OREGON STREET LAW SUPPLEMENT

Revised Spring 2016

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WHAT IS OREGON STREET LAW?

Street Law: A Course in Practical Law is a student text which, while placing law in the context of the United States Constitution, tries to provide a practical perspective on the legal realities everyone faces in daily life. It has been used in secondary schools across the United States since 1975 and is being used in a number of schools in Oregon.

Developers of *Street Law* recognize that for the text to be used most effectively, the general information provided should be supplemented with more specific information about the laws of the state where it is used. *Oregon Street Law* is the supplement for Oregon. It describes practical aspects of Oregon law and procedure and, for the most part, addresses the sections of Oregon law that differ from the material presented in the textbook. When the reader is referred to *Street Law* in this supplement, one should look at the Ninth Edition.

HOW SHOULD IT BE USED?

Oregon Street Law is intended to be used in conjunction with *Street Law*. To make this possible and easy we followed the format of *Street Law* so that the person using it can refer quickly to the appropriate unit in *Oregon Street Law*.

TWO IMPORTANT THINGS TO REMEMBER

Oregon Street Law is a resource to help Oregon educators learn about and teach the law. It is not intended to provide legal advice.

Since laws are constantly being made, amended and repealed by the state Legislature, it is important to remember that the information presented here is subject to change.

HOW WAS OREGON STREET LAW *DEVELOPED?*

Oregon Street Law represents a consortium of efforts by a number of individuals and agencies in the Portland area and the National Street Law Project.

The first edition was published in 1979 in response to requests from educators. The Multnomah County Education Service District funded the first edition. Marilyn Cover, Director of the Oregon Law Related Education Program, was contracted to compile information for the supplement. She obtained help from practicing attorneys who submitted drafts of material to her. A draft edition was developed and was circulated with a request for feedback to educators, members of the legal community and representatives of the National Institute for Citizen Education and the Law. Input from these people was considered in preparation of the final draft. Subsequent editions were

published in 1984 and 1986. Louise Palmer, a Lewis & Clark Law School graduate, completed a substantial edit in 1990 and additional revision and updating in 1992 was undertaken by Barbara Rost, graduate of Lewis & Clark Law School and longtime volunteer with the Oregon Law Related Education Program. The 1997 edition was revised by Scott Coombes while he was a student at Lewis & Clark Law School, and by students Lake Perriguey and Scott Elder. The 1999 edition was revised and updated by Helen Kim while she was a student at Lewis & Clark Law School. The 2007 edition was substantially updated by Rachele Selvig while she was a student at Lewis & Clark Law School. Minor updates reflecting recent changes in the law were made in 2016 by Michael Cagle, yet another student at Lewis & Clark Law School.

Acknowledgments

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Introduction to Law and the LegalSystem

WHAT IS LAW?

Our Constitutional Framework

The rights of the citizens of Oregon are guaranteed by Article I of the Oregon State Constitution. Many of the fundamental rights in Article I are identical to those guaranteed by the United States Constitution. These fundamental rights are discussed in Unit 6, Individual Rights and Liberties. A current copy of the Oregon Constitution may be found in the current edition of the *Oregon Blue Book*, a guide to Oregon government published by the Office of the Secretary of State.

Voter Registration Allowed for 17-Year-Olds

Article I, section 2 if the Oregon State Constitution entitles all United States citizens over the age of 18 the right to vote in elections if they meet residency requirements and register to vote at least 20 days before an election. In 2007, the Oregon Legislature amended Oregon laws to allow 17-year-olds to register to vote, although they cannot vote until they reach 18 years of age.

LAWMAKING

Legislatures

The legislative power of the State of Oregon is vested in a Legislative Assembly consisting of a Senate and a House of Representatives. These two bodies have the power to enact laws governing certain matters that affect the citizens of the state but they do not have the authority to pass special local laws. In matters such as local parks, parking tags, appropriation of local taxes, or contracts with public utilities for local services, the power to regulate these concerns is reserved for local governments. The legislative power is also limited by the powers reserved to the people in referendum and initiative action.

The Senate consists of thirty members and the House of Representatives consists of sixty members. The senators are elected for a four-year term and the Representatives serve a two-year term. In order to be elected as a Senator or Representative, one must be a citizen of the United States

and have been an inhabitant of the county or district for one year and be at least twenty-one years of age. Title 17, Chapter 171 of the Oregon Revised Statutes describes the powers of the State Legislature including lobbying regulations, publication rules and proceeding regulations that may be helpful in examining the operations of the state legislature.

The sessions of the Legislative Assembly are held at the state capital in Salem and begin on the second Monday of each odd-numbered year. Oregon is one of only six states that do not convene annually. No limitation is set on the length of the session, but in the past several years, adjournment has come after five or six months.

The Governor and legislature are empowered to request a special legislative session "in the event of an emergency." In 2008, upon the recommendation of a legislative committee, the legislature called itself into special session for the first time. They did so in order to experiment with annual sessions before asking voters to amend the Oregon Constitution to require such sessions.

Agencies

In Oregon the state agencies are divided into eight major program areas:

1. Economic Development and Consumer Services
2. Education
3. Environment and Natural Resources
4. Human Resources
5. Public Safety
6. Transportation
7. Administrative and Support Services
8. Other Programs

Within each of these areas, there are agencies or departments headed by policy-setting boards or commissions appointed by the Governor.

In the Economic Development and Consumer Services Program, there are twelve state agencies that work to develop and diversify Oregon's economy and to insure safety and protection of the public as consumers, producers, employees, employers, savers, and investors.

Within the Education program area, there are seven state agencies with functions relating to the administration, supervision, management and control of the education institutions in Oregon.

There are thirteen agencies in the Environment and Natural Resources Program. The primary goal of each program is to conserve, develop and protect Oregon's natural resources.

The Human Resource Program is aimed at helping low income, disadvantaged and/or

unemployed persons maintain or regain their self-sufficiency.

There are five separate agencies in the Public Safety Program. The primary goal of these agencies is to reduce harm to individuals and damage to property caused by natural disasters, civil disorders, traffic accidents, criminal activities and armed conflict. The agencies are also concerned with improving the effectiveness of the criminal justice system and protecting consumers from fraudulent business practices.

There are six agencies under the Transportation Program, which are charged with providing a coordinated system of transportation for the safe and efficient movement of people and goods in a manner compatible with environmental quality.

The Administration and Support Service Program is composed of a wide variety of agencies performing many different activities and services concerned with the effective and efficient achievement of state government program objectives.

Many of these state agencies have been granted the authority by the legislature to make certain rules which have the force of laws controlling certain activities within their control. For example, the Liquor Control Commission has the authority to regulate the issuing of liquor licenses. If an individual decides that he or she wants to challenge a rule that has been passed by the Liquor Control Commission or a decision it has made, the individual may petition for a hearing before the Commission. The hearings are informal and a decision may be reviewed by the courts if there has been an error during the hearing. (ORS 183) Before they may be adopted, rules must be approved by an agency's rulemaking office, and released to the public well in advance so the public can participate in the rulemaking. The agency must respond in writing to comments. The legislature may require an agency to search for unnecessary or conflicting rules. If an agency makes a temporary rule without first notifying and getting comment from the public, the agency must check the legality of the temporary rule with the Attorney General.

ADVOCACY

Voting

Oregon's Initiative System

William S. U'Ren and his progressive group, the Direct Legislation League, convinced theOregon legislature in 1902 to place on the ballot a measure that, when approved by the voters, created Oregon's initiative system.* The "Oregon System" allows the voters to enact or repeal laws and amend the Oregon Constitution, the oldest state constitution in continuous existence in America. If the legislature intends to put an initiative or referendum on the ballot, it must agree to do so by a 2/3 majority in both the House and the Senate. If the people wish to place an issue on the ballot, they must gather signatures on a petition. The number of signatures varies depending on how many

people voted in the last election of the Governor. To put a new law on the ballot, it is necessary to gather six percent of the total number of votes cast in the last Governor's race **(88,183 in 2014),** eight percent **(117,577 in 2014)** for a Constitutional amendment. To make an existing law the subject of a vote at the next election, one must gather four percent **(58,789 in 2014),** and do so before 90 days have passed since the end of the legislative session in which the law was passed. Oregon Const. Sec.1, Art IV.

* The number of signatures and history of the initiative process, including the outcome of every initiative, referendum, and recall since 1902, are provided by the *Oregon Blue Book*, published by the Secretary of State of Oregon.

THE COURT SYSTEM

Federal and State Court Systems

The Oregon Constitution authorizes a Supreme Court and such other courts as may from time to time be created by law. The original Article VII of the Constitution also provides for the creation of circuit courts, county courts, justice of the peace and municipal courts.

In deciding in which court to file a particular case, a person must determine which court has the power or authority to decide the case, known as jurisdiction. The jurisdiction of a court is defined by law. A number of factors are considered in determining jurisdiction.

Geographical area: Each court has authority to act in a given geographical area. Some courts may serve the entire state; others are limited to the boundaries of a city, county or to several counties.

Types of cases to be heard: There may be a limit on the amount of money that is in controversy or the kind of relief that is sought (such as an order to do or not do something), or the determination of ownership of property. The content of a case is also a factor. In populous areas special courts may be established to handle probate, domestic relations matters, traffic offenses or nuisance matters.

Types of persons who can be brought before the court: State law defines under what circumstances and into which courts matters involving juveniles and incompetents can be heard. Representatives of decedent's estates may be brought to probate court. Most criminal cases are reserved for circuit court.

The Justice Court

Oregon law defines the justice court as a court held by a justice of the peace in a justice of

the peace district. The justice court is a remnant of territorial days when each state precinct was entitled to a justice of the peace court. In 1913 the state legislature established a state district court in every city of 100,000 population or more. Justice courts presently exist in only 30 Oregon communities in 19 counties. The justice court is administered by the Supreme Court of Oregon.

The boundaries of a justice court district are determined by county commissioners. The jurisdiction of a justice court is limited to misdemeanors, traffic offenses, boating, wildlife, and other violations occurring in the county where the amount in controversy does not exceed $5,000. Each justice court has a small claims division which may handle claims involving up to$7,500 except in actions involving title to real property, false imprisonment, libel, slander or malicious prosecution. Justices of the peace also perform weddings at no charge if performed at their offices during regular business hours.

In 1999, the Oregon legislature passed a bill which established that if a justice court is more than 50 miles away from a circuit court, it can become a court of record. If the defendant is charged with a misdemeanor, he/she can choose to remain in the justice court or transfer to a circuit court. However, if the defendant chooses to remain in the justice court, the judgment may only be appealed for the same reasons that a judgment from a circuit court may be appealed.

Also as of 1999, a justice of the peace must be a member of the Oregon State Bar. He or she must be a citizen of the United States, a registered voter of the county, a resident of Oregon for at least three years, and a resident of the district for not less than one year.

The Municipal Court

A municipal court is created by a city and has authority to hear and determine violations of ordinances in the city's jurisdiction. Most incorporated cities in Oregon have a municipal court and have jurisdiction over violations of the city's municipal ordinances and concurrent jurisdiction with district courts over criminal cases occurring within the city limits or on city-owned or controlled property. The usual types of cases adjudicated by municipal courts are criminal misdemeanors, including misdemeanor traffic crimes where the maximum penalty does not exceed a $2,500 fine or one year in jail, or both, other minor traffic infractions, certain minor liquor and drug violations, parking violations, and municipal code violations such as animal and fire violations.

Most municipal court judges are appointed by the city council. However, some are elected by the city voters. In 1999, the Oregon legislature allocated more authority to the municipal court by allowing a municipal court located more than 50 miles away from a circuit court to become a court of record if the local governing body passes an ordinance to designate it so. Like in the justice court above, a defendant charged with a misdemeanor must choose to remain in the municipal court of record or transfer to a circuit court. Also like above, if the defendant does choose to remain in municipal court, he/she may only appeal the court's judgment according to the rules that allow a

circuit court judgment to be appealed.

Because municipal courts can be designated as courts of record, the legislature allowed municipal courts more authority in enforcing their judgments. As of 1999, if the court has been registered with the Department of Revenue, it can also enforce judgments other than money judgments such as garnishment and liens on real property.

The County Court

Originally the county courts were established as courts of record with jurisdiction over matters pertaining to probate, civil and criminal jurisdiction. With two exceptions, all judicial authority has been given to higher courts. Now county courts mainly devote their time to nonjudicial administrative responsibilities as a member of the county board. However, some county judges have limited jurisdiction in juvenile and probate matters. Six counties in eastern Oregon still retain probate jurisdiction. They are Gilliam, Grant, Harney, Malheur, Sherman and Wheeler. Juvenile jurisdiction (with the exception of termination of parental rights) is retained by county courts in Gilliam, Morrow, Sherman, and Wheeler Counties.

The Circuit Court

The Circuit Court has judicial authority and jurisdiction over all matters that have not been vested in some other court. Circuit court criminal jurisdiction extends to all felony cases. This jurisdiction is retained indefinitely so that a judge, for example, could correct an erroneous sentence (provided all parties to the case are notified). Its civil jurisdiction includes money claims, domestic relations, injunctions, restraining orders, juvenile court and probate. Circuit courts handle small claims (non-jury proceedings up to $7,500). Juries in cases involving from $750 to $10,000 will be limited to six members. ORS 55.065. The circuit court also has jurisdiction over appeals from municipal courts, justice courts and county courts.

From 1913 until 1998, Oregon also had “district courts.” In 1998, these courts were abolished and their functions were transferred to circuit courts.

In response to crowded court dockets, in 2005, the legislature expanded laws that require mandatory arbitration departments in the circuit courts. If the amount in a civil suit is under $50,000, the court must require the parties to settle their dispute through arbitration. ORS 36.400.

Jurisdiction over juveniles rests with the circuit court, except in counties of less than 11,000 population where juvenile jurisdiction remains in the county court (Gilliam, Grant, Malheur, Sherman and Wheeler). Jurisdiction of juveniles may be transferred to the municipal court in certain cases if the municipal court consents. This can be done for misdemeanor cases involving property crimes and crimes involving tobacco. The municipal court may not impose

a jail sentence. The municipal court must report the outcome of the case to the circuit court. ORS 221.390.

The Oregon Tax Court

The jurisdiction of the Tax Court, established in 1961, is limited to questions of law arising out of the tax laws of Oregon. It has the same powers as a circuit court and has one judge. The main office for the tax court is in Salem, but the court may hold hearings in any county seat. Appeals from the tax court go directly to the Oregon Court of Appeals.

In 1997, the Tax Court formed a Magistrate Division to take over the administrative appeals hearings now conducted by the Department of Revenue. The small claims department of the Tax Court was eliminated. The taxpayer, the Department of Revenue, or the Tax Court may take the case to mediation.

The Oregon Court of Appeals

The Oregon Court of Appeals was created in 1969 to relieve the State Supreme Court of the increasing number of appeals, particularly in the area of criminal law. It consists of ten judges who are elected to serve six year terms. The Court of Appeals has jurisdiction to hear all appeals, with one exception: a 1995 law eliminated judicial review of disciplinary actions taken against inmates by the Department of Corrections. The Court of Appeals takes appeals from District Courts and Circuit Courts. It does not review death-penalty cases, appeals from the Tax Court and most state administrative agency actions.

The Oregon Supreme Court

The Supreme Court is the highest court in the State and consists of seven judges. The court has original jurisdiction in mandamus (an action compelling a state officer to perform a duty), habeas corpus (a hearing to determine whether a person is lawfully being held in custody), and quo warranto (a hearing to determine the authority of a state employee to act in a certain matter). When cases arise in these three areas, the case is brought directly before the Supreme Court and does not need to be presented to a lower court first. The greatest case load of the Supreme Court consists of cases that are appealed from the Court of Appeals. The Supreme Court in its own discretion decides which cases to review, usually selecting those with legal issues requiring significant interpretation of laws affecting many citizens. When it decides not to review a case, the decision of the Court of Appeals becomes final and is law.

The legislature requested in 1995 that the Supreme Court undertake studies of the effects of the judicial system on children. The aim of the studies is to have the Supreme Court of Oregon formulate policy to address the specific needs of children in the court system. Specifically, the

legislature asked for a study of the effects of court procedures on children, a recommendation of training requirements for judges on the role of court appointed special advocates (CASAs), and a study of the benefits of appointing counsel for parents and children.

Federal Court in Oregon

In addition to the state courts just described there are also federal courts in Oregon. The State of Oregon constitutes one district for Federal District Court. Oregon is part of the United States Ninth Circuit along with Alaska, Arizona, Idaho, Montana, Nevada, Washington, Guam, Hawaii and California. The federal circuit court hears appeals from the lower federal district court. The federal district courts have original jurisdiction over all civil actions where the matter in controversy exceeds the sum or value of $75,000 and arises under the Constitution, laws or treaties of the United States. The federal district courts also have original jurisdiction over all civil actions where the amount in controversy exceeds the sum or value of $75,000 and is between citizens of different states or citizens of a state and foreign countries. Matters of bankruptcy, admiralty, and any civil actions arising under an act of Congress regulating against monopolies or relating to patents, copyrights and trademarks are within the jurisdiction of the district courts. Jurisdiction is also extended to persons seeking relief under federal laws providing for the protection of civil rights.

The United States Supreme Court has original jurisdiction in cases affecting ambassadors, other public ministers or where a state is a party to the case. The United States Supreme Court's appellate jurisdiction is the same as the jurisdiction of the federal district courts.

The Jury System

Any person is eligible to act as a juror providing the person is at least eighteen years of age, a citizen of the United States, and lives in the county in which he or she was summoned for jury service. Blindness, hearing disability, speech impairment or physical disability does not affect eligibility. Likewise, the opportunity for jury service shall not be denied or limited on the basis of race, national origin, gender, age, religious belief, income or occupation. ORS 10.030.

The jury pool is gathered from various listings, including voter registration and the Department of Motor Vehicles records. ORS 10.215. If jury service poses an extreme hardship or inconvenience upon the person called for service, the court may excuse the person from having to serve. ORS 10.050. Persons aged 70 or over may be excused from jury duty by request by phone, mail, or in person. Women that are breast-feeding a child, are the sole caregivers for a child, are unable to afford day care, or take care of a dependent during the court’s normal operating hours may also be excused from the jury. Finally, jury duty may be deferred for good cause with the understanding that the person must serve a term of jury duty within the coming year. ORS 10.055.

In circuit court, jury members are paid $10 daily for their service for the first two days and

are also allowed some mileage costs to arrive at the court (if it is more than 10 miles each way from their home to the court). After the first two days, jurors are paid minimum wage, but at least $10/day and no more than $50/day. ORS 10.055.

In Oregon, in a *civil case*, the jury will consist of twelve jurors unless the plaintiff and the defendant stipulate to a lesser number. ORCP 56. Three fourths of the total number of jurors must agree for their decision to be binding. ORCP 59G. The burden of proof is upon the plaintiff and he or she must produce sufficient evidence by a preponderance of the evidence. This means that the plaintiff must show that it is more likely than not that the defendant committed the act that is alleged.

In a criminal case, on a misdemeanor charge the accused is entitled to a jury of six persons and all six must concur for the accused to be found guilty. On a felony charge, however, Oregon law has determined that while an accused is entitled to a jury of twelve persons, only ten of the twelve must concur before he or she may be found guilty. An important exception to the lesser number standard exists in the case of a charge of murder. In such a case, twelve must agree before any person may be found guilty.

The burden of proof is upon the prosecution and it must produce sufficient evidence of the defendant's guilt beyond a reasonable doubt. While this is a rather fluid concept, it means that the prosecutor must show that no reasonable doubt would exist in the mind of a reasonable person as to the defendant's guilt. It does not mean that there could be no doubt at all of the defendant's guilt.

LAWYERS

How Do You Find a Lawyer?

The Oregon State Bar Association provides a lawyer referral service which has a list of lawyers that prefer to handle cases in given areas of law. This service may be reached by calling the Oregon State Bar and asking for the Lawyer Referral Service. The toll free number is 1-800-452-7636. The yellow pages of the telephone directory also provide a listing of attorneys practicing in a given location. The Oregon State Bar also offers legal information for the public, which includes educational advice on many legal issues. This can be found on its website at http://www.osbar.org/public/legallinks.html. If you are in the Portland area, you may also refer to the legal aid offices listed in the unit on consumer law.

The Lawyer Referral assistant will ask for the caller's name, phone number and a brief description of the legal problem. The assistant will then match the problem with a lawyer in the city requested by the caller. An advantage to using the Lawyer Referral Service is that the fee for the

first half hour of consultation is not to exceed $35. This gives the client an opportunity to decide whether or not he or she would like to have this particular lawyer handle the case.

Under the Oregon Rules of Professional Responsibility, DR2-010, advertising or solicitation of the lawyer's services is permitted, providing the lawyer does not make any false or misleading communication about the lawyer or the lawyer's services. False or misleading communications may include any statement which:

1 creates an unjustified expectation about the results the lawyer can achieve;
2 compares the lawyer's services with other lawyers' services;
3 states or implies that the lawyer is experienced in handling specific matters when in actuality he or she is not; or
4 is intended or reasonably likely to convey the impression that the lawyer is in a position to improperly influence the court or a public official.

A person lacking funds to pay for the legal services of an attorney may qualify for free legal services offered by Legal Services or the Northwestern School of Law Legal Clinic. Only people who meet the financial qualifications are entitled to the legal services offered by these organizations. Each organization handles different types of cases. Persons needing assistance may need to make several calls before they find the organization that can help them.

Public defenders are attorneys hired by the courts who may be appointed to represent persons brought to criminal court who cannot afford to hire their own attorney. Only persons charged with a crime where the penalty is a jail sentence have the right to court appointed counsel. At this time, courts are not required to appoint counsel to represent indigents in civil matters.

Criminal Law and Juvenile Justice

CRIME IN AMERICA

The Nature of Crimes

Along with legislation in the 1990s describing mandatory sentences for certain felonies and a tough new juvenile justice system came a joint resolution. It proposed to change the nature of criminal punishment under the Oregon Constitution. Prior to November 1996, Article I, Section 15 of the Oregon Constitution read, "Laws for the punishment of crime shall be founded on the principles of reformation, and not of vindictive justice." But in November 1996 the voters of Oregon passed Measure 26 to amend this section to "change the foundation of punishment to principles of protection of society, personal responsibility, accountability for one's actions, and reformation."

Victims of Crime

Is there a victim's assistance program in your community? (*Street Law* text, question, page 95)

In Oregon, victim assistance programs are varied in scope and growing in number. Over the past decade, the people in Oregon have realized the benefits of assisting victims of crime or negligence. As a society, we all pay the price when a segment of the population becomes unproductive due to injuries received by criminal or negligent acts. It is far more beneficial for both society and victims alike if, through these assistance programs, we are able to return victims back to a productive state as quickly as possible.

Victim assistance programs are provided in each county and are listed in the blue section of the telephone directory. Other programs are privately administered through churches and support groups in various cities, towns, and neighborhoods.

INTRODUCTION TO CRIMINAL LAW

State and Federal Crimes

Chapters 161 through 169 of the Oregon Revised Statutes set out the majority of crimes and punishments that are enforced at the state level. Chapter 471 also contains crimes relating to the purchase and sale of alcoholic beverages. Chapter 475 contains drug-related crimes, and Chapters 801 through 822, vehicle and traffic offenses.

Classes of Crimes

In Oregon, crimes are classified as either misdemeanors or felonies and carry the following maximum punishments.

Punishments

	Fines	*Jail Terms*
Violations (traffic)		
1. Class A	$720	–
2. Class B	$360	–
3. Class C	$180	–
4. Class D	$90	–
5. Unclassified violations	See the statute	– [there is reference to bail in the traffic violation context, so jail may not be out of the question]
Misdemeanors		
1. Class A	$6,250	1 year
2. Class B	$2,500	6 months
3. Class C	$1,250	30 days
4. Unclassified misdemeanors	Fixed by court as defined by statute	See statute defining the crime
Felonies		
1. Class A	$375,000	20 years
2. Class B	$250,000	10 years
3. Class C	$125,000	5 years
4. Unclassified felonies	See statute defining the crime	See statute defining the crime

A violation is not a “crime” as that term is defined in Oregon's criminal code. It is, however, an offense the commission of which the legislature has decided should carry some punishment. This punishment is payment of a fine up to $720.

Some traffic offenses, such as speeding, are violations. They are referred to as “infractions” in the Oregon Vehicle Code. Although conviction of the infraction is entered on a person’s driving record with the Oregon Motor Vehicles Division, the individual does not have a criminal record and suffers no other consequences from the conviction. However, in 2005, the legislature allowed the court to suspend a person’s driving privileges for up to 30 days if the person exceeds the speed limit by more than 30 mph and has had one or more speeding violations within the past 12 months of the current offense. Additionally, if the person was driving 100 mph or more, the court must fine the person $1,000 and suspend his or her license for 30–90 days.

In 2005, the legislature required citations issued from photo radar to be dismissed if the registered owner submits a certificate of innocence indicating the car was being driven by another person when the photo was taken. However, the citation can be reissued one time if the registered owner appears to be the driver when the photo was taken. A certificate of innocence cannot be submitted for the reissued citation; the registered owner must follow the directions listed on the reissued citation to contest it. ORS 810.436.

Certain degrees of the following crimes are punishable as felonies in Oregon: arson, assault, burglary, criminal mischief, extortion, promoting prostitution, rape, robbery, sexual abuse, sodomy, theft, homicide (aggravated murder, murder, manslaughter), kidnapping, coercion, forgery, possession, manufacture or delivery of a controlled substance and unauthorized use of a vehicle.

It is a crime to bring a weapon into a court facility. In 1999, the Oregon legislature defined a court facility to include a county courthouse or any other building occupied by a court or court personnel. The definition of weapon includes dirks, daggers, mace, and stun guns among other things. It is a class C felony for a person to possess a weapon in a court facility, and the person carrying such a weapon must surrender it to a law enforcement officer or immediately remove it from the building. **Police officers carrying weapons in the course of their work are exempt from this prohibition. Off-duty and honorably retired officers were added to this category in 2015.**

Mental States

Oregon law classifies the state of the person’s mind when he or she committed a criminal act as intentionally, knowingly, recklessly or criminally negligent. The statutes define intentionally as acting with a “conscious objective” to cause the result. Knowingly is defined as acting with an “awareness” that the conduct is illegal or will cause physical injury. Recklessly is used to define an act that the person is aware of and “consciously disregards a substantial and unjustifiable risk that

the result will occur." A person is criminally negligent when he or she "fails to be aware of a substantial and unjustifiable risk" that the illegal result will occur. An unjustifiable risk, as mentioned in recklessly and criminally negligent, refers to a gross deviation from the standard of care that a reasonable person would observe under the same circumstances. ORS 161.085(10).

Parties to Crime

In Oregon, a person is guilty of a crime if it is committed as a result of his or her own conduct or the conduct of another person for which he or she is responsible or criminally liable. A person is considered criminally liable for the conduct of another person when he or she solicits or orders another person to commit the crime, aids, abets or attempts to aid or abet another in planning or committing the crime (conspiracy), or has a legal obligation to prevent the commission of the crime and fails to make an effort that he or she is obliged to make. ORS 161.150 and 161.155.

Preliminary Crimes

Solicitation

This occurs when one person commands or solicits another person to engage in criminal conduct. The punishment for solicitation is one class below the punishment for the crime solicited. For example, if the criminal conduct solicited is murder or treason, the crime is a Class A felony. If the offense solicited is a Class A felony, the crime of solicitation is punishable as a Class B felony, and so on. ORS 161.435.

Attempt

A person is considered to have attempted to commit a crime when he or she intentionally engages in conduct that could be considered a substantial step toward committing the crime. Like solicitation, the punishment for attempt is one class below the punishment for the crime attempted. ORS 161.405.

Conspiracy

A person is guilty of criminal conspiracy when that person agrees to engage in criminal conduct with another person and intends to engage in the criminal conduct agreed to. The punishment for criminal conspiracy to commit a crime is the same as the punishment for the crime agreed upon. For example, criminal conspiracy to commit robbery in the first degree, a Class A felony, is a Class A felony. The only exceptions are criminal conspiracy to commit murder or treason. These are punishable as Class A felonies. ORS 161.450.

CRIMES AGAINST THE PERSON

Homicide

The following are the different types of homicide as defined by Oregon law (***Street Law* text, question, p. 106**):

Murder is when one person intentionally, and not under the influence of extreme emotional disturbance, kills another human being. Murder is also committed when a person acting alone or with one or more persons causes the death of another person while committing or attempting to commit arson, burglary involving the use of weapons or threats, escape involving weapons or the use of aid from a second person to make physical threats, kidnapping, rape, robbery, sodomy, or in the immediate flight therefrom. ORS 163.115. A person convicted of murder shall be punished by life imprisonment with a minimum of 25 years confinement followed by the possibility of parole. Murder by abuse is committed when a person causes the death of a dependent child under 14 years old using a pattern of mistreatment and neglect. ORS 163.115(1)(e).

Prior to February 1999, the punishment for murder was life imprisonment without a possibility of parole. However, in February 1999, the Oregon Court of Appeals found that this punishment violated the Oregon constitution which requires all penalties to be proportional to the offense. *State v. McLain*, 974 P.2d 727 (Or. App. 1999). Because the punishment for murder was life imprisonment without a possibility of parole, and the punishment for aggravated murder, which is more extreme than murder, was life imprisonment with a possibility of parole, the punishment for murder was greater than the penalty for aggravated murder. Therefore, in response to *McLain*, the Oregon legislature changed the penalty for murder to be life imprisonment with the possibility of parole after the minimum sentence.

Aggravated Murder is when a person intentionally causes the death of another under any of the following circumstances:

1. if the defendant (the person charged) was hired to commit the murder;

2. the defendant paid another to commit the murder;

3. the defendant committed the murder after being convicted for another murder;

4. the defendant committed the murder by using a bomb;

5. the death occurred as a result of or in the course of a torture or maiming;

6. the victim was carrying out official duties in the justice system when the murder occurred. Also if the victim was a police officer and carrying out official duties; a correctional, parole or probation officer; a member of the Oregon State Police; a juror or witness in a criminal proceeding; an employee or officer of a court; or a member of the State Board of Parole and Post-Prison Supervision;

7. the defendant was in custody in a parole or correctional facility at the time;

8. there was more than one murder victim;

9. the defendant had escaped from prison at the time;

10. the murder was committed in an effort to conceal another crime or the identity of the person who committed a crime; or

11. the murder was committed during the course of committing another felony (see above under ORS 163.115), but the defendant personally and intentionally killed the person (in other words, his partner in crime didn't kill the victim; if the partner killed the victim, the defendant would be guilty of murder, and the partner would be guilty of aggravated murder).

The penalty for aggravated murder is either death, life imprisonment without the possibility of parole, or a minimum of 300 months confinement. Twenty-five years must be served before parole is possible. The Oregon Constitution provides that a defendant facing a potential sentence of death must be tried by a jury. So it is up to a jury of twelve people to decide what sentence a defendant should receive.

