2013
LEGISLATIVE UPDATE

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2013 LEGISLATIVE UPDATE

***NOTE**: The effective date for all new legislation is January 1, 2014, except those bills for which a separate effective date is specifically set forth.*

A. NEW CRIMES AND CHANGES TO EXISTING CRIMES

Animal Abuse/Neglect

SENATE BILL 6, 2013 Oregon Laws, Chapter, Animal Abuse in the First Degree, ORS 167.320 is a Class C Felony if the individual has previously been convicted of a crime involving domestic violence, a minor child or animal neglect or abuse. Animal Abuse in the First Degree when it is a felony is a crime category 6.

Animal Neglect in the Second Degree is a Class C Felony if the individual has two prior animal neglect convictions, the offense involved 11 or more animals or the neglect was committed in the immediate presence of a minor child and the person has a previous conviction for domestic violence.

For sentencing guidelines purposes, Animal Neglect in the Second Degree is a 3, a 6 if 11 to 40 animals were involved and a 7 if more than 40 animals were involved.

Individuals convicted of second degree animal neglect or abuse may not possess a domestic animal or any animal of the same genus against which the crime was committed for a period of five years. Individuals convicted of first degree animal neglect or abuse may not possess a domestic animal or any animal of the same genus against which the crime was committed for a period of 15 years.

A commercial livestock operation is excepted if it is the owner's first conviction, livestock were involved and the owner has not been convicted within the last five years of a crime involving animals, minors, or domestic violence. In addition, the owner's conviction must be for the conduct of another or a corporation.

ORS 167.345 is amended to allow service of a petition for forfeiture of an animal on any claimant or defendant by publication. Anyone with an interest in an animal is authorized to file a written petition demanding a hearing before the court to contest the forfeiture.

Emergency Clause: *This bill took effect on July 28, 2013.*

Initiating a False Report

SENATE BILL 834, 2013 Oregon Laws, Chapter 490, amends ORS 162.375 to make Initiating a False Report a Class A misdemeanor instead of a Class C misdemeanor. The sentencing court is required to include a condition ordering the person to repay any costs incurred responding to and investigating the false report.

Emergency Clause: *This bill took effect on June 24, 2013.*

Prostitution

HOUSE BILL 2334, 2013 Oregon Laws, Chapter_____, amends ORS 167.017(a) and (c) to add attempted prostitution to the language of the crime of compelling prostitution. Specifically now section (a) prohibits the person from using force or intimidation to compel another to engage in prostitution or attempted prostitution. Section (c) prohibits aiding or facilitating the commission of prostitution or attempted prostitution by a person under 18 years of age. The amendments apply to conduct occurring on or after the effective date of this act.

Emergency Clause: *This bill took effect on June 4, 2013.*

Unlawful Tethering

HOUSE BILL 2893, 2013 Oregon Laws, Chapter ____, creates the offense of unlawful tethering when a tether is not a reasonable length, with a collar that pinches or chokes when pulled, for more than 10 hours in a 24-hour period or more than 15 hours in a 24-hour period if the tether is attached to a running line, pulley or trolley system. It is not unlawful tethering if the animal remains in the presence of the person, is part of a requirement of a campground or other recreational area, hunting, transporting domestic animals or a dog kept for herding or protecting livestock, or dogsledding. Unlawful tethering is a Class B violation. It is a class A misdemeanor if the tethering results in serious physical injury or death; it is a Class B misdemeanor if the tethering results in physical injury to the domestic animal.

ORS 167.310 is also amended to add definitions for adequate bedding and shelter for purposes of what is minimum care.

B. CRIMINAL PROCEDURE

Appealing Trial Court DNA Rulings

SENATE BILL 42, 2013 Oregon Laws, Chapter 152, allows the defendant to appeal to the Court of Appeals from a final order or judgment denying or limiting DNA testing under ORS 138.696. The State is also allowed to appeal to the Court of Appeals a final order or judgment granting a motion for DNA testing under ORS 138.692 or from a final order or judgment granting a motion for a new trial under ORS 138.696. Senate Bill 42 applies retroactively to prior trial court decisions when appeal was not available.

Emergency Clause: *This bill took effect on May 16, 2013.*

Preliminary Hearings

HOUSE BILL 2553, 2013 Oregon Laws, Chapter 74, requires that when a defendant is in custody, a preliminary hearing must be held within five judicial days.

Emergency Clause: *This bill took effect on May 9, 2013.*

Restitution

HOUSE BILL 3277, 2013 Oregon Laws, Chapter 388, clarifies the timing for an order of restitution, establishes obligations on the State related to restitution hearings, and allows the

victim to accept a less than the "full" amount of restitution. It eliminates the "prior to the time of sentencing" language of the current statute (the language that caused all the problems) and makes it clear that the State may at the time of sentencing or within 90 days after the entry of judgment establish the amount of restitution. The time may be extended on a showing of good cause. The State, at least 10 days prior to the restitution hearing, must disclose to the Defendant, the names of witnesses to be called at the hearing and provide copies (or inspect) exhibits to be presented at the hearing. The court "shall" grant a continuance if the State fails to do so, but the continuance does not count toward the 90 days. The court may order a restitution amount less than the full amount of the victim's economic damages "only if" the victim consents in a non-person felony case, or the victim consents in writing to a lesser amount for a person felony.

