 14
POSSESSION AND USE OF WEAPONS

166.210 DEFINITIONS

As used in ORS 166.250 (Unlawful possession of firearms) to 166.270 (Possession of weapons by certain felons), 166.291 (Issuance of concealed handgun license) to 166.295 (Renewal of license) and 166.410 (Manufacture, importation or sale of firearms) to 166.470 (Limitations and conditions for sales of firearms):

(1)"Antique firearm" means:

> (a) Any firearm, including any firearm with a matchlock, flintlock, percussion cap or similar type of ignition system, manufactured in or before 1898; and
> (b) Any replica of any firearm described in paragraph (a) of this subsection if the replica:
>
> > (A) Is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or
> > (B) Uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is not readily available in the ordinary channels of commercial trade.

(2)"Corrections officer" has the meaning given that term in ORS 181A.355 (Definitions for ORS 181A.355 to 181A.670).
(3)"Firearm" means a weapon, by whatever name known, which is designed to expel a projectile by the action of powder.
(4)"Firearms silencer" means any device for silencing, muffling or diminishing the report of a firearm.
(5)"Handgun" means any pistol or revolver using a fixed cartridge containing a propellant charge, primer and projectile, and designed to be aimed or fired otherwise than from the shoulder.
(6)"Machine gun" means a weapon of any description by whatever name known, loaded or unloaded, which is designed or modified to allow two or more shots to be fired by a single pressure on the trigger device.
(7)"Minor" means a person under 18 years of age.
(8)"Offense" has the meaning given that term in ORS 161.505 ("Offense" described).
(9)"Parole and probation officer" has the meaning given that term in ORS 181A.355 (Definitions for ORS 181A.355 to 181A.670).
(10)"Peace officer" has the meaning given that term in ORS 133.005 (Definitions for ORS 133.005 to 133.400 and 133.410 to 133.450).
(11)"Short-barreled rifle" means a rifle having one or more barrels less than 16 inches in length and any weapon made from a rifle if the weapon has an overall length of less than 26 inches.

(12)“Short-barreled shotgun” means a shotgun having one or more barrels less than 18 inches in length and any weapon made from a shotgun if the weapon has an overall length of less than 26 inches. [Amended by 1977 c.769 §1; 1979 c.779 §3; 1989 c.839 §1; 1993 c.735 §14; 1995 c.670 §3; 1999 c.1040 §2; 2001 c.666 §§32,44; 2003 c.614 §7; 2007 c.368 §1; 2009 c.610 §4]

166.220 UNLAWFUL USE OF WEAPON

(1) A person commits the crime of unlawful use of a weapon if the person:

(a) Attempts to use unlawfully against another, or carries or possesses with intent to use unlawfully against another, any dangerous or deadly weapon as defined in ORS 161.015 (General definitions); or
(b) Intentionally discharges a firearm, blowgun, bow and arrow, crossbow or explosive device within the city limits of any city or within residential areas within urban growth boundaries at or in the direction of any person, building, structure or vehicle within the range of the weapon without having legal authority for such discharge.

(2) This section does not apply to:

(a) Police officers or military personnel in the lawful performance of their official duties;
(b) Persons lawfully defending life or property as provided in ORS 161.219 (Limitations on use of deadly physical force in defense of a person);
(c) Persons discharging firearms, blowguns, bows and arrows, crossbows or explosive devices upon public or private shooting ranges, shooting galleries or other areas designated and built for the purpose of target shooting;
(d) Persons lawfully engaged in hunting in compliance with rules and regulations adopted by the State Department of Fish and Wildlife; or
(e) An employee of the United States Department of Agriculture, acting within the scope of employment, discharging a firearm in the course of the lawful taking of wildlife.

(3) Unlawful use of a weapon is a Class C felony. [Amended by 1975 c.700 §1; 1985 c.543 §1; 1991 c.797 §1; 2009 c.556 §5]

166.240 CARRY OF CONCEALED WEAPONS

(1) Except as provided in subsection (2) of this section, any person who carries concealed upon the person any knife having a blade that projects or swings into position by force of a spring or by centrifugal force, any dirk, dagger, ice pick, slungshot, metal knuckles, or any similar instrument by the use of which injury could be inflicted upon the person or property of any other person, commits a Class B misdemeanor.

(2) Nothing in subsection (1) of this section applies to any peace officer as defined in ORS 133.005 (Definitions for ORS 133.005 to 133.400 and 133.410 to 133.450), whose duty it is to serve process or make arrests. Justice courts have concurrent jurisdiction to try any person charged with violating any of the provisions of subsection (1) of this section. [Amended by 1977 c.454 §1; 1985 c.543 §2; 1989 c.839 §21; 1999 c.1040 §15]

166.250 UNLAWFUL POSSESSION OF FIREARMS

(1) Except as otherwise provided in this section or ORS 166.260 (Persons not affected by ORS 166.250), 166.270 (Possession of weapons by certain felons), 166.273 (Relief from firearm prohibitions related to mental health), 166.274 (Relief from prohibition against possessing or receiving firearm), 166.291 (Issuance of concealed handgun license), 166.292 (Procedure for issuing) or 166.410 (Manufacture, importation or sale of firearms) to 166.470 (Limitations and conditions for sales of firearms), a person commits the crime of unlawful possession of a firearm if the person knowingly:

(a) Carries any firearm concealed upon the person;
(b) Possesses a handgun that is concealed and readily accessible to the person within any vehicle; or
(c) Possesses a firearm and:

(A) Is under 18 years of age;
(B)(i) While a minor, was found to be within the jurisdiction of the juvenile court for having committed an act which, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470 (Limitations and conditions for sales of firearms); and
(ii) Was discharged from the jurisdiction of the juvenile court within four years prior to being charged under this section;
(C) Has been convicted of a felony;
(D) Was committed to the Oregon Health Authority under ORS 426.130 (Court determination of mental illness);
(E) Was found to be a person with mental illness and subject to an order under ORS 426.130 (Court determination of mental illness) that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness;
(F) Is presently subject to an order under ORS 426.133 (Assisted outpatient treatment) prohibiting the person from purchasing or possessing a firearm;
(G) Has been found guilty except for insanity under ORS 161.295 (Effect of qualifying mental disorder) of a felony; or
(H) The possession of the firearm by the person is prohibited under ORS 166.255 (Possession of firearm or ammunition by certain persons prohibited).

(2) This section does not prohibit:

(a) A minor, who is not otherwise prohibited under subsection (1)(c) of this section, from possessing a firearm:

(A) Other than a handgun, if the firearm was transferred to the minor by the minor's parent or guardian or by another person with the consent of the minor's parent or guardian; or
(B) Temporarily for hunting, target practice or any other lawful purpose; or

(b) Any citizen of the United States over the age of 18 years who resides in or is temporarily sojourning within this state, and who is not within the excepted classes prescribed by ORS

166.270 (Possession of weapons by certain felons) and subsection (1) of this section, from owning, possessing or keeping within the person's place of residence or place of business any handgun, and no permit or license to purchase, own, possess or keep any such firearm at the person's place of residence or place of business is required of any such citizen. As used in this subsection, "residence" includes a recreational vessel or recreational vehicle while used, for whatever period of time, as residential quarters.

(3) Firearms carried openly in belt holsters are not concealed within the meaning of this section.
(4)(a) Except as provided in paragraphs (b) and (c) of this subsection, a handgun is readily accessible within the meaning of this section if the handgun is within the passenger compartment of the vehicle.

(b) If a vehicle, other than a vehicle described in paragraph (c) of this subsection, has no storage location that is outside the passenger compartment of the vehicle, a handgun is not readily accessible within the meaning of this section if:

(A) The handgun is stored in a closed and locked glove compartment, center console or other container; and
(B) The key is not inserted into the lock, if the glove compartment, center console or other container unlocks with a key.

(c) If the vehicle is a motorcycle, an all-terrain vehicle or a snowmobile, a handgun is not readily accessible within the meaning of this section if:

(A) The handgun is in a locked container within or affixed to the vehicle; or
(B) The handgun is equipped with a trigger lock or other locking mechanism that prevents the discharge of the firearm.

(5) Unlawful possession of a firearm is a Class A misdemeanor. [Amended by 1979 c.779 §4; 1985 c.543 §3; 1989 c.839 §13; 1993 c.732 §1; 1993 c.735 §12; 1999 c.1040 §1; 2001 c.666 §§33,45; 2003 c.614 §8; 2009 c.499 §1; 2009 c.595 §112; 2009 c.826 §§8a,11a; 2011 c.662 §§1,2; 2013 c.360 §§6,7; 2015 c.50 §§12,13; 2015 c.201 §3; 2015 c.497 §§3,4]

166.255 POSSESSION OF FIREARM OR AMMUNITION BY CERTAIN PERSONS PROHIBITED

(1) It is unlawful for a person to knowingly possess a firearm or ammunition if:

(a) The person is the subject of a court order that:

(A) Was issued or continued after a hearing for which the person had actual notice and during the course of which the person had an opportunity to be heard;

(B) Restrains the person from stalking, intimidating, molesting or menacing an intimate partner, a child of an intimate partner or a child of the person; and

(C) Includes a finding that the person represents a credible threat to the physical safety of an intimate partner, a child of an intimate partner or a child of the person; or

(b) The person has been convicted of a qualifying misdemeanor and, at the time of the offense, the person was a family member of the victim of the offense.