If a defendant receives a life sentence without the possibility of parole, he will spend the rest of his natural life in prison. If a defendant receives a life sentence with a minimum of 30 years before any possibility of parole, he or she must serve a minimum of 25 years before being eligible for any rehabilitation program. The defendant must petition the State Board of Parole and Post-Prison Supervision for a hearing to determine whether he or she is likely to be rehabilitated within a reasonable period of time. ORS 163.105. If the Board finds that the prisoner is capable of rehabilitation, the sentence will be changed to life imprisonment with the possibility of parole. If the petition is turned down the prisoner must wait at least two years before repetitioning the Board of Parole.

Manslaughter in the First Degree is when a person recklessly causes the death of another human being under circumstances indicating an extreme indifference or disregard for the value of human life. First degree manslaughter is also committed intentionally under circumstances not constituting murder. Manslaughter in the first degree is a Class A felony. ORS 163.118.

Manslaughter in the Second Degree is when a person recklessly causes the death of another human being or intentionally causes or aids another person to commit suicide (health care practitioners following the guidelines set forth in the Death With Dignity law are not subject to criminal prosecution; see below). Manslaughter in the second degree is a Class B felony. ORS 163.125.

Criminally Negligent Homicide is when a person kills another with criminal negligence. This is a Class C felony.

An extreme emotional disturbance existing in the mind of the defendant at the time of the criminal act may serve to reduce the degree of the offense from murder to manslaughter. This term, "extreme emotional disturbance," was formerly known as "adequate provocation" or "heat of passion." If there is a reasonable explanation for the disturbance, it may be raised as a defense. The reasonableness of an explanation for the disturbance is determined from the standpoint of an ordinary person under the circumstances. ORS 163.118(1)(b).

Suicide

A person is guilty of second degree manslaughter if he intentionally causes or aids another person to commit suicide. ORS 163.125. In 1997, the voters passed Oregon's physician-assisted suicide law. Health care practitioners following the guidelines set forth in this law are not subject to criminal prosecution. ORS 127.800-.995.

The suicide law is called the Death with Dignity Act, and it has undergone court challenges since it was passed by the voters. However, the United States Supreme Court found the law constitutional in the 2006 case, *Gonzales v. Oregon*, 546 U.S. 243. Some hospitals have instituted policies against this Act, but in the 1999 Oregon legislature, doctors and pharmacists were protected from being prosecuted for money damages for prescribing deadly medication under the Act. ORS 127.800-.897.

Assault and Battery

The following are the assault offenses under Oregon law **(question, *Street Law* text, p. 110)**:

Assault in the First Degree is when a person intentionally causes serious physical injury to another by means of a deadly or dangerous weapon. This is a Class A felony. ORS 163.185. Responding to cases of "shaken baby syndrome," in 2005 the legislature expanded assault in the first degree to include intentionally or knowingly causing serious physical injury to a child five years of age or younger.

Assault in the Second Degree is when a person intentionally or knowingly causes serious physical injury to another, or causes physical injury to another by using a deadly or dangerous weapon. It is also second degree assault when the defendant both shows extreme indifference to life and uses a deadly or dangerous weapon and recklessly causes serious injury. This is a Class B felony. ORS 163.175.

Assault in the Third Degree is when a person recklessly causes serious physical injury to another by using a deadly or dangerous weapon or under circumstances showing an extreme indifference to the value of human life. If the injury was not serious but the defendant showed not

only extreme indifference to life but also used a dangerous or deadly weapon, it is also third degree assault. Third degree assault can also be committed if the defendant intentionally or knowingly causes physical injury to another while being aided by a partner in crime. If a person is 18 years of age or older and intentionally or knowingly causes physical injury to a child 10 years of age or younger, this is also third degree assault. This is a Class C felony.

In 1999, the Oregon legislature added two more classifications to third degree assault. If a person intentionally or knowingly caused physical injury to a staff member of a youth or adult corrections facility in which the offender is incarcerated and if the person intentionally or knowingly propels a dangerous bodily substance at a corrections officer or similar employee. ORS 163.165.

Assault in the Fourth Degree is when a person intentionally, knowingly or recklessly causes physical injury to another or with criminal negligence causes physical injury to another with a deadly weapon. This is a Class A misdemeanor. However, as of 1999, if the person has previously been convicted of **assault in any degree, strangulation, or menacing against the same victim (or if the person has at least three convictions for the listed crimes, even if not against the same victim),** or if a child witnesses the assault, it becomes a Class C felony. ORS 163.160.

Intimidation is taking action with others to intentionally, knowingly, or recklessly frighten or injure a person or that person's family or property because of the intimidators' *perception* of the victim's race, color, religion, national origin or sexual orientation. Depending on the conduct and the number of people involved, it is either a Class A misdemeanor or a Class C felony. ORS 166.165.

Menacing is using words or conduct to intentionally attempt to place another person in fear of imminent serious physical injury. This is punished as a Class A misdemeanor. ORS 163.190.

Recklessly endangering another person is recklessly engaging in conduct which creates a substantial risk of serious physical injury to another person. This is a Class A misdemeanor. ORS 163.195.

Strangulation is knowingly impeding breathing or blood circulation of another person byapplying pressure to the throat or blocking the nose or throat of that person. This crime was created in 2003 to cover behavior that fails to cause enough injury to satisfy the definition of physical injury needed to be in violation of other crimes.

Strangulation is a Class A misdemeanor by default; however certain enhancing factors can raise the crime to a Class C felony. **In 2015, the legislature added to the list of enhancements by providing that a person commits felony strangulation if he or she commits the crime knowing that the victim is pregnant.**

The definitions of the following may be helpful in understanding the differences between the assault offenses:

Dangerous weapon is any instrument, article or substance that when used or threatened to be used is readily capable of causing death or serious bodily injury. ORS 161.015(1). Oregon courts have found a car and cowboy boots to be dangerous weapons.

Deadly weapon is any instrument, article or substance that is specifically designed for and presently capable of causing death or serious physical injury. ORS 161.015(2).

Serious physical injury is a physical injury which creates a substantial risk of death or causes serious and protracted disfigurement, impairment of health or loss or impairment of the function of any organ. ORS 161.015(7).

Harassment

Harassment occurs when a person subjects another to an offensive physical contact, or publicly insults the other person in such a way that a violent response is likely, or subjects another to alarm by telephonic or written threat. This is a Class B misdemeanor. ORS 166.065.

If the offensive contact consists of touching the sexual or other intimate parts of another person, the harassment is a Class A misdemeanor.

Telephonic harassment is a separate crime. It is committed by intentionally harassing and annoying another person by causing the other person's telephone to ring when the defendant has no communicative purpose. Sending or leaving text messages, voice mails, or any other message when the defendant knows the owner of the phone has forbidden him or her to do so is also telephonic harassment. It is a Class B misdemeanor.

In 1999, a civil remedy for sports officials was created to avoid harassment. Spectators and players that disagreed with calls were spitting on, pushing, and slapping officials. Now the sports officials can seek remedies of up to $1000 under a theory of criminal harassment or criminal assault. In 2003, a new law provides that sports officials may order a coach, spectator, or player engaged in inappropriate behavior (which includes threatening or abusive words or conduct) to leave the premises. If the person returns to the premises, it is criminal trespass.

Invasion of Personal Privacy

ORS 163.700 prohibits the nonconsensual viewing of a person for purposes of arousing or gratifying sexual desire, when that person is in a private place and nude. It also prohibits

the nonconsensual photographing or recording of a person's "intimate areas," regardless of whether that person is nude or in a private place. The offense is a Class A misdemeanor. In 2015, the legislature created the elevated offense of Invasion of Privacy in the First Degree, a Class C felony. The elevated offense applies to persons who violate ORS 163.700 and, at the time of the offense, have certain predicate convictions. It also applies to persons who knowingly photograph or record another person when that person is in a private place and nude (exceptions are made for certain medical and law enforcement situations, and for naked baby pictures taken by family members). Sex offender registration is discretionary if the court finds it appropriate for public safety.

Unlawful Dissemination of an Intimate Image

In 2015, the legislature created the crime of unlawful dissemination of an intimate image. Prohibited is the nonconsensual disclosure of an intimate picture to a website with a specific intent to harass, humiliate, or injure another person. The first violation is a Class A misdemeanor, with each subsequent violation being a Class C felony. Theft of an intimate image is also a crime; it was added to the list of violations of the Computer Crime statute, ORS 164.377, in 2015.

Stalking

The elements of stalking are:

1 person knowingly alarms or coerces another person by repeated, unwanted contact;

2 it is objectively reasonable for the victim to be alarmed by the contact;

3 and the contact caused the victim reasonable apprehension regarding his or her personal safety or personal safety of a household member.ORS 163.732.

If a police officer has reason to believe someone has committed stalking, he may temporarily order the stalker to leave his or her victim alone. The victim may go to court to make the anti-stalking order permanent.

Rape

(Question, Street Law text, p. 112)

Rape in the First Degree is committed when a person has sexual intercourse with another person and the act is either:

1 forced by the defendant;

2 the victim is under 12 years of age;

3 the victim is under 16 years of age and is the defendant's sibling, child, or stepchild; or

4 the victim is incapable of consent because of a mental defect or physical impairment. This is a Class A felony. ORS 163.375.

Rape in the Second Degree is committed if a defendant has sexual intercourse with a person who is under 14 years of age. This is a Class B felony. ORS 163.365.

Rape in the Third Degree is committed if a defendant has sexual intercourse with a female who is under 16 years of age. This is a Class C felony. ORS 163.355.

Under Oregon law, a person under age 18 is considered to be legally incapable of consenting to the sexual act. ORS 163.315. That is why someone who has consensual sexual intercourse with a person who is 16 or under can still be guilty of rape. It is a complete defense to this crime, however, if there was consent and the victim was less than three years younger than the defendant – for example, when the persons are 16 and 18 years old. ORS 163.345. **A prior conviction may be expunged if the difference in age is no more than three years plus 180 days, and if the sex was consensual if not for the age factor (the extra 180 days was added in 2015). ORS 137.225.**

The lack of verbal or physical resistance does not necessarily constitute consent.

In 2015, the legislature created a new type of confidentiality privilege in the evidence code. The bill states that "confidential communications" between victims of sexual assault, domestic violence, or stalking and victim advocates or services programs are to be kept confidential from disclosure, and by default will not be admissible in court. This functions as both an evidentiary privilege, and as a duty of confidentiality.

Rape Shield Law

Reputation of a victim's past sexual behavior and the clothing that they were wearing at the time is not admissible in a prosecution for rape. When a person is tried for allegedly committing rape, he may not introduce evidence of the victim's reputation of past sexual behavior. Other evidence concerning the victim's past sexual behavior must be heard by the judge alone, out of the presence of the public and the jury. The judge will decide whether such information should be heard by the jury. However, this evidence may be allowed if the court finds this evidence is necessary to determine a motive, is contradictory to scientific evidence, or is necessary to establish the identity of the person. ORS 40.210.

Pre-Trial Release; No-Contact Orders

ORS 135.247 provides that when a defendant is charged with a sex crime or a crime

constituting domestic violence, a pre-trial release order must include a provision prohibiting contact with the victim. In a 2015 amendment, the legislature expanded upon this by stating that the order must prohibit contact or attempted contact, either directly or through a third party. The same statute requires that, when a defendant is charged with a sex crime or a crime constituting domestic violence, the court shall enter an order prohibiting contact with the victim while the defendant is in custody. In 2015 this prohibition was also expanded to include contact or attempted contact, either directly or through a third party.

Sex Offender Registration

The Sex Offender Registration is operated by State Police. Federal laws require predatory sex offenders and kidnappers to register with the police. In 2005, the legislature directed the State Police to create an internet database of predatory sex offenders and sexually violent dangerous offenders. The database must include the offender's name, address, photograph, information about the offense, and information such as primary targets and modes of operation.ORS 181.592. The website is located at http://sexoffenders.oregon.gov/. The Oregon State police must check the address of sex offenders that are no longer on active parole every 90 days to verify that they live in the same place. ORS 163.345.

In 2015, ORS 181-800-181.845 was amended to eliminate automatic registration of juvenile offenders, providing instead for a court hearing, to take place within six months of the juvenile being released from supervision or custody, at which the offender has an opportunity to show by clear and convincing evidence that he or she is rehabilitated and poses no threat to public safety, and thus avoid being included in the register.

Various other sex crimes, such as public and private indecency, are described in 163.305 163.465 of the Oregon statutes.

Disorderly Conduct

In Oregon, a person commits the crime of disorderly conduct if he or she:

1 engages in fighting behavior;

2 makes unreasonable noise;

3 disturbs a lawful gathering of people without authority;

4 obstructs vehicular or pedestrian traffic on a public way;

5 congregates with other persons in a public place and refuses to disperse when ordered to do so by the police;

6 initiates or circulates a report knowing it to be false, concerning a fire, explosion,crime, catastrophe or other emergency; or

7 creates a hazardous condition by an unprivileged or unlicensed act. Disorderly conduct is classified as a Class B misdemeanor. ORS 166.025.

False Reports Concerning Schools and Public Buildings

A new crime was created in 2005 for initiating or spreading false reports about emergencies in schools. **In 2015, the list of relevant locations covered by the law was expanded to include all public buildings and court facilities.** Alleged or impending emergencies include, but are not limited to, hazardous substances, fires, and explosions.

It is a Class A misdemeanor, disorderly conduct in the first degree, to initiate a false report about a hazardous substance, fire, explosion, catastrophe, or other emergency in the covered location; a second offense is a Class C felony. To make such a false report concerning some other, non-covered location is a Class B misdemeanor, disorderly conduct. ORS 166.023, ORS 166.025.

Additionally, the law allows the juvenile court to order a youth placed in detention until his or her case is adjudicated. This authority is granted for both misdemeanor and felony alleged violations. ORS 419C.145.

Careless Driving and Vulnerable Users

If a driver causes serious physical injury or death to a vulnerable user of the public way, highway shoulder, or crosswalk because he or she is driving carelessly, the driver faces increased penalties as of 2007. A vulnerable user is someone operating farm equipment, a skateboard, skates, scooters or a bicycle. Pedestrians, highway workers and people riding animals are also vulnerable users.

A driver convicted of careless driving that results in serious injury or death to a vulnerable user will have his or her driving privileges suspended, be required to complete a traffic safety course, be required to perform 100–200 hours of community service work related to driver improvement, and may have to pay a fine of $12,500. ORS 811.135.

CRIMES AGAINST PROPERTY

Arson

Arson in the First Degree is when a person starts a fire or causes an explosion and intentionally causes damage to another person's protected property. If any property is damaged by

the person's fire or explosion and this activity recklessly endangers another person or property, it is also first degree arson. Further, if a fire fighter or peace officer is seriously injured while on duty due to the person's reckless behavior regarding the explosion or fire, it is first degree arson. This is a Class A felony. ORS 164.325.

Arson in the Second Degree occurs when a person intentionally damages any unprotected building of another by fire or explosion. It is a Class C felony. ORS 164.315.

Criminal Mischief

Criminal Mischief in the First Degree occurs when a person causes more than $750 worth of damage by intentionally destroying or damaging property of another. It is also first degree criminal mischief if the damage is caused by an explosive; occurs in an institution where the person has been confined; is done to livestock or police animal; or if the property is a publicutility or facility (transportation, medical, telecommunication, etc.) and the act interferes with its efficiency. Throwing objects recklessly from a highway overpass is also criminal mischief. This is a Class C felony.

Criminal Mischief in the Second Degree occurs in the same circumstances as first degree criminal mischief except the damage ranges from over $100 to $750. It is a Class A misdemeanor.

Tombstone Tipping is a Class A misdemeanor. Abuse of a memorial to the dead occurs when a person destroys or defaces any tomb, gravestone, monument, fence, railing, tree, shrub, or plant, or anything placed as a memorial to the dead. ORS 166.076.

Killing Pets and using their fur has been classified as a Class A misdemeanor in the 1999 legislative session. People who buy and sell the fur of a domestic dog or cat if the fur has been obtained through a process that kills or maims the animal violate this law. However, the fur of wild animals such as bobcats or coyotes is excluded.

Embezzlement

Embezzlement is theft by deception with an attempt to defraud. ORS 164.085.

Theft

Theft in the First Degree is generally defined as wrongfully depriving or taking another's property. It is punishable as a Class C felony if the value of the stolen property is $200 or more (for theft by receiving) or $750 or more (in any other case), the theft is committed during a riot or other emergency; or the subject of the theft is a firearm, explosive, livestock, pet or wild animal removed from its habitat. ORS 164.055.

Aggravated Theft in the First Degree occurs when the value of the property is $10,000 or more. ORS 164.057.

Theft in the Second Degree occurs when a person intentionally deprives another of his or her property. The value of the property must be $50 to $200 (theft by receiving) or under $500 in any other case. This is a Class A misdemeanor. ORS 164.045.

Theft in the Third Degree occurs when the value of the property is less than $50 and the person deprives the owner of that property. It is a Class C misdemeanor. ORS 164.043.

Robbery

Robbery in the First Degree is committed if a person, while committing or attempting to commit a theft, uses or threatens physical force to force the owner to give up the property or prevent him or her from resisting. These acts must be accompanied by the person being armed with a deadly weapon; using a dangerous weapon; or attempting or causing serious harm to another. This is a Class A felony. ORS 164.415.

Robbery in the Second Degree is like first degree robbery in that the person, while committing a theft, uses or threatens physical force to force the owner to give up the property or stop him or her from resisting. Unlike robbery in the first degree, second degree robbery requires only that the person claim that he or she is armed with a dangerous or deadly weapon or is aided by another person in committing the robbery. This is a Class B felony. ORS 164.405.

Robbery in the Third Degree is committed if a person uses or threatens to use physical force while committing theft to prevent the victim from resisting the taking of the property or to force the owner to give up the property. In 2003, unauthorized use of a vehicle was made a violation also. This is a Class C felony. ORS 164.415.

Extortion

Theft by Extortion occurs when one person gets another person to turn over his or her property by using threats. These threats could include (but are not limited to) threats of physical harm to a person or someone he or she cares about, threats to accuse the person of a crime or to expose a secret about him or threats to damage someone's property. It is a Class B felony. ORS 164.075.

Burglary

Burglary in the First Degree is committed by a person entering and remaining unlawfully in a building with the intent to commit a crime there. Also required is that the building be a dwelling; or, if not a dwelling, the burglar is armed with burglar tools or a dangerous weapon and uses or attempts

to use it; or when in the building the burglar attempts to cause physical injury to any person. This is a Class A felony. ORS 164.215.

Burglary in the Second Degree occurs when person enters or remains unlawfully in a building and intends to commit a crime while inside. This is a Class C felony. ORS 164.215.

Forgery

Forgery may consist of possession of a forged document, possession of a forgery device, fraudulently obtaining a signature, using slugs, fraudulent use of a credit card or negotiating a bad check. It is either a Class C felony or a Class A misdemeanor, depending upon the document. ORS 165.002, 165.007 and 165.013.

Receiving Stolen Property

In Oregon this crime is referred to as theft by receiving. It occurs when one keeps or conceals or disposes of another person's property, knowing or having good reason to know that the property was stolen. ORS 164.095. The punishments are the same as those for theft, and depend upon the value of the property.

Unauthorized Use of a Vehicle

A person commits this crime when he takes, operates, exercises control over, rides in or otherwise uses another's vehicle, boat or aircraft without the consent of the owner. This crime also occurs where a person who has custody of a vehicle, boat or aircraft with the owner's consent (such as to perform maintenance or repair services) uses the vehicle for his or her own use in a manner that deviates seriously from the agreed purpose.

This crime also occurs where a person has custody of a vehicle, boat, etc. by agreement with the owner for a specific period of time and the person keeps it beyond that time without the consent of the owner for a lengthy period of time. Unauthorized use of a vehicle is punishable as a Class C felony. ORS 164.135.

It is a Class A misdemeanor to *enter* into a vehicle with *intent* to commit a crime. Even without an intent to commit crime, entering or unlawfully remaining in a motor vehicle is considered Criminal Trespass in the Second Degree.

Computer Crime

Any person commits computer crime who knowingly accesses or uses (or attempts to do so) any computer, computer system or network for the purpose of fraud or theft. ORS 164.377(2). Similarly, any unauthorized alteration, damage or destruction of any computer, computer system, or

computer network is computer crime. **Theft of a digital "intimate image" is also computer crime.** ORS 164.377(3). This is a Class C felony.

Unlawful Sound Recording

A Class C Felony, the unauthorized recording of a live performance, unlawful labeling of a sound or video recording requires that offenders must turn over recordings for destruction. This is considered a racketeering activity under Oregon's RICO statute. ORS 164.868, 164.869.

Unlawful Audiovisual Recording in a Theater

Recording a movie while it is being played in a theater without written consent was made unlawful in 2005. If a theater owner or employee has probable cause to believe a patron was recording a movie, he or she may detain that patron. Violations are a Class B misdemeanor. ORS 164.882.

Littering

The unlawful placing of trash, offensive material or substances in waters, on highways or other property. Littering is a misdemeanor offense. ORS 164.775 to 164.805.

Possessory Crimes

The Oregon statutes require that a person obtain a license in order to carry a concealed pistol, revolver or firearm on his or her person or within any vehicle. The county sheriff, upon proof of the applicant's good moral character, may issue a license for a period of one year. A person does not need a license to own or possess a pistol, revolver or firearm capable of being concealed at home or at a place of business. Unlawful possession of a firearm is a Class A misdemeanor. ORS 166.250.

Graffiti

An individual applying graffiti or unlawfully possessing a graffiti implement is subject to a fine or required community service. If the graffiti artist is a juvenile, the court may impose liability on the parent for any damage caused. ORS 419C.461.

Alcohol Offenses

Adult property owners are held responsible if a person under 21 years old consumes alcohol on their property or if they allow the underage drinker to remain on the property while continuing to drink. **(With the recent legalization in Oregon of marijuana for personal use in small amounts by those 21 years and older, the same rule applies to allowing marijuana use by youths on a**

person's property.) The prohibition is only in effect when the property owner is present. This does not extend to rental property. It is unclear if this extends to the adult's own children. ORS 471.410.

Liquor licenses must be issued by the state before any alcoholic beverage may be sold. In 1999, the Oregon legislature created 4 broad categories of retail alcoholic beverage licenses that may be issued. These licenses are monitored by the Oregon Liquor Control Commission (OLCC), and it is a crime to sell liquor without one of these licenses. ORS 471.410.

Driving Under the Influence of Intoxicants

A person commits the offense of driving under the influence of intoxicants (DUII) if he or she drives a vehicle with a blood alcohol level of at least .08 percent or is under the influence of intoxicating liquor and/or a controlled substance (drugs). ORS 813.010. In 1999, the legislature included inhalants such as glue, paint, and cement to the list of controlled substances. This is a Class A misdemeanor. ORS 813.010.

The penalties for this crime are many. They include:

1 a mandatory $220 fee;

2 potentially an additional fine which is determined by the court;

3 two days in jail;

4 suspension of one's driver's license;

5 an alcohol/drug examination; and

6 participation in an alcohol/drug treatment program at one's own expense. ORS 813.020-813.030 and 813.400.

7 Also, the court may order that an ignition interlock device be attached to the offender's vehicle.

If the person has been convicted of a DUII three or more times, it becomes classified as a Class C felony. ORS 813.010. Upon a person's third conviction for misdemeanor DUII, his or her driving privileges must be revoked. The person may also have to pay fines or serve time in jail. Additionally, if a person has a prior conviction for DUII and a conviction for seriously injuring or killing another person while driving under the influence, that person faces severely increased penalties for another accident that seriously injures or kills another person. ORS 137.700, 137.707, 163.118 and 163,185.

Additionally, Oregon drivers are required to take a breath test when it is requested. The fact that a person is driving implies that there is consent. If the breath test is refused, or if the breath test

is taken and the result is .08 percent or higher, the person's driving privilege may be suspended. ORS 813.100. Evidence of refusal may be offered against the person in court. ORS 813.130. Drivers are also required to perform field sobriety tests when it is requested. Refusal to do so can be held against the person in court. ORS 813.136. It also subjects the person to a fine of $500 to $1000.

As of 1999, any person between 18 and 21 years of age who has been convicted of any alcohol violations for a second time must undergo diagnostic assessment and treatment. The same assessment may be given for a first time offender as well. ORS 813.030-.040.

As of 2007, any youth between the ages of 13 and 20 years old who is convicted for any offense involving the possession, use, or abuse of alcohol is denied driving privileges. ORS 809.260.

Drug Offenses

It is against Oregon law to manufacture (grow or develop), deliver (sell) or possess illegal drugs. The punishment for the crime depends upon the drug involved and the nature of the conduct.

In 2015, the legislature substantially revised the laws relating to marijuana. It is now legal under state (but not federal) law for individual persons age 21 and older to grow or possess small amounts for personal use in their own homes, with many restrictions and exceptions. Businesses that grow, process, distribute or sell marijuana were also legalized, subject to state and local regulation (they are still illegal under federal law, and may be prohibited by local law).

For persons under 21, the previously existing law still applies: It is a Class B felony to possess marijuana unless the amount possessed is less than one ounce. Possessing less than one ounce reduces the crime to a violation. Possession of less than one ounce of marijuana within 1,000 feet of school property is a Class C misdemeanor (compared to possession elsewhere, which is not a crime but only a violation).

With regard to other drugs, there is no difference in punishment depending upon the amounts possessed. Possession of even a trace amount of cocaine or methamphetamine (crank or speed), for example, is a Class C felony. ORS 475.992. Possession even a trace amount of heroin and MDMA (ecstacy) is a Class B felony. ORS 475.854.

The Oregon statutes provide that a person commits criminal drug promotion if he or she keeps, maintains, frequents or remains at a place while knowing that persons are using, or keeping or selling illegal drugs. This is a Class A misdemeanor. ORS 167.222.

Delivery of marijuana to a minor (if the defendant is at least 18 years of age and the minor is under 18 years of age and at least three years younger than the defendant) is classified as a Class A felony. ORS 475.906. Delivery of methamphetamine or cocaine to a minor is classified as a Class A felony. ORS 475.890, ORS 475.880. Delivery of heroin or MDMA is a Class A felony, regardless of the age of the recipient. ORS 475.850, ORS 475.870.

The selling of marijuana, methamphetamine, cocaine, MDMA or heroin within 1,000 feet of school property is a Class A felony. ORS 475.904.

In 2005, the legislature began passing laws in an attempt to combat the rise of methamphetamine use in Oregon. Oregon was the first state to require a prescription for products containing pseudoephedrine, a precursor substance of methamphetamine. ORS 475.973. Additionally, felony crimes relating to meth labs and precursor substances were established. ORS 475.940–80. Leaving a child in a place where methamphetamine is manufactured is criminal mistreatment in the first degree and child neglect in the first degree. ORS 163.205, ORS 163.547.

Police Profiling

HB 2002, passed in 2015, defines and prohibits profiling by law enforcement. The bill requires law enforcement agencies to adopt written policies prohibiting profiling and to establish a procedure to record profiling complaints by January 1, 2016. The bill authorizes funds for the Law Enforcement Contacts Policy and Data Review Committee and establishes the Committee as a central repository for profiling complaints statewide.

Citizen Recording of Law Enforcement

ORS 165.540 provides that a person who obtains, or attempts to obtain, the whole or part of a conversation by means of any device must "specifically inform" the parties of the recording. Failure to do so constitutes a Class A misdemeanor. There are several specific exemptions to this rule. Examples include:

1) Public or semipublic meetings such as hearings before governmental or quasi-governmental bodies, trials, press conferences, public speeches, rallies, and sporting or other services;
2) Regularly scheduled classes or similar educational activities in public or private institutions; and
3) Law enforcement officers operating vehicle mounted cameras.

House Bill 2704, passed in 2015, creates a new exemption to this rule for citizens who are recording the police. The exemption applies to a person who openly, and in plain view of the participants in the conversation, records a law enforcement officer while the officer is

performing his or her official duties in a place where the person recording is lawfully present. The measure makes clear that the exemption does not authorize a person to engage in conduct constituting criminal trespass.

DEFENSES

Defendant Committed a Criminal Act, but the Act Was Excusable or Justifiable

A person may use non-deadly self-defense in certain circumstances. If the person reasonably believes that force is necessary to prevent a physical injury to himself or herself or another person, then he or she may use the degree of force necessary to stop the harm. ORS 161.205 and 161.209. So, a defendant may use the defense of self-defense if there was a reasonable belief that the use of force and the amount used was necessary. There is no requirement that the defendant retreat before using non-deadly physical force in self-defense or in defense of another person.

The defendant may not use self-defense if he or she had provoked another to use physical force or the defendant had the intent to cause physical injury or death to the other person. If the defendant was the initial aggressor, he or she may only use the defense when he or she withdraws from the confrontation and effectively communicates this intent to the other person.Self-defense is not justified if the physical force involved was the product of mutual combat. ORS 161.215.

A person is not justified in using deadly physical force upon another person unless the person reasonably believes that the other person is (a) committing or attempting to commit a felony using or threatening to use physical force against a person, or (b) committing or attempting to commit a burglary in a dwelling, or (c) using or about to use unlawful deadly physical force against a person. ORS 161.219.

Defendant Committed a Criminal Act but Is Not Criminally Responsible for His or Her Actions

Intoxication

Drug use or voluntary intoxication is not a defense to a criminal charge. However, evidence that the defendant used or was on drugs or was intoxicated may be offered by the defendant in any prosecution for an offense to negate or reduce the crime charged. ORS 161.125. Intoxication may be used only to show defendant's incapability to have formed the mental element of the crime charged. Thus, in crimes such as rape, where there is no mental state specified, only the act of forcible intercourse, intoxication may not be raised as a defense. Intoxication may not be used as a defense to a crime with the element of recklessness if the defendant would have been aware of a risk if he or she had not been intoxicated. Thus, a person charged with manslaughter in the second

degree (recklessly causing the death of another) may not raise the defense of intoxication.

Insanity

(*Street Law* text, question, p. 128)

In Oregon the insanity defense is called mental disease or defect excluding responsibility. Oregon law provides that a person is not responsible for criminal conduct if at the time of such conduct, as a result of mental disease or defect, he or she lacks substantial capacity either to appreciate the criminality of his or her conduct or to conform such conduct to the requirements of law. The person is judged "guilty except for insanity." The defendant's actions must have coincided with the mental disease or defect, and there must have been a causal relationship between the conduct and the mental impairment in order to raise it as a defense. Mental disease or defect has been defined by the courts as any abnormal condition of the mind which substantially impairs a person's ability to control his or her behavior. The statute excludes abnormality which is manifested only by repeated criminal or antisocial behavior. ORS 161.295(2). If a defendant is able to appreciate the criminality of his or her conduct or knows thedifference between right and wrong, the mental disease or defect defense does not apply.

The defense of mental disease or defect excluding responsibility is an affirmative defense which must be proved by a preponderance of the evidence (more likely than not) by the defendant that he or she qualifies under the statute and is not responsible for the criminal conduct.

A judgment of "guilty except for insanity" is not a criminal conviction, so under previous law it was not possible to have these judgments expunged. HB 2557, passed in 2016, authorizes courts to set aside any G.E.I. adjudication that would have been eligible for expungement as a criminal conviction under ORS 137.225. When an order setting aside the adjudication is granted, the person is no longer legally deemed to have been found G.E.I. and the court records are sealed. The bill requires the court to inform such people that their right to possess, purchase, or acquire a firearm is still prohibited under federal law. The court retains jurisdiction to unseal and disclose records relating to GEI adjudication in civil actions in which truth is a defense or criminal cases when the moving party shows good cause. In addition, HB 2557 amended ORS 419A.260 and authorizes the expunction of records associated with juvenile adjudications of responsible except for insanity.