Emergency Clause: *This bill took effect on June 13, 2013.*

Statutory Speedy Trial

HOUSE BILL 2962, 2013 Oregon Laws, Chapter 431, repeals ORS 135.747 Oregon's statutory speedy trial provisions on April 1, 2014.

Emergency Clause: *This bill took effect on June 18, 2013.*

Trial Court Retains Limited Jurisdiction after Notice of Appeal is Filed

SENATE BILL 50, 2013 Oregon Laws, Chapter 50, addresses the situation where an order or judgment is appealed but the order or judgment, although signed by the judge, had not been filed or entered into the register. Currently, a motion is required for re-entering the judgment or order to be able to pursue the appeal because the Court of Appeals obtained jurisdiction when the appeal was served and filed. Senate Bill 50 clarifies that the trial court retains jurisdiction for entering a judgment or order in the register even after an appeal has been served and filed.

Emergency Clause: *This bill took effect on March 18, 2013.*

Witness False in Part Jury Instruction

SENATE BILL 55, 2013 Oregon Laws, Chapter 25, changes the "Witness False in Part" jury instruction as follows:

"That a witness false in one part of the testimony of the witness [is to] may be distrusted in others;

Comment: The jury gets to decide whether to distrust the witness false in part rather than being required by law to distrust the witness.

C. CONTROLLED SUBSTANCES

Marijuana

SENATE BILL 40, 2013 Oregon Laws, Chapter 591, reduces manufacture of marijuana to a Class B felony. Possession of marijuana is reclassified to coincide with the rescheduling of marijuana in Oregon (from CI to CII), and also to create the new intermediate misdemeanor between a violation and a felony as follows:

Leaves, stems, flowers:

* Less than 1 ounce: Violation, ORS 475.864(3)(c). Fine for the violation is $650.00

* 1 ounce to under 4 ounces: B Misdemeanor, ORS 475.864(3)(b).

* 4 ounces or more: C Felony, ORS 475.864(3)(a).

Other forms (e.g., hash, hash oil, etc):

* Less than 1/4 ounces: B Misdemeanor, ORS 475.864(4)(b).

* 1/4 ounces or more: C Felony, ORS 475.864(4)(a).

Emergency Clause: *This bill took effect on July 1, 2013*.

Medical Marijuana

HOUSE BILL 3460, Oregon Laws 2013, Chapter ____, requires the Oregon Health Authority to establish rules for the registration and regulation of medical marijuana dispensary facilities. Dispensaries may be located in commercial, industrial, mixed use or agricultural land but may not be located at the same address as a marijuana grow site. Dispensaries must be registered as a business with the secretary of state, may not be located within a 1,000 feel of a school, or within 1,000 feet of another medical marijuana facility. Only registered card holders may obtain marijuana from a dispensary, the facility must be property licensed and the product must be tested for pesticide, mold, and mildew prior to distribution. Individuals with one prior delivery or manufacture of a Schedule I or II controlled substance are prohibited for five years from the date of conviction from operating a dispensary. Individuals with more than one conviction for a delivery or manufacture of a Schedule I or II controlled substances are prohibited from operating a dispensary.

NOTE*: This bill is currently awaiting the Governor's signature.*

SENATE BILL 281, 2013 Oregon Laws, Chapter_____, amends ORS 475.302 to add post-traumatic stress disorder to the list of specific medical conditions that qualify as a "debilitating medical condition". It also further amends the definition to include any side effects related to the treatment of cancer, glaucoma, agitation incident to Alzheimer's disease, positive status for human immunodeficiency virus or acquired immune deficiency syndrome.

D. SENTENCING ISSUES

Mitigation

SENATE BILL 124, 2013 Oregon Laws 331,amends ORS 137.090 to provide that the defendant's status as a servicemember may be considered for purposes of mitigation.

Emergency Clause: *This bill took effect on June 6, 2013.*

Public Safety Sentencing Reform

HOUSE BILL 3194, 2013 Oregon Laws, Chapter ____:

SEE ATTACHED Appendix A – Memo from Chuck French

Staying Execution of Sentence Pending Appeal

SENATE BILL 39, 2013 Oregon Laws, Chapter 151 makes it clear that a trial judge may stay the execution of sentence pending appeal after considering factors such as nature of offense; severity of sentence imposed; health of defendant; character and strength of evidence; criminal history of defendant; likelihood that defendant will appear in court and comply with conditions of release; likelihood appellate court will reverse sentence. The court may also set terms of release pending appeal.

The former statute providing for release pending appeal (ORS 138.135) is repealed.