(2) The prohibition described in subsection (1)(a) of this section does not apply with respect to the transportation, shipment, receipt, possession or importation of any firearm or ammunition imported for, sold or shipped to or issued for the use of the United States Government or any federal department or agency, or any state or department, agency or political subdivision of a state.
(3) As used in this section:

(a)"Convicted" means:

(A) The person was represented by counsel or knowingly and intelligently waived the right to counsel;
(B) The case was tried to a jury, if the crime was one for which the person was entitled to a jury trial, or the person knowingly and intelligently waived the person's right to a jury trial; and
(C) The conviction has not been set aside or expunged, and the person has not been pardoned.

(b)"Deadly weapon" has the meaning given that term in ORS 161.015 (General definitions).
(c)"Family member" means, with respect to the victim, the victim's spouse, the victim's former spouse, a person with whom the victim shares a child in common, the victim's parent or guardian, a person cohabiting with or who has cohabited with the victim as a spouse, parent or guardian or a person similarly situated to a spouse, parent or guardian of the victim.
(d)"Intimate partner" means, with respect to a person, the person's spouse, the person's former spouse, a parent of the person's child or another person who has cohabited or is cohabiting with the person in a relationship akin to a spouse.
(e)"Possess" has the meaning given that term in ORS 161.015 (General definitions).
(f)"Qualifying misdemeanor" means a misdemeanor that has, as an element of the offense, the use or attempted use of physical force or the threatened use of a deadly weapon. [2015 c.497 §2]

166.260 PERSONS NOT AFFECTED BY ORS 166.250

(1) ORS 166.250 (Unlawful possession of firearms) does not apply to or affect:

(a) A parole and probation officer, police officer or reserve officer, as those terms are defined in ORS 181A.355 (Definitions for ORS 181A.355 to 181A.670).

(b) A federal officer, as defined in ORS 133.005 (Definitions for ORS 133.005 to 133.400 and 133.410 to 133.450), or a certified reserve officer or corrections officer, as those terms are

defined in ORS 181A.355 (Definitions for ORS 181A.355 to 181A.670), while the federal officer, certified reserve officer or corrections officer is acting within the scope of employment.
(c) An honorably retired law enforcement officer, unless the person who is a retired law enforcement officer has been convicted of an offense that would make the person ineligible to obtain a concealed handgun license under ORS 166.291 (Issuance of concealed handgun license) and 166.292 (Procedure for issuing).
(d) Any person summoned by an officer described in paragraph (a) or (b) of this subsection to assist in making arrests or preserving the peace, while the summoned person is engaged in assisting the officer.
(e) The possession or transportation by any merchant of unloaded firearms as merchandise.
(f) Active or reserve members of:

(A) The Army, Navy, Air Force, Coast Guard or Marine Corps of the United States, or of the National Guard, when on duty;
(B) The commissioned corps of the National Oceanic and Atmospheric Administration; or
(C) The Public Health Service of the United States Department of Health and Human Services, when detailed by proper authority for duty with the Army or Navy of the United States.

(g) Organizations which are by law authorized to purchase or receive weapons described in ORS 166.250 (Unlawful possession of firearms) from the United States, or from this state.
(h) Duly authorized military or civil organizations while parading, or the members thereof when going to and from the places of meeting of their organization.
(i) A person who is licensed under ORS 166.291 (Issuance of concealed handgun license) and 166.292 (Procedure for issuing) to carry a concealed handgun.

(2) It is an affirmative defense to a charge of violating ORS 166.250 (Unlawful possession of firearms) (1)(c)(C) that the person has been granted relief from the disability under ORS 166.274 (Relief from prohibition against possessing or receiving firearm).
(3) Except for persons who are otherwise prohibited from possessing a firearm under ORS 166.250 (Unlawful possession of firearms) (1)(c) or 166.270 (Possession of weapons by certain felons), ORS 166.250 (Unlawful possession of firearms) does not apply to or affect:

(a) Members of any club or organization, for the purpose of practicing shooting at targets upon the established target ranges, whether public or private, while such members are using any of the firearms referred to in ORS 166.250 (Unlawful possession of firearms) upon such target ranges, or while going to and from such ranges.
(b) Licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from a hunting or fishing expedition.

(4) The exceptions listed in subsection (1)(d) to (i) of this section constitute affirmative defenses to a charge of violating ORS 166.250 (Unlawful possession of firearms). [Amended by 1977 c.207 §1; 1991 c.67 §36; 1993 c.735 §1; 1995 c.670 §2; 1999 c.1040 §3; 2009 c.316 §2; 2009 c.499 §4; 2012 c.106 §3; 2015 c.709 §2]

166.270 POSSESSION OF WEAPONS BY CERTAIN FELONS

(1) Any person who has been convicted of a felony under the law of this state or any other state, or who has been convicted of a felony under the laws of the Government of the United States, who owns or has in the person's possession or under the person's custody or control any firearm commits the crime of felon in possession of a firearm.
(2) Any person who has been convicted of a felony under the law of this state or any other state, or who has been convicted of a felony under the laws of the Government of the United States, who owns or has in the person's possession or under the person's custody or control any instrument or weapon having a blade that projects or swings into position by force of a spring or by centrifugal force or any blackjack, slingshot, sandclub, sandbag, sap glove, metal knuckles or an Electro-Muscular Disruption Technology device as defined in ORS 165.540 (Obtaining contents of communications), or who carries a dirk, dagger or stiletto, commits the crime of felon in possession of a restricted weapon.
(3) For the purposes of this section, a person "has been convicted of a felony" if, at the time of conviction for an offense, that offense was a felony under the law of the jurisdiction in which it was committed. Such conviction shall not be deemed a conviction of a felony if:

(a) The court declared the conviction to be a misdemeanor at the time of judgment; or
(b) The offense was possession of marijuana and the conviction was prior to January 1, 1972.

(4) Subsection (1) of this section does not apply to any person who has been:

(a) Convicted of only one felony under the law of this state or any other state, or who has been convicted of only one felony under the laws of the United States, which felony did not involve criminal homicide, as defined in ORS 163.005 (Criminal homicide), or the possession or use of a firearm or a weapon having a blade that projects or swings into position by force of a spring or by centrifugal force, and who has been discharged from imprisonment, parole or probation for said offense for a period of 15 years prior to the date of alleged violation of subsection (1) of this section; or
(b) Granted relief from the disability under 18 U.S.C. 925(c) or ORS 166.274 (Relief from prohibition against possessing or receiving firearm) or has had the person's record expunged under the laws of this state or equivalent laws of another jurisdiction.

(5) Felon in possession of a firearm is a Class C felony. Felon in possession of a restricted weapon is a Class A misdemeanor. [Amended by 1975 c.702 §1; 1985 c.543 §4; 1985 c.709 §2; 1987 c.853 §1; 1989 c.839 §4; 1993 c.735 §2; 1995 c.518 §1; 1999 c.1040 §16; 2003 c.14 §64; 2009 c.189 §1; 2009 c.499 §3]

166.272 UNLAWFUL POSSESSION OF MACHINE GUNS, CERTAIN SHORT-BARRELED FIREARMS AND FIREARMS SILENCERS

(1) A person commits the crime of unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer if the person knowingly possesses any machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer.
(2) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or firearms

silencer is a Class B felony.
(3) A peace officer may not arrest or charge a person for violating subsection (1) of this section if the person has in the person's immediate possession documentation showing that the machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer is registered as required under federal law.
(4) It is an affirmative defense to a charge of violating subsection (1) of this section that the machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer was registered as required under federal law. [1989 c.839 §13a; 1997 c.749 §8; 1997 c.798 §1]

166.273 RELIEF FROM FIREARM PROHIBITIONS RELATED TO MENTAL HEALTH

(1) A person barred from transporting, shipping, possessing or receiving a firearm may file a petition with the Psychiatric Security Review Board for relief from the bar if:

(a) The person is barred from possessing a firearm under ORS 166.250 (Unlawful possession of firearms) (1)(c)(D) or (E);
(b) The person is barred from receiving a firearm under ORS 166.470 (Limitations and conditions for sales of firearms) (1)(e) or (f) or, if the person has been found guilty except for insanity of a misdemeanor involving violence, ORS 166.470 (Limitations and conditions for sales of firearms) (1)(g); or
(c) The person is barred from possessing, receiving, shipping or transporting a firearm under 18 U.S.C. 922(d)(4) or (g)(4) as the result of a state mental health determination.