Other Defenses

The Oregon Revised Statutes establish a "*choice of evils*" defense to alleged criminal behavior. Certain conduct, which would otherwise constitute an offense, is justifiable if it is necessary in an emergency. The emergency must be of the type that the person believes there is an imminent threat to public or private injury which is so severe that it outweighs the desirability of not committing the

other offense. ORS 161.200. The defendant must show that he or she is avoiding a greater evil, for example, breaking into an unoccupied house in a remote and isolated area in order to make an emergency telephone call to obtain medical or rescue assistance.

Duress is a defense to all crimes except murder. The defendant must show that he or she believed that the other person would immediately inflict serious physical injury on the defendant or a third person if the command was not obeyed. ORS 161.270. Duress may not be used as a defense if a person intentionally or recklessly placed him/herself in a situation in which it was probable that he or she would be subject to duress.

Entrapment may be raised as a defense if the defendant engaged in the conduct as a result of being lured or induced by law enforcement officials or their agents for the purpose of obtaining evidence for criminal prosecution. If the defendant was not predisposed to commit the offense and does not contemplate and would not otherwise have engaged in the acts charged, the defendant has been entrapped. Merely affording the defendant an opportunity to commit an offense that the defendant was predisposed to commit does not constitute entrapment. ORS 161.275.

Spiritual Treatment Defense

See Unit 5 of this Supplement.

CRIMINAL JUSTICE PROCESS: THE INVESTIGATION

Arrest

Oregon laws governing the procedural aspects of the criminal justice system require that certain things must take place whenever a person has been charged with a criminal offense.

Usually, the criminal justice process begins when an individual is arrested by a police officer, with or without a warrant, depending upon circumstances. When there is a warrant, several steps must be followed before the warrant is issued. A warrant for arrest may be issued by a judge or justice of the peace. The warrant must be based upon a finding on the judge's part that there is a probable basis to believe that the person has committed a crime. An arrest warrant must fulfill the following requirements:

1 be in writing;

2 specify name of the person to be arrested or description if name is unknown;

3 state the nature of the offense;

4 state the date when issued and the county or city where issued;

5 be in the name of the State of Oregon or city where issued, signed by and bear the title of the office of the judge with authority to issue the warrant;

6 command any police officer to arrest the person against whom the charge was made and to bring him or her before the judge issuing the warrant;

7 specify that the arresting officer may enter premises where he or she believes the person is (the officer does not have to give notice of his or her authority and purpose if the issuing judge has approved a request for this special authorization); and

8 specify the amount of security for release. ORS 133.140.

There are, however, circumstances under which police officers may make arrests without warrants. A police officer need not obtain a warrant if he or she has probable cause to believe that a person has committed a felony, a Class A misdemeanor or a major traffic offense. ORS 133.310. It is also possible for the criminal process to begin without an arrest first occurring. For certain types of offenses police officers are given discretion to issue a citation in lieu of arrest. Common examples would be many traffic charges and minor misdemeanor offenses for which the likelihood of the imposition of a jail sentence is very small.

It should also be noted that private citizens may make an arrest, but the requirements are far stricter than they are for police officers. A private citizen may arrest another person for a crime committed in his or her presence providing there is probable cause to believe the arrested person committed the crime. The private person, without unnecessary delay, should take the arrested person to the police. ORS 133.225.

Search and Seizure

Article 1, Section 9 of the Oregon Constitution protects against unlawful searches and seizures by providing:

> No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure; and no warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

The following are objects set out by the Oregon statutes which may be obtained in a search and seizure in accordance with a search warrant:

1 evidence or information about a crime;

2 contraband, the fruits or objects obtained in commission of a crime;

3 property that has been used or possessed for the purpose of being used to commitor conceal

the commission of a crime; or

4 a person if there is probable cause for arrest. ORS 133.535.

The Oregon Supreme Court has ruled that the objects that may be seized in a warrantless search may not vary from the objects which can be seized in accordance with an authorized search warrant.

Oregon is bound by the decisions of the United States Supreme Court, but may impose higher standards on searches and seizures and police conduct if it chooses to do so.

The USA Patriot Act, passed after the September 11, 2001 terrorist attacks, has amended federal search and seizure laws regarding foreign intelligence and terrorism. For example, the Patriot Act amended the Foreign Intelligence Surveillance Act of 1978 to allow the government to conduct physical searches and wiretaps upon a criminal suspect without first proving to a judge that probable cause exists to believe a crime was committed. In Oregon, the federal government used these provisions of the Patriot Act to secretly search the home of Brandon Mayfield, whom they suspected (wrongly) of being involved in a terrorist train bombing in Madrid, Spain. After Mayfield was released, he challenged these secret searches of his home, declaring that they violated the Fourth Amendment's requirement of "probable cause" for a search. Mayfield won his case in the federal district court. **Mayfield and the federal government then settled part of the case (he received a formal apology and, according to some reports, a large cash payment), and the government appealed the part of the decision that found two parts of the Patriot Act unconstitutional. The Ninth Circuit heard the appeal and ruled that because the settlement had redressed Mayfield's injuries, he no longer had standing to challenge the Patriot Act, and therefore the appeals court vacated the district court's decision and avoided reaching the question of the Patriot Act's constitutionality.**

Interrogations and Confessions

The following information is based on Oregon Supreme Court decision interpreting Article1, Section 12 of the Oregon Constitution which says that no person shall " . . . be compelled in any criminal prosecution to testify against himself." For a more comprehensive discussion of these issues, see *State v. Smith*, 310 Or 1, 791 P.2d 836 (1990); *State v. Magee*, 304 Or 261, 744 P.2d 250 (1987).

The Oregon Constitution requires that before police beginning questioning, a suspect must be advised of his constitutional rights under the *Miranda* decision, if the setting in which the suspect is questioned is one "which judges and officers should recognize to be 'compelling.'" *Smith,* 310 Or 1, 7.

In *Smith*, for instance, the defendant was questioned by the police while he was in a voluntary treatment center. The surroundings were familiar to the defendant. The police were investigating a report that the defendant's wife was missing. Thus, at the time of being questioned by the police, the defendant was not a suspect because the police did not know a crime had occurred. Based on all these circumstances, the court found that *Miranda* warnings were not required.

This test under the Oregon Constitution is different than the test under the Fifth Amendment to the United States Constitution. Under the United States Constitution, *Miranda* warnings must be given when a person being questioned is in custody. A person is in custody when his freedom has been significantly restrained, even if the person is in his home or other familiar surroundings. *Oregon v. Elstad,* 470 US 298 (1985).

If a person is interrogated in a police station or police vehicle, the person is deemed to be in custody; but if the person voluntarily goes to the station, the United States Supreme Court has held that there is no custodial interrogation. *Oregon v. Mathiason*, 429 U.S. 492 (1977). In *Mathiason*, the police officer had invited the defendant to the police station for a discussion of the fact that the defendant was under suspicion for burglary. The defendant was told that he was not under arrest, and he proceeded to make an incriminating statement. The Supreme Court held it was not a custodial interrogation just because the environment at the station was coercive. Thus no *Miranda* warnings were required. If a person is interrogated at the police station as a witness to a crime, the interrogation is not a custodial interview. The court has also held that a police officer may question a person in the police vehicle and not be bound by the *Miranda* requirements if the interview is "field-questioning" by the officer investigating the crime.

Generally, the interrogation in the suspect's home or place of business is not considered custodial since they are familiar. The same rationale is used in finding that an interrogation of a person in a vehicle normally is considered non-custodial and a traffic stop is not an arrest. If a person is deliberately removed from family or friends in order to be interrogated as a suspect, it will tend to show that the suspect was in custody during the questioning.

Any actions indicating a formal arrest (such as holding a gun on the defendant, search and seizure activities, or going through the booking procedures) will result in a finding of custody. The Oregon Court of Appeals has held that advising a person that there is a warrant out for the person's arrest is sufficient to constitute custody even though the police officer does not arrest the person at that time.

In Oregon, police may interview any person not in custody and not subject to coercion without giving the *Miranda* warnings in order to determine whether a crime has been committed. Such statements may be regarded as part of a preliminary investigation even though a tape recording is made of the defendant's conversation with a police officer and not pursuant to a custodial

interrogation.

CRIMINAL JUSTICE PROCESS: PROCEEDINGS BEFORE TRIAL

Preliminary Hearing

In a preliminary hearing, the judge determines whether there is sufficient evidence to establish probable cause that the defendant committed the crime. If the judge finds that the district attorney does not have sufficient evidence, the defendant is discharged. Otherwise, the defendant is bound over to the circuit court for a felony arraignment. ORS 135.070.

Grand Jury

In Oregon, a grand jury consists of seven jurors. The grand jury considers evidence of crimes in the county. The district attorney may submit an indictment to the grand jury if there is good reason to believe that a crime has been committed. An indictment is a formal written accusation submitted to a grand jury by the prosecuting attorney, charging one or more persons with a crime. The grand jury endorses the indictment when all the evidence presented would, if unexplained or uncontradicted, warrant a conviction by the trial jury. ORS 132.010 to 132.390.

Felony Arraignment and Pleas

The Oregon statutes require that once the defendant is taken into custody, an arraignment shall be held during the first 36 hours of custody, excluding holidays, Saturdays and Sundays. If the defendant is out on temporary release, an arraignment must be held 96 hours after the arrest. ORS 135.010. An arraignment is the step in the criminal process where the defendant is formally charged with an offense. The defendant is given a copy of the accusatory instrument (usually a complaint if the crime is a misdemeanor and an indictment if the crime is a felony) and informed of his or her constitutional rights.

At the time of arraignment, the issue of the accused's custody status is usually decided by the court. If the person is in custody, he or she will normally first have been interviewed by a pretrial release officer. The function of the officer is to obtain background information sufficient to allow the court to decide whether the person is a good risk to be released into the community pending the disposition of his or her case. If the court determines that the individual is a good risk, he or she may be released upon a promise that he or she will return, or upon other conditions, including the posting of bail, so as to insure appearance at trial. Whether a court releases a person on a promise to return on bail depends on the sufficiency of his or her ties to the community, employment record, lack or presence of a past record, the nature of the charges themselves, and the presence or absence of friends or family in the community who are willing to assure the court that the person will appear.

Once released on any condition, failure to appear is a separate offense.

In 2007, the law was amended to deny pre-trial release to certain defendants charged with violent felonies. If there is clear and convincing evidence the defendants will pose a danger of physical injury or sexual victimization to the public or the victim if released, the court must deny the release. ORS 135.240.

If the defendant is charged with a felony, he or she must be personally present at the arraignment. If the charge is for a misdemeanor, the defendant may appear by counsel since his or her personal appearance is not required. ORS 135.030.

The court may conduct a hearing at any time after the arraignment and before the beginning of trial. The purpose of a hearing is to rule on any pretrial motions that have been filed by the attorneys challenging things like the suppression of evidence, the accusatory instrument, the voluntariness of admissions or confessions or certain identification procedures (line-ups or photographs) used by the prosecution. ORS 135.037.

At the circuit court arraignment the felony charges are read to the defendant and the judge asks for a plea of guilty or not guilty. If the defendant pleads guilty, a separate hearing for sentencing is scheduled. If the defendant pleads not guilty, a trial date is scheduled.

Plea Bargaining

In plea bargaining, the district attorney and the defense counsel consider whether the defendant has acknowledged guilt and shown a willingness to take responsibility for his or her conduct and whether there is a chance defendant's cooperation with the prosecution may result in successful prosecution of other offenders. ORS 135.415. When a defendant enters a plea of guilty as a result of a plea agreement, the court shall determine that the plea is voluntary. If the district attorney has agreed to seek concessions in the charge or the sentence, which must be approved by the court, the court must advise the defendant that the recommendations of the district attorney are not binding on the court. ORS 135.390.

CRIMINAL JUSTICE PROCESS: THE TRIAL

Right to Trial By Jury

On a misdemeanor charge, the accused in Oregon is entitled to a jury of six persons and all six must agree for the accused to be found guilty. On a felony charge, however, Oregon law has determined that while an accused is entitled to a jury of twelve persons, only ten of the twelve must concur before he or she may be found guilty. An important exception to that lesser number standard exists in the case of a charge of murder. In such a case twelve must agree before any person may be

found guilty.

Assuming that a defendant does not desire to enter a plea of guilty, the next major occurrence is the preparation of his or her defense for trial.

Right to a Speedy and Public Trial

The Oregon speedy trial statute requires that one must be brought to trial within a reasonable period of time. If not, unless the accused has requested that the trial be postponed, the court must either release the defendant from custody if there is reason for the delay, or dismiss the charges. ORS 135.747, 135.750. An information must be filed by the district attorney's office or an indictment be returned by the grand jury within 30 days after a person has been held for a crime. ORS 135.745. A trial must be started within 60 days of a defendant's arrest if the defendant is not given a pre-trial release. ORS 136.290. However, as of 1999, the court can order a defendant in custody to remain in custody for over 60 days before the trial if there is a showing of good cause. ORS 136.290. If there is an indictment or criminal complaint filed against a state prisoner while in prison, the inmate may file a demand for a speedy trial with the district attorney. Upon receiving notice requesting trial, the district attorney shall bring the inmate to trial within 90 days. Failure to comply with this statute requires absolute dismissal of the charges. ORS 135.763, 135.765.

Right to Compulsory Process and to Confront Witnesses

Although some states have allowed some witnesses, particularly some children, to be examined in court without the defendant being present, Oregon has never been one of these states. Article I, Section 11, of the Oregon Constitution requires that an accused "shall have the right . . . to meet the witnesses face to face." The Oregon Supreme Court has interpreted this section to mean that a defendant cannot be excluded from a pretrial hearing in which the child witness is being examined by the court to decide if the child is competent to testify at trial. *State v. Kitzman,* 323 Or 589, 920 P.2d 134 (1996). The ability to confront and cross examine a witness was declared a constitutional right protected by the Sixth Amendment by the United States Supreme Court in the 2004 case *Crawford v. Washington*, 541 U.S. 36. This important decision may require all states to allow defendants to be present during all witness testimony, even that of children.

Criminal Appeals

In the State of Oregon any person who has been convicted of a crime enjoys the right to file an appeal to the Oregon Court of Appeals. ORS 138.040 and ORS 138.050. It should be noted that the United States Constitution does *not* provide for the right to appeals. Appeal is purely a creature of statute(s). The purpose of an appeal is to attempt to secure the reversal of a conviction in the trial court, alleging that errors were committed by the trial judge and that the decision of the jury deprived the individual of his or her right to a fair trial.

If the Oregon Court of Appeals determines that an error has occurred, a new trial is ordered, and the accused is treated as if he or she had never been first brought to trial. If, however, the Court of Appeals determines that a fair trial was accorded the accused, the conviction must stand unless the Oregon Supreme Court decides to hear a further appeal of the conviction and possibly overturn the conviction. A possible appeal to the United States Supreme Court from the Oregon Supreme Court exists beyond the appellate remedies in the State of Oregon.

However, appeals to both the Oregon Supreme Court and the United States Supreme Court do not exist as a matter of right. Both of these Courts have *discretion* in deciding whether to accept any case for purposes of consideration on appeal. Once a person has exhausted all appellate remedies, the only remaining possibility for overturning a conviction, and possibly securing release from custody, is through executive clemency, which is commonly known as pardon. This, too, is a discretionary procedure, solely within the power of the governor of the state or the president of the country.

Certain non-criminal penalties may occur in our society when a person has been convicted of a crime. If, for example, a person has been convicted of a felony, this individual may lose the right to hold public office, obtain a job requiring a government security clearance or to become bonded for a position of trust. Such penalties are called civil death penalties based upon ancient common law principles that held that any person convicted of a crime was a person of "corrupt blood" and, thus, not worthy of many of the rights and privileges accorded to the rest of themembers of society. Many of those civil death provisions have been repealed by the legislature in the State of Oregon. Nevertheless, conviction of a crime is a serious matter and can adversely affect an individual's position in society.

Partly in recognition of this fact, the Oregon legislature decided to provide a method by which a person convicted for the first time could, after a period of years, have his or her conviction removed from his or her record. This procedure is known as expunction or expungement. It requires that the individual not have been arrested or convicted of any subsequent crime for a period of three years from the date of his or her original conviction. Expungement applies mainly to misdemeanor offenses (although it can apply to some felonies), and the court has discretion in deciding whether to grant it based upon such factors as the original nature of the offense, whether the offense involved force or violence, and whether the individual is deserving of expunction. If the court decides to expunge the person's conviction, the legal effect is that of placing the person in the position as if he had never been arrested or convicted of the crime in the first place.

In 2015, the Oregon legislature passed SB 364, expanding the availability of expungement to people convicted of many marijuana-related misdemeanors and felonies before July 1, 2013. Many former crimes are no longer crimes in the wake of the state's recent limited legalization of recreational marijuana; therefore courts are now instructed

to consider those past offenses as they are classed under current law, when determining if a person is eligible for an expungement order. A person convicted of a marijuana offense that would not be a crime these days may be able to get the conviction expunged.

Expungement is a valuable remedy available to many persons who incurred their first and only criminal conviction in the State of Oregon.

CRIMINAL JUSTICE PROCESS: SENTENCING AND CORRECTIONS

Sentencing Options

If a person has been found guilty, either by trial or by guilty plea, the court must impose a sentence. Oregon law, as previously stated, sets out certain maximum possible penalties for various classifications of crime. Therefore, within the bounds permitted by law the court must determine, based upon the facts of the case and the nature and background of the individual (*e.g.*, lack of prior record, aggravating or mitigating circumstances in the case, age, education, presence or absence of alcohol or drug problems, mental illness, etc.), what sentence is appropriate. The prosecutor and defense counsel, of course, may also make recommendations to the court concerning possible sentence, and frequently do. In fact, the job of a defense attorney is to suggest to the court the most appropriate disposition of the case, consistent with the best interests of his or her client. Conversely, it is the obligation of the prosecutor to suggest to the court a disposition that is consistent with the interests of the community at large. Having considered all those factors and recommendations, the court must select the appropriate sentence.

In order to fashion an appropriate sentence for the defendant, the court may request a pre-sentence investigation. A "rap sheet" is a document which presents any prior criminal activity of the defendant and often comprises a substantial portion of the pre-sentence report. A judge may have no other information about the defendant to assist in determining the appropriate sentence. The report must be in writing; relate the circumstances of the offense, the criminal record, the social history and present condition and environment of the defendant; and contain a statement by the victim if possible. ORS 137.530.

For crimes committed before November 1, 1989, a judge is required to state his or her reasons for a particular sentence. Imprisonment will be indeterminate in length but state the maximum term for the crime committed. For crimes on or after November 1, 1989, judges must impose the sentence required by the State Sentencing Guidelines Board. Voters in 1994 helped to enact what was popularly known as Measure 11. Measure 11 imposed strict mandatory sentences on first-time offenders for a select group of violent crimes. Whereas Measure 11 may make a potential criminal think twice about committing an assault, the prosecutor, defense attorney and judge lose the ability to look at the individual circumstances and attempt to do justice in an individual case. One of the

most controversial aspects of Measure 11 is that it also applies to youths under the age of 18. This will be discussed further in the "Juvenile Justice" section.

In 2005, the legislature passed a procedure allowing criminal courts to impose a felony sentence beyond the sentencing guidelines only when a jury finds enhancement facts are proven. Enhancement facts may be offense-related or defendant-related. This procedure was created in response to the 2004 United States Supreme Court case, *Blakely v. Washington*, 542 U.S. 296, in which a judge violated a defendant's Sixth Amendment rights by increasing the defendant's sentence based on the judge's finding that the defendant acted with "deliberate cruelty." The Supreme Court held that the Sixth Amendment right to a jury trial gives a defendant the right to have a jury decide factors that would increase the defendant's sentence.

If the judge places a person on probation, the person's activities are supervised for a period of time by a probation officer. The court may attach reasonable conditions to the probation in order to rehabilitate the individual and protect society. Examples of conditions of probation are participating in a drug or alcohol rehabilitation program, performing voluntary community service, serving time on a work-release basis in a local county facility; and/or making restitution to an injured victim.

If a person has been sentenced to prison as a result of a conviction, his or her only way to secure release from custody, short of serving the entire sentence, is to be released upon parole, if the crime was committed before November 1, 1989. This involves a determination by the Parole Board that the person has served sufficient time in custody and is fit to be released into the community on a supervised basis. Conditions of release upon parole can be similar to those imposed in a probationary sentence. If the crime was committed after November 1, 1989, the defendant must serve the entire sentence. This sentence may be reduced if the inmate earns "good time" credits (see below). With the enactment of the State Sentencing Guidelines, there is no "parole" for offenders who committed their crimes on or after November 1, 1989. They are instead required to complete a period of post-prison supervision (usually one to three years, although much longer for sexual and other serious offenses).

An inmate with a sentence for any term other than life, whose record of conduct shows that he or she has observed the rules of the institution, is entitled to a reduction in the prison term. If the sentence was for any period from six months to one year, one day is deducted for every six days served in the penal institution. If the sentence term was for longer than one year, one day will be deducted for every two days served in the institution. "Good-time" is also deducted from an inmate's sentence for work performance in the prison industry, maintenance and agricultural work and time spent at work camp. ORS 421.120.

In 1999, the Oregon legislature established the Oregon Corrections Enterprises (OCE), which is a semi-independent agency that possesses the authority to engage eligible inmates in work or on-the-job training. OCE can enter into contracts with private businesses or government agencies for

the workers. All previous work programs in the state transfer to the exclusive control of the OCE, which acts independent from the State of Oregon and the Department of Corrections. OCE establishes accounts for money, retirement accounts for the prisoners, and alternative employee benefits. ORS 421.

Parole

Parole is a procedure that is separate from the judicial system. While a judge may determine probation as a viable alternative to a prison sentence, no member of the judicial branch participates in a parole decision. Parole decisions fall under the department of corrections.

As previously noted, with the enactment of the State Sentencing Guidelines by the Oregon legislature in 1989, more and more convicted offenders no longer have the possibility of parole. Offenders who committed their crimes on or after November 1, 1989 must serve their entire prison sentences, with only a possible reduction based on good-time credits. They are then released on post-prison supervision. The amount of time on post-prison supervision is specifically calculated in the State Sentencing Guidelines. The former Oregon Board of Parole is now the Oregon Board of Parole and Post-Prison Supervision. It oversees the conduct of prisoners released from prison and can impose sanctions (such as more time in prison) for misconduct committed during the period of post-prison supervision.

Capital Punishment

Oregon voters, through the initiative process, reinstated the death penalty as a method to punish violent criminals. In 1996, serial killer Douglas Franklin Wright was the first Oregon prisoner executed through lethal injection in 34 years.

Right to Vote

(*Street Law* text, question, p. 182)

In Oregon, individuals incercerated for a felony conviction are ineligible to vote while in prison. Voting rights are automatically restored upon release from prison, although the individual must re-register to vote.

Prison Population Growing

(*Street Law* text, question, p. 181)

In 1994 there were 6,545 prisoners in Oregon state prisons; by March of 2015 the number had increased to 14,584 – a 122.8 percent increase.

JUVENILE JUSTICE

History and Overview of Juvenile Courts

At what age does juvenile court jurisdiction end? (*Street Law* text, question, p. 185)

In Oregon, the juvenile justice system concerns itself with "youths." A youth is defined as a person under 18 years old who is within the jurisdiction of the juvenile court because he or she is alleged (but has not been found) to have committed a violation of the law. The juvenile court may have jurisdiction over a person until the age of 25. A "youth offender" is a youth who has been found, through the judicial process, to have broken the law.

The focus of the juvenile justice system in Oregon changed in 1995. The guiding policy for many years had been to act always in the "best interest of the child." Now, delinquency cases are guided by the court's stated purpose: to protect the public, reduce juvenile delinquency, and provide fair and impartial procedures for dealing with delinquent conduct. The system is founded on the principles of personal responsibility, accountability and reformation within the context of public safety and restitution to the victims and to the community.

Ballot Measure 11 passed by a majority of Oregon voters in the 1994 general election increased the number of crimes for which a juvenile may be tried as an adult. Youths who are at least 15 years old when they allegedly commit one of the following crimes must be prosecuted as adults, and if convicted, must receive the minimum sentence listed:

	Years and Months
Murder (ORS 163.115)	25 yrs
Attempt or conspiracy to commit aggravated murder (163.095)	10 yrs
Attempt or conspiracy to commit murder (163.115)	7 yrs + 6 mos
Manslaughter in the first degree (163.118)	10 yrs
Manslaughter in the second degree (163.125)	6 yrs + 3 mos
Assault in the first degree (163.185)	7 yrs + 6 mos
Assault in the second degree (163.175)	5 yrs + 10 mos
Kidnapping in the first degree (163.235)	7 yrs + 6 mos
Kidnapping in the second degree (163.225)	5 yrs + 10 mos
Rape in the first degree (163.375)	8 yrs + 4 mos
Rape in the second degree (163.365)	6 yrs + 3 mos

Sodomy in the first degree (163.405) 8 yrs + 4 mos
Sodomy in the second degree (163.395) 6 yrs + 3 mos
Unlawful sexual penetration in the first degree (163.411) 8 yrs + 4 mos
Unlawful sexual penetration in the second degree (163.408) 6 yrs + 3 mos
Sexual abuse in the first degree (163.427) 6 yrs + 3 mos
Robbery in the first degree (164.415) 7 yrs + 6 mos
Robbery in the second degree (164.405) 5 yrs + 10 mos
Compelling Prostitution 5 yrs + 10 mos
Using a Child in a Display of Sexually Explicit Conduct 5 yrs + 10 mos
Arson I if represented threat of serious physical injury 7 yrs + 6 mos

A person convicted of a Measure 11 crime is not eligible for parole, good time, expunction, or any other sentence reduction. ORS 137.707.

The Oregon Youth Authority (OYA) is the state agency responsible for youth corrections in the state court system. OYA was formerly known as the Children's Services Division (CSD), and any reference to the CSD in a statute, resolution, rule, document, or record is considered to describe the OYA. The purpose of having a separate court for juveniles was originally to focus on rehabilitation rather than punishment through a less restrictive means than traditional adult court. The flexibility that this affords is not available to persons charged with a crime in adult courts. As indicated in the *Street Law* textbook, the primary goals in setting up a separate court were to provide flexibility and informality, to separate juveniles in custody from adults in custody, and to avoid abuse from and contact with hardened criminals. Juvenile court aims to create a rehabilitative or treatment-oriented atmosphere rather than one of pure retribution or intimidation. This is accomplished by the state taking on the dual role of both prosecutor and "parens patriae," using informal and less stigmatizing vocabulary, and focusing on individual care and the best interests of the child. In Oregon, de-emphasis of the criminal process is achieved by substituting less stigmatizing words for their more formal counterpart like "custody" for "arrest," "petition" for "criminal complaint," "adjudication" for "trial," "accountability" for "sentencing" and "found within the jurisdiction" for "found guilty." As noted earlier, Oregon's emphasis in dealing with youth is changing to a system based more on retribution than on rehabilitation.

In 1999, the Oregon legislature created a comprehensive system for at-risk children beginning as early as kindergarten. Different county and state commissions are required to develop support against violence, to conduct drug tests, and to work to prevent crime in young children at an earlier age in life. Local programs like these are designed to reduce long-term crime rates and establish community alternatives to violence and crime. ORS 419C.100.

Juveniles have the right to be represented by an attorney at any step in the process. Courts are willing to appoint an attorney for a child unable to pay for one. This is especially important

for any felony matter because severe limitations on the youth's liberty might result.

Constitutional Rights of Juveniles

Juveniles do not have all the same rights as adults who are charged with crimes. They do *not* have a right to a jury trial or the right to bail. The reason for this is not that juveniles are inferior persons under the law but simply because the nature of the juvenile justice system does not require that these rights be extended to juveniles. For example, juveniles are not routinely incarcerated when they are charged with a crime and therefore no right to bail is necessary. And since juvenile court cases are most often disposed of by an informal hearing, there is no need for a jury trial. The law also makes it much more difficult to hold juveniles. If there are less restrictive options, such as a release to a parent, a child must be released.

In 2007, the legislature amended the law to make it easier to detain juveniles under certain circumstances. If there is probable cause to believe a youth has committed a violent felony and poses a danger of serious physical injury or sexual victimization to the public or the victim if released, a court can order the youth detained. ORS 419C.145.

Traditionally juvenile court proceedings have been confidential, but in 1980 the Oregon Supreme Court decided the case of *State ex rel Oregonian Publishing Co. v. Diez*, 289 Or 277, 613 P.2d 23 (1980), which opened proceedings to the public based on Article I, Section 10 of the Oregon Constitution which states that "no court shall be secret. . . ." After this case was decided, the law was codified in ORS 419.567(5) which provides that the public may have access to the name of the juvenile brought before the court, the basis of jurisdiction, date, time, and place of any proceeding, and legal disposition of the case *but only if jurisdiction is based on delinquency or emancipation*. The records in other juvenile matters remain confidential. Juvenile court proceedings are always open to the public with the exception of the testimony of young children which may occur outside public view.

Who is a Juvenile?

The juvenile court has jurisdiction to hear cases involving children in a variety of circumstances. Specifically, a person must be under 18 years of age and:

1. Beyond the parental or guardian's control;

2. Whose behavior, condition or circumstances may endanger the welfare of self or others;

3. Who is dependent for care on a public or private child-caring agency that needs the services of the court in planning for the best interest of the youth;

4. Whose parents or any other person having custody have:

a) Abandoned the person;

b) Failed to provide the person with the care or education provided by law;

c) Subjected the person to cruelty, depravity or unexplained physical injury; or
d) Failed to provide the person with the care, guidance and protectionnecessary for the physical, mental or emotional well-being;
5. Who has run away from home;
6. Who has filed a petition to be emancipated. ORS 419B.100.

Status Offenses

Status offenses are violations of laws which only apply to juveniles. Examples of such offenses are truancy or staying out past curfew. These crimes are offenses which if committed by an adult would not be considered an offense.

A chronology of what happens to status offenders in Oregon is as follows:

1 initiated by officer who makes decision to detain;

2 taken to juvenile court and interviewed by intake worker who then decides whether to detain further and notifies parents;

3 if detained, a juvenile court counselor is assigned to child;

4 preliminary hearing to determine probable cause and whether to detain (up to 8 days unless probable cause is found to detain longer). Parents must receive notice of the hearing and an attorney can be present.

Some factors which the court examines to determine if there is probable cause to detain are: whether or not there is imminent threat of harm to self or others, prior offenses, seriousness of the allegation, willingness of parents to take the child back into home, and other options available for disposition of the child. *Roberts v. Mills*, 290 Or 441, 622 P.2d 1094 (1981). (See Detention, this unit.)

Graffiti – Liability for Parents

An individual applying graffiti or unlawfully possessing a graffiti implement is subject to a fine or required community service. If the graffiti artist is a juvenile, the court may impose liability on the parent for any damage caused. ORS 164.386.