E. CORRECTIONS/PAROLE AND PROBATION

Conveying Prisoners

HOUSE BILL 2685, 2013 Oregon Laws, Chapter 130, modifies ORS 421.205 and ORS 421.210 relating to the conveyance of felony prisoners to those contracting with DOC to provide prison services. Inmates, by this bill, may not be conveyed to the receiving (contracting) prison if "they are eligible for any form of temporary or transitional leave from custody, work release or a program of conditional or supervised released, that is authorized by the department…" In short, if they can get out early they can't be shipped to another state or the feds to be held on the imprisoning charges. Expands use of inmate revenues (like canteen, phone use, vending machines, etc.) to include applying such funds to providing for or supporting reentry programs.

Emergency Clause: *This bill took effect on May 16, 2013.*

Post- Prison Supervision

HOUSE BILL 2234, 2013 Oregon Laws, Chapter 67, eliminates the sunset provision that would have ended the practice of "active" vs. "inactive" supervision for PPS supervision. The provisions that would allow, upon request, the extension of "active" supervision of PPS offenders are eliminated as well.

Emergency Clause: *This bill took effect on May 9, 2013.*

F. ASSET FORFEITURE

Civil Forfeiture

HOUSE BILL 2384, 2013 Oregon Laws, Chapter 374 authorizes civil forfeiture for the crimes of driving while suspended. A motor vehicle may be seized for civil or criminal forfeiture if the individual is arrested or cited for driving while suspended or revoked and the person within three years has been criminally convicted of driving while suspend. A law enforcement agency must adopt policies and procedures if they intend to seize and forfeit vehicles when the prohibited conduct is driving while suspended.

Forfeiture Reporting

SENATE BILL 27, 2013 Oregon Laws, Chapter 9, changes the date by which the annual forfeiture report is due to the Asset Forfeiture Advisory Committee to January 31 of the following calendar year.

Emergency Clause: *This bill took effect on March 18, 2013.*

G. JUVENILE LAW

Confinement

HOUSE BILL 3183, 2013 Oregon Laws, Chapter_____, amends ORS 137.124 to state that when a person is otherwise eligible to serve all or part of their sentence at the Oregon Youth Authority, the sheriff may by agreement with the Department of Corrections, deliver the person directly to the Oregon Youth Authority and bypass first delivering them to the Department of Corrections. Applies to persons sentenced for a crime in a proceeding occurring on or after the effective date of this act.

Emergency Clause: *This bill took effect on June 11, 2013.*

Custody

HOUSE BILL 2049, 2013 Oregon Laws, Chapter 259, authorizes "Juvenile community supervision officers," and OYA probation and parole officers, to take parole violators into custody and to deliver the person to a juvenile or adult detention facility.

Emergency Clause: *This bill took effect on June 4, 2013.*

Dependency Proceedings

HOUSE BILL 3363, 2013 Oregon Laws, Chapter 439, primarily deals in two ways with juvenile dependency proceedings. Section 1 makes it clear that discovery in permanency hearings have the same 10 day 'before the hearing' discovery obligation as currently exists in termination proceedings. Additionally when DHS has legal custody of the child, DHS "shall" disclose to "all parties" the case plan developed pursuant to ORS 419B.343 along with any supporting documents within 10 days of completing the plan or within 10 days of receiving supporting materials. Children who are protected by a FAPA restraining order may petition the court to renew the restraining order against the respondent after they turn 18 years of age. The petitioner parent of the child does not need to seek the renewal or agree to a renewal. In the case of the child who was previously protected by the order, has now turned 18 years old, and reasonably fears further acts of abuse by the respondent if the order is not renewed, the court may renew the restraining order. Additionally, if the petitioner parent no longer wishes to be a party to the restraining order, the court may renew the order and remove the parent as a party and leave the child who has turned 18 as the sole party to the restraining order against the respondent.

The other major piece establishes "The Work Group on Juvenile Court Dependency Proceedings." This group consists of 11 members, six appointed by the Chief Justice with

designated positions including a member representing the Public Defense Services Commission. Two are to be appointed by the AG, one from DOJ and one from ODAA. Two members are to be chosen by the OSB Board of Governors from those representing parents and children in these proceedings. Yes, your math is correct; two from the prosecution side and three from the defense. The Task Force is to examine Oregon's juvenile court dependency system relating to a host of issues and report back to the Legislature no later than January 15, 2015. The Task Force will "sunset" on June 30, 2015.

Fitness to Proceed

HOUSE BILL 2836, 2013 Oregon Laws, Chapter ____, fills the statutory gap in fitness to proceed procedures and hearings for juveniles. Prior to HB 2836 there were no statutory standards and procedures when a youth was unfit to proceed in a delinquency matter as a result of mental disease or defect. The procedures created are similar to those used in the adult system. The court must order an evaluation by a psychiatrist, psychologist or clinical social worker if the court has reason to doubt the youth's fitness to proceed. Here is a portion of the legislative summary that captures many of the important parts of the bill:

"Requires report on the youth's fitness to contain evaluator's opinion of youth's fitness to proceed and, if youth is not fit to proceed, whether there is a substantial probability that youth will regain fitness. Requires court to dismiss juvenile proceedings if court finds youth is unfit to proceed and unable to benefit from restorative services. Requires court to order Department of Human Services (DHS) to provide services intended to restore the youth's mental health if court finds youth will benefit from services. Prohibits youth from being committed for a period longer than: (1) three years; or (2) period of time equal to the maximum commitment the court could have imposed if petition had been adjudicated. Requires DHS to administer restorative services program. Requires court to find that DHS has made reasonable efforts if providing services would not have eliminated need for removal of youth from his or her current placement. Requires court to make written findings that DHS has made reasonable efforts to prevent the need for removal. Allows pre-trial detention for additional 28 days under certain limited circumstances. Clarifies Oregon Health Authority must consult with DHS before placing a youth in a mental health treatment facility. Clarifies party to the proceeding who raises the issue of fitness to proceed shall file evaluation report with court. Sets forth under what circumstances a youth may be removed from the youth's current placement and given restorative services. Allows pre-trial detention for an additional 28 days under certain limited circumstances."

***NOTE**: This bill is currently awaiting the Governor's signature.*

Juvenile Court Jurisdiction While Appeal is Pending

HOUSE BILL 3278, 2013 Oregon Laws, Chapter 143, provides that "upon joint motion of the parties to an appeal" the court may vacate a judgment or order in a juvenile matter and remand the matter to the juvenile trial court to reconsider the matter. On remand to the juvenile court, the juvenile court shall have the jurisdiction to enter a modified judgment or order. After doing so, the same rules of appeal apply to the new order. Effective as to any order entered after the effective date of the bill.

Juvenile "Record of the Case" and "Supplemental Confidential Files"

SENATE BILL 622, 2013 Oregon Laws, Chapter 417 defines "record of the case" in juvenile court proceedings as: (1) The summons, petitions, pleadings, motions, exhibits, transcripts, and affidavits; (2) Local citizens review board findings; (3) Guardianship reports; (4) Orders and judgments of the court; and (5) Other documents that are part of the court record. A "supplemental confidential file" includes reports relating to the child's history and prognosis. These records are not to become part of the case record and are not received as evidence in the case. Attorneys who may be filing an appeal in the Court of Appeals regarding a juvenile court decision access to both files for the purposes of analyzing the appeal. The juvenile court judge is limited to taking judicial notice of law and fact, and not documents or other material. Who may disclose and when they may disclose information in the "supplemental confidential file" is clarified if the file indicates that the juvenile presents a clear and present danger to another person or society. Indian tribes have the right to inspect and copy the record of the case including the confidential file when tribal members are involved. The court's authority to allow persons other than those specifically authorized in statute to obtain juvenile court files that are otherwise confidential is delayed until July 1, 2014. The Clerk of Court for each circuit court shall keep the supplemental confidential file and record of each case as provided for by ORS 7.120.

Task Force on the Delivery of Human Services

SENATE BILL 450, 2013 Oregon Laws, Chapter 599, establishes the "Task Force on the Delivery of Human Services" with 20 members to be appointed as follows: appointed by the Senate President (2), Speaker of the House (2), Director of Human Services (7), (each designated by expertise or organization description), Director of DOC (1), Director of OHA (1), and the Governor (5), (each by a given description including one recommended by AOC). The Task Force is to look at many facets of the services and operations of DHS. There is no requirement that a D/DA or A/AG doing this work be included on the Task Force. An interim preliminary report to the Legislature must be submitted by February 15, 2014.

Emergency Clause: *This bill took effect on July 1, 2013.*

Work Release Program for Juvenile Offenders

SENATE BILL 188, 2013 Oregon Laws, Chapter229, amends ORS 420.060 to 420.235 to allow the Oregon Youth Authority to establish and administer a work release program for youth in its custody. This does not include those serving sentences under ORS 137.635, ORS 137.700 or ORS 137.707. Any unauthorized absence from the place of employment, work assignment, or assigned quarters shall constitute escape in the second degree from a correctional facility. ORS 137.750 is amended to add the Oregon Youth Authority to the definition of an "executing or releasing authority."

Emergency Clause: *This bill took effect on May 23, 2013.*

H. SEXUAL OFFENSES AND DANGEROUS OFFENDERS

Military Sex Offenders

SENATE JOINT MEMORIAL 1, to effectively track members of the military convicted in military courts of sex crimes, this memorial urges Congress to develop mechanisms to provide adequate notice to states in which such persons plan to reside.

Prostitution

HOUSE BILL 2234, 2013 Oregon Laws, Chapter 271, amends ORS 167.017(a) and (c) to add attempted prostitution to the language of the crime of compelling prostitution. Specifically now section (a) prohibits the person from using force or intimidation to compel another to engage in prostitution or attempted prostitution. Section (c) prohibits aiding or facilitating the commission of prostitution or attempted prostitution by a person under 18 years of age. It applies only to conduct occurring on or after the effective date of this act.