(2) The petitioner shall serve a copy of the petition on:

(a) The Department of Human Services and the Oregon Health Authority; and
(b) The district attorney in each county in which:

(A) The person was committed by a court to the Oregon Health Authority, or adjudicated by a court as a person with mental illness, under ORS 426.130 (Court determination of mental illness);
(B) The person was committed by a court to the Department of Human Services, or adjudicated by a court as in need of commitment for residential care, treatment and training, under ORS 427.290 (Determination by court of need for commitment);
(C) The person was found guilty except for insanity under ORS 161.295 (Effect of qualifying mental disorder);
(D) The person was found responsible except for insanity under ORS 419C.411 (Disposition order); or
(E) The person was found by a court to lack fitness to proceed under ORS 161.370 (Determination of fitness).

(3) Following receipt of the petition, the board shall conduct a contested case hearing, make written findings of fact and conclusions of law on the issues before the board and issue a final order. Board members from the adult panel, the juvenile panel or a combination of both panels of the board may conduct the hearings described in this section.
(4) The state and any person or entity described in subsection (2) of this section may appear and object to and present evidence relevant to the relief sought by the petitioner.

(5) The board shall grant the relief requested in the petition if the petitioner demonstrates, based on the petitioner's reputation, the petitioner's record, the circumstances surrounding the firearm disability and any other evidence in the record, that the petitioner will not be likely to act in a manner that is dangerous to public safety and that granting the relief would not be contrary to the public interest.
(6) If the board grants the relief requested in the petition, the board shall provide to the Department of State Police the minimum information necessary, as defined in ORS 181A.290 (Certain information required from agencies), to enable the department to:

(a) Maintain the information and transmit the information to the federal government as required under federal law; and
(b) Maintain a record of the person's relief from the disqualification to possess or receive a firearm under ORS 166.250 (Unlawful possession of firearms) (1)(c)(D) or (E) or 166.470 (Limitations and conditions for sales of firearms) (1)(e), (f) or (g).

(7) The petitioner may petition for judicial review of a final order of the board. The petition shall be filed in the circuit court of a county described in subsection (2)(b) of this section. The review shall be conducted de novo and without a jury.
(8) A petitioner may take an appeal from the circuit court to the Court of Appeals. Review by the Court of Appeals shall be conducted in accordance with ORS 183.500 (Appeals).
(9) A person may file a petition for relief under this section no more than once every two years.
(10) The board shall adopt procedural rules to carry out the provisions of this section.
(11) As used in this section, "state mental health determination" means:

(a) A finding by a court that a person lacks fitness to proceed under ORS 161.370 (Determination of fitness);
(b) A finding that a person is guilty except for insanity of a crime under ORS 161.295 (Effect of qualifying mental disorder) or responsible except for insanity of an act under ORS 419C.411 (Disposition order) or any determination by the Psychiatric Security Review Board thereafter;
(c) A commitment by a court to the Oregon Health Authority, or an adjudication by a court that a person is a person with mental illness, under ORS 426.130 (Court determination of mental illness); or
(d) A commitment by a court to the Department of Human Services, or an adjudication by a court that a person is in need of commitment for residential care, treatment and training, under ORS 427.290 (Determination by court of need for commitment). [2009 c.826 §5; 2009 c.826 §§18,18a; 2011 c.658 §32; 2013 c.360 §68; 2015 c.201 §2]

166.274 RELIEF FROM PROHIBITION AGAINST POSSESSING OR RECEIVING FIREARM

(1) Except as provided in subsection (11) of this section, a person barred from possessing or receiving a firearm may file a petition for relief from the bar in accordance with subsection (2) of this section if:

(a) The person is barred from possessing a firearm under ORS 166.250 (Unlawful possession of firearms) (1)(c)(A), (C) or (H) or 166.270 (Possession of weapons by certain felons); or
(b) The person is barred from receiving a firearm under ORS 166.470 (Limitations and

conditions for sales of firearms) (1)(a) or (b) or, if the person has been convicted of a misdemeanor involving violence, ORS 166.470 (Limitations and conditions for sales of firearms) (1)(g).

(2) A petition for relief described in this section must be filed in the circuit court in the petitioner's county of residence.
(3) A person may apply once per calendar year for relief under the provisions of this section.
(4)(a) A person petitioning for relief under this section shall serve a copy of the petition on:

(A) The city chief of police if the court in which the petition is filed is located in a city; or
(B) The sheriff of the county in which the court is located.

(b) The copy of the petition shall be served on the chief of police or sheriff at the same time the petition is filed at the court.

(5)(a) When a petition is denied, the judge shall cause that information to be entered into the Department of State Police computerized criminal history files.

(b) When a petition is granted, the judge shall cause that information and a fingerprint card of the petitioner to be entered into the Department of State Police computerized criminal history files. If, after a petition is granted, the petitioner is arrested and convicted of a crime that would disqualify the petitioner from purchasing or possessing a firearm, the Department of State Police shall notify the court that granted relief under this section. The court shall review the order granting relief and determine whether to rescind the order. The Department of State Police may charge a reasonable fee, under ORS 192.324 (Copies or inspection of public records), for the entry and maintenance of information under this section.

(6) Notwithstanding the provisions of ORS 9.320 (Necessity for employment of attorney), a party that is not a natural person, the state or any city, county, district or other political subdivision or public corporation in this state, without appearance by attorney, may appear as a party to an action under this section.
(7) If the petitioner seeks relief from the bar on possessing or purchasing a firearm, relief shall be granted when the petitioner demonstrates, by clear and convincing evidence, that the petitioner does not pose a threat to the safety of the public or the petitioner.
(8) Petitions filed under this section shall be heard and disposed of within 15 judicial days of filing or as soon as is practicable thereafter, but not more than 30 days thereafter. The judge shall then make findings and conclusions and issue a judgment based on the findings and conclusions in accordance with the requirements of law.
(9) A person filing a petition under this section must pay the filing fee established under ORS 21.135 (Standard filing fee).
(10)(a) Initial appeals of petitions shall be heard de novo.

(b) Any party to a judgment under this subsection may appeal to the Court of Appeals in the same manner as for any other civil action.

(c) If the governmental entity files an appeal under this subsection and does not prevail, it shall be ordered to pay the attorney fees for the prevailing party.

(11) The court may not grant relief under this section to a person who:

(a) Has been convicted of a person felony, as that term is defined in the rules of the Oregon Criminal Justice Commission, or the statutory counterpart to a person felony in any other jurisdiction, if the offense involved the use of a firearm or a deadly weapon as defined in ORS 161.015 (General definitions);
(b) Has been convicted of an offense listed in ORS 137.700 (Offenses requiring imposition of mandatory minimum sentences) or the statutory counterpart to an offense listed in ORS 137.700 (Offenses requiring imposition of mandatory minimum sentences) in any other jurisdiction; or
(c) Is currently serving a felony sentence as defined in ORS 10.030 (Eligibility for jury service) or has served a felony sentence in the one-year period preceding the filing of the petition.
[1989 c.839 §11; 1991 c.67 §37; 1993 c.732 §§3,4; 1995 c.518 §2; 1995 c.658 §88; 2009 c.499 §2; 2009 c.826 §§19,20; 2010 c.86 §§1,2,3; 2011 c.595 §§59,60; 2011 c.662 §§3,4; 2015 c.7 §§6,7; 2015 c.201 §4; 2015 c.497 §§5,6]

166.279 FORFEITURE OF DEADLY WEAPONS

(1) Except as provided in subsection (4) of this section, ORS 131.550 (Definitions for ORS 131.550 to 131.600) to 131.600 (Record keeping and reporting requirements) do not apply to the forfeiture of a firearm or other deadly weapon that was possessed, used or available for use to facilitate a criminal offense.
(2) Except as provided in subsection (3) of this section, at the time of sentencing for any criminal offense in which a firearm or other deadly weapon was possessed, used or available for use to facilitate the offense, the court shall declare the weapon to be contraband and order that the weapon be forfeited.
(3) If a firearm or other deadly weapon that was possessed, used or available for use to facilitate a criminal offense was stolen from its lawful owner and was recovered from a person other than the lawful owner, the court may not order that the weapon be forfeited but shall order that the weapon be restored to the lawful owner as soon as the weapon is no longer needed for evidentiary purposes.
(4) The court shall release a firearm or other deadly weapon forfeited under subsection (2) of this section to the law enforcement agency that seized the weapon. The law enforcement agency may destroy or sell the weapon, use the weapon as a service weapon or use the weapon for training, identification or demonstration purposes. When a weapon is sold pursuant to this subsection, the law enforcement agency shall pay the proceeds from the sale, less the costs of the sale, as provided in ORS 131.594 (Disposition and distribution of forfeited property when seizing agency not the state) and 131.597 (Disposition and distribution of forfeited property when seizing agency is the state).
(5) As used in this section, “deadly weapon” has the meaning given that term in ORS 161.015 (General definitions). [2003 c.614 §4; 2005 c.830 §24]

166.429 FIREARMS USED IN FELONY

Any person who, with intent to commit a felony or who knows or reasonably should know that a felony will be committed with the firearm, ships, transports, receives, sells or otherwise furnishes any firearm in the furtherance of the felony is guilty of a Class B felony. [1989 c.839 §17]

166.432 DEFINITIONS FOR ORS 166.412 AND 166.433 TO 166.441

(1) As used in ORS 166.412 (Definitions), 166.433 (Findings regarding transfers of firearms), 166.434 (Application of ORS 166.412 to all firearm transfers by gun dealers), 166.435 (Firearm transfers by unlicensed persons), 166.436 (Department of State Police criminal background checks for gun show firearm transfers) and 166.438 (Transfer of firearms at gun shows), "criminal background check" or "criminal history record check" means determining the eligibility of a person to purchase or possess a firearm by reviewing state and federal databases including, but not limited to, the:

(a) Oregon computerized criminal history system;
(b) Oregon mental health data system;
(c) Law Enforcement Data System;
(d) National Instant Criminal Background Check System; and
(e) Stolen guns system.