Driving While Using a Cell Phone

In 2007, a new law was created to make it an offense for drivers under the age of 18 to use a mobile communications device while driving. **This law was later expanded to apply to *all* drivers, whatever their age. One age-related distinction remains in the law: drivers 18 or older**

may use a cell phone if they are using a hands-free accessory, but drivers under age 18 may not use a cell phone even with a hands-free accessory. The law provides a number of exceptions, most notably for drivers summoning emergency help or driving for agricultural purposes. ORS 811.507.

Juvenile Justice Today

Procedures in Oregon Juvenile Courts

The first step in initiating a juvenile court proceeding may be taken by anyone filing a complaint or reporting an incident to court officials. Generally the case begins with a police officer taking the juvenile into custody. Although the process of questioning, handcuffing, placing the child in the police car may look like an arrest, it is called "protective custody." ORS 419C.091(1). At this point, the youth enters the jurisdiction of the juvenile court. As soon as is practicable, the child's parents must be notified of the action taken and of the time and place of the hearing. At this point, in a complaint for abuse and neglect, the child may be taken into temporary care if there is concern about the child's welfare. In a complaint for a law violation, the child may be taken to detention if the court determines that one of two situations apply. That is: (1) if the court has issued a warrant of arrest against the youth or (2) where the person taking the youth into protective custody has probable cause to believe that the welfare of the youth or others may be immediately endangered by release. ORS 419C.100. Therefore the term "take into custody" is used. ORS 419C.091. If an officer decides to take the juvenile into custody, the juvenile must be given *Miranda* warnings to protect his or her constitutional rights. In addition, the same constitutional rights apply to juveniles with respect to searches and seizures as apply to adults. (See Chapter 12 of *Street Law*.)

Detention

In juvenile law generally and detention specifically, the Oregon statutes place many hoops in front of all the participants from juvenile through judge. Each county may also apply the statutes in its own way which may result in differences between one county and the next.

A child cannot be detained for over 36 hours (excluding weekends and judicial holidays) before an initial hearing. If the child is 11 or younger, only a judge (not the police) can decide that the child should be held in detention. ORS 419C.133. The rules for when a child may be held in detention are very specific and include any felony crime and possession of a firearm (a lawyer should be consulted). If the child is on probation, parole or on release for another charge, he or she may be held in detention if charged with a new crime, a probation violation or if the child has run away from a court-ordered out-of-home placement. ORS 419C.145.

The child may not be held in detention before trial if the reasons he or she has been referred to Juvenile Court involve only status offenses such as running away from home, truancy, disobeying parents, curfew violation, etc. Whether the child is accused of a status offense or a crime, he or she

may be picked up by the police and held at a juvenile detention facility or apolice station for up to five hours while identifying information is obtained. Status offenders may also be held in shelter care facilities including foster and group homes. Generally a youth may be held in detention for a maximum of 28 days except for good cause shown prior to the 28 day period. 419C.150.

All youths 12 to 17 taken into custody for a crime that would be punishable if committed by an adult must be fingerprinted and photographed. If a youth is then sent to the courts, the prints and photo will be sent to the State Police central "depository" and held for five years and 30 days. If the youth does not go to court, or if the charges are later dismissed, the prints and photo record must be destroyed within one year of receipt. ORS 419A.250. Prior to 1989, fingerprinting and photographing were done only in cases where the conduct for which the child was taken into custody would constitute a felony if committed by an adult.

After a hearing, a juvenile court may place a child who is at least 12 years old in detention for up to 8 days, or 30 days if there is an established "program plan," if:

1 the child committed an act which would be a crime if committed by an adult and is within the jurisdiction of the juvenile court;

2 the child violated formal probation imposed for having committed an act which if committed by an adult would be a crime; or

3 the child escaped from a juvenile detention facility. ORS 419C.453, .456.

In any case, a child may not be held in an adult jail for this period unless there is a separate ward for children which is staffed by juvenile department personnel and the child is 16 or older. ORS 419.575.

NOTE: Detention applies only to a *crime*, not merely a delinquent act or status offenses.

Waiver

In Oregon, if a person is at least 15 and has committed a very serious offense, he or she may lose the protections of the juvenile court system. When certain criteria are met, a hearing is held to determine whether the child should be remanded to adult court. So serious is this phase of the process that an attorney for the child is required. Juvenile court examines a number of factors to determine if the child should be remanded. The court must first determine that:

1 the child is at least 15 years of age and mature enough to understand the nature of the conduct involved;

2 the child is charged with a serious offense (generally, that which would be a felony in adult court);

3 the child is not served best by the juvenile court;

4 the protection required by the community demands; and

5 the child is not willing and able to benefit from the facilities and programs offered.

When these factors are met, the remand hearing examines things like the child's previous record, treatment history, and attitude; whether the offense was planned and/or violent; gravity of loss, damage or injury, and protection required by the community; and amenability to and availability of rehabilitative treatment. ORS 419C.349.

In 2003, the list of crimes for which a waiver is allowed was expanded. Now a court can order waiver when a youth is alleged to have committed a felony or misdemeanor and the youth and the state stipulate to waiver. This allows for more flexibility in settling Measure 11 cases.

To enable the juvenile court to avoid remand, the court now has authority to impose fines on juveniles in circumstances where adults could be fined. The court may also impose community service. Before this authority was given, cases which could be disposed of by imposing a fine or community service sentence had to be remanded. A child remaining in the juvenile court system may also be detained. (See Detention, this unit.)

Standards for Detention Facilities/Discipline

Detention facilities in Oregon must meet strict guidelines. A certain number of showers, toilets and square feet per occupant must be maintained. Safe water, minimum air temperature (64 degrees) and good lighting are also required. Classrooms, a library, and indoor and outdoor recreation areas are required in new or renovated facilities. ORS 419A.052. Should the legislature concern itself with the living conditions of offenders? Why or why not?

Significant changes which restrict and upgrade juvenile detention facility standards are:

1 juveniles cannot be placed in jails for detention purposes;

2 juveniles cannot be put into isolation in order to meet the state requirement of sight and sound separation from adults;

3 attorneys must be guaranteed liberal access to their juvenile clients;

4 if held in detention, a juvenile must be seen within 36 hours of admission by someone from the juvenile department and seen daily thereafter; and

5 if held in detention, review hearings must be held every 8 days.

Disciplinary procedures also have become more restricted in Oregon. For instance, the same

statute provides that a juvenile may only be locked in his/her sleeping room for violating a criminal law or posted rule. If the juvenile is locked up for more than 12 hours or is denied privileges ordinarily given others for more than 24 hours, a hearing before a staff member who was not a witness to the act is mandated and written allegations with an opportunity to respond and cross examine as well as a finding by a preponderance of evidence that the violation occurred must be made.

Expunction (Destroying of Records)

Records of juvenile court matters may be expunged after a period of time. Expunction (or expungement) means that a child's juvenile court records are obliterated; they cease to exist. This is available so that mistakes made when a person was a child do not come back to haunt him or her in adulthood.

Some records may be destroyed if certain conditions exist. Those conditions include:

1 at least five years have passed since the court ended its jurisdiction over the child;

2 the child has not been convicted of a felony or a Class A misdemeanor;

3 there are no pending or current juvenile court proceedings;

4 the person is not within the jurisdiction of any juvenile court on the basis of a petition alleging criminal behavior;

5 the juvenile department is not aware of any pending *investigation* of the person's conduct by *any* law enforcement agency; and

6 expunction would be in the best interests of the person and of the public. 419A.262.

Expunction is generally a simple process that only requires that a form be completed.

A juvenile record includes any reports or information relating to a person's contact with any law enforcement agency or juvenile court. Once the records are expunged, the contact with the juvenile system, which is the subject of the record, shall be treated as if it never occurred. Therefore, the person can assert to an inquiring employer, for example, that a record never existed without incurring a penalty for perjury or falsifying an employment application. ORS 419A.262(20).

If a record is not expunged, it is confidential and the public does not have access to any part of it. However, the records can be inspected by the child, his or her parent or guardian and their attorneys. Additionally, in 2005 the legislature made juvenile court records available to lawyers representing the state in a juvenile court proceeding, the juvenile department, the Dept of Human Services, and the Oregon Youth Authority. The use of information from these records is limited.

Reports and other material relating to the child's history and prognosis are privileged as well and as a rule cannot be disclosed directly or indirectly except at the request of the child. An example of such a report might be a transcript of a student's academic record from MacLaren School for Boys. Only the judge, those persons acting under the judge's direction, the attorneys of record for the child and the child's parents or guardians may have access to these records.

Post-adjudicative Depositions

Post-adjudicative disposition refers to how and where the child will be housed if he or she was found within the jurisdiction of the court ("guilty") after a hearing. The goal with respect to post-adjudicative dispositions ("sentencing") is always the least restrictive setting. Options listed in order of increasing restrictiveness are: home; in home with state assistance (counselors, probation officers); foster home; shelter home; juvenile detention facility (8 day limit); adult detention facility (*i.e.*, jail); mental health facility or other special care facility unless a "program plan" is approved for 30-day program. Note that an adult facility is an option *but* the child must be separated by sight and sound from adults at all times and be at least 15 years old. Youth offenders over age 18, however, can be lodged in adult jails without violating the sight and sound requirement. Before ordering this, the court has to make case specific findings and the jail placement has to meet the needs of the individual.

After disposition (again in the least restrictive setting), the minor still retains certain rights. For instance, if placed in a secure facility such as a reformatory or detention center, certain conditions must be met within that facility such as: adequate staff and size, no overcrowding, right to treatment if required, freedom from abuse and first amendment rights. Handicapped offenders must have their special needs met so as to afford them their constitutional rights, (*e.g.* wheelchair access to classrooms to protect right to education). On the other hand, the state has a legitimate interest in running the institution and thus must make administrative fiscal choices as well as provide adequate security to the community.

After institutionalization, a child may be put on parole or probation. Probation is the most common disposition. Probation is an agreement between the court and the child that may last up to five years (but not go beyond the child's 21st birthday). The court agrees not to impose more severe restrictions on the child if he or she accepts the conditions placed on his or her behavior. During that time, certain conditions must be met and if these conditions are violated, re-institutionalization after a due process hearing could occur. If that is the case, the child is again afforded all the procedural due process rights previously allowed.

Appeal

The state has the option to take an appeal in juvenile cases just as it can in adult criminal

cases. The child also has a right of appeal as in adult criminal cases.

Restitution

Restitution has become a high priority of the juvenile court. As of 2016, the youth offender is required to pay restitution for the full amount of the victim's monetary losses. Because of this, the victim's name and address (if known) must be included in the petition, and a copy of the summons, along with notice of their right to be present at the hearing and all future hearings must be mailed to the victim. In addition, victims are notified of their right to proceed against the child's parents in a civil action. Under this statute, parents are liable for the intentional torts of their unemancipated minor children for up to $5,000. Restitution is often made a part of the disposition order or part of many informal disposition agreements. If the parties cannot agree on the appropriate amount, the court can schedule a hearing. Restitution may be required as a condition of probation.

Emancipation

See Unit 5, Family Law, in this supplement.

Second Look

The 1995 legislature provided for a "second look" at the sentences of some waived juveniles. Those juveniles who were automatically waived for Measure 11 offenses cannot take advantage of the second look program. Once a juvenile has served half of his or her sentence, a hearing is held by the sentencing court which decides if the youth offender should continue to serve the sentence. The youth has the burden of proving that (1) he or she has been reformed and rehabilitated; (2) he or she would not be a threat to the safety of the victim, to the victim's family, or to the community; and (3) he or she would comply with any release conditions. The court then weighs this proof against the youth's character, records, mental and physical health, contrition, the safety of the victim and the victim's family, as well as other considerations. ORS 420A.206(1)(A)-(G).

Torts

TORTS: A CIVIL WRONG

The Idea of Liability

Typically, in a small claims or tenant-landlord case the judge will tell the two sides to meet in the hallway outside the courtroom and try to resolve their difference by negotiation before the judge will hear the case. Not having to hear a case saves the court precious time to hear cases in which the sides cannot resolve the dispute by discussion.

Throughout the court system in Oregon, there is a mandatory arbitration program for civil cases. It is designed to take the load off of the court by sending as many cases as appropriate out of the court system and into alternative dispute resolution. Cases involving less than $50,000 must be arbitrated. If a party is unsatisfied with the result of arbitration, that person may appeal the decision and request a trial in court. But there is a risk: if the unhappy person does not achieve a better result in court than in arbitration, the hapless complainant will have to pay court costs and the fees of his or her opponent's lawyer as well. ORS 36.425(4)(b)-(c).

Who Can Be Sued?

Torts by Children

The general common law rule is that parents are not liable for the wrongful acts of their children. Only the child faces responsibility for his or her tort (and can, in theory, be sued for it – although this is rare, partly because it's normally pointless). However, as in most cases, there are exceptions. In Oregon, ORS 30.765 governs parental liability for intentional and reckless torts committed by their children. When an intentional tort is committed by a minor child, the parent can be held liable for up to $7,500. It does not matter if the intentional tort committed caused personal injury or damage to property. Negligence is different from intentional wrongs which will have an effect as to the liability imposed on the parent. Parents may be liable for the negligence of their children in very specific circumstances. In addition to the ways described below, the legislature has made parents liable for the cost of fighting forest fires negligently started by their children. ORS 477.745.

Negligence

When the child commits a negligent act, the parents' action or inactions may be deemed to have contributed to the act. This theory is generally known as *direct liability*. It applies when one

person's negligent action or inaction can be causally connected to another's wrongful act. In these cases, the parents can be held responsible for acts committed by their minor children.

Generally, there are two situations in which parents can be held liable for the negligent acts of their minor children. First, if the parents have a duty to control the child's conduct which is known to be dangerous to others, then the parents may be liable under the "control" theory. Second, if the parent entrusts a dangerous instrumentality to a child, then the parent may be liable under a "dangerous instrumentality" theory.

An example of how a parent can be held liable for the negligent act of a child under the "control" theory follows: Say that Patti is ten years old and she likes to play with matches. She has, over the past year, started two or three small fires in her Tualatin neighborhood. All the fires were accidental; *i.e.*, Patti did not intentionally try to burn anything other than the matches. There had been no damage to property. Patti's parents felt this was just a stage their daughterwas going through, and decided to leave her alone. Two weeks later, through Patti's actions, Mr. Burns' brand new barn caught fire and was destroyed. Mr. Burns brings suit against Patti's parents. Since Patti's parents knew of her dangerous propensities and did nothing or very little to control it, they will likely be found liable for the damages incurred by Mr. Burns.

As an example of the "dangerous instrumentality" theory, consider the following: Johnny's dad is an avid hunter. Johnny is only six years old. Johnny's dad feels that the outdoor experience – both the pleasures and the responsibilities – should be shared. Johnny and his dad went hunting in the woods near Baker and Johnny's dad gave Johnny the responsibility of carrying a loaded gun. Unfortunately for Johnny's dad and Mr. Milcher's cow, Johnny received no instructions on how to handle such a weapon or on how to identify a deer. Even though Johnny will be found to have committed the negligent act of shooting Mr. Milcher's cow, Johnny's dad will most likely be held liable for the damages because of the dangerous instrumentality he entrusted to Johnny.

A third, very limited way of holding a parent liable for the torts of their minor children is under the "family purpose" doctrine.

The "family purpose" doctrine deals only with use of automobiles by family members. In short, a parent who owns an automobile and gives his or her child permission to drive it, even though the child has a valid driver's license, will be held liable for the damages caused by the negligent acts of the child while driving. In effect, this is similar to the dangerous instrumentality doctrine, although the reasoning is somewhat different, based on the traditional view of the family as the nurturing unit protective of its individual members. Under this legal doctrine, it is easy to understand why parents are concerned about insurance when their children start driving.

Some of these exceptions have a broad-reaching effect. However, unless one or more of these three general theories applies (or the kid started a forest fire), parents will not be held liable for the

negligent acts of their children.

Intentional Torts

When dealing with intentional torts, a different rule applies. In Oregon, the parental liability statute, ORS 30.765, states that the parent of an unemancipated minor child is liable for the intentional torts of the child, limited to not more than $7,500 to any one claimant for one or more acts. Foster parents or parents not entitled to legal custody are not liable under this statute.

Emancipation is defined under ORS 109.550 and 109.555 as the conferral of certain rights of majority upon a minor, *i.e.*, a person under eighteen years of age. The minor is recognized as an adult for the purposes of contracting and conveying, establishing a residence, suing and being sued, and for purposes of the criminal laws of Oregon. (*See* Family Law, Unit 6, for more information in emancipation.)

The parental liability statute applies to both property damage and personal injury. In an Oregon appellate case, *Garrett v. Olsen*, 71 Or. App. 93, 99-100, 691 P.2d 123, 127 (1984), the court held that general and special damages arising out of an intentional tort committed by a minor causing personal injury would fall under ORS 30.765, thus limiting the parents' liability to $7,500. In this case, a student struck a teacher twice following an argument. In *Francis v. Farnham*, 58 Or. App. 469, 472-473, 648 P.2d 1349, 1351 (1982), the parents were held liable for damages to another person's car, which had been wrongfully taken by the child. The court held that even though the child did not intentionally damage the car, the child did intentionally and wrongfully gain possession of the car. Therefore, the parent was held liable under ORS 30.765.

Can a minor child sue a parent in your state? Can spouses sue each other for torts? (*Street Law* text, questions, page 221)

The answer to both questions is yes. In the case of *Winn v. Gilroy*, 296 Or. 718, 681 P.2d 776 (1984), two children died in an automobile collision which was caused by their father's reckless driving at high speed while intoxicated. In deciding the case, the Oregon Supreme Court greatly narrowed what is known as the parental immunity doctrine. The court stated that "the proper inquiry concerns the tortuous or privileged nature of a parent's act that causes injury to the child, not a special parental immunity from a child's action for personal torts as distinct from other types of claims." *Id.* at 731, 681 P.2d at 784. This left the door open for suits against parents by their children.

Unlike parental immunity, spousal immunity from negligence suits has been completely abolished in the case of *Heino v. Harper*, 306 Or. 347, 759 P.2d 253 (1988). So spouses may sue each other for negligence.

Insurance

Insuring a Car

What type and amount of auto insurance does your state require? Is there a law dealing with uninsured motorists? What does it provide? (*Street Law* text, questions, page 227)

In Oregon, the type and amounts of liability coverage an automobile owner must carry are governed by statute. ORS 806.070 requires the owner of a car to carry liability insurance at a minimum limit of at least $25,000/50,000/10,000 (shorthand: 25/50/10). In other words, the policy would pay up to $25,000 for personal injury (PI) liability for any one person injured in an accident, up to $50,000 personal injury if two or more persons were injured in any one accident, and up to $10,000 for property damage (PD) liability in any one accident.

Also, under ORS 742.520, personal injury protection (PIP) coverage is required to be provided as a part of vehicle liability policy issued for delivery in this state. PIP pays for medical bills incurred by the driver or passengers of an insured vehicle, as well as by any pedestrian struck by that vehicle. The required minimum limit for this coverage is $10,000 per person. Other coverage required to be provided by PIP include death benefits, loss of income, and loss of essential services. As of 1999, a vehicle must be specified for PIP in the insurance policy. ORS 742.520.

Another type of coverage required with every auto liability policy issued in Oregon is uninsured motorist personal injury coverage (UMPI). UMPI pays the driver and passengers for general damages when they sustain bodily injury due to the negligence of another driver who happens to be uninsured. In other words, your own insurance company takes the place of the insurance company which should have been representing the liable party, had the liable party been properly (legally) insured. Minimum required UMPI coverage limits are the same as for bodily injury liability coverage: 25/50. ORS 742.502.

Uninsured motorist property damage (UMPD) coverage is not required by statute. However, ORS 742.510 requires that a minimum of $10,000 UMPD coverage be made available for optional purchase by every Oregon consumer who purchases or renews an auto liability policy. UMPD applies when an uninsured motorist hits your car and is liable for your property damage. Your insurance company pays for your damage as if it were the insurance company of the other driver.

Under insured bodily injury (UBI) coverage is required in the same amounts as uninsured motorist coverage. It works basically the same as uninsured motorist coverage, except that it gives the insured the option to increase the amount of coverage where, for example, the other driver carries only the minimum required liability limits. Thus, when the other driver, who is liable, does not have enough insurance to pay for the bodily injury damages incurred by you or your passengers, your UBI coverage will supplement the liable party's coverage up to your UBI limits.

To summarize, liability coverage in the amount of 25/50/10, personal injury protection coverage with minimum limits of $10,000, uninsured motorist coverage of 25/50 and under-insured motorist coverage of 25/50, are all required by Oregon state law. Also, uninsured property damage coverage, though not mandatory, must be offered. Additional mandated coverage is considered by State Legislatures on a regular basis.

How much does auto insurance cost for high school age drivers in your state? Is there a discount for taking driver's education? Does the rate differ depending on the driver's age, the driver's gender, and the type and home location of the car?

Are there criminal penalties in your state for failing to have insurance? (*Street Law* text, questions, page 227)

In January 1991, over 700 different insurance companies sold automobile insurance policies in Oregon. Of these, eight to ten sold approximately 90% of the total number of policies in force. Of these, four or five specialize in insuring young drivers.

The cost of insuring a young driver is usually 30% to 70% higher than that of insuring a married driver over 25 years of age. This, of course, depends on the company selling the policy and the individual being insured. To quote a figure which will be reasonably accurate is impossible since the conditions and limits of such a policy may vary considerably from company to company. To get a better idea of cost, a simple phone call to a local insurance agent will be most helpful.

Many companies offer discounts for young drivers who have taken driver's education courses, while others do not. In some instances driver education classes are required before an insurance company will sell a policy to a young driver. Some companies give discounts to students who have good grades.

Determining acceptable risks and assessing proper rates for those risks is called "underwriting." Many factors may be used by an underwriter in determining the risks and rates. The driver's age, sex, type of automobile, the automobile's intended daily use, and the locale in which the driver or owner lives are all considered.

The reason for taking these factors into account when deciding rates is fairness. For example, statistically, a young unmarried male driver 16 to 25 years of age has an approximately 30% greater chance of getting into an accident for which he is liable than a female of the same age and marital status. This percentage drops dramatically for married males age 25 and older. Therefore, it would be inherently unfair to charge a young female driver the same rate as a young male driver. Similar rate-setting stratagems are applied to factors such as intended automobile use, the type of automobile, and where the insured is located. The main idea is to establish rates reasonably correlated to the risk being insured.

Driving without insurance in Oregon is a Class B traffic violation. Offenders are required to file proof of auto insurance for 3 years after a violation occurs. This proof is referred to as a "financial responsibility report" by the law. Failure to file financial responsibility reports may result in suspension of driving privileges. An uninsured motorist who is involved in an accident will have his or her driving privileges suspended. ORS 806.010. It is a Class B misdemeanor to give false insurance information to a police officer. ORS 806.055.

Is there a no fault insurance law in your state? If so, how does it work? (*Street Law* text, question, page 227)

No-fault insurance in its purest sense means just what it says, "no fault." The liability is completely eliminated. Coverage is afforded to the driver and passengers of an auto by its owner's insurance policy for all damages, specific and general, regardless of who is liable. Oregon does not have a comprehensive no-fault insurance law. However, there is certain coverage in an insurance policy which does provide protection without regard to who was at fault. The only no-fault coverage mandated in the state of Oregon is personal injury protection coverage (PIP), as described above. Two other no-fault coverages are offered to most policy holders: collision and comprehensive. Both are optional. They cover damage and theft of your vehicle. Collision covers damage to your vehicle caused by colliding with other vehicles orobjects (except animals). Comprehensive generally covers theft and any other type of damage, including falling objects, fire, flood, hail, vandalism, and collision with animals. Usually, both of these coverages are sold with deductibles. A deductible is that portion of a loss for which the insured is first responsible to bear the cost. For example, collision coverage with a $200 deductible means that the insured is self-insuring him or herself for the first $200 of a covered loss. Any covered damage above that amount, up to the policy limit, is normally then paid for by the insurance company.

The type of car and the amount of deductible desired can drastically affect the cost of these coverages. If the owner has an auto loan on the vehicle, the lender will usually require the owner to purchase collision and comprehensive coverage. Since the lender has an interest in the condition of the car (*i.e.*, as security for the loan), it will want to protect that interest from any loss until the loan is paid off.

Workers' Compensation

Are all jobs covered by your state's workers' compensation system? (*Street Law* text, questions, page 229)

Oregon does have a workers' compensation law. ORS Chapter 656 is the governing set of statutes for this law. All workers must be covered by workers' compensation insurance in the state of Oregon. The employer is required to provide this coverage, which can be accomplished in three ways. First, if the employer is large enough or has enough funds, it can choose to be self-insured.

Second, the employer can purchase coverage from the state chartered, independent workers' compensation insurer known as the State Accident Insurance Fund (SAIF) Corporation. Third, the employer can purchase workers' compensation insurance from private providers.

There are a few exceptions as to who must be covered by "workers' comp." Certain temporary, casual workers need not be covered. For example, a maid who only works one day a week in your home, or you, if hired for only a couple of days to help your neighbor clean out her garage, need not be covered. However, if you are hired, even if only for short-term temporary work in a business which carries on a trade or profession, *e.g.*, a retail store, warehouse, office, or any other place of gainful employment, by law, you must be insured. Penalties for employers not in compliance with the law are significant and costly.

The principal purpose of a worker's compensation system is to provide the only remedy available to employees injured on the job. That means injured workers may not sue in tort for injuries because worker's compensation covers the injury instead. This takes away much uncertainty from the mind of an employer who simply maintains worker's compensation insurance to cover the expenses when workers become injured at work. However, there is controversy, and opinions have spilt among courts, when temporary employees are injured or injure another on the job. Who is the "employer"? The temporary agency or the client company?

What are the principle provisions of your state's workers' comp law? How effectively and fairly does the system work? (*Street Law* text, questions, page 229)

The principle benefits available to injured workers in the state of Oregon depend on the type and extent of a worker's injury. For example, if a worker has his hands severely cut, he will be entitled to lost wages (under certain conditions) and to have all his medical expenses paid. However, if the injury results in a permanent disability, the injured worker may be entitled to an award for permanent impairment along with his wage loss and medical bills.

Wage loss benefits are scheduled and the rules concerning them vary. If you are temporarily disabled, you must be off work more than three days to collect wage loss benefits. However, if you are off work less than fourteen days, you will not be able to collect wage loss for the first three days unless you were hospitalized as an inpatient for those first three days. If you are disabled and off work for more than 14 days, wage loss benefits will retroactively cover the first three days. The maximum amount you can receive under current law is $756.80 per week. The amount will be based on your gross wages at the time and place the injury occurred.

Consider the following example: Jim works full-time at McBurger's and part-time at a Gasgo gas station on Saturdays only. Jim makes $5.00 per hour at McB's and $4.25 per hour at Gasgo. Jim is injured one Saturday morning while pumping gas at Gasgo. His injuries are such that he is temporarily, totally disabled for a period of three weeks. The determination of his wage loss

benefits would be based on his wages earned at Gasgo only, and not McBurger's, since he was injured while working at Gasgo.

Medical benefits for services rendered are also scheduled and may vary depending upon the nature and extent of the injury. Prosthetic devices, prescriptions, and even mileage to and from the doctor's office fall within the medical benefits coverage.

Continuing the example of Jim, say he slipped and fell on an oil spot while working atGasgo. He hurt his shoulder and cut his hand deeply. Either injury is severe enough to preclude Jim's working at Gasgo or McBurger's. He would have little or no difficulty getting workers compensation to pay the emergency room bill. However, if Jim were to follow up with his family physician or a referral physician, he would have to submit medical reports to prove that ongoing treatment was in fact related to and necessitated by the injury he incurred on the job.

If Jim seeks unorthodox or special treatment for his shoulder or hand, prior approval may be required. Also, if treatment exceeds a prescribed guideline amount, benefits of the coverage may be limited or denied.

Total and partial disability benefits are probably within the most regulated and disputed area of the workers' compensation laws. If Jim's family physician has diagnosed his shoulder condition to be a temporary disability, but Jim's cut hand was damaged to the extent that he will have only 80% total use of it, preventing him from ever returning to the work force again, he would be classified as permanently and totally disabled. If he were to be classified as such, he would receive a monthly benefit for the remainder of his life and all related medical bills would be paid. The amount and scope of the award would be determined by the Valuations Division ofthe Workers' Compensation Board. Individual carriers or self-insured employers are precluded from making any determination of impairment under current law.

To summarize, Workers' Compensation laws attempt either to maintain an injured worker's financial stability while he or she is recovering from an injury or to award him or her maintenance support if permanently disabled due to an on-the-job injury. Although disagreements often arise as to the value of an injury, usually there is no argument that the intent of the law is beneficial to society.

INTENTIONAL TORTS

Torts That Injure Persons

Defamation

Under ORS 31.200, if a defamatory statement is made on radio or television, liability will be

found only when the person defamed can prove that due care was not exercised. Owners, licensees, operators, or agents of television or radio stations will not be held liable unless failure to exercise due care is alleged and proved by the person defamed. When a person can prove the defamation, he or she is entitled to damages.

The plaintiff may be entitled to both general and special damages on account of a defamatory statement which is broadcast or published. The plaintiff must prove by competent evidence that the damage complained of was a direct and proximate result of the publication of the defamatory statement. ORS 31.205. However, the plaintiff may not recover general damages unless (1) a correction or retraction is demanded but not published or (2) the plaintiff proves by a preponderance of the evidence that the defendant actually intended to defame plaintiff. When the plaintiff is entitled to general damages, the publication of a correction or retraction may be considered in mitigation of damages. ORS 31.210. Under ORS 12.120, an action for libel or slander shall be commenced within one year of its occurrence.

Invasion of Privacy

Invasion of privacy is a tort in Oregon. Generally, there are four different kinds of privacy claims recognized in common law. They include:

1. appropriation of the plaintiff's name or likeness;
2. intrusion by the defendant upon plaintiff's affairs or seclusion;
3. public disclosures of private facts about the plaintiff by the defendant;
4. publicity which places the plaintiff in a false light in the public eye.

Each of these four claims requires different elements of fact or evidence to be proven. However, the Oregon Supreme Court said "this court has not adopted all forms of the tort wholesale." *Humphers v. First Interstate Bank of Oregon*, 298 Or. 706, 714, 696 P.2d 527, 534 (1985). The court went on to explain that not all of the four theories had been tested in Oregon courts.

The tort of intrusion by the defendant upon the plaintiff's seclusion is one of the common law theories recognized by Oregon courts. *Mauri v. Smith*, 324 Or. 476, 929 P.2d 307 (1996). In 2005, the legislature created the tort of invasion of personal privacy, which is much like the common law theory. The law recognizes that post-pubescent people can have a reasonable expectation of privacy in areas not open to public view (such as bathrooms and dressing rooms). A defendant who views, records, or distributes videos of a plaintiff who is nude and reasonably expects privacy is liable. Viewing or recording a plaintiff's undergarments is also included in the law. ORS 163.700.

See also the new (2016) criminal offense, Invasion of Personal Privacy.

The common law in Oregon generally accepts the idea that a person's privacy is important. Invasion of this privacy, with or without malice or outrageous conduct, could be actionable. However, the tort itself is just forming its parameters in this state. The protection of an individual's right to privacy is often times balanced with society's right to know or another individual's freedom to speak. Many issues and concerns regarding depth and scope will need to be addressed as cases come before the courts.