Emergency Clause: *This bill took effect on June 4, 2013.*

Sex Offender Registration

HOUSE BILL 2549, 2013 Oregon Laws, Chapter____, creates a three-tier system for ranking sex offenders based on their risk as established by a designated risk assessment tool. It requires all offenders in the current system (almost 20,000 individuals) to be reclassified. Offenders classified in the first tier are eligible for relief from reporting obligations five years after the end of their supervision. Offenders classified in the second tier are eligible to apply for reclassification into tier one 10 years after the end of their supervision. Offenders classified in the third tier are eligible to apply to be moved into tier two 10 years after their supervision has ended. Tier 3 offenders are not eligible to apply for total relief from reporting obligations, ever. Offenders convicted of Rape I, Sodomy I, Unlawful Sexual Penetration I, Kidnap I or Burglary I will never be eligible for relief from the obligation to register as a sex offender. The bill creates requirements for notification of the public. It requires all classifications of existing registrants to be completed by December 1, 2016. Relief hearings are designated critical stage for which victims must be notified of, and that victims may attend.

NOTE*: This bill is currently awaiting the Governor's signature.*

HOUSE BILL 3253, 2013 Oregon Laws, Chapter_____, amends ORS 181.594 adding to the definition of a "sex offender" anyone who has been convicted of a crime in another United States court that would require sex offender registration if committed in Oregon, or would require registration in the other state or under federal law, even if it would not otherwise require registration in Oregon. All such persons must comply with all the sex offender registration requirements in Oregon if convicted of an offense, or adjudicated for an act, occurring on or after the effective date of this act.

Emergency Clause: *This bill took effect on June 18, 2013.*

Sex Offender Registration for Luring a Minor and Conspiracy to Commit a Sex Crime

SENATE BILL 30, 2013 Oregon Laws, Chapter 293 adds Luring a Minor (ORS 167.057) and Conspiracy Involving a Sex Crime (ORS 161.450) to the list of sex crimes (ORS 181.594(5)) for which a person may have to register as a sex offender.

Specifically, "The court may designate luring a minor as a sex crime under ORS 181.594 if the court determines that: (A) The offender reasonably believed the child to be more than five years younger than the offender or under 16 years of age; and (B) Given the nature of the offense, the age or purported age of the minor and the person's criminal history, designation of the offense as a sex crime is necessary for the safety of the community.

(b) The court shall indicate the designation and the findings supporting the designation in the judgment."

Emergency Clause: *This Bill took effect on June 4, 2013.*

Sex Trafficking of Children

SENATE BILL 673, 2013 Oregon Laws, Chapter_____, amends ORS 163.266 trafficking in persons by adding two more theories to this crime. The first theory is whether the person knows or recklessly disregards the fact that force, fraud, or coercion will be used to cause the other person to engage in a commercial sex act. The second theory is that the person knows or recklessly disregards the fact that the other person is under 15 years of age and will be used in a commercial sex act. The definition of "commercial sex act" is created to mean sexual conduct or sexual contact, as those terms are defined in ORS 167.002, performed in return for a fee or anything of value. The theories that existed before this amendment are still in effect and are still a B felony. The new theories added by this amendment are now Class A felonies.

ORS 167.008, the crime of patronizing a prostitute, is amended by removing all the language in subsection (3) dealing with patronizing a minor. The crime now simply states that a person commits the crime of patronizing a prostitute if the person pays, or offers or agrees to pay, a fee to engage in sexual conduct or sexual contact. This crime is still a Class A misdemeanor.

The new crime of "purchasing sex with a minor" is created when the person pays, or offers or agrees to pay, a fee to engage in sexual intercourse or sexual contact with a minor. For the first offense, it is a Class C felony and the person may use the defense of ignorance or mistake under ORS 163.325 only if the minor was at least 16 years old. There is a mandatory minimum fine of $10,000, 30 days jail, and a completion of a john school program. The court may designate the offense as a sex crime under ORS 181.594 if certain findings are made. For a second or subsequent offense, this crime is a Class B felony, and the state need not prove that the person knew the minor was under 18 years of age and the person may not use the defense of ignorance or mistake at all. There is a mandatory minimum fine of $20,000 and the court shall designate the offense as a sex crime under ORS 181.594. For either conviction, the court may impose a lesser fine if the court finds that the person is unable to pay the mandatory minimum.

The rape shield statute under ORS 40.210 is amended to include prosecutions for ORS 166.266(1)(b) or (c) trafficking in persons, ORS 163.670 using a child in display of sexually explicit conduct, and ORS 167.017 compelling prostitution. The wiretap statute, ORS 133.724 is