(2) As used in ORS 166.433 (Findings regarding transfers of firearms), 166.434 (Application of ORS 166.412 to all firearm transfers by gun dealers), 166.435 (Firearm transfers by unlicensed persons), 166.436 (Department of State Police criminal background checks for gun show firearm transfers), 166.438 (Transfer of firearms at gun shows) and 166.441 (Form for transfer of firearm at gun show):

(a)"Gun dealer" has the meaning given that term in ORS 166.412 (Definitions).
(b)"Gun show" means an event at which more than 25 firearms are on site and available for transfer. [2001 c.1 §3; 2015 c.50 §6]

Note: 166.432 (Definitions for ORS 166.412 and 166.433 to 166.441), 166.433 (Findings regarding transfers of firearms) and 166.445 (Short title) were made a part of 166.432 (Definitions for ORS 166.412 and 166.433 to 166.441) to 166.445 (Short title) by law but were not added to or made a part of ORS chapter 166 or any other series therein. See Preface to Oregon Revised Statutes for further explanation.

166.435 FIREARM TRANSFERS BY UNLICENSED PERSONS

(1) As used in this section:

(a)"Transfer" means the delivery of a firearm from a transferor to a transferee, including, but not limited to, the sale, gift, loan or lease of the firearm. "Transfer" does not include the temporary provision of a firearm to a transferee if the transferor has no reason to believe the transferee is prohibited from possessing a firearm or intends to use the firearm in the commission of a crime, and the provision occurs:

(A) At a shooting range, shooting gallery or other area designed for the purpose of target shooting, for use during target practice, a firearms safety or training course or class or a similar lawful activity;
(B) For the purpose of hunting, trapping or target shooting, during the time in which the transferee is engaged in activities related to hunting, trapping or target shooting;
(C) Under circumstances in which the transferee and the firearm are in the presence of the transferor;
(D) To a transferee who is in the business of repairing firearms, for the time during which the firearm is being repaired;
(E) To a transferee who is in the business of making or repairing custom accessories for firearms, for the time during which the accessories are being made or repaired; or
(F) For the purpose of preventing imminent death or serious physical injury, and the provision lasts only as long as is necessary to prevent the death or serious physical injury.

(b)"Transferee" means a person who is not a gun dealer or licensed as a manufacturer or importer under 18 U.S.C. 923 and who intends to receive a firearm from a transferor.
(c)"Transferor" means a person who is not a gun dealer or licensed as a manufacturer or importer under 18 U.S.C. 923 and who intends to deliver a firearm to a transferee.

(2) Except as provided in ORS 166.436 (Department of State Police criminal background checks for gun show firearm transfers) and 166.438 (Transfer of firearms at gun shows) and subsection (4) of this section, a transferor may not transfer a firearm to a transferee unless the transfer is completed through a gun dealer as described in subsection (3) of this section.
(3)(a) A transferor may transfer a firearm to a transferee only as provided in this section. Except as provided in paragraph (b) of this subsection, prior to the transfer both the transferor and the transferee must appear in person before a gun dealer, with the firearm, and request that the gun dealer perform a criminal background check on the transferee.

(b) If the transferor and the transferee reside over 40 miles from each other, the transferor may ship or deliver the firearm to a gun dealer located near the transferee or a gun dealer designated by the transferee, and the transferor need not appear before the gun dealer in person.

(c) A gun dealer who agrees to complete a transfer of a firearm under this section shall request a criminal history record check on the transferee as described in ORS 166.412 (Definitions) and shall comply with all requirements of federal law.
(d) If, upon completion of a criminal background check, the gun dealer:

(A) Receives a unique approval number from the Department of State Police indicating that the transferee is qualified to complete the transfer, the gun dealer shall notify the transferor, enter the firearm into the gun dealer's inventory and transfer the firearm to the transferee.
(B) Receives notification that the transferee is prohibited by state or federal law

from possessing or receiving the firearm, the gun dealer shall notify the transferor and neither the transferor nor the gun dealer shall transfer the firearm to the transferee. If the transferor shipped or delivered the firearm to the gun dealer pursuant to paragraph (b) of this subsection, the gun dealer shall comply with federal law when returning the firearm to the transferor.

(e) A gun dealer may charge a reasonable fee for facilitating a firearm transfer pursuant to this section.

(4) The requirements of subsections (2) and (3) of this section do not apply to:

(a) The transfer of a firearm by or to a law enforcement agency, or by or to a law enforcement officer, private security professional or member of the Armed Forces of the United States, while that person is acting within the scope of official duties.
(b) The transfer of a firearm as part of a firearm turn-in or buyback event, in which a law enforcement agency receives or purchases firearms from members of the public.
(c) The transfer of a firearm to:

(A) A transferor's spouse or domestic partner;
(B) A transferor's parent or stepparent
(C) A transferor's child or stepchild;
(D) A transferor's sibling;
(E) A transferor's grandparent;
(F) A transferor's grandchild;
(G) A transferor's aunt or uncle;
(H) A transferor's first cousin;
(I) A transferor's niece or nephew; or
(J) The spouse or domestic partner of a person specified in subparagraphs (B) to (I) of this paragraph.

(d) The transfer of a firearm that occurs because of the death of the firearm owner, provided that:

(A) The transfer is conducted or facilitated by a personal representative, as defined in ORS 111.005 (Definitions for probate law), or a trustee of a trust created in a will; and

(B) The transferee is related to the deceased firearm owner in a manner specified in paragraph (c) of this subsection.

(5)(a) A transferor who fails to comply with the requirements of this section commits a Class A misdemeanor.

(b) Notwithstanding paragraph (a) of this subsection, a transferor who fails to comply with the requirements of this section commits a Class B felony if the transferor has a previous conviction under this section at the time of the offense. [2015 c.50 §2]

166.450 OBLITERATION OR CHANGE OF IDENTIFICATION NUMBER ON FIREARMS

Any person who intentionally alters, removes or obliterates the identification number of any firearm for an unlawful purpose, shall be punished upon conviction by imprisonment in the custody of the Department of Corrections for not more than five years. Possession of any such firearm is presumptive evidence that the possessor has altered, removed or obliterated the identification number. [Amended by 1987 c.320 §90; 1989 c.839 §24]

166.460 ANTIQUE FIREARMS EXCEPTED

(1) ORS 166.250 (Unlawful possession of firearms), 166.260 (Persons not affected by ORS 166.250), 166.291 (Issuance of concealed handgun license) to 166.295 (Renewal of license), 166.410 (Manufacture, importation or sale of firearms), 166.412 (Definitions), 166.425 (Unlawfully purchasing a firearm), 166.434 (Application of ORS 166.412 to all firearm transfers by gun dealers), 166.438 (Transfer of firearms at gun shows) and 166.450 (Obliteration or change of identification number on firearms) do not apply to antique firearms.
(2) Notwithstanding the provisions of subsection (1) of this section, possession of an antique firearm by a person described in ORS 166.250 (Unlawful possession of firearms) (1)(c)(B) to (D) or (G) constitutes a violation of ORS 166.250 (Unlawful possession of firearms). [Amended by 1979 c.779 §6; 1989 c.839 §25; 1993 c.735 §8; 1995 c.729 §9; 2001 c.1 §11; 2001 c.666 §§35,47; 2003 c.614 §10; 2009 c.499 §5; 2015 c.50 §14]

166.470 LIMITATIONS AND CONDITIONS FOR SALES OF FIREARMS

(1) Unless relief has been granted under ORS 166.273 (Relief from firearm prohibitions related to mental health) or 166.274 (Relief from prohibition against possessing or receiving firearm) or 18 U.S.C. 925(c) or the expunction laws of this state or an equivalent law of another jurisdiction, a person may not intentionally sell, deliver or otherwise transfer any firearm when the transferor knows or reasonably should know that the recipient:

(a) Is under 18 years of age;
(b) Has been convicted of a felony;
(c) Has any outstanding felony warrants for arrest;
(d) Is free on any form of pretrial release for a felony;
(e) Was committed to the Oregon Health Authority under ORS 426.130 (Court determination of mental illness);
(f) After January 1, 1990, was found to be a person with mental illness and subject to an order under ORS 426.130 (Court determination of mental illness) that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness;
(g) Has been convicted of a misdemeanor involving violence or found guilty except for insanity under ORS 161.295 (Effect of qualifying mental disorder) of a misdemeanor involving violence within the previous four years. As used in this paragraph, "misdemeanor involving violence" means a misdemeanor described in ORS 163.160 (Assault in the fourth degree), 163.187 (Strangulation), 163.190 (Menacing), 163.195 (Recklessly endangering another person) or 166.155 (Intimidation in the second degree) (1)(b);
(h) Is presently subject to an order under ORS 426.133 (Assisted outpatient treatment) prohibiting the person from purchasing or possessing a firearm; or

(i) Has been found guilty except for insanity under ORS 161.295 (Effect of qualifying mental disorder) of a felony.