NEGLIGENCE

Defenses to Negligence Suits

Is comparative negligence a defense in your state? How are damages apportioned if more than one person has been negligent? (*Street Law* text, questions, page 259)

There are three different general types of negligence defenses. First is contributory negligence. Here, even one percent of assessed liability could bar a plaintiff from any recovery.

Second are the "pure," or "Wisconsin," type of comparative negligence laws. This type of defense is used to purely assess liability. For example, in Washington state, which is a pure comparative state, if party A was 60% at fault and party B was 40% at fault, party A would beliable to B for 60% of B's damages. Conversely, party B would be liable to A for 40% of A's damages.

Contributory negligence is not a valid defense in Oregon. Comparative negligence has been the rule in Oregon since 1971. In Oregon, the judge or jury compares the fault of the plaintiff, if any, with the fault of each defendant. If the plaintiff's percentage of fault is more than the combined fault of all the defendants, then the plaintiff cannot win the lawsuit. Liability is several only and not joint. That is, if the plaintiff wins, the jury or court measures the damages caused by each defendant and assigns a percentage of fault to each one. Each defendant is only responsible for paying according to that percentage of fault. However, the court can raise the amount each defendant has to pay within a year if some defendant(s) cannot pay.

Good Samaritan Law

Oregon follows the general common law rule that a person owes no duty to rescue another from harm. However, if a person takes on the task of rescue, he or she must at least do no more harm than if he or she had not attempted the rescue at all. Also, if one attempts to rescue another and

the other person relied upon the actions of the rescuer, the would-be rescuer may be held liable if he or she withdraws from the rescue attempt and thus causes harm to the victim. The rescuer will be found liable only if it is determined that the withdrawal was unreasonable.

Many states have enacted “good Samaritan” laws. These laws give immunities to general or specific classes of persons attempting rescue. Oregon gives a specific type of good Samaritan immunity. ORS 30.800 states that, if you are a trained medical technician or a person with some past provable medical training and you acted reasonably without expectation of compensation, you are immune from liability. This is not to say that if you are not medically trained, you have no protection. The common law recognizes the social benefit of rescue. If you act reasonably and in the process do at least no more harm than would have resulted if you had taken no action at all, you will generally not be held liable for the results of your attempt.

How the general common law theory of rescue applies is as follows: While driving down a country road one night, Barb finds Steve unconscious in his car which has just left the road and crashed into a utility pole. Steve has multiple cuts and fractures. One of the cuts is bleeding very badly. Barb undertakes the task of rescue. She moves Steve out of the car in order to put a compress on the bleeding wound. A passing trucker calls for help on his CB radio just a few minutes after Barb arrives on the scene, but the ambulance takes 45 minutes to arrive. It is later determined that Steve would have bled to death if it was not for Barb’s actions. However, it was also determined that Steve’s partial paralysis of his left arm was due to his being moved by Barb. Will Barb be held liable for Steve's partial paralysis? The answer is no. It is clear that the courts in Oregon will consider Steve better off by Barb’s rescue than if Barb had done nothing at all and Steve had died.

Now, instead, let’s say Barb moved Steve, thinking she would try to stop the bleeding.Then all of a sudden Barb stopped the rescue attempt. Barb remembered she was late for an important appointment in the next town and left Steve lying there. Steve died from his wounds. Would Barb be held liable for Steve’s death?

Under the common law rule regarding withdrawal from a rescue attempt, it would most likely be found that Barb irresponsibly withdrew from the rescue. However, it would also be found that Steve did not rely on Barb’s rescue. Therefore, for this reason, it would most likely be found that Barb was not liable for Steve’s death. Conversely, if Steve somehow survived, and Barb had done nothing more than move Steve, which caused his partial paralysis, Barb may be found liable because she caused Steve more harm than if she had taken no action. Steve would recover damages from Barb under a theory of negligent attempt to rescue.

As an example of reliance on the would-be rescuer, assume now that Steve is at the Oregon coast. He went swimming and got caught in the undercurrent. When he surfaced gasping for air, he was confronted with the choice of clinging to a rock jutting out of the water or of swimming to

shore. Upon hearing Steve's cries for help and seeing his precarious situation, Barb motions and yells at Steve to hang on; she's on her way out. Exhausted and relying on Barb's assurance that she will rescue him, Steve chooses to wait clinging to the rock. Barb starts to swim out to Steve. Then, half way out, Barb realizes she is wearing her brand new Timex/E watch, which is not waterproof. Barb returns to shore, the tide comes in, covering the rock, and Steve goes down for the third time.

In the ensuing wrongful death action, the Oregon courts would probably find that Steve had relied on Barb's attempted rescue. Also, Barb's withdrawal from the rescue was unreasonable. Therefore, in Oregon, Barb could be held liable for damages.

STRICT LIABILITY

Dangerous Activities

In Oregon, among the activities giving rise to strict liability are storage and use of explosive materials and aerial spraying of crops with destructive chemicals. One of the most recent and prevalent examples of an abnormally dangerous activity is the custom of farmers to burn off the plant stubble when the harvest is complete. In *Koos v. Roth*, 293 Or. 670, 652 P.2d 1255 (1982), the Oregon Supreme Court decided that, for the purposes of abnormally dangerous activities, field burning would qualify, regardless of the value of that activity to the community.

Koos was a farmer who produced grass seed. After harvest, he and his crew set about to burn the stubble off the field. They were equipped with mobile water tanks and had plowed a protective strip around the perimeter of the area they wanted to clear. Roth, Koos' neighbor, sued because his adjoining field was also burned and he suffered damages of $8,017. Roth said that field burning was an abnormally dangerous activity and Koos countered with the defense that field burning in the manner that he and his crew conducted it was not abnormally dangerous. The Oregon Supreme Court agreed with Roth.

Common usage by the industry of a technique will not create immunity nor does the use of fire in other industries necessarily create an abnormally dangerous activity. However, when one uses fire to burn a large area open to the winds, the possibility that it will spread beyond its intended bounds cannot be excluded with any practical degree of care. The uncontrollable potential of spreading is in principle like that of aerial spraying and therefore, treated as an abnormally dangerous activity as well.

Animals

When livestock trespasses and causes damage to property or persons, the livestock's owner or possessor will be held strictly liable for the damage. Livestock are generally considered to be domestic, such as cattle, horses, llamas, sheep, goats, fowl, pigs and animals raised for their fur, but not household pets. ORS 609.010(1).

Owners of domestic animals and livestock with known dangerous propensities are strictly liable as to that propensity. For example, suppose you own a goat which has a habit of kicking with its hind legs and it bites someone. If the animal had never bitten anyone before, then strict liability would not factor in because the biting was not the known dangerous propensity. If the goat kicked someone, however, the owner would be strictly liable for the injury.

For domestic animals without known dangerous propensities, the owner is generally not strictly liable. So long as the animal has not exhibited dangerous behavior in the past and the possessor or owner was exercising reasonable care at the time of the injury, strict liability will not be found. However, a law passed in 2005 makes owners strictly liable for injuries caused by *potentially dangerous dogs*. A court can label a dog who menaces or injures a person or who injures or kills a domestic animal as potentially dangerous. If that dog later causes injury, the owner is strictly liable and the court will order the death of the dog. ORS 609.115.

In Oregon, dog owners and keepers are held responsible for the acts of their dogs. A dog that kills, maims, or chases livestock is subject to outlined penalties. If a dog injures a human, the tendency used to be to allow every previously well-behaved dog "one free bite" before finding the owner liable. However, in 2007, the Legislature passed a bill that effectively abolishes the "one free bite" rule. A victim no longer has to prove the dog's owner could foresee that the dog would cause the injury it caused. The victim may recover economic damages for physical injuries or property damage whether or not the dog has exhibited similar behavior in thepast.

Moreover, if a watchdog is vicious, the owners of the dog should post notice of this fact at the place where the dog is kept, because in the case of vicious watchdogs, a trespasser may be able to claim for damages due to injury. In certain instances, liability may be avoided, such as where the injured party was injured while trespassing on the defendant's property and the owner had no reason to anticipate the trespass, or in cases where the animal was provoked. ORS 609.095.

Penalties for maintaining dogs that are a public nuisance include fines up to $250. A dog is considered a public nuisance if it chases people or cars, scatters other people's garbage, destroys other people's property, or trespasses. Dogs that bark all the time, that are considered potentially dangerous, or that run at large while in heat are also public nuisances. ORS 609.095. In 2007, maintaining a dangerous dog became a Class A misdemeanor.

Defective Products

The test for strict liability for dangerous products is whether the reasonably prudent manufacturer would have designed and sold the product had it known of the risk of injury to the user. When the utility of the product is great and the magnitude of the risk is limited, the court will

examine whether it is possible for the manufacturer to eliminate the unsafe characteristic of the product without impairing its usefulness or making it too expensive. The plaintiff must show that there is an alternate safer design, practicable under the circumstances.

In *Wood v. Ford Motor Co.*, 71 Or. App. 87, 691 P.2d 495 (1984), Wood was injured when the Mustang Cobra she owned suddenly moved forward and then backward at high speed while in the "park" position, causing it to collide with another vehicle. Wood claimed that the defendants were negligent in failing to warn purchasers of this tendency of the car to shift from forward to reverse without a change in the gear shift and also that the product was defective and unreasonably dangerous. The court stated that a manufacturer is negligent if it fails to warn of those dangerous propensities of which it knows or reasonably should know. There was evidence that Ford's transmission was "state of the art," but that mispositioning of the shift control was possible, with the potential consequence that the control could move to reverse when jarred, for instance, by slamming a door or bumping the steering wheel. Evidence of this dangerous propensity in the vehicle and that defendants knew or should have known of that propensity established that defendants had a duty to warn. Wood presented evidence that there was a mechanism that would have prevented the shifting out of park and that 40,000 have been installed in cars. This and the defendants' failure to warn are enough to have the issue go to a judge or jury.

Does your state have strict liability laws covering harm caused by defective products? Can the consumer use strict liability to sue everyone from the manufacturer to the seller of the product? (*Street Law* text, questions, page 264)

In Oregon, ORS 30.920 is the governing statute of strict products liability. This statute was codified in 1979 and not many cases have interpreted this statute. The pattern of resolving strict liability cases as discussed above has remained essentially the same.

All persons connected with the manufacture and sale of a defective product can be sued. However, if a person is simply financing the sale, that person will not be held strictly liable for a defective product. The common law courts have generally held that those engaged in the manufacture, distribution, and sale of a product that turns out to be defective are in the best position to assume the cost of damages by such a product.

Defenses to Strict Liability

In *Findlay v. Copeland Lumber Co.*, 265 Or. 300, 509 P.2d 28 (1973), Findlay bought a ladder which collapsed while he was standing on it, and was injured. The cause of the collapse was claimed by Findlay to be a rivet hole which was drilled off-center creating a reduction in the load capacity of the ladder. The defendants claimed the injury was due to Findlay's negligent use of the ladder in that he placed the ladder on uneven ground, failed to test for stability, failed to keep a proper lookout, and used the ladder in such a manner as to cause an overbalance. The jury was instructed to find for

the defendants if it found that the action of Findlay was the proximate cause of his injuries. The jury found for the defendants.

On appeal to the Supreme Court, the issue was presented as whether the plaintiff's alleged negligent acts of not testing the ladder before he used it and failing to maintain a proper lookout while using it did not constitute conduct which would bar recovery on a strict liability theory. The court recognized that a user's negligent failure to discover a defect, or to take precautions against the possibility of its existence, is not a defense to a strict liability action, as well as the concept that a user who discovers a defect and unreasonably continues to use the product or misuses the product cannot recover.

The Supreme Court reversed the lower court decision by finding that conduct by the user which does not amount to abnormal use of the product, or to unreasonable use with knowledge of the product's dangerous and defective condition, should not bar recovery in this sort of case. The plaintiff who neither mishandles the product nor voluntarily and unreasonably uses it after learning of the defect should not be deprived of the protections afforded by strict products liability on account of some incidental carelessness, even it plays some part in the injury. However, if the plaintiff voluntarily and unreasonably uses a product he or she knows is defective, the plaintiff assumes the risk for using the product and may not recover, even under strict liability. The jury was instructed to find for the defendants if any of the claims of misuse were found and the claims of failure to test the ladder and not maintaining a proper lookout would not bar a claim of strict products liability. Since the court could not determine on which claims the jury made its decision, the case was reversed and remanded for a new trial.

TORTS AND PUBLIC POLICY

Tort Reform

Have there been tort reform efforts in your state? (*Street Law* text, questions, page 269)

Tort reform legislation has been introduced in the Oregon legislature in various forms and under different titles for many years. Tort reform can be addressed under the negligence laws, damages laws, privileges and immunity laws, etc.

Recent legislative activity on tort reform has not been as robust as previous years. Highlights from the 1991 legislature include expanding the statute of limitations in both wrongful death and child abuse actions. The wrongful death legislation is directly related to the issue of medical malpractice. In 1995, the legislature responded to the public perception that punitive damage awards are much too high. The legislature simply passed a law requiring 60%of any such award to a plaintiff to be paid directly to the State of Oregon. Judges may also reduce punitive damages awards by the jury if the award is unreasonable. ORS 18.537.

ORS 30.020 was amended so that the statute of limitations (3 years) in wrongful death actions runs from the date of the discovery of the injury which resulted in death. Prior to the amendment, the statute of limitations began to run from the date of the injury regardless of when it was discovered. The statute also expanded the parties in wrongful death actions to include stepchildren and stepparents. These changes greatly enhance a plaintiff's ability to recover in wrongful death cases.

Victims of child abuse may now be able to successfully bring a cause of action well into adulthood as a result of changes to ORS 12.117. The statute allows the victim to sue within six years of the date of the injury or three years of the date of *discovery* of a causal connection between the abuse and injury. Once the victim reaches age 40, however, he or she is barred from suing for abuse occurring when he or she was 18 or younger.

Consumer and Housing Law

CONTRACTS

Elements of a Contract

We have all heard the phrase "the pen is mightier than the sword." This literally becomes true once a consumer's signature is placed on the contract. Consider the following *general* rules about contracts:

1 A contract may be oral, handwritten or typed, and may be on any type of paper (even the back of an envelope).

2 The written terms of the contract will generally prevail over any prior oral statements or agreements of the parties.

3 If the contract states that the buyer must pay $200 by a certain date, then the payment must be made on that date. It is not an excuse for nonpayment that the buyer became sick or lost a job.

4 The terms which are written on the back of the contract in small print are as much a part of the contract as those which are written on the front of the contract in large print.

5 It is not an excuse for non-payment that the buyer did not read the contract before it was signed or that the buyer did not understand what was written in the contract.

6 A person does not have the right to cancel the contract within 24 hours or any other period of time. Once the contract is signed, it is binding on both parties unless they mutually agree to cancel or change it. (An exception to this rule involves contracts which result from the personal solicitation at a residence, and involve a purchase in excess of $25; contracts to purchase health-spa services; and contracts in which the consumer's principal residence is used as security. The buyer then has three business days to cancel.)

7 Until the contract is signed it is just a piece of paper. Either party may change the terms by crossing them out or writing in new provisions.

Many states and the federal government have passed laws intended to prevent unfair practices by sellers and to make contracts simpler and easier to understand. However, these laws are only effective if the consumer takes the time to read and understand the contract.

Minors and Contracts

In Oregon, any person 18 years of age or older or legally married may enter into a valid and binding contract. ORS 109.510. A minor may rescind the contract even if he or she misrepresents his or her age to the seller, and even if the goods have been destroyed, provided that the contract is rescinded before the minor reaches the age of majority, or within a reasonable time thereafter.

Written and Oral Contracts

As previously mentioned, contracts may be oral. There are a couple of exceptions, however. An agreement that by its terms is not to be performed within a year from the making, must be in writing. Otherwise the agreement is void. ORS 41.580. Also, contracts to sell goods for $500 or more must be in writing to be valid. ORS 72.2010.

WARRANTIES

Rules concerning warranties are set out in the Uniform Commercial Code (UCC), which is a set of laws pertaining to both business and consumer transactions and which has been adopted by most of the states. In Oregon, the UCC can be found beginning at ORS 71.1010.

Express Warranties

An express warranty may be oral. The consumer should listen carefully to what the salesperson is saying. If he or she is making an express warranty, the consumer should check to see if it is written in the contract, and if it is, make certain what is written agrees with what the seller has verbally promised.

Disclaimers

The Federal government has passed a law known as the Magnuson-Moss Federal Warranty Act. It is located in the United States Code (USC), which is the set of books containing all federal statutes, at chapter 15 section 2300 (15 USC 2301). The law became effective January 4, 1975.

This Act basically intended to force sellers and manufacturers to disclose the actual provisions of their warranties and to make the terms of these warranties available to consumers. This law has certain limitations in that (1) it applies only to written warranties; (2) it is made in regard to the sale of a consumer good, (3) which costs $15.00 or more.

While this law is fairly lengthy and complicated, it does contain two requirements which directly benefit the consumer. First, the law requires manufacturers to describe their warranties by using only the terms *limited warranty* and *full warranty*, and it gives specific meanings to these terms.

If a product is advertised as having a full warranty then, among other things, the consumer has the right to obtain a refund, replacement or repair without charge. A seller providing a full warranty may not limit the duration of implied warranties. However, if the product has a limited warranty, there may be a charge for repair, the warranty may be limited in duration, or the warranty may apply only to a specific part or component of the item.

Second, the Act requires sellers to either display the full text of any warranties in close proximity to the product, or to keep a binder in the store which contains the full text of the warranty. The existence of this binder must be made known to prospective purchasers.

For example, if a television has a warranty, one should ask the store manager to show you the text of the warranty. After all, a television with a limited warranty which applies only to the sound may not be as good a buy as the more expensive television which has a full warranty.

CREDIT AND OTHER FINANCIAL SERVICES

The Cost of Credit

Interest Rates

Many states have laws setting maximum interest rates which a lender may charge for the loan of money. Often these maximum interest rates vary depending on the type of lender. For instance, in Oregon the general interest limitation used to be 10% per year. However, a bank could charge 15.5% per year and credit unions up to 18% per year. Certain lenders, known as small loan companies, could charge up to 36% interest per year. A company or person which violated these interest restrictions committed "usury." A lender who violated a usury law would usually forfeit all interest, and in some cases the entire amount of the loan.

In 1981 Oregon severely limited the application of usury and set the maximum interest rate on loans at the *greater* of 12% per annum or 5% in excess of the discount rate on 90-day commercial paper at the Federal Reserve Bank in the district where the loan is made. However, small loan companies, banks, credit unions, pawnbrokers and lenders who reserve a security interest in real property may charge whatever interest they desire.

Time Price Differential

Generally, the concept of time price differential is an exception to the general rule of interest rate ceilings for loans. This concept applies to the sale of goods or services on time and is based on the premise that such a transaction is not a loan of money but rather the sale of goods for either a cash price or a time sale price. Since usury concepts apply only to the loan of money, a seller may charge as interest whatever a buyer is willing to pay.

Truth In Lending

More than twenty years ago Congress recognized that in the United States there was a major problem of abuse of consumers by creditors. Creditors were adding a wide variety of additional charges onto the cash price of an item, labeling these charges with a series of confusing and misleading names, and burying them in fine print in the middle of multi-page contracts. Consequently, the average consumer was only guessing at what might be the ultimate cost of an item.

When Congress decided to attack this problem, it operated on the premise that the solution lay in having consumers read and understand the contract before they signed it. Since Congress could not pass legislation forcing consumers to read their contracts, it did the next best thing, by passing the Truth In Lending Act and Regulation Z, which contains the regulations of the Federal Reserve Board enforcing the Act.

The Truth In Lending Act simplifies consumer contracts by requiring all creditors to disclose significant credit terms in uniform terminology grouped together and segregated from all of the

other contractual terms before the buyer ever signs. Consequently, any person who reads a consumer contract should be able to quickly and accurately ascertain the exact cost of the item which is being purchased or the money which is being borrowed.

Under the provisions of the Act, the most important terms were the *finance charge* and the *annual percentage rate*. Each of these terms has to be printed more conspicuously than any other credit terms in the contract.

The *finance charge* is typically the interest cost of repaying the debt over time. The term *finance charge* has to be used whether the transaction is a loan of money or the purchase of goods or services. The *annual percentage rate* is the finance charge translated into a yearly percentage. It reflects the percent of those payments made during a year which are applied to interest rather than to reduction of the principal. As with the term finance charge, the creditor has to reflect this percentage by use of the term *annual percentage rate*.

Both of these terms are an indicator of the true cost of the item which is being purchased on time. The finance charge will ultimately be paid by the purchaser and therefore increases the cash price by the amount of the charge. If the annual percentage rate is very high, this may indicate that the purchaser is paying an inordinate amount of interest as compared to the cash price of the item purchased.

Other significant disclosures include the following:

1 The *amount financed*, which is the total amount of credit provided to the consumer. This figure would include such items as official fees and credit insurance premiums.

2 The number, amount and due dates of the installments necessary to repay the indebtedness, and the total of these payments using the term *Total of Payments*.

3 The *Total Sale Price*, which is probably the single most significant term in an installment contract. This figure represents the total cost to the consumer of buying the item over time, and includes the amount of any down payment by the consumer.

4 The fact that a security interest exists and a general description of the secured property.

Of course, if the consumer defaults in a payment he or she may have to pay a default or delinquency charge. The amount of these charges must also be disclosed on the contract.

All of these terms must be disclosed clearly and conspicuously.

If a creditor violates the Truth In Lending Act, it becomes liable to the consumer for any actual damages incurred as a result of the violation. If the creditor fails to disclose the Finance Charge or the Annual Percentage Rate, or any of the items listed above, it also becomes liable for a penalty in

the amount of twice the finance charge, with a minimum recovery of $100 and a maximum recovery of $1000. The creditor may also become liable for court costs and attorney fees. Despite a violation of the Act, the consumer is still liable to the seller under the terms of the contract.

The Truth In Lending Act does contain certain limitations. It applies only to those creditors who are in the business of extending credit and only to consumer purchases and loans. Further, the transaction must involve a finance charge or be payable in more than four installments. Finally, a consumer must act to collect a penalty within one year of the date the contract is signed.

The Truth In Lending Act is set out at 15 U.S.C. 1601, and Regulation Z is located at 12 C.F.R. § 226 *et. seq*.

Charge Accounts (Credit Cards)

The Truth in Lending Act also determines maximum liability for the unauthorized use of a credit card. A card holder is liable for the first $50 of unauthorized use providing that the credit card has been accepted, the card issuer has provided a method whereby the user of the card can be identified as the authorized user, and the unauthorized use occurs before the card issuer is notified that the card has been lost or stolen (15 U.S.C. § 1643). If these requirements are not followed, the card holder will not be liable for even the first $50 of unauthorized use. A 2003 amendment to ORS 646.894 allows, but does not require, merchants to ask the user of a credit or debit card for personal information to verify the identity of the cardholder.

Often a card holder will receive a monthly billing statement from the card issuer which the card holder believes is inaccurate. The Truth In Lending Act provides a procedure by which this type of dispute may be resolved.

Within 60 days of receiving the disputed bill, the card holder must notify the card issuer in writing of the dispute, and identify the transaction, the card number, and the disputed amount. The card holder may also request photocopies of any credit card receipts. The card issuer must acknowledge the dispute within 30 days of receipt of the card holder's notice and attempt to resolve the dispute within 90 days. During this time the card issuer can take no action to collect the disputed amount or any interest which may have accrued on that portion of the account. The card holder remains liable for all other undisputed amounts.

If the card issuer determines that it made a mistake, it must take whatever action is necessary to reflect the correct amount of the card holder's account. However, if the card issuer believes it is correct and notifies the card holder within the 90 day period, the card holder must pay the disputed amount plus accrued interest. If payment is not made the card issuer may take appropriate collection action.

If the card issuer fails to follow these procedures, the card holder is freed from liability for the first $50 of the disputed amount, even if the card holder in fact owes the amount.

What Lenders Want to Know Before Extending Credit

Credit Discrimination

The Equal Credit Opportunity Act is located at 15 U.S.C. 1691. The enforcing regulations of the Federal Reserve Board are at 12 C.F.R. § 202. It prohibits discrimination in any aspect of consumer credit because of race, color, religion, national origin, sex, marital status, age (so long as one has reached majority) or the fact that the consumer has exercised a right granted under a federal consumer protection statute.

The Act contains certain prohibitions and specific rules which a creditor must follow. For instance, during the process of collecting credit information from an applicant the creditor may not ask any questions concerning the applicant's marital status. The creditor may ask the applicant to use the titles "Mr., Mrs. or Ms.," but must designate that this is an optional requirement. If the creditor denies an applicant credit or refuses to increase an existing line of credit, it must notify the applicant in writing of the reasons for the denial.

Any creditor who violates the Act may be liable to the aggrieved applicant for actual damages, punitive damages up to $10,000, attorney fees and court costs. A copy of the Equal Credit Opportunity Act may be obtained free by writing a local branch of the Federal Reserve Bank of San Francisco or by contacting the main branch at P.O. Box 7702, San Francisco, Calif. 54120. In Portland the local branch is located at 915 SW Stark.

What to Do If You Are Denied Credit

Credit Reports

The Federal Fair Credit Reporting Act is located at 15 U.S.C. 1681. Oregon has no law which governs the activities of credit reporting agencies.

Among the items which might be included in a credit record would be suits and judgments against the consumer, accounts placed for collection, records of arrests or conviction of a crime and bankruptcies. Except for records of bankruptcies, none of these items may antedate the credit report by more than seven years. A credit reporting agency may keep a record of bankruptcy for 10 years. It must promptly delete any information which is found to be inaccurate.

Beginning in 2005, all US residents are able to access their credit reports once per year free of charge. Free reports from the three credit reporting agencies, Equifax, Experian, and TransUnion, are available through www.annualcreditreport.com, by calling 877-322-8228, or by mailing a

standardized form to Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281. Checking your credit reports regularly for accuracy is essential to your credit health. Your credit health not only affects your ability to borrow money, but it can also affect who will hire you, who will rent an apartment to you, and how much your insurance costs.

If an individual is denied credit because of information in a credit report, the creditor must divulge in writing the name and address of the credit reporting agency. The consumer has a right to look at the report for free if requested in writing 30 days in advance. A credit reporting agency which violates the Act may be liable to the consumer for actual damages, punitive damages, attorney fees and court costs.

Due to increasing concerns about identity theft, in 2007 the Oregon Consumer Identity Theft Protection Act was passed. In addition to requiring businesses to safeguard consumer information and report security breaches to consumers, the Act allows consumers to place a freeze on their credit reports. When a freeze is in effect, certain information about the consumer's report may not be released without written approval from the consumer. Credit reporting agencies can charge up to $10 to place a freeze, but cannot charge any fee if the consumer places a freeze because he or she is the victim of identity theft.

Default and Collection Practices

Defaulting on a Contract

The contract will specify exactly what type of action by the consumer constitutes a default. Probably the most common reason for default is the failure to make a payment on time. If the contract provides that a payment is to be made on December 15 and the payment is not made until December 16, the seller may have the right under the contract to refuse to accept the payment and declare the contract in default.

It is not a crime to fail to pay a contract. However, once the contract is in default the seller can resort to a number of methods to collect the unpaid balance of the contract.

As of 1999, a seller of cable services can assess a late fee to subscribers that have not paid the balances on their accounts. The fee must be disclosed, and it is limited to $6 or 5% of the unpaid balance, whichever is greater. If the fee is not disclosed, it is considered a violation of fair trade practice. ORS 646.605.

Collection Agencies

A collection agency is an independent business which for a fee attempts to collect debts allegedly owed by one person to another. The creditor generally *assigns* the debt to the collection

agency, which means that for collection purposes the collection agency becomes the creditor of the consumer. The agency charges the creditor a fee for this service, which is usually a certain percentage of any amounts collected from the debtor. (A common fee is between 33 1/3% and 50% of any amounts collected).

Traditionally, collection agencies have been associated with abusive and harassing collection practices. However, only approximately 1% of the outstanding consumer debt in the United States is collected by collection agencies. The remainder is handled by the collection departments of the creditors. Nevertheless, in the past there have been numerous instances of unconscionable collection practices by collection agencies. Part of the reason for this situation is that until 1978, approximately 80 million people lived in states with no or virtually no laws governing collection practices.

However, both the federal government and the State of Oregon passed laws controlling collection activities. The Federal law is known as the Fair Debt Collection Practices Act, is located in 15 U.S.C. 1692, and became effective on March 20, 1978. This law applies only to the activities of collection agencies. The Oregon law is located at ORS 646.639 and became effective on October 28, 1977. This law applies both to collection agencies and to the collection departments of creditors.

Both laws essentially contain laundry lists of prohibited activities, and provide that it is a violation of the law for the creditor or collection agency to engage in one of the prohibited activities. A violation of the federal law may render the collection agency liable for actual damages, additional damages up to $1,000, and attorney fees and court costs. A violation of the Oregon law may render the creditor or collection agency liable for actual damages or $200, whichever is greater, punitive damages, attorney fees and court costs.

Prohibited Activities

Certain phone calls and letters violate federal law. Prohibited activities include:

1. communicating with the debtor by postcard;
2. communicating with the debtor at any unusual time or place or at a time or place known, or which should be known, to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debtor collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock a.m. and before 9 o'clock p.m. local time at the consumer's location;
3. communicating at the consumer's place of employment if the debt collector knows, or has reason to know, that the consumer's employer prohibits the consumer from receiving such communication;
4. communicating with the consumer after a consumer notifies the debt collector in writing that the consumer refuses to pay the debt or wishes the collector to cease further communication with the consumer. There are three exceptions to this rule. The collector may communicate with the consumer:

a. to advise the consumer that the debt collector's further efforts are being terminated;
b. to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or
c. where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be completed upon receipt.

Oregon law goes further than federal law in prohibiting certain actions by a debt collector. Under ORS 646.639, the collector may not:

1 use profane, obscene, or abusive language in communicating with a debtor or his or her family;

2 communicate with the debtor or any member of his or her family repeatedly or continuously or at times known to be inconvenient to that person with intent to harass or annoy the debtor or any member of his or her family;

3 communicate or threaten to communicate with a debtor's employer concerning the nature or existence of the debt; or

4 communicate with the debtor in writing without clearly identifying the name of the debt collector, the name of the person, if any, for whom the debt collector is attempting to collect the debt and the debt collector's business address.

Repossession

The Uniform Commercial Code provides that a creditor may repossess a secured item as long as the creditor does not breach the peace. It makes no difference whether the secured item is an automobile, a lawn mower, or a television. It is not necessary that the creditor notify the consumer prior to the repossession that the item will be repossessed. Consequently, if the debtor leaves the car in the street or allows the creditor into the house to repossess the television, the law has not been violated. However, if the creditor breaks a window to gain entry, or pushes the debtor aside, or cuts a chain securing the car to a tree, the law would be violated as the peace has been breached. It is not a crime to refuse to allow a creditor to repossess a secured item as long as the form of refusal does not itself constitute a breach of the peace (you cannot assault the creditor with a garden rake). The peace may be breached either by direct action or by verbal threats. ORS 79.5030.