also amended to add the crimes of ORS 166.266(1)(b) or (c) trafficking in persons, ORS 163.670 using a child in display of sexually explicit conduct, ORS 167.017 compelling prostitution, ORS 167.012 promoting prostitution, and the new crime of purchasing sex with a minor. ORS 147.015 dealing with crime victim compensation now reads that when the victim of the crime is subjected to sexual exploitation it is prima facie evidence of good cause for the victim's failure to timely notify law enforcement, or cooperate with law enforcement. ORS 181.594 is amended by adding ORS 163.266(1)(b) or (c) trafficking of persons, purchasing sex with a minor for the second or subsequent offense, or if a court designates the first offense as a sex crime, to the definition of "sex crime". ORS 419B.005(1)(a), the definition of abuse, is amended to include allowing, permitting, encouraging, or hiring a child to engage in prostitution as described in ORS 167.007, a commercial sex act as defined in ORS 163.266, purchasing sex with a minor, or patronizing a prostitute as described in ORS 167.008. The sections pertaining to the creation of the crime of purchasing sex with a minor, amendments to the elements of the crime of trafficking in persons and patronizing a prostitute, and the amendments to the definition of a "sex crime" apply to prosecutions for offenses committed on or after the effective date of this act. The sections pertaining to the rape shield statute, wire taps, and crime victim compensation apply to prosecutions commenced on or after the effective date of this act.

***NOTE**: This bill is currently awaiting the Governor's signature.*

I. DRIVING UNDER THE INFLUENCE

Blood/Breath

HOUSE BILL 2117, 2013 Oregon Laws, Chapter ___ makes it clear that law enforcement may obtain a warrant for a blood test even after a person has refused a breath test without being in violation of the implied consent laws. ORS 813.100 has been amended to state that a warrant or any other lawful means may be used to obtain a chemical analysis of the breath or blood. This is even in light of ORS 813.100(2) that states that no chemical analysis of the breath or blood should be given if the person refuses to provide such evidence after having been read the implied consent rights and consequences. The McNeely case is making it necessary to obtain more warrants in simple DUII cases than in the past.

The second part of HB 2117 amends ORS 813.140 to allow an officer to ask for express consent for a breath test without violating implied consent (the law previously only allowed for express consent for blood and urine). This is necessary as officers are now asking for express consent for a breath test prior to reading implied consent so that consent is a viable option for breath test evidence to be admitted.

Interlock Ignition Device

HOUSE BILL 2116, 2013 Oregon Laws, Chapter 315, provides two exemptions for people required to get an interlock ignition device while on diversion. First, if the person meets the conditions set out by DMV for a medical exemption they are not required to install an interlock ignition device as long as they carry proof of the exemption in their car with them. The second

part of HB 2116 provides an exemption for people driving work vehicles owned by the person's employer. The employer must be notified that they were required to have the interlock ignition evice installed and proof of the notification must be carried with the person in the car with them.

License Suspension

HOUSE BILL 2121, 2013 Oregon Laws, Chapter 233, sets the steps that must occur for an individual who has been convicted of a DUII to have their license reinstated after the appropriate suspension. Currently, the person is required to complete any ordered treatment and provide to the DMV proof of such completion as a prerequisite to license reinstatement. This bill additionally allows reinstatement if DMV receives an order from the circuit court that the person has taken sufficient steps to complete the ordered treatment, or alternatively fifteen years has elapsed since the date of conviction. To show "sufficient steps" the person may file a motion with the court for a hearing on the matter. A copy of the motion and any supporting documentation shall be provided to the district attorney of the county in which the person was convicted. The district attorney may file an objection within 45 days of the filing of the motion. If no objection is filed, the court shall enter an order without a hearing, or on its own motion, conduct its own hearing, and then provide a copy of the order to the district attorney and applies to convictions occurring before, on, or after the effective date of this act.

Emergency Clause: *This bill took effect on May 28, 2013.*

DUII Diversion

HOUSE BILL 2627, 2013 Oregon Laws, Chapter 78, amends ORS 813.255 regarding the circumstances in which a court may terminate DUII diversion and enter a judgment of conviction or dismiss the DUII charge with prejudice upon a filing of a motion to show cause. It also creates a procedure to collect restitution as part of the diversion agreement. The court shall terminate diversion and enter the original plea as a conviction if the person fails to appear at the show cause hearing, or if the court finds to a preponderance of the evidence that the defendant no longer qualifies for diversion, or failed to fulfill all of the terms of the DUII diversion agreement. If the only remaining requirement to complete the DUII diversion is the payment of $500 or less of fees owing, the court may dismiss the DUII with prejudice if the person appears and pays the balance of the fees by 5 p.m. on the date of the show cause hearing. If the only requirement to be completed is the payment of restitution, the court may not terminate the diversion for failure to pay. Upon termination, the court shall enter a money judgment for the remaining amount of restitution owed. Additionally, at any time before entry of judgment of conviction and within 180 days after the conclusion of DUII diversion, a defendant who has completed all conditions of diversion except that they still owe $500 or less of fees owing may apply by motion to dismiss the DUII. This motion shall be served on the district attorney, and the district attorney may contest the motion. The court may dismiss the DUII with prejudice if the money is paid in full by 5 p.m. on the date of the scheduled hearing. If the money owing is restitution, the court shall enter a money judgment for the balance. Additional language is now required to be present in the DUII diversion petition that the defendant agrees to pay any restitution ordered by the court. When a person enters diversion, the district attorney has 90 days from the date of entry to present to the court evidence of the nature and amount of the economic damages. These amendments apply to diversion agreements entered into on or after the effective date of this act.