(2) A person may not sell, deliver or otherwise transfer any firearm that the person knows or reasonably should know is stolen.
(3) Subsection (1)(a) of this section does not prohibit:

(a) The parent or guardian, or another person with the consent of the parent or guardian, of a minor from transferring to the minor a firearm, other than a handgun; or
(b) The temporary transfer of any firearm to a minor for hunting, target practice or any other lawful purpose.

(4) Violation of this section is a Class A misdemeanor. [Amended by 1989 c.839 §3; 1991 c.67 §40; 1993 c.735 §11; 2001 c.828 §2; 2003 c.577 §7; 2009 c.499 §6; 2009 c.595 §115; 2009 c.826 §§8,11; 2013 c.360 §§10,11; 2015 c.50 §§17,18; 2015 c.201 §6]

Denial Disqualifier by Statutes and Federal Code

Reason	Federal/State Statutes
CONVICTED OF A FELONY	[Fed 18 U.S.C Chapter 44 922(d)(1)/(g)(1) ORS 166.470(1)(b)]
OUTSTANDING FELONY WARRANT	[Fed 18 U.S.C Chapter 44 922 (d)(2)/(g)(2) ORS 166.470(1)(c)]
FREE ON PRE-TRIAL REL.-FELONY	[Fed 18 U.S.C Chapter 44 922 (d)(1)/(g)(2) ORS 166.470(1)(d)]
COMMITTED TO MENTAL HEALTH	[Fed 18 U.S.C Chapter 44 922 (d)(4)/(g)(4) ORS 166.470(1)(e)]
CONV ASLT IV <4YRS 163.160	[ORS 166.470(1)(g)]
CONV MENACING <4YRS 163.190	[ORS 166.470(1)(g)]
CONV RKLS ENDGR <4 YRS 163.195	[ORS 166.470(1)(g)]
CONV INTIMIDATION II <4YRS 166.155(1)(b)	[ORS 166.470(1)(g)]
STOLEN GUN	[ORS 166.470(2)]
RESTRAINING ORDER	[Fed 18 U.S.C Chapter 44 922 (d)(8)/(g)(8)]
FUGITIVE FROM JUSTICE	[Fed 18 U.S.C Chapter 44 922 (d)(2)/(g)(2)]
PROBATION	[ORS 137.540(1)(m)]
CONV 4YRS FEL JUVENILE	[ORS 166.250(1)(B)]
DISHONORABLE DISCHARGE	[Fed 18 U.S.C Chapter 44 922 (d)(6)/(g)(6)]
NON U.S. CITIZEN	[Fed 18 U.S.C Chapter 44 922 (d)(6)/(g)(5)]
CONV DOMESTIC ABUSE	[Fed 18 U.S.C Chapter 44 922 (d)(9)/(g)(9)]
CONV FELON INSANITY	[ORS 166.470(1)(h)]
OUT OF STATE DISQUALIFIER	VARIES - GIVE THE SPECIFIC STATUTE/CHARGE
CONV MISD/INSANITY	[ORS 166.470(1)(g)]
UNLAW USER CONT SUBST	[Fed 18 U.S.C Chapter 44 922 (d)(3)/(g)(3)]
CONV STRANGULATION<4YRS 163.187	[ORS 166.470(1)(g)]
FEDERAL FLAG (IFFS)	VARIES - GIVE THE SPECIFIC STATUTE/CHARGE IF AVAILABLE
FEDERAL MENTAL DEFECTIVE	[Fed 18 U.S.C Chapter 44 922 (d)(4)/(g)(4)]
NICS INDEX	VARIES- GIVE THE SPECIFIC CHARGE LISTED BELOW NICS INDEX HIT

CHAPTER 15
PROHIBITIONS RELATED TO LIQUOR

471.405 PROHIBITED SALES, PURCHASES, POSSESSION, TRANSPORTATION, IMPORTATION, OR SOLICITATION IN GENERAL; FORFEITURE UPON CONVICTION

(1) No person shall peddle or deliver alcoholic beverages to or at any place, where, without a license, alcoholic beverages are sold or offered for sale. No licensee shall sell or offer for sale any alcoholic beverage in a manner, or to a person, other than the license permits the licensee to sell.
(2) No person shall purchase, possess, transport or import, except for sacramental purposes, an alcoholic beverage unless it is procured from or through the Oregon Liquor Control Commission, except as provided otherwise in the Liquor Control Act.
(3) No person not licensed under the Liquor Control Act shall sell, solicit, take orders for or peddle alcoholic beverages.
(4) Notwithstanding the provisions of subsection (2) of this section, an individual entering the state may have in possession an amount not to exceed four liters (135.2 fluid ounces) of distilled liquor, two cases of wine or cider (620 fluid ounces) and two cases of malt beverages (576 fluid ounces). These quantities of alcoholic beverages are exempt from fees collected by the commission.
(5) Upon conviction for unlawfully purchasing or importing alcoholic beverages into this state, the person convicted shall forfeit to the commission the alcoholic beverage so purchased or imported. The commission shall thereupon seize the forfeited beverage and it shall then become the commission's property. [Amended by 1953 c.120 §6; 1974 c.4 §5; 1981 c.600 §1; 1985 c.592 §2; 1987 c.608 §11; 1995 c.301 §19; 1999 c.351 §72]

471.610 CONFISCATION OF LIQUOR AND PROPERTY BY COMMISSION

Whenever any officer arrests any person for violation of the Liquor Control Act, the officer may take into possession all alcoholic liquor and other property which the person so arrested has in possession, or on the premises, which is apparently being used in violation of that statute. If the person so arrested is convicted, and it is found that the liquor and other property has been used in violation of the law, the same shall be forfeited to the Oregon Liquor Control Commission, and shall be delivered by the court or officer to the commission. The commission is authorized to destroy or make such other disposition thereof as it considers to be in the public interest. In any such case, all alcoholic liquor purchased or acquired from any source, and all property, including bars, glasses, mixers, lockers, chairs, tables, cash registers, music devices, gambling devices, furniture, furnishings, equipment and facilities for the mixing, storing, serving or drinking of alcoholic liquor shall be confiscated and forfeited to the state, and the clear proceeds shall be deposited with the State Treasury in the Common School Fund in the manner provided in this section. [Amended by 1981 c.601 §1; 1987 c.858 §5]

471.657 CONFISCATION AND FORFEITURE FOR VIOLATION OF ORS 471.475

Upon conviction for violation of ORS 471.475 (Mixing, storing or serving of liquor without license), the premises upon which the violation has occurred shall be declared to be a common nuisance and subject to abatement proceedings as provided by ORS 471.605 (Duty of officers to enforce and

to inform district attorney) to 471.655 (Owner may defend). Any person who knowingly suffers or permits such nuisance to exist or be kept or maintained in a private or public club or place of which the person is the owner, manager or lessor, may be a party defendant to such abatement proceedings. In any such case, upon conviction, all alcoholic liquor, whether purchased or acquired from any other source, and all property, including bars, glasses, mixers, lockers, chairs, tables, cash registers, music devices, gambling devices, and all facilities for the mixing, storing, serving or drinking of alcoholic liquor shall be declared to be a common nuisance and shall be subject to confiscation and forfeiture as provided for by ORS 471.610 (Confiscation of liquor and property by commission). No claim of ownership or of any right, title, or interest in or to any of the personal property enumerated in this section or ORS 471.475 (Mixing, storing or serving of liquor without license) shall be held valid unless claimant shows to the satisfaction of the court that claimant is in good faith the owner of the claim and had no knowledge that the personal property was used in violation of ORS 471.475 (Mixing, storing or serving of liquor without license).