Sometimes the lender or seller is allowed to keep the collateral as payment for the debt. However, if the debtor has paid at least 60% of the loan or at least 60% of the price of the goods purchased (if they are used as collateral), the creditor cannot use the collateral to satisfy the debt

without written permission from the debtor after default. If the debtor does not give his or her written permission, the collateral must be sold and the money received from the sale used to pay the debt. Again, any surplus from the sale is paid to the debtor. ORS 79.5050.

Court Action

In Oregon, the *summons* will always be accompanied by a *complaint*. The summons basically informs the consumer that he or she must respond to the complaint within a specified period of time, or risk having a default judgment taken against him or her. The complaint sets out the claim of the creditor against the consumer.

To avoid a default judgment in small claims court, a response must be filed within 14 days of delivery of the summons. In circuit court, the response must be made within 30 days. These time periods begin to run on the day following the date the summons and complaint are *personally* served upon the consumer or a person over the age of 14 who lives with the consumer. Except in limited circumstances, the creditor cannot mail a summons and complaint to the consumer, or leave it on the doorstep. ORCP 7D(1).

The consumer need not go to court to file a response and prevent a default judgment. Rather, he or she may file with the court some type of response to the complaint. The usual response to the complaint is an *answer*, which is a document which either admits or denies the matters set out in the complaint and generally is drafted by an attorney. After the answer is filed, the court will notify the creditor and the consumer when the trial will be held.

Low income consumers are not automatically entitled to a free lawyer. However, they may request assistance from a local legal services organizations. In addition, if the consumer believes that the creditor has violated one of the various consumer laws outlined in this section, he or she might consult a private attorney. Most of these consumer laws provide for attorney fees for the successful consumer.

If the consumer fails to respond to the creditor's complaint within the appropriate time, the creditor may take a default judgment. It is not a crime to have a default judgment taken against you so you cannot go to jail because of this. A *default judgment* means that the consumer has waived the right to respond to the creditor's complaint and the creditor wins automatically. A *judgment* is a court determination that the consumer owes the creditor a certain sum of money.

Once the creditor has taken a judgment against the debtor, it must determine how to enforce it. The creditor cannot put the debtor in jail because the debtor cannot pay the judgment. The most common methods of collecting on a judgment are by garnishment and attachment.

Garnishment and Attachment

Garnishment

Both the federal government and the State of Oregon have passed laws establishing maximum limits on the amount of a debtor's wages which can be garnished. The Oregon law is more restrictive than the federal law. It provides that the creditor may garnish the lesser of 25%of the weekly disposable earnings or the amount by which those earnings exceed $170 per week. The exception for a person paid every two weeks is $340. ORS 23.185.

To determine the appropriate garnishment limit for a debtor earning a monthly wage, multiply the weekly exemption limit of $170 by 4.3 (since there are 4.3 weeks in a month). The monthly exemption limit therefore is $736.67.

Similarly to the federal law, Oregon also prohibits an employer from discharging an employee because of a garnishment. ORS 23.185.

Attachment

Unlike the garnishment situation, there is no federal law which provides a uniform list of exempt property. Rather, each state determines what property will be exempt from being attached.

In Oregon among the items included are an automobile to a value of $2,150, household goods to a value of $3000, jewelry and clothes to a value of $1,800, and enough food and fuel for 60 days. A debtor also has an exemption for his or her homestead, but only the first $30,000 of equity. For two or more members of the household, the protected amount is $39,000. A debtor has an exemption of $400 which can be applied to *any* property not otherwise covered by an exemption. A creditor may also attach a debtor's bank account. However, if the money in the bank account was originally exempt from execution, it retains that exemption even though it is placed in the account. If any of these items are attached by a creditor, the debtor must file with the court a *claim of exemption*, which is basically an affidavit stating that the property is exempt and that the debtor requests that the property be returned. ORS 18.345.

Previously, a family home was protected by the homestead exemption if the debt after subtracting the allotted homestead exemption was less than $3,000. However, the Oregon legislature now allows the property to be sold on execution even to recover a debt of less than $3,000 when the property is no longer occupied by the debtor. The theory behind this law is that the threat of the sale of the house would cause the debtor to pay his or her debts. Also, if a legal judgment over $3,000 or two or more judgments worth over $3,000 are owed to a single creditor, the sale of real property is allowed despite the homestead exemption. ORS 18.395(5).

If a debtor has no wages or property which are subject to garnishment or attachment, the

debtor is *judgment proof*. Even though the creditor may have a judgment against the debt or there is no method by which the creditor can collect any money. However, a judgment is valid for 10 years, and may be renewed by the creditor for an additional 10 years.

Debt Reorganization and Bankruptcy

If the debtor files bankruptcy, he or she may retain only those assets which are exempt from execution under the law of the state in which the bankruptcy is filed, and which are not secured. If any property is secured the underlying debt will be discharged, but the consumer may have to either return the secured property to the creditor, reaffirm the debt, or pay the creditor the fair market value of the property.

While alimony and child support cannot be taken in bankruptcy to pay the creditors, the *right* to receive a tax return is an asset, and the court can order the tax return to be turned over to the creditors. Also, if alimony or child support are debts of the bankrupt they cannot be discharged. Most taxes cannot be discharged.

Student loans are dischargeable only if the person can prove to the court that the denial of a discharge would constitute an undue hardship. "Undue hardship" is not defined in the law, and dfiiferent courts use different tests to find it.

A debtor who is filing for bankruptcy may choose to rely on either the bankruptcy exemptions controlled by federal law, or the state exemptions, depending on which list is more to his or her benefit. However, the Act also allows any state to pass a law providing that its state residents may utilize *only* the state exemptions. Oregon passed such a law in 1981. ORS 18.300.

DECEPTIVE SALES PRACTICES

Oregon has passed a law which prohibits sellers from misleading consumers as to any aspect of a consumer transaction. A violation of this law, known as the Unlawful Trade Practices Act, renders the seller liable for any actual damages incurred by the buyer or $200, whichever is greater, plus punitive damages, attorney's fees and court costs. The consumer must have incurred an ascertainable loss before he or she can recover these damages. The Unlawful Trade Practices Act is found at ORS 646.605 *et seq*.

The Act contains a long list of prohibited practices and provides that the seller shall be liable if it willfully engages in a prohibited practice. The practice may constitute words, conduct or the failure to disclose a fact.

Door-to-Door and Telephone Sales

If one solicits customers by telephone or door to door as a seller, he or she must, within 30 seconds after beginning the conversation, identify himself or herself, whom he or she represents, the purpose of the call, and inquire whether or not the customer is interested in listening to a sales presentation. ORS 646.611(l).

Both the Federal Trade Commission and the State of Oregon have passed rules concerning cooling off periods for transactions resulting from door to door sales. The Federal Trade Commission Rule is located in the Code of Federal Regulations, which contains the regulations of the federal administrative agencies, at Title 16, section 429. The rule became effective on June 7, 1974. 16 C.F.R. 429.1. The Oregon law is set out at ORS 83.710 and became effective on October 4, 1971.

Both the Federal Trade Commission and the Oregon law basically apply to the sale of any consumer goods or services in an amount of $25 or more, in which the seller engages in a personal solicitation of the sale at a residence or place other than that of the seller. In this situation, the buyer has until midnight of the third business day following the date of the sale in which to cancel the transaction.

The cancellation must be in writing, but need not take any particular form. It is effective as long as it is placed in a mailbox prior to the midnight deadline. The seller cannot charge a fee for the exercise of this cancellation right.

Within ten days of receipt of the cancellation notice, the seller must return to the buyer all money paid on the contract as well as all goods traded in by the buyer. The buyer must then make available to the seller the item which was purchased, but if the seller fails to demand possession within 20 days, the buyer may keep the item free of charge.

Both the Federal Trade Commission and the Oregon law require the seller to give the buyer a written notice of this cancellation right. This notice must be given even if the sale is for cash and no written contract is signed. If the proper notice is not given by the seller, the buyer's cancellation right continues indefinitely.

The "Do Not Call" Registry

People that do not wish to receive telephone solicitations can be placed on the National Do Not Call Registry. Most telemarketers should not call your number after it has been on the registry for 31 days. Both landlines and mobile numbers can be registered. Registration is available online at www.donotcall.gov or by telephone at 1 (888) 382-1222. Registration is free and lasts for five years.

Referral Sales

In a sale, rental or other disposition of real estate, goods, or services, if the seller gives or offers to give a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or otherwise aiding the person in making a sale to another person, it will be considered a referral sale. This is an unlawful practice in Oregon. ORS 646.608. The earning of a rebate, discount or other value is a condition of a referral sale if it is contingent upon occurrence of an event subsequent to the time the customer enters into the transaction.

Bait and Switch

Oregon law provides that one shall be held in violation of the law if he or she:

1 disparages the real estate, goods, services, property or business of a customer or another by false or misleading representatations of fact; ORS 646.608(h) or

2 advertise real estate, goods, or service with intent not to provide them as advertised or with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity. ORS 646.608(i).

A seller will be found in violation of Oregon law if he or she makes false or misleading representation of fact concerning the reasons for, existence of, or amounts of price reductions. ORS 646.608(j).

Phony Contests

Oregon law provides that if one commits the following, he or she will be found in violation of the law:

1 makes any false or misleading statement about a prize, contest, or promotion used to publicize a product, business or service; ORS 646.608(p) or

2 organizes or induces or attempts to induce membership in a pyramid club. ORS 646.608(r).

Sweepstakes Promotions

In 1999, the Oregon legislature declared misleading mail sweepstakes promotions to be unlawful trade practices. Sweepstakes promotions are defined as any procedure for awarding a prize based on chance, including any procedure which is advertised as a payment when something is purchased or donated as a condition of winning a prize. Certain information and terms of the sweepstakes must be disclosed conspicuously and sweepstakes companies must follow terms to protect elderly people from mistakenly believing that they have won prizes. ORS 646.608.

This unlawful trade practice was established as abuse under the Elder Abuse Prevention Act, and sweepstakes companies are prohibited from mailing promotions to elderly people who have spent more than $500 in one organization in the preceding year. Also, an elderly, disabled, or incapacitated person, or someone acting on his or her behalf, can request a court to protect them from sweepstakes companies. The sweepstakes companies are allowed up to 150 days to cease their mailing, the company must remove the elderly person's name from the mailing lists, send them no further promotions, and provide a refund on any payment received after the date ordered by the court. The court can find that the sweepstakes companies have abused the petitioner by continuing to mail to these fragile people. In turn, such a company can offer as an affirmative defense that they had, at the time of the violation, implemented reasonable practices or procedures for preventing a violation. ORS 646.608.

False Description of Goods or Services

Oregon requirements

In Oregon, a seller shall not:

1 Represent real estate, goods or services as having sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that they do not have; or that a person has a sponsorship, approval, status, qualification, affiliation or connection that he or she does not have. ORS 646.608(e).

2 Represent that real estate or goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or second-hand. ORS 646.608(f).

3 Represent that real estate, goods or services are of a particular standard, quality, or grade, or that real estate or goods are a particular style or model, if they are of another. ORS 646.608(g).

Unordered Goods

Oregon law provides that if a person sends or mails goods, newspapers or periodicals of a value of less than $20 to a person without first receiving an order, the items are conclusively presumed to be a gift. If the items are valued in excess of $20, they are conclusively presumed to be a gift if they were deliberately or intentionally mailed. ORS 98.450.

Promotional Checks

Mailing a check or any other payment instrument that obligates the payee or depositor to make any payment after depositing or cashing it is an unlawful practice according to an Oregon law passed in 2007. This law does not apply to extensions of credit or offers to lend money from a credit card company to card holders. ORS 646.608.

BECOMING A SMART CONSUMER

Protecting Your Rights as a Consumer

What to Do Before Buying

1 become informed about the product;

2 ask questions;

3 shop wisely and compare.

It is important to *listen* to what the salesperson is saying about the product which you are thinking of buying. Is the salesperson "puffing," presenting general statements or opinions about how great the product is, or is he or she presenting straight, hard facts about what the product will or will not do? Does the salesperson answer questions directly or is he or she being evasive and vague?

There are laws governing the type of statement a seller may make about a product. These laws are intended to prevent the seller from lying about a product or making vague promises which can be misinterpreted by the buyer. However, the easiest way to make sure that the seller is not being deceptive is to *listen* to what the salesperson is saying.

Often the seller will require that a *contract* be signed. A contract is a written document which evidences the purchase agreement of the parties. It basically describes the product or service which the seller is selling, and states the price and terms of purchase. Generally the written terms of the contract take precedence over the oral statements of the seller while the contract is being signed. If the seller states one thing and the contract states something different, the statements in the contract will usually control.

After listening to the seller, the contract should be read very carefully. It is important not to be pressured into signing the contract without reading it and comparing the written statements to what the seller has said. If there is a discrepancy, ask the seller if the contract can be changed to conform with what he or she has stated. If the seller refuses to cooperate, it is probable that the seller is not dealing fairly.

What to Do After Buying

In Oregon, the buyer is usually entitled to receive a copy of the contract which has been signed. A copy of the contract should be kept until all of the payments have been made for the purchase and you are absolutely satisfied with the product. This contract is the only evidence of the purchase, and if it is lost it may be difficult to obtain another copy from the seller.

In addition to the court, there are several possible places to turn for help. They include government agencies, state and local licensing boards, private agencies and organizations, and the media. They are described next.

Consumer Protection Agencies and Organizations

Government Agencies

The office of the Federal Trade Commission which serves the State of Oregon is located at 2840 Federal Building, 915 2nd Avenue, Seattle, Washington, 98174.

As indicated above, one may also want to contact the Consumer Protection Division of the Department of Justice, State of Oregon. Their toll free telephone number is (877) 877-9392; their email address is help@oregonconsumer.gov . Web site: www.doj.state.or.us/consumer .

State and Local Licensing Boards

The Department of Commerce has supervised more than 13 licensing and regulating boards. The Consumer Services Division of the Department of Commerce handles consumer complaints that the Department of Justice cannot answer. The Insurance Division of the Department of Commerce licenses insurance companies that operate in Oregon.

In Portland, the Bureau of Financial Affairs supervises the issuance of local licenses to various businesses through the Business License Division.

Private Agencies and Organizations

Other good sources for help include:

1. professional associations and unions, and
2. consumer help groups.

In addition to the consumer services offered by the state agencies regarding consumer complaints, other information coordinators are listed in the white pages of the telephone book under Consumer Complaints. The Consumer Credit Counseling Service of Oregon and the Consumer League of Oregon may be able to offer assistance. The Western Insurance Information Service may be helpful in handling insurance problems.

Media

Local television stations (such as station KGW-TV) often have a consumer protection center and many news programs present segments dealing with consumer issues.

Taking Your Case to Court

In Oregon, a person must be at least 18 years of age to sue in court in his or her own name.

Small Claims Court

In Oregon, each county has a Small Claims Court, which handles only civil cases (non-criminal actions). If the case involves a sum of money of $750 or less, the suit must be filed in small claims court. However, if the controversy involves a sum of money between $751 and $7,500, it may be brought in either Small Claims Court or Circuit Court. Finally, even though the lawsuit is brought in Small Claims Court, if it involves a sum of money between $751 and $7,500 the defendant may request that it be tried in Circuit Court. The Circuit Court requires a case from small claims to go through arbitration before the Circuit Court will hear it.

Each county Small Claims Court sets its own filing fee. Fee waivers may be granted by the court. ORS 46.570. Service may be made by certified mail or according to the written instructions provided by each Small Claims Court, ORS 46.441.

In Multnomah County, the filing fee for the plaintiff is $47.50 if the claim is less than $1,500 and $89.50 if the claim is greater than $1,500. If the defendant wishes a hearing on the matter, he or she must pay a filing fee of $44.50 if the plaintiff's complaint is less than $1,500, and $82.50 if it is greater than $1,500. A request that the matter be heard by a jury costs $246.

In Oregon, attorneys are not allowed to appear in Small Claims Court to represent any party, whether the party is the plaintiff or the defendant, without permission from the court (but, if you wish to and can afford it, you can seek out-of-court advice or guidance regarding the court process from an attorney, to prepare before your appearance). One of the advantages of removing a case from Small Claims Court to Circuit Court is that either party is allowed to retain an attorney, although this may result in a greater cost to both parties. ORS 46.415(4).

Unlike defendants in criminal actions, a low income person is not guaranteed an attorney in a civil action. However, the low income consumer may be able to obtain representation from Oregon Legal Services. Some of the legal services available to low income consumers are listed below.

1 Multnomah County Legal Aid Services, (503) 224-4094 (This organization serves only residents of Multnomah County);

2 Marion-Polk County Legal Aid Services, (503) 581-5265; and

3 Lane County Legal Aid, (541) 485-1017.

For all other counties consult the local phone directory, or contact the central office of Oregon Legal Services in Portland, at (503) 224-4086. Additionally, Legal Aid Services of

Oregon hosts a website that provides contacts for all Oregon counties at http://www.lawhelp.org/program/694/index.cfm.

Civil Courts Other than Small Claims

If the consumer's case involves an amount of money in excess of $7,500, it is brought in Circuit Court. Filing fees in Circuit Courts change periodically, and each Circuit Court sets its own fees. If the plaintiff or defendant is a low income consumer, he or she may request the court to defer (waive) the requirement of paying filing fees.

Criminal Prosecution

In Oregon the Attorney General's office has jurisdiction for criminal prosecution of unlawful trade practices.

CARS AND THE CONSUMER

Sellers of motor vehicles are allowed to sell or lease vehicles subject to future acceptances by a lender that will finance the sale. Because many lending institutions are not open on the weekends, dealers could perform a preliminary credit check on the buyer, but not actually receive approval until the following Monday. These institutions are allowed to sell the vehicle without actual approval of financing. However, they are not allowed to sell or lease the traded-in vehicles until the financing has been approved. The Oregon legislature created this law to prevent a procedure called "bushing." Bushing occurred when a purchaser believed that his or her financing would be approved, traded in his or her car, and then left with the new car. Then his or her older vehicle would be sold before the financing was approved, and – when the finacing wasn't approved – he or she would be left without their older car, and without being able to pay for the new car (a good reason not to buy a car on the weekend!). Under a 1999 law, this is included as an unlawful trade practice. ORS 646.608.

HOUSING AND THE CONSUMER

Leases: A Special Kind of Contract

Renters do pay property taxes, but they do so indirectly. Landlords include the cost of property taxes in the rent they charge tenants. Historically, property taxes in Oregon were high relative to many other states. The passage of ballot initiatives (Measure 5, Measure 47 and Measure 50) limiting property taxes removed Oregon from the ranks of states with high property taxes.

Condominiums and Cooperatives

In Oregon when a multiple unit building is being converted from rental apartments into a condominium, the tenants must be given at least 120 days notice before the actual conversion procedures begin. The notice of conversion must state that the owner intends to create a condominium and be hand delivered to the tenant's dwelling unit or be sent to the tenant by certified mail, return receipt requested. ORS 100.305. The tenant must be informed of the date the declaration converting the building to a condominium form of ownership will be recorded with the county recorder's office.

When an apartment is to be offered as a unit in the conversion to condominiums without substantial alteration the developer is required to offer the right to purchase the unit to the tenant first. The tenant has 60 days after delivery of the notice to decide whether to purchase the unit. ORS 100.310(1). The notice of conversion may not include a notice to terminate the tenancy; the termination notice must be delivered in a separate document. ORS 100.305. Oregon law also provides that the tenant's dwelling may not be shown to any prospective purchasers without the tenant's permission before the termination of the tenancy. ORS 100.310(2).

The condominium law is administered by the Oregon Real Estate Commissioner. The condition of the building, its financing, and management of the unit ownership association is, therefore, regulated by the commissioner.

Housing Discrimination

Oregon law prohibits discrimination on the basis of race, color, sex, sexual orientation, gender identity, marital status, familial status (children or lack thereof), source of income, religion, being a surivor of domestic violence, or national origin in the sale or leasing of real property. ORS 659A.145, 659A.421. (In Portland, age – if 18 or older – and occupation are also forbidden reasons to discriminate.) Likewise, discrimination based upon disability or handicap in the sale, leasing, or making available of real property is prohibited. ORS 659A.145. It is also illegal to discriminate against a blind person because he or she has a guide dog or to charge a pet fee for the guide dog. ORS 346.630. During a sale or rental of housing no person can disclose that the occupant or owner has or died from human immunodeficiency virus (HIV) or acquired immune deficiency syndrome (AIDS). ORS 659A.145(8). Additionally, 2007's Oregon Equality Act prohibits discrimination in housing based on sexual orientation.

The state agency where complaints of discrimination in rentals or sales of real estate are filed is the State of Oregon, Bureau of Labor and Industries, Civil Rights Division. The complaint should be filed promptly and, in any case, within one year of the discriminatory practice, on a form provided by the Bureau of Labor and Industries. Municipal and county ordinances often have prohibitions against discrimination in real estate transactions. Some municipal or county governments have a fair housing office and also take complaints. For example, Portland City

Ordinance 164709 prohibits discrimination in housing and public accommodations and employment where the discrimination is based on sexual orientation. Exceptions include owner occupied housing, duplexes, and religious facilities.

For example, in 1999, the Oregon legislature passed a law which allows some discrimination based on sex and familial status if the person was renting space within their own residence. Therefore, if a woman wished to rent out a room within her primary residence, and she did not wish to rent to a single male, she could do this without facing a discrimination suit. ORS 659A.145(9).

Landlord-Tenant Negotiations

In Oregon, several printed lease forms are in common use. Some are fairly balanced as to the landlords' and tenants' rights and responsibilities; others are not. The only way to know what the lease terms require and whether they are fair is to read the entire lease.

The Application

A prospective landlord in Oregon may charge an application fee but only if the units are orsoon will be available for occupancy. ORS 90.295(6). Further, the landlord must provide the prospective tenant with written notice of the fee amount, of what the screening of consumer credit report entails, that the tenant has the right to dispute information provided to the landlord, and the name and address of the screening service or credit reporting agency. ORS 90.295(3). The landlord must also disclose the admission criteria for the rental space before charging for the application screening.

In 2005, a law was passed requiring a landlord to give a written reason for denying an application if the landlord requires an applicant to pay an application fee and the application isdenied, or if an applicant makes a written request for the landlord's reason for denial. ORS 90.304.

The Lease

In Oregon, residential leases are for set periods of time (*e.g.*, a nine month lease, a one year lease, etc.), month-to-month, or week-to-week. ORS 90.900 and 90.240(4)(b).

Paying the Rent

Rent is payable without demand. Unless otherwise agreed, rent is payable at the rented dwelling. ORS 90.240(5)(a). Late charges can be imposed if the written lease specifically provides, but only if rent is not received by 5:00 p.m. on the fourth day after rent is due.

Raising the Rent

Whether a residential lease agreement is written or oral, and regardless of the terms of the agreement, Oregon landlords may not increase rent without at least 30 days' prior written notice (90 days in Portland), except for week-to-week tenancies. ORS 90.240(5)(a). During a fixed term tenancy, the landlord cannot unilaterally change the terms (such as amount of rent) of the tenancy. Oregon does not have rent control ordinances or laws. A landlord may raise the rents to any amount he or she believes the market will sustain.

Upkeep and Repairs

The Oregon legislature enacted a standard of habitability which is implied in every residential lease. The landlord must perform the following services for a tenant in order to maintain the premises in a habitable condition (ORS 90.320(1):

1 provide effective waterproofing and weather protection of roof and exterior walls, including windows and doors;

2 furnish plumbing, heating facilities, electricity and lighting that was installed to code and is maintained in good working order;

3 supply water that is under tenant's or landlord's control, is safe to drink, runs hot and cold, is furnished to appropriate fixtures, is connected to a legal sewage disposal system, and which landlord maintains in good working order to the extent possible;

4 provide, at the beginning of the rental agreement, building and grounds that are clean, sanitary, and free from rodents and vermin, and keep those parts of the premises under the landlord's control, including common areas, clean and sanitary;

5 provide an adequate number of garbage cans and provide for garbage removal service in Portland. Outside of Portland, the landlord must provide for garbage removal service unless the parties agree otherwise in writing;

6 furnish floors, walls, ceilings, stairways and railings, maintained in good repair;

7 maintain ventilating, air conditioning and other facilities and appliances, including elevators, in good repair if supplied or required to be supplied by the landlord;

8 ensure that the premises are safe from fire hazards (including provision of smoke detector(s)); and

9 provide working locks and keys for all dwelling entrance doors and legal latches for all windows.

The landlord and tenant may agree in writing that the tenant will perform specified repairs, maintenance tasks, and minor remodeling if such an agreement is made in good faith, does not

detract from the landlord's responsibilities to other tenants, and there is adequate consideration for the agreement. ORS 90.320(2). Also, the tenant must assist in some sanitation and vermin controls within the rental space. A landlord may not attempt to evade his or her responsibility for properly maintaining the rental in the rental agreement. Such provisions are unenforceable and can subject a landlord to a lawsuit for actual damages plus an amount equal to three months' rent. ORS 90.245.

Landlords are not licensed. Hence, they may not lose a license to rent property. However, failures to correct building code violations may result in the local government treating the building as a nuisance and fining the landlord, performing certain maintenance and charging the landlord, or demolishing the building. A tenant living with serious health and safety defects may request an inspection from the municipal or county building inspector.

Use of the Property

Unless otherwise agreed, the tenant must use the rental only as a dwelling unit. ORS 90.340. A landlord may impose occupancy rules to prevent a small rental from being rented by an excessive number of tenants; the landlord may not limit the number of people on the lease to less than two persons per bedroom. ORS 90.262(3).

Security Deposits

Tenants will often have to pay a security deposit before moving in. In Oregon, there is no limit on the amount a landlord can require as a security deposit, nor are they required by law to pay interest on it. If the landlord claims a right to keep some or all of a security deposit, he or she must give the tenant a written accounting which states specifically the landlord's claim for unpaid rent, property damage, or other breach of the tenant. Damage from ordinary wear and tear cannot be deducted from the security deposit. The accounting must be given within 31 days after the termination of the tenancy. Any part of the security deposit not claimed by the landlord must be returned within the same 31 day period. A landlord who fails to account for or return a security deposit within the 31 day period, or who withholds the deposit in bad faith, may be sued for twice the value of the sum which is wrongfully withheld. ORS 90.300. Landlords may not charge new or increased security deposits.

It is important to note the difference between a security deposit, which is refundable, and a fee (*e.g.,* a cleaning fee), which is charged at the beginning of the lease and is not refundable. ORS 90.300(1). To avoid disputes later, label such payments "refundable" on the lease and obtain a receipt which also specifies that the amount is refundable.

Responsibility for Injuries in the Building

As noted above, in "Upkeep and Repairs," a landlord is required to make the premises

habitable at the start of the lease and to provide certain maintenance during the term of the lease. ORS 90.320(1). A landlord may not limit or excuse himself or herself from liabilities for injuries which occur due to the landlord's negligence. ORS 90.245(1)(c). A term in a lease which relieves a landlord from liability is unenforceable. If the landlord attempts to enforce such a term, the tenant can sue for up to three months' rent and actual damages. ORS 90.245(2).

Landlord Access and Inspection

Unless the tenant signs a lease giving a landlord greater rights, or the landlord is responding to a written request for repairs, the landlord must generally give 24 hours notice of intent to enter. This is covered in "Quiet Enjoyment."

Rules and Regulations

Rules and regulations can supplement the lease. To be enforceable, such rules must be designed to promote the convenience, safety, or welfare of all the tenants and be applied fairly and evenly. If a proposed rule would be a substantial modification of an existing lease, it must be in writing and signed by the tenant. ORS 90.262(2).

Sublease of a House or Apartment

If a tenant moves out prior to the end of the lease, the tenant is still responsible for the balance of the rent under the lease. However, if a landlord accepts a tenant's abandonment of the lease as a surrender, the lease ends. In any case, the landlord must mitigate or limit his or her damages by attempting to rent the dwelling to new tenants. ORS 90.410(3). If a landlord finds a subtenant occupying the premises in violation of a rental agreement which prohibits subleasing, the landlord may begin a court eviction after serving a 24 hour written notice to terminate the tenancy. ORS 90.400(3)(d).

Quiet Enjoyment

Tenants and their guests must conduct themselves in a manner that will not disturb the neighbors' peaceful enjoyment of the premises. ORS 90.325(9). A tenant who fails to meet this responsibility may have his or her lease terminated. ORS 90.400(1) and (3).

Tenants also have a right to privacy in their rented home, free from intrusions from the landlord. Except in an emergency (*e.g.*, to put out a fire or to stop a plumbing leak), or if it appears that the tenant has abandoned the premises, the landlord must give at least 24 hours notice before entering the dwelling. If the entry is for the purpose of making repairs or performing maintenance, the landlord must give the tenant at least 24 hours; however no notice is required if the landlord is promptly responding to a tenant's written request for repairs. ORS 90.322(1)(c). A landlord may

not abuse the right to enter or use it to harass the tenant. A tenant may agree to allow the landlord more liberal rights of entry. ORS 90.322(1)(e). Such agreements are often stated in a printed lease. If a pet-related issue brings a cause for termination, the tenant is allowed to cure their problem. If the pet persists in being an issue, then the landlord may terminate the lease.

A tenant can (but see ORS 90.322(1)(e)), but should not refuse the landlord lawful access. ORS 90.322(1) and (6). Forcefully excluding a landlord from access to the rental is grounds for eviction. ORS 90.322(6). A landlord who makes an unlawful entry, who enters in an unreasonable manner, or whose demands for entry are harassing can be sued for actual damages or damages equal to one month's rent, whichever is greater. ORS 90.322(7).

Landlord right-of-entry includes rental space in manufactured homes, and in floating home dwellings. The landlord has the right to terminate the renters' use and remove the manufactured or floating home if the home is in poor physical condition. ORS 90.322.

LANDLORD-TENANT PROBLEMS

Oregon does not have a separate court that hears only landlord and tenant cases. Many problems are resolved in small claims court when the damages are below a specific amount ($7,500 as of January 1, 2008). Cases involving a greater sum (up to $10,000) or eviction cases are brought in a court.

What Tenants Can Do When Things Go Wrong

Rent Withholding

Withholding rent to force a landlord to make repairs or perform other duties under the lease or the landlord-tenant laws is legal in Oregon – but practically speaking, it is a bad idea. (Tenants should NOT do this unless advised to do so by an attorney! – and unless they are willing to face eviction proceedings.) The landlord will generally file an eviction lawsuit, and the tenant must be prepared to defend the lawsuit by showing that the landlord knew of the need for repairs and failed to make the repairs. ORS 90.330(1). The necessary repairs must be serious enough to entitle the tenant to damages. ORS 90.125, .130(6), and .360(2).

Rent withholding, where the tenant makes repairs and deducts the cost of repairs from the rental obligation, is allowed under ORS 90.365(3). (But again, tenants should generally *not* do this unless advised to by a law office – or if the landlord has agreed to it. Otherwise, they may find themselves fighting an eviction suit.) If the landlord negligently fails to provide essential services (utilities) or a working stove or refrigerator when supplied under the lease, the tenant may hire someone to make the repair after giving written notice of the need for repairs.

The cost of the repairs is limited to $500 unless the landlord agrees to authorize a "repair and deduct" in excess of $500. ORS 90.365(3).