Emergency Clause: *This bill took effect on May 9, 2013.*

HOUSE BILL 2773, 2013 Oregon Laws, Chapter 134, amends ORS 813.215 regarding DUII diversion eligibility. A person will not be ineligible for DUII diversion as a result of participation in any alcohol or drug diversion or other rehabilitation program that resulted from the current DUII, a violation of minor in possession, or a violation of possession of less than one ounce of marijuana from arising from this same incident. Applies to petitions for a DUII diversion agreement filed on or after the effective date of this act.

J. CRIME VICTIMS

Notice to Victims

HOUSE BILL 3281, 2013 Oregon Laws, Chapter 144, amends ORS 135.970 to expand the current requirement upon defense attorneys, to their agents, to inform victims upon contact of their identity and capacity as well as the rights of the victim to refuse the interview. Additionally, the victim must be informed that the victim has the right to have the district attorney, or now an assistant attorney general, another attorney, or an advocate, present for any contact by the defense. The definition of victim given in ORS 137.007 is added. The same requirements of notice under ORS 138.625 are added in post-conviction relief proceedings. It also limits when the defense can subpoena a victim for a post-conviction relief proceeding.

Restraining Orders for Victims of Sexual Abuse

HOUSE BILL 2779, 2013 Oregon Laws, Chapter ____, allows victims of sexual abuse to obtain a restraining order. A person who has been sexually abused and who has an objectively reasonable fear for his or her physical safety may petition a circuit court for a restraining order against his or her alleged abuser if: (1) Person seeking the restraining order and respondent are not family or household members; (2) Respondent is at least 18 years old; and (3) Respondent is not already subject to a restraining order. The court must hold an ex- parte hearing the day of filing or the following judicial day. If the petitioner can show that his or her fear is objectively reasonable and that the respondent subjected the petitioner to sexual abuse within the 180 days preceding the filing of the petition, the court must: (1) Restrain respondent from contacting or intimidating the petitioner; and (2) Restrain the respondent from contacting the petitioner's children or family or household members if requested. If the respondent is restrained from entering an area surrounding the petitioner's residence, the order must describe the area.

The respondent has the right to request a hearing within 30 days after the order is issued. If the person does not request a hearing, the order is confirmed by operation of law. The use of evidence relating to the petitioner's reputation or past sexual behavior is limited.

Comment: The District Attorney has no attorney role in this restraining order process. District Attorney Victim assistance programs should be able to provide the same services they provide for other types of restraining orders.

Emergency Clause: *This bill took effect on July 29, 2013.*

Victims' Rights Task Force

HOUSE BILL 2774, 2013 Oregon Laws, Chapter 582 eliminates the sunset provision which would have ended the Task Force on Victims' Rights Enforcement, headed by the Attorney General, and assigned the task of reviewing the implementation of ORS 147.500-ORS 147.550 (victims' rights). The task force is no longer required to submit reports to the legislature but "may" submit reports.

Emergency Clause: *This bill took effect on May 1, 2013.*

K. MISCELLANEOUS

Driver's Licenses

HOUSE BILL 2542, 2013 Oregon Laws, Chapter 124, amends ORS 809.409 to require the DMV to impose a license revocation of three years for the conviction of felony failure to perform duties of a driver – injury when a victim sustains serious physical injury as a result of the accident. If the sentence includes incarceration, the person may not apply for reinstatement until three years after the date the person is released from custody and applies to revocations for conduct occurring on or after the effective date of this act.

Emergency Clause: *This bill took effect on May 16, 2013.*

HOUSE BIL 3047, 2013 Oregon Laws, Chapter 432, deals primarily with the court's obligation of notice to DMV about suspensions for traffic offenses. The Court is now required to notify DMV of eligibility for reinstatement when the person is making payments as agreed rather than paid in full. Additionally, on a suspension for FTA, the court is required to notify DMV if person has begun making payments as agreed or the citation has been dismissed. There are new provisions that allow the person to apply for reinstatement if the person is involved in a "pre-apprenticeship" program under ORS 660.020. There are specified times for different sections related to reinstatement and issuing citations.

Emergency Clause: *This bill took effect on June 18, 2013.*

Drones

HOUSE BILL 2710, 2013 Oregon Laws, Chapter ____, prohibits law enforcement from using a drone to acquire information except as allowed by law. Drone means an unmanned flying machine and does not include model airplanes. Law enforcement agencies may use a drone:

1. Pursuant to a warrant authorizing the use of the drone for a specific period of time not longer than 30 days.

2. Without a warrant if the law enforcement agency has probable cause to believe that a person has committed a crime, is committing a crime or is about to commit a crime, and exigent circumstances exist that make it unreasonable for the law enforcement agency to obtain a warrant authorizing use of a drone.

3. With the consent of an individual for the purpose of acquiring information

about the individual, or about the individual's property.

4. For the purpose of search and rescue activities, assisting an individual in an emergency and when the Governor has declared an emergency.