471.666 DISPOSAL OF SEIZED LIQUOR AND OF VEHICLE OR OTHER CONVEYANCE

Whenever any officer arrests any person for violation of the Liquor Control Act, the officer may take into possession all alcoholic liquor and other property which the person so arrested has in possession, or on the premises, which is apparently being used in violation of that statute. If the person so arrested is convicted, and it is found that the liquor and other property has been used in violation of the law, the same shall be forfeited to the Oregon Liquor Control Commission, and shall be delivered by the court or officer to the commission. The commission is authorized to destroy or make such other disposition thereof as it considers to be in the public interest. In any such case, all alcoholic liquor purchased or acquired from any source, and all property, including bars, glasses, mixers, lockers, chairs, tables, cash registers, music devices, gambling devices, furniture, furnishings, equipment and facilities for the mixing, storing, serving or drinking of alcoholic liquor shall be confiscated and forfeited to the state, and the clear proceeds shall be deposited with the State Treasury in the Common School Fund in the manner provided in this section. [Amended by 1981 c.601 §1; 1987 c.858 §5]

CHAPTER 16
CONTROLLED SUBSTANCES

475.235 BURDEN OF PROOF; STATUS OF ANALYSIS OF CONTROLLED SUBSTANCE; NOTICE OF OBJECTION

(1) It is not necessary for the state to negate any exemption or exception in ORS 475.005 (Definitions for ORS 475.005 to 475.285 and 475.752 to 475.980) to 475.285 (Short title) and 475.752 (Prohibited acts generally) to 475.980 (Affirmative defense to ORS 475.969, 475.971, 475.975 (1) and 475.976 (1)) in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under ORS 475.005 (Definitions for ORS 475.005 to 475.285 and 475.752 to 475.980) to 475.285 (Short title) and 475.752 (Prohibited acts generally) to 475.980 (Affirmative defense to ORS 475.969, 475.971, 475.975 (1) and 475.976 (1)). The burden of proof of any exemption or exception is upon the person claiming it.
(2) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under ORS 475.005 (Definitions for ORS 475.005 to 475.285 and 475.752 to 475.980) to 475.285 (Short title) and 475.752 (Prohibited acts generally) to 475.980 (Affirmative defense to ORS 475.969, 475.971, 475.975 (1) and 475.976 (1)), the person is presumed not to be the holder of the registration or form. The burden of proof is upon the person to rebut the presumption.
(3)(a) When a controlled substance is at issue in a criminal proceeding before a grand jury, at a preliminary hearing, in a proceeding on a district attorney's information or for purposes of an early disposition program, it is prima facie evidence of the identity of the controlled substance if:

(A) A sample of the controlled substance is tested using a presumptive test for controlled substances;
(B) The test is conducted by a law enforcement officer trained to use the test or by a forensic scientist; and
(C) The test is positive for the particular controlled substance.

(b) When the identity of a controlled substance is established using a presumptive test for purposes of a criminal proceeding before a grand jury, a preliminary hearing, a proceeding on a district attorney's information or an early disposition program, the defendant, upon notice to the district attorney, may request that the controlled substance be sent to a state police forensic laboratory for analysis.

(4) Notwithstanding any other provision of law, in all prosecutions in which an analysis of a controlled substance or sample was conducted, a certified copy of the analytical report signed by the director of a state police forensic laboratory or the analyst or forensic scientist conducting the analysis shall be admitted as prima facie evidence of the results of the analytical findings unless the defendant has provided notice of an objection in accordance with subsection (5) of this section.

(5) If the defendant intends to object at trial to the admission of a certified copy of an analytical report as provided in subsection (4) of this section, not less than 15 days prior to trial the

defendant shall file written notice of the objection with the court and serve a copy on the district attorney.

(6) As used in this section:

(a)“Analyst” means a person employed by the Department of State Police to conduct analysis in forensic laboratories established by the department under ORS 181A.150 (Forensic laboratories).
(b)“Presumptive test” includes, but is not limited to, chemical tests using Marquis reagent, Duquenois-Levine reagent, Scott reagent system or modified Chen’s reagent. [1977 c.745 §23; 1989 c.194 §1; 1995 c.440 §6; 1997 c.346 §1; 2001 c.870 §14; 2003 c.538 §1; 2007 c.636 §§1,2; 2009 c.610 §8]

475.525 SALE OF DRUG PARAPHERNALIA PROHIBITED; DEFINITION OF DRUG PARAPHERNALIA; EXCEPTIONS.

(1) It is unlawful for any person to sell or deliver, possess with intent to sell or deliver or manufacture with intent to sell or deliver drug paraphernalia, knowing that it will be used to unlawfully plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance as defined by ORS 475.005 (Definitions for ORS 475.005 to 475.285 and 475.752 to 475.980).
(2) For the purposes of this section, “drug paraphernalia” means all equipment, products and materials of any kind that are marketed for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of ORS 475.752 (Prohibited acts generally) to 475.980 (Affirmative defense to ORS 475.969, 475.971, 475.975 (1) and 475.976 (1)). Drug paraphernalia includes, but is not limited to:

(a) Kits marketed for use or designed for use in unlawfully planting, propagating, cultivating, growing or harvesting of any species of plant that is a controlled substance or from which a controlled substance can be derived;
(b) Kits marketed for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;
(c) Isomerization devices marketed for use or designed for use in increasing the potency of any species of plant that is a controlled substance;
(d) Testing equipment marketed for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;
(e) Scales and balances marketed for use or designed for use in weighing or measuring controlled substances;
(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, marketed for use or designed for use in cutting controlled substances;
(g) Lighting equipment specifically designed for growing controlled substances;
(h) Containers and other objects marketed for use or designed for use in storing or concealing controlled substances; and
(i) Objects marketed for use or designed specifically for use in ingesting, inhaling or

otherwise introducing a controlled substance into the human body, such as:

(A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens;
(B) Water pipes;
(C) Carburetion tubes and devices;
(D) Smoking and carburetion masks;
(E) Roach clips, meaning objects used to hold burning material that has become too small or too short to be held in the hand;
(F) Miniature cocaine spoons and cocaine vials;
(G) Chamber pipes;
(H) Carburetor pipes;
(I) Electric pipes;
(J) Air-driven pipes;
(K) Chillums;
(L) Bongs; and
(M) Ice pipes or chillers.

(3) For purposes of this section, "drug paraphernalia" does not include hypodermic syringes or needles.
(4) The provisions of ORS 475.525 (Sale of drug paraphernalia prohibited) to 475.565 (Civil penalty for violation of ORS 475.525) do not apply to persons registered under the provisions of ORS 475.125 (Registration requirements) or to persons specified as exempt from registration under the provisions of that statute.
(5)(a) The provisions of ORS 475.525 (Sale of drug paraphernalia prohibited) to 475.565 (Civil penalty for violation of ORS 475.525) do not apply to a person who sells or delivers marijuana paraphernalia as defined in ORS 475B.376 (Unlawful sale or delivery of marijuana paraphernalia) to a person 21 years of age or older.

(b) In determining whether an object is drug paraphernalia under this section or marijuana paraphernalia under ORS 475B.376 (Unlawful sale or delivery of marijuana paraphernalia), a trier of fact shall consider, in addition to any other relevant factor, the following:

(A) Any oral or written instruction provided with the object related to the object's use;
(B) Any descriptive material packaged with the object that explains or depicts the object's use;
(C) Any national or local advertising related to the object's use;
(D) Any proffered expert testimony related to the object's use;
(E) The manner in which the object is displayed for sale, if applicable; and
(F) Any other proffered evidence substantiating the object's intended use. [1989 c.1077 §1; 1995 c.440 §10; 2015 c.1 §75; 2017 c.17 §42a; 2017 c.21 §25]

475.535 ACTION TO ENFORCE ORS 475.525 TO 475.565

The State of Oregon, any political subdivision of the state, or any official or agency of the state or its political subdivisions may bring an action to enforce ORS 475.525 (Sale of drug paraphernalia prohibited) to 475.565 (Civil penalty for violation of ORS 475.525). The court shall award costs and reasonable attorney fees to the prevailing party in any such action. [1989 c.1077 §2]

475.545 ORDER OF FORFEITURE OF PARAPHERNALIA; EFFECT.

If, at the trial or upon a hearing, the trier of fact finds any item received into evidence at the trial or hearing to be drug paraphernalia, the court may order the item forfeited upon motion of the district attorney. The drug paraphernalia may then be destroyed or, if the paraphernalia is of substantial value and is not contraband, may be sold, the proceeds to be deposited in the Common School Fund. [1989 c.1077 §3]

475.555 SEIZURE OF DRUG PARAPHERNALIA

An official of the state, its political subdivisions or any agency thereof may seize drug paraphernalia when:

(1) The drug paraphernalia is the subject of an adverse judgment under ORS 475.525 (Sale of drug paraphernalia prohibited) to 475.565 (Civil penalty for violation of ORS 475.525);
(2) The seizure is in the course of a constitutionally valid arrest or search;
(3) The owner or person in possession of the drug paraphernalia consents to the seizure; or
(4) The seizure is pursuant to a lawful order of a court, including an order issued under ORCP 83 or ORS 166.725 (Remedies for violation of ORS 166.720). [1989 c.1077 §5]

475.565 CIVIL PENALTY FOR VIOLATION OF ORS 475.525

(1) In addition to any other penalty provided by law:

> (a) A person who violates ORS 475.525 (Sale of drug paraphernalia prohibited) shall incur a civil penalty in an amount of at least $2,000 and not more than $10,000; and
> (b) The court may order other equitable remedies including but not limited to injunctive relief.