Suing the Landlord

If the landlord fails to properly maintain the premises or materially comply with the rental agreement, the tenant may issue a 30-day written notice of termination. The landlord then has 30 days to get in compliance. ORS 90.360(1). If the defect is a lack of essential services, the notice can allow the landlord only seven days in which to remedy the tenant's complaint. ORS 90.360(1). If the landlord deliberately fails, or is grossly negligent in failing, to provide essential services, the tenant may make the repairs and deduct up to $500 of the cost from the rent, recover damages based upon the reduced rental value of the dwelling, or move into reasonable substitute housing and not pay rent until the services are restored. The tenant may, in addition, sue the landlord for the cost of substitute housing. ORS 90.365(2). A tenant who moves out due to a landlord's failure to meet the landlord's responsibilities without first giving the notice of termination may be sued for nonpayment of rent and should be prepared to prove (that is, have witnesses and photographs) the landlord's failings.

Moving Out

A tenant's notice of termination to the landlord must be in writing and, if possible, be personally delivered. ORS 90.360(1), .427(2), and .155. The notice should be received by the landlord at least 30 days prior to the date specified in the notice as the date the tenant proposes to move and avoid further responsibility for the house or apartment. If the tenant cannot personally deliver the notice, it can be mailed by first class mail with at least three days added to the 30-day notice to allow for delivery.

If a tenant moves out of or abandons a manufactured or floating home, the county tax collector may cancel unpaid property taxes under certain conditions. ORS 90.427. The landlord may have to pay damages sustained by the lienholder and the country tax collector when he or she violates laws governing the disposal of abandoned homes.

Community Alliance of Tenants

The Community Alliance of Tenants is an important resource available to tenants. They operate a Renters' Rights Hotline at (503) 288-0130. Tenants who are having issues or problems with their housing or their landlords, or who have other housing-related questions, can call this number and leave a message. Calls are returned by volunteers. More information can be found at www.oregoncat.org

What Landlords Can Do When Things Go Wrong

Ending the Lease

Most leases for a fixed period of time will end automatically on a certain date which the lease itself specifies. In this situation no other notice to terminate the tenancy is required. ORS 105.115(2)(b). At the end of a tenancy-for-years type lease (such as a one year lease), if the tenant holds over, and the landlord does not object, the lease converts to a month-to-month tenancy. ORS 90.240(4)(b).

The landlord or the tenant may terminate a month-to-month tenancy by giving 30 days *written* notice. The agreement may be terminated on any day, regardless of when the rent is due, in which case the rent must be prorated. The landlord is not required to state the reason for the eviction. ORS 90.427(2). However, the Oregon Landlord-Tenant Act bars retaliatory or discriminatory evictions. ORS 90.385 and .390.

In the event that a tenant fails to comply with the rental agreement or negatively affects the health and safety of the premises, the landlord may give the tenant 30 days written notice of the problem, and terminate the lease if the problem is not remedied within 14 days of the receipt of the notice. If the tenant does remedy the problem, the landlord cannot terminate the rental agreement for that offense. However, in 2005, a law was passed allowing landlords to terminate the rental agreement sooner than 14 days of the receipt of the notice when the problem is not ongoing and it is not remedied. ORS 90.392(4)(a)(B).

If the landlord does not receive rent when due and the tenant fails to pay the rent within seven days after its due date, the landlord may give the tenant 72 hours written notice, demanding the payment. If the rent is not paid within that time, the landlord may terminate the tenancy and file an eviction case to recover possession of the premises. ORS 90.400(2).

If the landlord accepts partial rent, the landlord has waived the right to terminate the tenancy for that offense. For example, in the case of late rent, if the landlord accepts partial payment of the rent knowing that the tenant may have to wait before paying the remainder, the landlord may not evict the tenant for that particular nonpayment of rent. The landlord's right to terminate the agreement is only waived for that period. ORS 90.415(1)(a). But if the funds for partial payment of rent came from a public housing agency as part of a low income rental housing program, the landlord does not waive his or her right to evict. ORS 90.415(8).

The landlord may terminate a tenancy on 24 hours written notice and file an eviction case if:

1 the tenant, someone in the tenant's control, or the tenant's pet seriously injuries or seriously threatens to inflict immediate personal injury on the landlord or other tenants;

2 the tenant intentionally inflicts substantial damage to the premises;

3 the tenant moves out and subleases the premises to someone else in violation of the lease; or

4 the tenant or someone under the tenant's control commits an act which is outrageous in the extreme; ORS 90.400(3).

5 the tenant recklessly engagers others by creating a serious risk of substantial personal injury

6 the tenant provides false information about a material criminal conviction in a rental application

Landlords may evict for certain breaches with 48 hours notice if they run alcohol or drug free housing.

In an eviction case, the tenant may "counter-claim" for damages, for the cost of substitute housing or for the cost of essential services not supplied to the tenant. The court may order the tenant to pay all or part of the accrued or accruing rent. ORS 90.370.

A landlord must release from a rental agreement, without penalty, any tenant who is verifiably a victim of domestic violence, sexual assault, or stalking. That victim may change the locks if she (it's usually she) remains in the rental housing. She must give notice and a copy of the new key to the landlord (so if the landlord is the perpetrator, it would be best to move out), and may have to pay for the lock change. If the abuser is a co-tenant, the survivor must have a valid court order excluding the perpetrator from the unit in order to change the locks.

Eviction

If the tenant remains on the premises after the term of the lease or the notice of termination expires, and in defiance of the landlord, the tenant is called a "holdover tenant." The landlord does not have the right to enter the premises under force. The landlord must file an eviction case and secure a court order (and perhaps the assistance of a sheriff), to enter the premises. The landlord is not entitled to hold the tenant's personal property for the payment of rent (ORS90.420), but may sell or dispose of the property after he or she has held it for at least 15 days after notifying the tenant that the property must be removed. ORS 90.425. (If the tenant holds over after the lease ends and the landlord does not object, the lease becomes a month-to-month lease.)

In Oregon, eviction cases are filed in the Circuit court for the county where the rental property is located. In some rural counties, there is no Circuit court and evictions are filed in the justice of the peace court. The courts treat evictions as special cases involving procedures which are only applicable to evictions. ORS 105.137. A court summons served on the tenant tells the tenant when and where to appear in court. Service of summons occurs after a formal complaint has been filed by the landlord for termination of the tenancy because the tenant has allegedly failed to pay rent, has otherwise breached the lease, or because the lease has ended by its own terms. Service of the summons on the tenant must be accomplished on the workday following the filing of the complaint.

ORS 105.135. Service is effective when the clerk mails a copy to the tenant and a sheriff or process server either personally hands a copy to the tenant or posts a copy on the main entrance door of the premises. In the forcible entry and detainer (another way of saying "eviction") hearing the landlord or an attorney must personally appear, and either party may be represented by an attorney. The tenant must file a legal document called an answer if he or she wants to contest the eviction. If the right to possession is disputed at the first court appearance, the court will have the parties return for a trial within fifteen days of that first court appearance. ORS 105.137(5). The tenant may be required to post a bond in court to cover the rent if he or she wishes to have the trial delayed. ORS 105.140.

A landlord may not evict a tenant in retaliation for a tenant's complaints about the habitability of the premises, based on unlawful discrimination, or due to the landlord's failure to fulfill his or her obligations under the lease or the Oregon Residential Landlord and Tenant Act. ORS 90.385 and .390. The landlord may, however, evict the tenant if the building code violation was caused by the tenant, if the tenant owes rent, or if the dwelling must be vacated to allow repairs to bring the dwelling into compliance with the building code. The landlord may also terminate the tenancy of tenants who complain unreasonably – that is, when "the complaint by the tenant was made to the landlord or an agent of the landlord in an unreasonable manner or at an unreasonable time or was repeated in a manner having the effect of unreasonably harassing the landlord." ORS 90.385.

Family Law

LAW AND THE AMERICAN FAMILY

Law From Birth to Death

In Oregon, any competent person at least 18 years of age or married may make a will. ORS 112.225. A will may be handwritten in any language. ORS 112.232. Oregon does not recognize oral wills as being valid. ORS 112.232. The will must be signed by the person making the will plus two witnesses. The witnesses do not need to know what the will says, simply that it is a will, and that they observed the signing by the person making the will and the other witnesses. ORS 112.232.

If a spouse dies with a will that leaves the surviving spouse with less than one fourth of the net estate, the surviving spouse may elect to take either one fourth of the net estate and ignore the provisions of the will or take under the will and add enough from the estate to make his or her share one fourth amount. ORS 114.105.

When a person dies without a will, all of his or her property is distributed according to the laws of intestacy. In Oregon, the distribution can be summarized as follows (ORS 112.035, 112.045 and 112.055):

1 surviving spouse and no children, spouse takes all;

2 surviving spouse and children, spouse takes one-half and the remainder is divided among the surviving children, or their surviving issue (children), if they are not alive;

3 no surviving spouse, then to his or her surviving children; if they are not alive, to their surviving children;

4 no surviving spouse or surviving issue, then to the surviving parents;

5 no surviving issue, spouse or parent, then to the brothers and sisters and thechildren of any deceased brother or sister;

6 no surviving issue, spouse, parent, brother or sister, then to the grandparents ofthe decedent, or their issue if no grandparents survive;

7 no survivor, then the property passes to the State of Oregon.

Living Wills

A "living will" is a document where an individual expresses his or her wishes regarding giving or withholding life-sustaining medical treatment to him or herself. It is generally used when an individual is dying. In Oregon a living will is known as a "Directive to Physician" and it directly tells the health care provider the patient's desires. The Directive used in combination with another document, the "Durable Power of Attorney for Health Care" (DPAHC), operate to provide consent to the giving or withholding of treatment according to the patient's wishes. ORS 127.507-.510.

The law is very specific in declaring that nothing in the statutes should be taken as condoning mercy killing. ORS 127.570. Rather, the intent is to provide a means for having health care decisions made in keeping with the individual's desires when she or he is incapable of doing so. The law presumes that the individual will want nutrition and hydration. If not, the person may explicitly say so in the Directive. ORS 127.580. Neither the person carrying out the patient's wishes nor the health care provider will suffer criminal liability when they in good faith follow the wishes set out in the Directive and DPAHC. ORS 127.555.

It is important that the exact forms be used. Oregon law states that use of these forms is mandatory. ORS 127.530(1). It is not recommended that other reasonable facsimiles be used. Both require the signature of two witnesses who are other than relatives or physicians of the individual. Oregon's codification of these health care matters greatly clarifies individual's ability to control decisions about their health care.

MARRIAGE

The right to marry is a fundamental right regulated by the state in the public interest. To prevent marriage between immature persons, Oregon has established that individuals who are being married must be at least 18 years old. Persons who are 17 may marry but they must have parental permission. A person of either sex who is at least 17 years old, and has the written consent of his or her parent or guardian may marry. If either person has no parent or guardian who lives in Oregon and either of the applicants has lived in Oregon for six months immediately preceding filing for a marriage license, the license may be granted without consent. ORS 106.060.

Getting Married

The process of getting married begins with the filing of the marriage application which is obtained from the county clerk. The application is filed with the county clerk with an affidavit (of someone other than the applicant) showing that the applicant is at least 18, and a filing fee. The filing fee is currently $60. No physical exam or blood tests are required, but the county clerk is required to give the parties a pamphlet about fetal alcohol syndrome when the license is issued. ORS 106.081. Also, the license itself must have the following phrase: "Neither you nor your spouse is the property of the other. The laws of the State of Oregon affirm your right to enter into marriage and at the same time to live within the marriage free from violence and abuse." ORS 106.041(4).

There is a three day waiting period from the time of the filing of the license application to when the marriage may take place. Those three days may be waived by a probate, county, or circuit judge for "good and sufficient cause." The marriage license is valid for 60 days following the effective date. ORS 106.077.

Marriages may be performed by several different kinds of people. They include a judge within his or her jurisdiction, county clerk, congregations or other religious organizations, or by ministers of any organized church which carries on its work and has congregations in Oregon. However, ministers and other officials must file a written document swearing that they have the authority to perform marriages with the clerk of the county of his or her residence or in which the marriage is solemnized, or in the case of an out-of-state minister, in the county in which the marriage is solemnized. Previously the county clerk had to make a value judgment as to whether the minister or

official had the authority to perform marriages. Since they no longer wished to possess that responsibility, the affidavits must be filed. The county clerk or the person solemnizing the marriage may retain the marriage license. ORS 106.120.

Legal Aspects of Marriage

Annulment

Annulment is a court order saying that the marriage never existed legally. It places the parties in the legal position of never having been husband and wife. In Oregon, marriages can be annulled if one partner is already married, if the parties are related as first cousins or closer, if a partner is under age at the time of the marriage, if one partner lacked capacity to consent to marriage, or if consent was obtained by fraud or force. ORS 106.020-030.

Common-Law Marriage

Oregon does not recognize common law marriages (without a license and formal solemnization) between Oregon residents. However, if persons move to Oregon from another state which does recognize common law marriage, then Oregon will honor that state's view of such a couple's marital status.

Same-Sex Marriage

Oregon law previously defined a marriage as a civil contract between a male and a female. ORS 106.010. The state Constitution also has a provision to this effect. Therefore, gay and lesbian unions were not recognized as legal marriages (the question of whether Oregon would have recognized same-sex marriages formed in another state where such marriages were legal was never conclusively decided). In March and April 2004, Multnomah County issued marriage licenses to more than 3,000 same-sex couples, until ordered by a state judge to stop doing so. These marriages were later declared invalid by the Oregon Supreme Court.

In 2013, the state Department of Administrative Services issued a memo stating that "Oregon agencies must recognize all out-of-state marriages for purposes of administering state programs." The prohibition on same-sex marriage ended for Oregon in 2014, as a result of a federal court ruling. And of course, in Obergefell v. Hodges (2015), the US Supreme Court held that the right to marry is guaranteed to same-sex couples by the US Constitution, overturning all state impediments to marriage equality.

In 2015, the governor signed HB 2478, codifying gender-neutral language relating to marriage in various Oregon statutes. These changes went into effect on January 1, 2016.

Property Ownership

While Oregon law gives wives certain rights with respect to property ownership, no law specifically requires the husband to support his wife. Either party may obtain a court order, however, requiring the other party to pay some or all of the necessary living expenses of the party requesting such an order. ORS 107.095. Both parents are legally obligated to support any children of the marriage. ORS 109.010.

Property purchased in one party's name is the property of the person in whose name it is. Debts incurred in only one party's name remain the responsibility of the one in whose name the debt was incurred. Property may be jointly owned by the parties giving them both an equal right to control the property. Likewise, debts can be jointly incurred, making both equally responsible for repayment. However, a court may order a temporary restraining order which will freeze assets held by both partners jointly and those held individually.

Decisions in a Marriage

Premarital Agreements (ORS 108.700 to 108.740), also called antenuptial agreements, are valid and binding on both spouses if both parties fully disclose their assets and liabilities before entering into the agreement. ORS 108.725. The agreement may address many items, including responsibilities of each party during the marriage, acquisition and ownership of property, and decisions regarding what happens if the marriage ends in divorce. ORS 108.710. But the agreement cannot adversely affect the rights of children to support. ORS 108.710.

To declare a premarital agreement invalid, the court may look at a number of reasons. They include involuntary signing of the agreement, nondisclosure of significant assets, unconscionability of the agreement, and if agreement to eliminate spousal support would result in a party obtaining public assistance. ORS 108.725.

Privileged Communications are communications between a husband and wife which are considered to be private. In most legal matters in Oregon a spouse can prevent the other from disclosing privileged communications. ORS 40.255, 505. Exceptions to the right to assert the privilege include certain criminal proceedings, matters occurring before the marriage, or in a civil action where the spouses are adverse parties.

Spouse Abuse

Oregon law on family abuse prevention is among the most liberal in the country. Under the Family Abuse Prevention Act ORS 107.700 to 107.730, an abused person can get a court order stopping the abuser from having any contact with him or her. Any person who has been threatened with bodily harm, been forced to participate in unwanted sexual activity, or who has actually been

subjected to any type of physical abuse by a relative, spouse, a person with whom the person cohabits, an intimate, or the other parent of a child may obtain an order. The order is called a restraining order and forms are available at the county courthouse. They are easy to complete, no attorney is needed and no filing fee is necessary. Once the one seeking the restraining order fills out the form describing the incident(s) leading to the request for the order, a judge reviews the request. The judge may ask the applicant some questions under oath, then sign the order if it is warranted. The order can restrain the abuser from being at or near aparticular residence, school, workplace and anywhere else the applicant requests. The order can require the abuser to move out of the family home and award child custody to the one obtaining the restraining order, and may designate when the other party may visit with a child.

Once it is signed, the order is served on the abuser and the existence of the order is entered on all Oregon law enforcement computers. If the order was issued under the Family Abuse Prevention Act or a stalking protective order, this order is also recorded in the databases of the National Crime Information Center of the United States Department of Justice. If the abuser disobeys the order, a law enforcement official is required to arrest the abuser, and to require a minimum $5,000 bail figure. ORS 107.720. The order stays in effect for one year unless removed by the one obtaining it prior to that time. It can automatically be renewed for an additional year at the request of the applicant. ORS 107.725.

The abuser may contest the restraining order or any aspect of it within thirty days of the day the order is issued by requesting that the court set a hearing in the case. Custody and visitation can be contested at any time. ORS 107.718. At the hearing, a judge will listen to both sides and may adjust the order, remove it completely or keep it intact. If the court does award visitation rights to a non-custodial abusive parent, it must make adequate safety provisions for the children.

Throughout Oregon, there are battered women's shelters established for women and children to have a safe place to stay if they are afraid of remaining in the home. The locations of these shelters are kept secret so that the abusers cannot find their partners. A woman can find a shelter by contacting the local police department or crisis line. No such shelters exist for abused men.

Acts of domestic violence are crimes in Oregon. An abuser may be charged with one of four degrees of assault (ORS 163.160 to 163.185), menacing (ORS 163.190), rape or a related sexual offense. ORS 163.305 to 163.445. In 2003, the crime of strangulation was created, in part, to combat domestic violence. It is not a defense to any of these crimes that the parties are married to each other.

It is also a crime to prevent a person from making a report to an agency for protection by damaging or interfering with a telephone line or other communication equipment. For example, if a woman was attempting to report her husband when he was abusing her, and he prevented her from doing this by cutting the telephone line, he also committed the crime of Interference with Making a

Report which is a class A misdemeanor. ORS 138.060.

Legal issues for Single People in Nontraditional Relationships

Unmarried couples have far fewer legal protections than married couples. For example, division of property is determined in a different fashion for unmarried couples than it is for married couples. Unmarried partners have no rights to inheritance without a specific will stating the contrary. Some doctors and hospitals will not allow an unmarried partner to visit a hospitalized partner to the same extent allowed married partners. An unmarried partner cannot make health care choices in the case of the other partner's inability to do so (but see Living Wills, this unit). If the couple has children, significant other problems arise.

Palimony

Oregon courts have not been quick to support the concept of palimony. The courts will generally apply standard contract law to any written agreements the parties may have entered into regarding their living together arrangements. In lawsuits filed alleging promises not put in writing, the courts are inconsistent in their treatment of the issues. It is generally agreed, however, that the court will attempt to determine the intent of the parties when they acquired their property. This is done if the judge is willing to resolve issues stemming from an unmarried couple's breakup and without any weight being given to what is or seems to be fair to both sides.

Same-Sex Partners

In 2007, the Oregon Family Fairness Act was passed, enabling same-sex couples to enter into domestic partnership contracts. The Act specifically stated that marriage was limited to opposite-sex couples. However, domestic partnership contracts grant privileges, immunities, rights, benefits, and responsibilities mostly comparable to those married couples have – including rights and responsibilities relating to children of either partner. A domestic partnership can only be terminated by a judgment of dissolution, an annulment, or the death of one of the partners. Since same-sex couple can now avail themselves of regular marriage, the current role of these contracts is not entirely clear.

PARENTS AND CHILDREN

Responsibilities Between Parents and Children

Paternity

In Oregon, there are a number of ways to establish paternity. If both parents agree that the man is the father of the child, they can sign a "Paternity Affidavit" which states that the man is the father of the child. ORS 109.070(1)(e). Once this affidavit is filed with the State of Oregon, legal

paternity is established.

Another method available is via a petition in court. It asks that a judge declare the man is the legal father. Either party can contest this action and ask for a jury trial on the issue of paternity. ORS 109.125. Few cases get to this point since blood and DNA tests are so accurate that parents do not often want to go through the expense of a trial.

The State of Oregon can also proceed to establish paternity of a child. The Support Enforcement Division (SED) of the State Department of Human Resources has the authority to proceed in such cases. It may do so on its own initiative or at the request of either of the parents. The procedure is an administrative one, which means they do not have to file formal documents in court. ORS 109.125. Usually blood tests are taken to determine whether the named man is in fact the father of the child.

Until 2005, a wife's husband was automatically the legal father of any child the wife bore during their marriage. Now, the wife's husband is presumed to be the father, but this can be disputed. ORS 109.070.

Support

Both parents are equally responsible for child support depending on their financial ability. ORS 109.010. Child support includes food, clothing, shelter, medical and dental expenses. It may also include such other items as piano lessons, travel and transportation expenses, and education depending on the family's standard of living. Oregon's Family Fairness Act, passed in 2007, treats both partners of a domestic partnership contract as parents of a child. Parents are not normally obligated to provide a college education for their children.

In a divorce, separation or annulment, the court may require the non-custodial parent to pay child support until the child is 18, emancipated, or until age 21, if the child is regularly enrolled in and attending some school, university or vocational training course, and remains unmarried. The student must be attending the school at least *half-time* according to the school's definition. ORS 107.108. Since a parent cannot have custody of an adult child (18 or over), both parents may be required to contribute toward the student's support if he or she is living away from either parent's home.

A stepparent may be held responsible for support of a stepchild, until the stepparent is divorced from the child's biological or adoptive parent. ORS 109.053.

Children can be bound to maintain their parents if the parents are poor, unable to work and maintain themselves. ORS 109.010.

Guardians

A person under 18 (if unmarried and/or unemancipated) cannot sue, be sued (except in exceptional circumstances), or make other legal claims. He or she must have a guardian act on his or her behalf. The parents are preferred by the court over all others for appointment as guardian for the child. If the parent(s) are not qualified or suitable (through incapacitating illness, death, incarceration and the like), the court will consider other factors. Among them are whether the parent(s) have named a guardian for their child in a will or other written document and if there is a familial relationship (blood or marriage) between the proposed guardian and child. Additionally, if the child is 14 or older, weight may be given to his or her preference. ORS 125.300-.325. A guardian may be not only a person but also an institution or agency like the State Office for Services to Children and Families.

A guardian's duties concern making decisions for the child of substantial legal significance. They include, but are not limited to, consenting to the child's marriage, joining the armed forces, and adoption. ORS 419B.376. Decisions regarding a child's estate are made by a conservator, and the conservator may be someone other than the guardian. ORS 419B.379.

Emancipation

Children reach the age of majority in Oregon at 18 or upon their marriage, whichever is sooner. ORS 109.510. In Oregon, a minor who is 16 or 17 may become emancipated. ORS 419B.550-.558. This means that the minor is treated as an adult for the purposes of contracting and conveying, establishing a residence, suing and being sued. An emancipated child will be treated as an adult in matters of criminal law. Emancipation also terminates the parent/child relationship for the purposes of the parental duty of support. An emancipation decree does not, however, affect any age requirements for the purchasing of alcoholic beverages, acquiring a marriage license or attaining the age of majority. 419B.522(2).

To become emancipated, the minor must apply in writing to the juvenile court of the minor's parents' domicile. The juvenile court has discretion to grant the application if it finds that it would be in the child's best interest. The court considers whether: the minor has been living away from the family and is able to be self-supporting without parental guidance and the minor can demonstrate to the satisfaction of the court that she/he is sufficiently mature and knowledgeable to manage the affairs of everyday life without parental assistance. ORS 419B.558.

Education

In Oregon, all children between the ages of 7 and 18 are required to attend school. ORS 339.100. Children can be "home schooled," provided the parents notify their local school district. In addition, home-schooled children are required to take standardized tests on a regular basis. As

of 1999, they are required to take tests in grades 3, 5, 8, and 10. ORS 339.030 and .035. The test results are provided to the local school district which has the authority to determine if the children are making adequate progress in their education. If the student tests below the 15th percentile of national norms, he or she is required to take additional tests. ORS 339.035.

Special public schooling must be provided to all children under the age of 18 even if they are incarcerated in adult corrections facilities or if they have been removed for disciplinary reasons for more than 10 school days. Special education law in Oregon was modified in 1999 to conform to federal law. People identified as having a disability must be given appropriate education up to age 21 if they are incarcerated, if they have been expelled for a weapons violation, or if they were removed because of a manifestation of their disability. ORS 339.252.

To reduce drop out rates, all children under the age of 18 must prove that they are attending school before they can receive their driver's licenses. All students must have proof of high school graduation or GED completion, or they must have a form signed by the high school principal affirming that the person is enrolled in school. The student may also have a form signed by a community college representative affirming that the student is working on a GED or from an instructor at home which verifies that they have a private teacher or a parent. ORS 339.257.

Medical Care

The United States Supreme Court ruled that a woman has the right to an abortion, in consultation with her doctor, during the first three months of pregnancy (*Roe v. Wade*). The state may restrict abortion only for reasons relating to the woman's health during the second three months of pregnancy. The state may prohibit abortion during the last three months. Oregon has not passed any specific laws on the subject since the Supreme Court set out these guidelines. The Supreme Court allows a juvenile court to decide whether a minor is mature enough to get an abortion if the minor and the parents or guardian disagree. These laws vary a great deal from state to state.

In Oregon, a physician may provide birth control information and services to any person without regard to the age of person. The physician or hospital may inform the parents of the care, diagnosis or treatment without the consent of the minor. A minor 15 years of age or older may give consent to hospital care, medical or surgical diagnosis or treatment without the consent of his or her parent or guardian. A minor of any age may get treatment for venereal disease, but if a parent does not approve of the medical care, the parent is not liable for the cost.

Responsibility for Injuries Both Oregon statutes and Oregon appellate courts require parents to be liable for at least some of the actions of their children. Under ORS 30.765, parents can be held responsible for up to $7,500 for actual damages caused by intentional tortuous conduct of a child. Likewise, parents can be held civilly liable for shoplifting committed by a child, to a maximum $750 plus actual damages other than the value of the item taken. ORS 30.875.

Oregon Appellate Courts have recognized the Family Car Doctrine, calling it the Family Purpose Doctrine. Courts, however, have not extended the doctrine beyond the use of the family vehicle. See the *Street Law* text for a description of the Family Car Doctrine. Essentially, it makes parents liable for the accidents of any driver in the family using the family car.

Child Abuse and Neglect

In Oregon a parent may use a reasonable amount of physical force in exercising discipline on a child. What is reasonable depends upon the circumstances. A parent whose carelessness causes an accident in which his or her child is injured may not be sued by a child. If the parent's act was with an intention to injure the child or is of a cruel nature in and of itself, then a child could sue.

A child who suffers substantial physical or emotional harm by a parent may be made a ward of the juvenile court and custody may be given to the Oregon Youth Authority or the Department of Human Services, the state agencies primarily responsible for adjudicated youth. To avoid an imminent danger to the child's life or health, the court may temporarily remove a child from his or her home. The court must hold a hearing the next judicial day, however, to allow the parents a chance to hear the evidence against them and to give an explanation. ORS 419B.183-.185. In 2003, the definition of child abuse was amended to include allowing a person under 18 years old to enter or remain in a place where methamphetamines are being manufactured.

Encouraging child abuse, depending on the circumstances, may be a Class B or C felony or a Class A misdemeanor.

In order for the juvenile court to stay involved in the family situation, the court first must find that the parent's action endangers the child, and/or that the child is in need of an agency to plan for his or her welfare. Then the court decides whether the child's custody should be given to the state agency or whether the child should be returned home. All juvenile court hearings are private and records are made public only if they relate to delinquency or emancipation proceedings. ORS 419A.225. Custody, child care, and child support matters are consolidated into juvenile court. This allows one judge to monitor the entire case, to make consistent decisions which will benefit the child, and to promote efficiency in the court system.

If the parents or child cannot afford to hire an attorney, the juvenile court may appoint an attorney to represent the parents or the child at state expense. An attorney may be appointed to represent the child because the district attorney may have conflicting interests and a neutral attorney would benefit the child. ORS 419B.195.

In Oregon, many persons are required by law to report suspected child abuse. ORS 419B.005-.040. The one exception to the reporting requirement is if the information was

obtained through confidential communications. ORS 419B.010. An example would be if an abuser reported the abuse to his or her attorney in the course of a confidential conversation.

Spiritual treatment defense is available for Murder and Manslaughter I when the victim is a child under the age of 14 or a dependent person. To prove this defense, the defendant must show that his or her religious beliefs dictated the actions against the victim. For example, if a person withheld medical treatment from his or her child, because he or she did not believe in the use of modern medicine, he or she could use the spiritual treatment defense. In 1999, the Oregon legislature allowed judges to consider this defense and gave the courts discretion in imposing a different sentence other than the mandatory Ballot Measure 11 sentences. See Unit 2 of this supplement. However, the defendant must meet multiple criteria before this defense would hold. Some of these criteria are: the defendant must be the parent of the child, the death or injury was not caused by the defendant, the defendant treated the injury solely by spiritual treatment according to his/her religious beliefs, the defendant believed that the child could recover, no other person previously died under the defendant's care, and the defendant doesn't have any other criminal record. ORS 419B.

FOSTER CARE AND ADOPTION

Foster Care

A foster home is under the jurisdiction of the Department of Human Services. If a child is abused, neglected, abandoned or found to have committed an act which would be criminal if he or she were an adult, DHS may place the child in a certified, licensed foster home under the supervision of the juvenile court. ORS 420.810. Other alternatives for placement would be with a parent or relative, local group homes operated by community agencies or homes or orphanages operated by non-profit private organizations similar to "Boys Town." A child found to have committed a crime can also be placed at the state training schools, Maclaren or Hillcrest. The juvenile court continues to monitor the placement of a foster child. DHS is required to do everything in its power to return the child to his or her home if that is possible. ORS 419B.340. If the child is not returned to his or her home, the juvenile court may terminate the parents' rights so that the child may be adopted. ORS 419B.340. The amount of time an abusive parent has to make the home safe enough for the return of the child is limited. If the child has been in foster care for 15 of the last 22 months, the court will terminate the parent-child relationship unless there is a compelling reason to do otherwise.

Adoption

An adoption in Oregon is filed with the clerk of the court and must be approved by the court. A person to be adopted may be of any age, even over 18. The birth parents of the child to be adopted must consent to the adoption unless a parent is found to be mentally ill, mentally deficient, or

imprisoned for three years or more, or has willfully deserted or neglected the child for a year. ORS 109.322-.324. If the child is 14 years or older, he or she must also consent to the adoption. ORS 109.328. If the person to be adopted is an adult, his or her consent is required and the court must find that the adoptee understands the ramifications of adoption and is not acting under duress or undue influence. The court may appoint a visitor or hold hearings or conferences to help in making this determination. ORS 109.329.

Oregon also requires that DHS be served a copy of each petition for adoption filed in the state, and that it has a chance to investigate the matter and report to the judge (except for stepparent adoptions). ORS 109.309(7).