5. For crime scene reconstruction or similar physical assessment related to a specific criminal investigation. The Drone use may not exceed 5 days.

6. For training in the use of drones. Information gathered during training is not admissible in judicial or administrative proceedings and may not be used to establish probable cause. Drones must be registered with the Oregon Department of Aviation and public body drones may not contain weapons.

HB 2710 creates (1) a Class A felony if a person possesses or controls a drone and intentionally causes, or attempts to cause, the drone to:

(a) Fire a bullet or other projectile at an aircraft while the aircraft is in the air;

(b) Direct a laser at an aircraft while the aircraft is in the air; or

(c) Crash into an aircraft while the aircraft is in the air.

(2) A person who intentionally interferes with, or gains unauthorized control over, a drone licensed by the Federal Aviation Administration, or operated by the Armed Forces of the United

States as defined in ORS 351.642, an agency of the United States or a federal, state or local law enforcement agency, commits a Class C felony.

Emergency Clause: *This bill took effect on July 29, 2013.*

Gray Machines

HOUSE BILL 2603, 2013 Oregon Laws, Chapter 128, the dreaded Gray Machine! For those that don't know, a Gray Machine is a machine used for unlawful gambling such as a proprietor paying off on a video poker machine that is not part of the State lottery program. First, if law enforcement seizes a Gray Machine and there is a motion filed for its return, the burden of proof is on the State to establish that the item seized is in fact a Gray Machine. Such a seized machine can be destroyed or disposed of only if there is a judgment of forfeiture entered as to it.

Emergency Clause: *This bill took effect on May 16, 2013.*

Mental Illness

HOUSE BILL 2594, 2013 Oregon Laws, Chapter____, allows a court to order a person with a mental illness into assisted outpatient treatment after making findings that the person, is 18 years of age or older; has a mental disorder; will not obtain treatment in the community voluntarily; is unable to make an informed decision to seek or to comply with voluntarily treatment; and as a result is incapable of surviving safely in the community without treatment and requires treatment to prevent deterioration in the person's condition that will predictably result in the person becoming a person with a mental illness. The bill provides that "assisted outpatient treatment" may not be construed to be a commitment under ORS 426.130 and does not include taking a

person into custody or the forced medication of a person. In short, the person needs help but they are not mentally ill to the extent they need to be civilly committed.

***NOTE**: This bill is currently awaiting the Governor's signature.*

SENATE BILL 421, 2013 Oregon Laws, Chapter ____ allows individuals found to be extremely dangerous to be civilly committed. If the court makes the finding, the person must be supervised by the Psychiatric Security Review Board (PSRB) and have an initial review hearing in six months. Their status will be reviewed only if requested by the hospital or treatment facility, or every two years, whichever comes first. The prosecuting attorney may petition court for a commitment hearing. Hospital superintendent must petition for early termination of commitment when the person no longer suffers from a mental disease or defect, or is no longer extremely dangerous. The supervisory agency must notify all parties before the commitment period ends, and hold a hearing to determine whether a new period of commitment should be set. The statute of limitations is tolled for the duration of the commitment if there is a pending underlying crime.

The prosecuting attorney may request an aid and assist evaluation be done in advance of any hearing where the person may be released from the jurisdiction of the PSRB.

***NOTE**: This bill is currently awaiting the Governor's signature.*

Post- Conviction

HOUSE BILL 3287, 2013 Oregon Laws, Chapter 226, amends ORS 138.510 to ORS 138.680 to require in post-conviction relief proceedings that upon written request, or order of the court, parties shall disclose the identity of, and contact information of, any person who is a potential witness. The parties shall also provide a written report that is prepared and signed by the witness with specific requirements. Upon breach of this disclosure, the court may grant a continuance of the proceedings, or refuse to allow that witness to testify. Unless ordered by the court, the defense shall not disclose the personal identifiers of the victim, and both parties may request a protective order as provided in ORS 135.873.

Prescription Drug Monitoring

SENATE BILL 470, 2013 Oregon Laws, Chapter 550, amends the prescription monitoring program administered by the Oregon Health Authority. It expands the definition of a "practitioner" as it applies to the requirements of this program. The practitioner or pharmacist is responsible for the misuse of the disclosed information if it is provided to the practitioner's or pharmacist's staff. Disclosure of information is authorized to the State Medical Examiner, or their designee, for the purpose of conducting a medicolegal investigation or autopsy.

Telephonic Search Warrants

HOUSE BILL 3286, 2013 Oregon Laws, Chapter 225, eliminates the requirement for a transcription of the oral statement for telephonic search warrants. The judge may take the oral statement under oath. The statement shall be recorded and a copy of the recording submitted to the judge who took it. The judge then "shall certify" that the recording is a true recording and retain the recording as part of the record of the proceedings for the issuance of the warrant. The applicant "shall retain" a copy of the recording and "shall provide" a copy to the District

Attorney if the DA is not the applicant. Applies only to warrants issued after the effective date of the bill.

Emergency Clause: *This bill took effect on May 23, 2013.*