(2) Any amounts collected under this section shall be forwarded to the State Treasurer for deposit in the General Fund to the credit of the Oregon Health Authority. The moneys shall be used for the development and implementation of drug abuse prevention activities and adolescent treatment. [1989 c.1077 §4; 2003 c.14 §307; 2009 c.595 §975; 2011 c.597 §218]

475B CANNABIS REGULATION

475B.015 DEFINITIONS FOR ORS 475B.010 TO 475B.545

As used in ORS 475B.010 (Short title) to 475B.545 (Severability of ORS 475B.010 to 475B.545):

(1)“Cannabinoid” means any of the chemical compounds that are the active constituents of marijuana.
(2)“Cannabinoid concentrate” means a substance obtained by separating cannabinoids from marijuana by:

(a) A mechanical extraction process;
(b) A chemical extraction process using a nonhydrocarbon-based solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol;
(c) A chemical extraction process using carbon dioxide, provided that the process does not involve the use of high heat or pressure; or
(d) Any other process identified by the Oregon Liquor Control Commission, in consultation with the Oregon Health Authority, by rule.

(3)“Cannabinoid edible” means food or potable liquid into which a cannabinoid concentrate, cannabinoid extract or dried marijuana leaves or flowers have been incorporated.
(4)“Cannabinoid extract” means a substance obtained by separating cannabinoids from marijuana by:

(a) A chemical extraction process using a hydrocarbon-based solvent, such as butane, hexane or propane;
(b) A chemical extraction process using carbon dioxide, if the process uses high heat or pressure; or
(c) Any other process identified by the commission, in consultation with the authority, by rule.

(5)(a) “Cannabinoid product” means a cannabinoid edible and any other product intended for human consumption or use, including a product intended to be applied to the skin or hair, that contains cannabinoids or dried marijuana leaves or flowers.

(b)“Cannabinoid product” does not include:

(A) Usable marijuana by itself;
(B) A cannabinoid concentrate by itself;
(C) A cannabinoid extract by itself; or
(D) Industrial hemp, as defined in ORS 571.300 (Definitions for ORS 571.300 to 571.348).

(6)“Consumer” means a person who purchases, acquires, owns, holds or uses marijuana items other than for the purpose of resale.
(7)“Deliver” means the actual, constructive or attempted transfer from one person to another of a marijuana item, whether or not there is an agency relationship.

(8)“Designated primary caregiver” has the meaning given that term in ORS 475B.791 (Definitions for ORS 475B.785 to 475B.949).
(9)(a) “Financial consideration” means value that is given or received either directly or indirectly through sales, barter, trade, fees, charges, dues, contributions or donations.

(b)“Financial consideration” does not include marijuana, cannabinoid products or cannabinoid concentrates that are delivered within the scope of and in compliance with ORS 475B.301 (Applicability of provisions to homegrown marijuana and homemade cannabinoid products and concentrates).

(10)“Homegrown” means grown by a person 21 years of age or older for noncommercial purposes.
(11)“Household” means a housing unit and any place in or around a housing unit at which the occupants of the housing unit are producing, processing, possessing or storing homegrown marijuana, cannabinoid products, cannabinoid concentrates or cannabinoid extracts.
(12)“Housing unit” means a house, an apartment or a mobile home, or a group of rooms or a single room that is occupied as separate living quarters, in which the occupants live and eat separately from any other persons in the building and that has direct access from the outside of the building or through a common hall.
(13)“Immature marijuana plant” means a marijuana plant that is not flowering.
(14)“Licensee” means a person that holds a license issued under ORS 475B.070 (Production license), 475B.090 (Processor license), 475B.100 (Wholesale license) or 475B.105 (Retail license).
(15)“Licensee representative” means an owner, director, officer, manager, employee, agent or other representative of a licensee, to the extent that the person acts in a representative capacity.
(16)(a) “Manufacture” means producing, propagating, preparing, compounding, converting or processing a marijuana item, either directly or indirectly, by extracting from substances of natural origin.

(b)“Manufacture” includes any packaging or repackaging of a marijuana item or the labeling or relabeling of a container containing a marijuana item.

(17)(a) “Marijuana” means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and marijuana seeds.

(b)“Marijuana” does not include industrial hemp, as defined in ORS 571.300 (Definitions for ORS 571.300 to 571.348).

(18)“Marijuana flowers” means the flowers of the plant genus Cannabis within the plant family Cannabaceae.
(19)“Marijuana items” means marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts.
(20)“Marijuana leaves” means the leaves of the plant genus Cannabis within the plant family Cannabaceae.
(21)“Marijuana processor” means a person that processes marijuana items in this state.
(22)“Marijuana producer” means a person that produces marijuana in this state.
(23)“Marijuana retailer” means a person that sells marijuana items to a consumer in this state.
(24)(a) “Marijuana seeds” means the seeds of the plant Cannabis family Cannabaceae.

(b)“Marijuana seeds” does not include the seeds of industrial hemp, as defined in ORS 571.300 (Definitions for ORS 571.300 to 571.348).

(25)“Marijuana wholesaler” means a person that purchases marijuana items in this state for resale to a person other than a consumer.

(26)“Mature marijuana plant” means a marijuana plant that is not an immature marijuana plant.
(27)“Medical grade cannabinoid product, cannabinoid concentrate or cannabinoid extract” means a cannabinoid product, cannabinoid concentrate or cannabinoid extract that has a concentration of tetrahydrocannabinol that is permitted under ORS 475B.625 (Dosage requirements) in a single serving of the cannabinoid product, cannabinoid concentrate or cannabinoid extract for consumers who hold a valid registry identification card issued under ORS 475B.797 (Registry identification cardholders).
(28)“Medical purpose” means a purpose related to using usable marijuana, cannabinoid products, cannabinoid concentrates or cannabinoid extracts to mitigate the symptoms or effects of a debilitating medical condition, as defined in ORS 475B.791 (Definitions for ORS 475B.785 to 475B.949).
(29)“Noncommercial” means not dependent or conditioned upon the provision or receipt of financial consideration.
(30)(a) “Premises” includes the following areas of a location licensed under ORS 475B.010 (Short title) to 475B.545 (Severability of ORS 475B.010 to 475B.545):

(A) All public and private enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms;
(B) All areas outside a building that the commission has specifically licensed for the processing, wholesale sale or retail sale of marijuana items; and
(C) For a location that the commission has specifically licensed for the production of marijuana outside a building, that portion of the location used to produce marijuana.

(b)“Premises” does not include a primary residence.

(31)(a) “Processes” means the processing, compounding or conversion of marijuana into cannabinoid products, cannabinoid concentrates or cannabinoid extracts.

(b)“Processes” does not include packaging or labeling.

(32)(a) “Produces” means the manufacture, planting, cultivation, growing or harvesting of marijuana.

(b)“Produces” does not include:

(A) The drying of marijuana by a marijuana processor, if the marijuana processor is not otherwise producing marijuana; or
(B) The cultivation and growing of an immature marijuana plant by a marijuana processor, marijuana wholesaler or marijuana retailer if the marijuana processor,

marijuana wholesaler or marijuana retailer purchased or otherwise received the plant from a licensed marijuana producer.

(33)"Propagate" means to grow immature marijuana plants or to breed or produce marijuana seeds.

(34)"Public place" means a place to which the general public has access and includes, but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and areas used in connection with public passenger transportation.
(35)"Registry identification cardholder" has the meaning given that term in ORS 475B.791 (Definitions for ORS 475B.785 to 475B.949).
(36)(a) "Usable marijuana" means the dried leaves and flowers of marijuana.

(b)"Usable marijuana" does not include:

(A) Marijuana seeds;
(B) The stalks and roots of marijuana; or
(C) Waste material that is a by-product of producing or processing marijuana. [2015 c.1 §5; 2015 c.614 §1; 2016 c.24 §63; 2016 c.83 §11; 2017 c.21 §1; 2017 c.183 §46]

475B.346 UNLAWFUL DELIVERY OF MARIJUANA ITEM

(1) Except for licensees and licensee representatives acting in accordance with ORS 475B.010 (Short title) to 475B.545 (Severability of ORS 475B.010 to 475B.545) and any rule adopted under ORS 475B.010 (Short title) to 475B.545 (Severability of ORS 475B.010 to 475B.545), and except for a person acting within the scope of and in compliance with ORS 475B.301 (Applicability of provisions to homegrown marijuana and homemade cannabinoid products and concentrates), it is unlawful for any person to deliver a marijuana item.
(2) Except as provided in subsection (3) of this section, unlawful delivery of a marijuana item is a Class A misdemeanor.
(3) Unlawful delivery of a marijuana item is:

(a) A Class B misdemeanor, if a person 21 years of age or older unlawfully delivers usable marijuana, for no consideration, to a person 21 years of age or older, and the total amount of usable marijuana delivered is not more than twice the amount described in ORS 475B.301 (Applicability of provisions to homegrown marijuana and homemade cannabinoid products and concentrates) (7).
(b) A Class C felony, if:

(A) The delivery involves:

(i) More than 16 times the applicable maximum amount specified in ORS 475B.337 (Unlawful possession by person 21 years of age or older) (1)(a), (c), (d), (e) or (f);
(ii) More than eight pounds of usable marijuana in a public place; or

(iii) More than one-quarter ounce of cannabinoid extract that was not purchased from a marijuana retailer that holds a license issued under ORS 475B.105 (Retail license).

(B) The marijuana item is delivered to a person under 21 years of age, unless the person delivering the marijuana item is under 24 years of age at the time of the delivery and delivers not more than one ounce of usable marijuana, for no consideration, to a person who is 16 years of age or older. [2017 c.21 §5]

475B.376 UNLAWFUL SALE OR DELIVERY OF MARIJUANA PARAPHERNALIA

(1) As used in this section, "marijuana paraphernalia" means an object that is marketed to be used for, or that is designed for, planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a marijuana item. "Marijuana paraphernalia" does not include hypodermic syringes or needles.
(2) It is unlawful for a person to sell or deliver, to possess with intent to sell or deliver or to manufacture with intent to sell or deliver marijuana paraphernalia to a person who is under 21 years of age, knowing that the marijuana paraphernalia will be used for the purpose for which it was marketed or designed.
(3) Violation of this section is a Class B violation.
(4) Subject to the provisions of ORS chapter 131A, and notwithstanding the violation classification specified in subsection (3) of this section, the Oregon Liquor Control Commission may purchase, possess, seize or dispose of marijuana paraphernalia as is necessary for the commission to ensure compliance with and enforce this section and any rule adopted under this section.
(5) In determining whether an object is marijuana paraphernalia under this section or drug paraphernalia under ORS 475.525 (Sale of drug paraphernalia prohibited), a trier of fact in an administrative or judicial proceeding must consider, in addition to any other relevant factor, the following:

(a) Any oral or written instruction provided with the object related to the object's use;
(b) Any descriptive material packaged with the object that explains or depicts the object's use;
(c) Any national or local advertising related to the object's use;
(d) Any proffered expert testimony related to the object's use;
(e) The manner in which the object is displayed for sale, if applicable; and
(f) Any other proffered evidence substantiating the object's intended use.

475B.389 EFFECT OF CRIME UNDER FEDERAL LAW OR LAW OF ANOTHER STATE

If a crime described in ORS 475B.010 (Short title) to 475B.545 (Severability of ORS 475B.010 to 475B.545) is a crime under federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state. [2017 c.21 §18]

475B.436 SEIZURE OF MARIJUANA ITEMS BY LAW ENFORCEMENT PERSONNEL

(1) When a law enforcement officer arrests a person for violating ORS 475B.010 (Short title) to 475B.545 (Severability of ORS 475B.010 to 475B.545), the law enforcement officer may take into possession all marijuana items and other property that the arrested person has in possession, or that is on the premises, that apparently is being used in violation of ORS 475B.010 (Short title) to 475B.545 (Severability of ORS 475B.010 to 475B.545).

(2) If a person arrested as described in this section is convicted, and the court finds that the marijuana items and other property have been used in violation of ORS 475B.010 (Short title) to 475B.545 (Severability of ORS 475B.010 to 475B.545):

> (a) The marijuana items must be forfeited to an appropriate state or local law enforcement agency and must be delivered by the court or law enforcement officer, at the direction of the court, to the law enforcement agency; and
> (b) Subject to any other applicable law, the other property must be forfeited to the Oregon Liquor Control Commission, and must be delivered by the court or law enforcement officer, at the direction of the court, to the commission.

(3) The commission is authorized to destroy or otherwise dispose of any property the commission receives under subsection (2)(b) of this section, provided that if the commission elects to sell the property, including furniture, furnishings, and equipment and facilities for the storing, serving or using of marijuana items, the clear proceeds of the sale must be credited to the State Treasury and deposited in the Common School Fund. [Formerly 475B.305]

475B.521 AUTHORITY TO PURCHASE, POSSESS, SEIZE OR DISPOSE OF MARIJUANA ITEMS

Subject to any applicable provision of ORS chapter 131A or 183, any state officer, board, commission, corporation, institution, department or other state body, and any local officer, board, commission, institution, department or other local government body, that is authorized by the statutory laws of this state to perform a duty, function or power with respect to a marijuana item, may purchase, possess, seize or dispose of the marijuana item as the state officer, board, commission, corporation, institution, department or other state body, or the local officer, board, commission, institution, department or other local government body, considers necessary to ensure compliance with and enforce the applicable statutory law or any rule adopted under the applicable statutory law. [Formerly 475B.360]

CHAPTER 17
VEHICLES

819.400 ASSIGNMENT OF NUMBERS

The Department of Transportation shall provide vehicle identification numbers for vehicles required to be registered in this state and components of such vehicles as the department determines necessary if the vehicles or components do not have vehicle identification numbers. The authority granted by this section is subject to the following:
(1) A vehicle identification number provided under this section shall be assigned by the department and permanently attached to the vehicle or component as prescribed by the department.
(2) A vehicle identification number provided under this section shall be furnished by the department.
(3) The vehicle identification number shall be affixed on an appropriate place on the vehicle or component by the department or, at the discretion of the department, by a police agency that has custody of the vehicle or component.
(4) The department shall not assign a vehicle identification number to a vehicle or component from which the identification number assigned to the vehicle or component has been removed, defaced, covered, altered or destroyed unless the vehicle or component has been:

(a) Held and inspected by a police agency under ORS 819.440 (Police seizure of vehicle without identification number); or
(b) Inspected by a specially qualified inspector or police officer for the purpose of locating the identification number and if the number is found it shall be checked with the list of stolen vehicles maintained by the National Crime Information Center. [1983 c.338 §293; 1985 c.253 §9]

819.440 POLICE SEIZURE OF VEHICLE WITHOUT IDENTIFICATION NUMBER

When a police officer discovers a vehicle or component, including a transmission, engine or other severable portion of a vehicle which possesses or did possess an identification number, from which the vehicle identification number assigned to the vehicle or component has been removed, defaced, covered, altered or destroyed the police officer may seize and hold it for identification and disposal as provided under the following:
(1) The police agency having custody of the property shall have a specially qualified inspector or police officer inspect the property for the purpose of locating the identification number.
(2) If the identification number is found it shall be checked with the list of stolen vehicles maintained by the National Crime Information Center.
(3) If the identification number is not found the police agency shall apply to the Department of Transportation for renumbering under ORS 819.400 (Assignment of numbers).
(4) When the property is not listed as stolen and the identification number is established, the property shall be returned to the person from whom it was seized if:

(a) The person can establish that the person is the owner of the property;
(b) The person executes a good and valid surety bond in an amount at least equal to the market value of the property and conditioned upon return of the property to the owner, if one can be established; or
(c) The person has a certificate as a vehicle dealer issued under ORS 822.020 (Issuance of certificate) or a dismantler certificate issued under ORS 822.110 (Dismantler certificate).

(5) If the person to whom the property was returned does not establish the person's ownership of the property, the police agency shall make reasonable efforts to determine the names and addresses of the owner and all persons of record having an interest in the property. If the police agency is able to determine the names and addresses of the owner and such other interested persons it shall immediately notify the owner by registered or certified mail of the disposition of the property.
(6) If the identification number of property seized is not established or if the property is reported as stolen the police agency having custody of the property shall do all of the following:

(a) After making reasonable efforts to ascertain the names and addresses of the owner and all persons of record having an interest in the property, notify the person from whom the property was seized, and the owner and such other persons if they can be ascertained, of their right to respond within 60 days from the issuance of the notice through court action for the return of the seized property.
(b) Advertise, as required by this subsection, the taking of the property, the description thereof and a statement of the rights of an owner or other persons of record having an interest in the property to respond through court action for the return of the seized property.
(c) Place the advertisement in a daily newspaper published in the city or county where the property was taken, or if a daily newspaper is not published in such city or county, in a newspaper having weekly circulation in the city or county, once a week for two consecutive weeks and by handbills posted in three public places near the place of seizure.

(7) If court action is not initiated within 60 days from the issuance of notice the property shall be sold at public auction by the sheriff or other local police agency having custody of the property.
(8) Property seized and held by or at the direction of the Department of State Police shall be delivered to the sheriff of the county in which the vehicle was located at the time it was taken into custody for sale under this subsection.
(9) The sheriff or other local police agency, after deducting the expense of keeping the property and the cost of sale, shall do the following:

(a) Pay all the security interests, according to their priorities which are established by intervention or otherwise at such hearing or in other proceeding brought for that purpose.
(b) Pay the balance of the proceeds into the general fund of the unit of government employing the officers of the selling police agency. [1983 c.338 §413; 1993 c.751 §77; 1995 c.79 §380; 2005 c.654 §31]