There are no restrictions upon the race, religion, marital status, or sexual orientation of adoptive parents in Oregon. Once the adoption is approved, the birth parents no longer have any rights to the child, and the child can no longer inherit via state intestacy law from his or her birth parents or their families. ORS 109.381 and 112.175. In a stepparent adoption, however, the grandparents of the child must be notified of the pending adoption. They can petition for visiting rights with the child even if they are no longer "legal" grandparents. ORS 109.332.

Adoption records and court files relevant to adoption are "sealed" which means that neither adopted children nor their birth parents have access to information about one another. In 1998, however, Oregon voters approved a ballot measure allowing adopted children to view their birth certificates at age 21, if they wish. Oregon also maintains an adoption registry where adopted children and birth parents including putative (alleged) fathers may voluntarily register themselves if they would like to find out something about the other. ORS 109.421.5-109.500. If both children and parents register, the agency puts the parties in touch with each other so information can be exchanged. In addition, an adopted person can request that DHS conduct a search for information about his or her birth parents. If the parents are found, they can elect whether or not to allow their identities to be disclosed. ORS 109.502-.503.

A stepparent has an obligation to support a stepchild. ORS 109.053. Unless there is a will giving a stepchild a bequest, a stepchild cannot inherit from a stepparent. ORS 112.175.

SEPARATION, DIVORCE, AND CUSTODY

Marriage Problems

In many counties in Oregon, the court offers mediation in family court cases as an alternative to counseling or going to a divorce trial. In mediation, a trained third party meets with each spouse and works with them to attempt to reach agreement. This is especially important when children are involved, in that the mediator can often push parties to look at the effect that their problems may be having on the children. Private mediators are also available in most communities. In some counties,

mediators may also act as marriage counselors if the parties request the service.

Separation and Divorce

A marriage may be ended by starting an action for a dissolution (divorce) or annulment. A separation does not end the marriage, nor does it prevent the spouses from later requesting a dissolution of the marriage, or from reconciling without having to remarry. Void or voidable marriages are ended by an annulment while all other marriages are ended by a dissolution. ORS 107.005 and 107.015.

A dissolution, annulment or separation action is begun by one of the parties filing a petition or a co-petition (if both parties are agreeable) with the court. A copy of the petition and a copy of the summons are "served on," or handed to, the other spouse. A lawyer usually starts the action, but nothing in the law prevents a spouse from starting an action for himself or herself. The person who did not file is the respondent and he or she may file a "response." The response informs the petitioner and the court that the respondent disagrees with something in the petition. If a low-income person cannot afford a lawyer, he or she may sometimes obtain free legal services through Legal Aid or other free or inexpensive resources.

Upon filing for annulment, separation, or dissolution an automatic financial restraining order is implemented. It restrains either party from changing insurance policies or beneficiaries, failing to pay premiums or disposing, concealing, or encumbering any assets. There are some exceptions to this restraint, however.

Under current law, no trial can be held on the merits for dissolution of the marriage until 90 days has passed. ORS 107.095. However, the judge can waive this 90 day waiting period where a stipulated judgment has been signed by both parties concerning custody, parenting or child support, and spousal support.

The court may grant a judgment even if there is custody or support involved. The court must have enough information in an affidavit to ensure the amount requested for support is fair and complies with state law relevant to child support. ORS 25.270-.290. Courts may also order custodial investigations of domestic relations and interview 3rd parties to uncover the true happenings in the family. Courts can also access mental health records of the parties involved in the separation. ORS 107.115.

Separation

In Oregon the court may declare the parties to be legally separated when:

1 irreconcilable differences between the parties have caused the temporary or unlimited

breakdown of the marriage;

2 the parties have a written agreement to live separately for at least a year, the agreement is filed with the court, and the court finds the agreement to be fair; or

3 irreconcilable differences exist between the parties, and the continuation of their status as married persons preserves or protects legal, financial, social or religious interests. ORS 107.025(2).

When the parties wish to be legally separated, the court then orders that the parties will be legally separated for a limited or an unlimited period of time, or until either of them obtains a divorce. Only one person need file for the divorce. Notice must be given to the other spouse but no appearance need be made by the spouse unless he or she wishes to contest the divorce.

Even in an informal separation arrangement, the parent who does not have custody of the children can be ordered to pay support for those children. ORS 25.240. The process of establishing the obligation to pay support is most often initiated by the Oregon Department of Justice through its Division of Child Support. ORS Chapter 25. There is no minimum residency requirement for filing a separation action but one party has to live in Oregon at the time the petition is filed. ORS 107.075(3).

Divorce

Oregon is a "no fault" divorce state. ORS 107.036. The grounds for divorce, called dissolution in Oregon, are as follows:

1 the marriage is voidable, because of incapacity, force or fraud; or

2 irreconcilable differences between the parties have caused the irremediable breakdown of the marriage (this is the "no fault" divorce). ORS 107.015 and 107.025.

Some couples seeking a divorce in Oregon may find that there is a waiting period to establish residency. Others will not. Those with no waiting period include:

1 those whose marriage was solemnized in Oregon;

2 the marriage is void or voidable; and

3 either party lives in Oregon when the divorce action is begun. ORS 107.075(1).

Those who do have to wait to establish residency are:

1 those who were married outside the state; or

2 the marriage is not void or voidable.

In that case, at least one of the parties must live in Oregon continuously for the six months immediately preceding the filing for dissolution. ORS 107.075.

In a suit for dissolution, the court may not enter a decree of dissolution until 90 days after the other party has been served with a summons and petition. If there is an emergency or other necessity, the court may grant a waiver of the waiting period. ORS 107.065.

Oregon law does not say that the court is required to grant a divorce if one spouse wants a divorce and the other wants only a separation. In practice, however, the court will normally grant a divorce if one of the spouses wishes to be divorced, largely because of the irreconcilable differences requirement.

Once a divorce is granted there is still a thirty-day waiting period during which time the parties are still married to each other. Neither party may remarry during that time, although they may, by joint written motion of both parties, set aside the judgment dissolving the marriage. ORS 107.115(4).

In an annulment the court declares the marriage void as if it never happened. The court will set a date to decree the end of the marriage relationship, and there is no thirty-day waiting period after the court enters the decree. ORS 107.115(6).

Child Custody

Each parent has an equal right to custody so the court may not give preference to either parent on the basis of their sex. More fathers are requesting custody than in the past and many courts are giving them custody. As a child grows older, his or her preference to live with one parent over the other becomes more important. However, this is only one factor and the court must take into consideration the following:

1. the emotional ties between the child and other family members;
2. the interest of the parents in and attitudes toward the child;
3. the desirability of maintaining an existing relationship or custody award; and
4. the abuse of one parent by the other. ORS 107.137.

Appellate courts have indicated that a court may consider the conduct, marital status, income, social environment or lifestyle only if it is shown that any of these factors are causing emotional or physical damage to the child.

While the child cannot dictate to the judge the parent with whom he or she will live, the judge

will listen to the child. By keeping the children happy, judges hope to prevent creating delinquents. Sometimes the judge will talk to the child privately, or with the lawyers for the parents present, to find out what the child's wishes are. This happens rarely, however, as judges are reluctant to involve children in processes viewed as adult in nature.

Often the judge will leave the child with the parent with whom he or she has been living because changing custody may be very traumatic for the child. After one parent has been awarded custody, the other parent has to show an important change in the facts to get the judge to change custody. For example, the court may change custody if the custodial parent becomes mentally ill or marries someone who does not get along with the child. If the custodial parent dies, the surviving parent usually gets custody, unless that parent is unfit.

The Oregon legislature and the courts have recognized that visitation by the non-custodial parent is extremely important to the child. If the custodian interferes with this relationship by intentionally denying visitation, the judge might change custody, reduce or terminate child support, or hold the custodial parent in contempt of court (and possibly jail that parent). ORS 33.010.

However, if a parent is abusive, it is in the best interests of the child to award custody to the other parent. If the abuse is extreme, the abusive parent may not be allowed to have visitation privileges. Also, if the custodial parent wishes to move within 60 miles of the original home, and the other parent does not have visitation rights, the custodial parent does not have to notify the non-custodial parent of the move.

The parents may also agree on joint custody of the child or children. Joint custody is defined as an arrangement by which both parents share rights and responsibilities for major decisions concerning the child, for example the child's residence, education and religious training. ORS 107.169. A joint custody arrangement does not alter the responsibility that both parents have for supporting their children, so one parent will probably be ordered to pay support to the other despite the joint custody designation. The court cannot award joint custody without both parents agreeing to the arrangement. ORS 107.169(3).

Grandparents have an independent right to petition the court to award them visitation rights with their grandchildren. They can seek to attain these visitation rights in a court setting, and sometimes their attorneys' fees can be assigned to the opposing party. ORS 109.121 to 109.123. Likewise, any other person who has established strong emotional ties to a child can petition the court to be part of the proceedings involving the child. ORS 109.119.

Alimony, Property Division, and Child Support

Alimony

In Oregon, alimony is called spousal support. Either spouse may be ordered to contribute to the support of the other regardless of his or her sex or who is ending marriage. In determining spousal support amount, duration, and property division, the court considers three categories: transitional support, compensatory, and maintenance. The person seeking spousal support must argue that they fit into one of the three categories. The court takes the following factors into consideration. ORS 107.105(1)(d):

1. the length of the marriage;

2. the ages and physical and mental health of the parties;

3. the contribution by one spouse to the education, training, and earning power ofthe other spouse;

4. the earning capacity of each party including their educational background, training, employment skills and work experience;

5. the ages, health, dependency of the children;

6. tax liabilities;

7. long-term financial obligations;

8. costs of health care;

9. the standard of living established during the marriage; and

10. the need for maintenance, retraining or education to enable the spouse to become employable at suitable work, or to enable the spouse to pursue career objectives.

Oregon is not a community property state, but the courts usually attempt to divide the property down the middle in cases of annulment, dissolution or legal separation. This includes property acquired before and during the marriage whether acquired by gift, inheritance or purchase. The court may consider the source of the property in separating the property. Judges are required to separate the parties' financial conditions as much as possible. If there are minor children of the marriage the court will usually attempt to award the family residence to the custodial parent, at least until the youngest child turns 18, but this is not a requirement.

Child Support

Both parents have a duty to support their children. ORS 109.010. The amount of support depends upon both the needs of the children and each parent's ability to pay. A mathematical formula is used by the courts to determine the amount of child support that the noncustodial parent should be required to pay. This formula allocates a presumed child support requirement between the parents based on their relative incomes. Judges can vary from this formula if there are special circumstances regarding the children or one or both of the parents. For instance, if a child has certain physical disabilities and needs specialized equipment to assist in handling the disability, a

judge might order a parent to pay more child support than the formula indicates that parent normally should be paying. ORS 25.270 to 25.280. Also, the court will consider Social Security and Veterans' benefits that the parents have been awarded because of disabilities.

GOVERNMENT SUPPORT FOR FAMILIES AND INDIVIDUALS

Economic Benefits for Individuals and Families

The state has programs similar to the Federal Social Insurance Programs, most notably a limited old-age assistance program (ORS Chapter 413) and an assistance program for the blind and disabled (ORS Chapter 412). Application for the programs is usually made at the local office of the Department of Human Resources (often referred to as the welfare office).

The state can exempt 75% of certain lump sum payments from garnishment for the purposes of collecting past due child support. The court also possesses the discretion to withhold a greater amount of the person's retirement money to pay old child support debts. ORS 412.610.

Medicare Oregon has a medical assistance program similar to the Federal Medicare program, called the Oregon Health Plan (ORS Chapter 414). An individual applies for this program at the local office of the Department of Human Services. This plan includes mental health services to those who need them, and it is consistent with and supports local programs. ORS 414.022.

Pharmacists may administer vaccines and other procedures to people over the age of 18. The State Board of Pharmacy must adopt the relevant rules of administering these vaccines and recording the immunizations to the patient's primary health care providers. This expands the patients' access to life saving vaccines. ORS 414.025.

Programs to Aid the Poor

Aid to Families with Dependent Children In Oregon, this program is called ADC, Aid to Dependent Children (ORS Chapter 411). At times, this program is available for low-income, two-parent families and other times it is not. Most recipients, except those with very young children, are required to participate in some sort of job training and job search program. Money for child care while they are doing the training or looking for a job is available, as is money for transportation and other costs connected with job searches.

In-home aids who are paid by the Seniors and People with Disabilities Division are not state employees. They serve children with developmental disabilities, which was an area previously maintained by the State Office for Services to Children and Families. This program works with the Department of Human Services along with many other similar programs. ORS 411.590.

Elder Abuse Prevention Act

Under ORS 124.005-.040, any person over the age of 65 can obtain an Elder Abuse Prevention Act restraining order against a cohabiter, a former cohabiter, a present or past caregiver if there is or was abuse. Abuse is defined as causing the elderly person physical injury, attempting or threatening physical injury, abandoning the elderly person, or using inappropriate language resulting in fear.

Sending mail sweepstakes promotions to elderly, incapacitated, or disabled people who spent over $500 on sweepstakes promotions the previous year is also classified as abuse under the Elder Abuse Prevention Act. See Unit 4 of this supplement for more information.

The process for obtaining an order is identical to that for obtaining a Family Abuse Prevention Act restraining order. The respondent has a right to a hearing to contest the order. Elderly people are entitled to as much protection as a disabled person. However, the petitioner in the claim bears the burden of proving his or her claim by a preponderance of the evidence. ORS 124.010.

Individual Rights and Liberties

INTRODUCTION TO CONSTITUTIONAL LAW

In Chapter One of the *Street Law* textbook, the basic rights granted to the citizens of our country under the United States Constitution were outlined. The Constitution of the State of Oregon similarly affords the same basic rights to the citizens of Oregon, thus creating an interrelationship between the United States and Oregon assuring that these basic rights are protected.

In recent years, the Oregon Supreme Court has increasingly relied upon the Oregon Constitution to develop and affirm individual rights. Indeed, the Court has said that rights under Oregon statutes and constitutional provisions should be *first* addressed before federal statutes or constitutional provisions. One example is *Hewitt v. SAIF*, 294 Or. 33, 653 P.2d 970, a 1983 case

which used Art. I, Sec. 20 in effect to give Oregon an Equal Rights Amendment. Similarly in *State v. Caraher*, 293 Or. 741, 653 P.2d 942 (1982), the Court criticized federal evidence law and relied upon the Oregon Constitution to develop a test of relevance and reasonableness. This trend may be expected to continue.

The state and federal constitutions have very similar provisions. These similarities illustrate that the basic rights of the citizens of Oregon are protected by both the Oregon *and* Federal Constitutions.

FREEDOM OF SPEECH

The Importance of Freedom of Speech

Speech and association are important rights in the United States. Although it is an historical accident of placement, that Amendment which protects these rights is the first of the Bill of Rights. The Constitution was approved only with a promise that these rights would be specifically protected. Some writers have asserted, as did John Stuart Mill in his book, *On Liberty*, that these are the rights upon which all the others depend. Courts have therefore held that prior restraints on rights of speech, publication, or association face a severe burden and are normally impermissible. Any restraints on speech or association will be looked at closely by thecourts, with the burden placed on government to justify any limitations they have placed on these rights.

Free Speech for Minors?

Minors are subject to much greater regulation than adults. For example, curfew laws, upheld by the courts, prohibit minors from being out at late hours except with express parental permission and for certain enumerated reasons. Compulsory attendance laws require minors to attend school, or they and their parents/guardians will be subject to arrest.

Minors can be punished by the law for offenses which would not be offenses if committed by adults (so-called "status offenses"). Once arrested, minors, under rulings of the U.S. Supreme Court, have most of the rights and protections which adults would have, except that the very offense may be one which would not apply for an adult, *e.g.*, truancy, runaway. Minors are under the control of their parents or guardian, and of the law and courts, in ways that adults are not, and can have speech and association rights limited by parents or by a court acting in their place. It is common for a juvenile court to prohibit association with particular individuals. Some court orders may be subject to constitutional attack, if not closely related to the offense for which the child is brought into court; but many are valid. For example, the Oregon Supreme Court held that juvenile court sessions must be public, despite conflicting privacy rights of the child, underArticle I, Section 10 of the Oregon Constitution. But in the juvenile court, some rights, such as trial by jury and right to bail are lost. Also, in deciding sentencing, the court may be very restricted.

In Oregon, minors with legal questions may be eligible for Legal Aid assistance; if arrested they may be eligible for a court-appointed attorney; or when constitutional rights are in question, they may turn to groups such as ACLU.

Free Speech in Oregon

In 1996, Oregon voters decided to keep the Oregon Constitution one of the freest in the country in regard to speech. The Oregon Constitution does not recognize any content restrictions when regulating speech. Therefore, speech that in other states might be deemed "obscene" due to its sexual content is simply speech in Oregon, because obscenity is not a restricted speech here.

In most states, a city or state attorney can bring an action against an individual or business for selling or distributing obscenity. For something to be considered obscene, it must appeal to the sexual interests, have no redeeming artistic or scientific value, and be outside the realm of contemporary community standards in that area. This test is not applicable in Oregon since "obscene" speech is not distinguished from other types of speech.

The Oregon Supreme Court has held that a ballot measure which limits or bans political contributions to a political candidate violates the state constitution's free speech protections. *Vannatta v. Keisling*, 324 Or. 514, 931 P.2d 770 (1997). The court found that every dollar someone spends on a political campaign is a type of advocacy. For the state government to limit that advocacy is a violation of Oregon's broad free speech clause. What does this mean for those pushing campaign finance reform? How can such reform be instituted while still protecting our strong free speech provisions?

Time, Place, and Manner Restrictions

In public places, speech and association may not normally be prohibited altogether (with some exceptions, such as demonstrations at courthouses which might interfere with rights of trial and due process), but may be limited as to time, place, and manner. Such limitations may exist to protect other rights of speech, business, assembly, security, etc. For example, the federal court in *Rosen v. Port of Portland*, 641 F.2d 1243 (1981), held that the Port of Portland cannot entirely prevent political and religious groups from distributing literature at the Portland airport, although it may limit the time, place, and manner in which they do so, so long as is the limitations are not unreasonable. Similarly, government may require parade permits, and similar nondiscriminatory permits for park and public place usage, so long as public officials do not deny the permit based upon the group or its message.

In the modern world, there are also many quasi-public places, such as large shopping centers and company towns which, although they seem to be public places, are in fact privately owned and regulated. The U.S. Supreme Court, in a case concerning demonstrators at the Lloyd Center in

Portland, held that the federal First Amendment did not ensure a right of access to such property for demonstrators. *Lloyd Corp., Ltd. v. Tanner*, 407 U.S. 551 (1972). California and some other states have held that state statutes or constitutions allowed such access, but Oregon has not so interpreted its laws.

EXPRESSION IN SPECIAL PLACES

The First Amendment in Public Schools

Many "public" places are not "open-to-the-public" places, such as the classroom, and are subject to special rules. These are places where rights conflict, where rights of order, security, academic freedom, speech, and teaching/learning meet each other, and there must be some accommodation. The right to speech may not include the right to disrupt someone else's speech. In the classroom, although the Ninth Circuit Court of Appeals held that the federal Constitution allows dress codes, Oregon's Court of Appeals held in 1973, *Neuhaus v. Cascade School District*, 12 Or. App. 314, 505 P.2d 939, that Oregon schools could not impose a hair length requirement. The Court determined that unless the student dress disrupted the educational process, it could not be restricted. In this way, the Oregon constitution is more permissive ofstudent free expression than is the federal constitution.

Since the 1980s, courts have expanded schools' ability to limit students' rights of expression. The U.S. Supreme Court has decided that student expression in school-sponsored events and publications can be censored when the expression conflicts with the basic educational mission of the school. In *Bethel School District v. Fraser*, 478 U. S. 675 (1986), the U.S.Supreme Court upheld a school's suspension of a student who delivered a speech with an extended sexually explicit metaphor during a school assembly. In *Hazelwood School Dist. v. Kuhlmeier*, 484 U. S. 260 (1988), the U.S. Supreme Court upheld a school's removal of two stories about the effects of pregnancy and divorce from the school newspaper.

To counteract this increased power of schools to censor student expression, Oregon passed a law in 2007 protecting student journalists' freedom of expression in school-sponsored publications. A school can only censor material if it disrupts the school, is libelous or slanderous, encourages illegal acts, violates school regulations, or does not comply with the professional standards of English or journalism. A school cannot censor material just because it disagrees with the student's viewpoint.

Even with Oregon's new law in place, the line separating student expression and the school's right to censorship is blurry. In 2000, the Oregon Court of Appeals upheld the expulsion of a student who distributed his underground newspaper at school. *Pangle v. Bend-LaPine School Dist.*, 10 P.3d 275. Typically, because underground newspapers are not school-sponsored publications, the school

can only censor those that disrupt the school. In *Pangle,* the student claimed he was joking about blowing things up, but the court reasoned that national fears about increasing school violence allowed the school to expel the student even though the newspaper did not cause a disruption at school.

Similarly, in 2007, the U.S. Supreme Court upheld the suspension of a student who displayed a large banner proclaiming "BONG HiTS 4 JESUS" across the street from his school during the celebration of the Olympic Torch passing through his town. *Morse v. Frederick*, 127 S. Ct. 2618. Because promoting drug use conflicts with a school's basic educational mission, a school can discipline a student who promotes drug use regardless of whether the student's expression occurs in a school-sponsored activity or causes a disruption at school.

The protection of *teachers'* rights may also result in protection of students. For example, in 1976, the Oregon Federal Court in *Wilson v. Chancellor*, 418 F. Supp. 1358, ruled that a schoolteacher could, without being disciplined, invite a Communist speaker to speak to his class. The teacher's method of teaching was a protected form of expression under the First Amendment. The school could not ban certain political speakers.

Similarly, around the country, many courts have stepped in to prevent citizens, parents, or school boards from censoring or removing books from classrooms or school libraries, or from punishing teachers because they exercised their constitutional speech rights. Groups objecting to such books as *Catcher in the Rye*, *Catch 22*, or Judy Blume's novels, have been prevented from removing them from the schools.

What is important to understand about many of these cases is that one person's rights, even constitutional rights, may conflict with another's constitutional rights. Parents' and schools' rights to determine content of books and lessons and to instruct children may collide with teachers' or students' rights to hear a point of view or read a book. A book, such as *Soul on Ice* or *Huckleberry Finn*, may be attacked because it is thought racist or sexist. A teacher or student wants to use it, while someone else objects to its use. Or a student objects to being forced to read or discuss a book which is fundamentally objectionable to his or her beliefs. The legitimate concerns and rights of parents, students, school boards, citizens, may collide. In the balancing of rights which follows, preference is usually given to that resolution which permits the most expression, so long as that expression does not interrupt the educational process. The U.S. Supreme Court, in the *Island Trees School Board* case, decided in 1982, reaffirmed the preference for non-censorship, but left open the question of whether parents' rights may allow for greater control. *Board of Education, Island Trees Union Free School District No. 26 v. Pico*,457 U.S. 853, 102 S.Ct. 2799 (1982).

In 1923, Oregon passed a law which prohibited education in private schools. The U.S. Supreme Court invalidated that law in a 1925 decision, *Pierce v. Society of Sisters*, 268 U.S. 510,

stating that the parents and child had the freedom to choose their own forum for education. Another law, passed by the same Ku Klux Klan dominated legislature, prohibited any textbook from speaking slightingly of the founding fathers. After the federal court held this prohibition may violate students' rights to free access of information, *Johnon v. Stuart*, 702 F. 2d 193 (1983), the prohibition was removed from the law. ORS 337.260. Students cannot be denied the right to hear views and facts, truth or opinion, during their education even though they may be unfavorable to historical figures.

FREEDOM OF RELIGION

When government has sought to impose religious practices, such as government sponsored prayer or religious programs, courts have uniformly held this improper, finding that the First Amendment prevents government from imposing one religion, any religion, or no religion. Under the State Constitution of Oregon and the First Amendment of the Federal Constitution, the government may not fund religious colleges or pay for their books. Under an Oregon Attorney General's opinion, the distribution of Gideon Bibles to public-school children, because it suggests government sponsorship, is also prohibited. Government is thus prevented from forcing any religious view upon public school students. In the school and classroom, both Oregon and federal law, as interpreted by the courts, prevent attempts to sponsor one, or any, religion or non-religion. School prayers, religious exercises, and officially sponsored religious ceremonies (as at graduations) do not belong in the school. *However*, it is not only permissible but good to teach *about* religions and their presence in American history and life, so long as no individual or group uses the classroom to impose a view upon captive students. To prevent teaching *about* religion, as opposed to propagation of religion, would violate constitutional rights.

DUE PROCESS

The Fifth Amendment of the U.S. Constitution provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, orproperty, without due process of law." Because this Amendment was a limitation on the *federal* government, it was held not to apply to the States. As federal protections developed, States had their own, in most cases, less protective laws. The Fourteenth Amendment, ratified in 1868, held "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." In the 20th Century, the Supreme Court gradually began to hold that, under the Fourteenth Amendment, provisions of the federal Bill of Rights were an inherent part of our freedoms and applied to the States. Thus the due process clause of the Fifth Amendment was held to apply to the States by virtue of the Fourteenth Amendment.

As a result, especially under the Warren Court in the 1950's and 1960's, the U.S. Supreme Court set for the nation a *federal constitutional minimum standard* for due process rights. In civil

and criminal cases, the Court held that due process requires prior notice and an opportunity for a hearing before significant deprivations of liberty could occur such as denial of welfare rights (*Goldberg v. Kelley*, 397 U.S. 254, 90 S.Ct. 1011 (1970)) or seizure of personal property (*Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337, 89 S.Ct. 1820 (1969)).

Under the Burger Court (in the 1970s) there was a retreat in the U.S. Supreme Court's willingness to develop and preserve federal constitutional rights of due process. Many state courts have responded by developing new state statutory and constitutional protections. Several Oregon cases dealing with exclusion of unlawfully obtained evidence have set different and higher standards than the federal courts (*i.e.*, greater protection for the people). *State v. Caraher*, *supra*, one such case in 1983, found that the federal evidence law, which Oregon had been following since 1974, was badly in need of simplification. When police, having arrested a suspect for drug possession, proceeded to search her purse and wallet, the Court turned to the *State* Constitution, rather than U.S. Constitution, to inquire whether the search was reasonable and relevant. The search was approved under the *State* test.

This important trend may be expected to produce more and more decisions under the State Constitution. The federal law is seen as a floor which sets the minimum, but the States are always free to give *greater* protection to individual rights.

The Right to Die – Oregon's Death With Dignity Act

In 1994 and 1997, the voters in Oregon approved the Death with Dignity Act. ORS 127.800-.995. Under this Act, a terminally ill person with less than six months to live may ask his or her physician to prescribe certain drugs that will cause the person's death. The law includes provisions for verification of a person's medical condition and mental health. A person may not qualify under the Act simply because the individual is old or disabled. As of 2006, 292 terminally ill patients have died under the Act.

This bill has encountered much resistance, but in 2006, the U.S. Supreme Court held the Attorney General of the U.S. cannot prohibit physicians from prescribing federally controlled drugs for use in physician assisted suicide. Not only does this important decision uphold the legality of the Death with Dignity Act, it confirms each state's authority to determine the scope of medical practice within its borders.

Hospitals have also attempted to punish doctors participating in following this Act, and in 1999, the Oregon legislature amended the Death with Dignity Act to provide strict requirements. ORS 127.800-127.897. An attending physician must request proof from the patient that he or she is a resident of Oregon, the doctor must counsel a patient to have another person present when he or she takes the medication, and the patient must not take the medication in a public place. The

physician must follow the expressed policies of the hospital. Some hospitals possess strict policies against the Act. Therefore, if the death takes place on hospital premises, the doctor may be punished by losing visiting privileges. If the physician was only leasing office space from the hospital when he or she participated in the Act, he or she could possibly lose the lease. However, the hospital may not recover monetary damages from a physician that participates in the Act. ORS 127.800-127.897.

The 1999 legislature also included pharmacists in the definition of a health care provider which allows participation in the Act. However, it allows the pharmacist to refuse to issue a prescription to aid the person to take his or her own life.

THE RIGHT TO PRIVACY

In 1995, the Oregon legislature created laws to protect the rights of an individual in the area of genetic research and testing. When an individual's genetic information is improperly collected, retained, and/or disclosed, significant harm could result. The 1995 legislation declared genetic information to be the property of the person that it was taken from, and it could not be used, sold, or manipulated without that person's knowledge or consent. This applies to law enforcement officials, district attorneys, and medical researchers. ORS 659.705(1)(d) and (e).

The 1999 legislature redefined the term "anonymous research" in Oregon's genetic privacy statutes to help balance the complexity of issues involved with genetic information for patient privacy and confidentiality with the need for vital medical research. "Anonymous research" in Oregon must now be conducted in accordance with the Federal Policy for the Protection of Human Subjects and with the approval of an institutional review board. Also, to avoid problems in patient confidentiality, the Health Division no longer maintains a registry of DNA research. The 2003 legislature added the requirement that the person whose DNA is being used in anonymous research give his informed consent for the specific research.

DISCRIMINATION

Discrimination which violates the equal protection clause of the Fourteenth Amendment to the United States Constitution or any federal statute is unlawful in every state. Most states have supplemented the federal discrimination laws with statutes or court decisions which either duplicate federal laws or create additional categories of prohibited conduct. Oregon has a variety of such laws ORS 659.020 but does not have an equal protection clause in its constitution.

Discrimination Based on Gender

In 1983, the Oregon Supreme Court ruled, in *Hewitt v. SAIF*, supra, that Article I, Section 20 of the Oregon Constitution, the state privileges and immunities clause, is equivalent to equal

protection and due process clauses and prohibits treating people differently because of their sex. Gender-based classifications were found by the court to be inherently suspect, a standard which requires an extremely strong rationale for a law allowing such classifications before it can be upheld. Many observers have stated that with this case Oregon has the equivalent of an Equal Rights Amendment. Article I, Section 20 states: "No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens." In *Hewitt*, the Court held that a law which allowed a woman, but not a similarly situated man, to recover benefits under workers' compensation when they lived together and one died was unconstitutional.

Discrimination Based on Sexual Orientation

In 1996, the United States Supreme Court recognized that gays and lesbians cannot be denied equal access to the laws. *Romer v. Evans*, 116 S.Ct. 1620. A Colorado statute which was passed by the voters in a statewide election would have made it impossible for a gay or lesbian citizen to bring a lawsuit challenging a state or private action which discriminated against him or her on the basis of sexual orientation. For example, if someone were continually denied employment or housing because she was a lesbian, she would not be able to go to court claiming discrimination based on her sexual orientation. The Court found this statute unconstitutional.

State and Local Laws Against Discrimination

Discrimination in Employment

In the employment field Oregon has a statute which prohibits both employers and unions from discrimination because of race, religion, color, sex, national origin, marital status or age if the individual is between the ages of 18 and 65. It also prohibits discrimination because of the race, religion, color, sex, national origin, marital status or age of any other person with whom the individual associates or because of a juvenile record that has been expunged. In 2007, the Oregon Equality Act added sexual orientation to the list of prohibited bases for discrimination. These statutes specifically exempt discrimination by an employer which results from a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business. ORS 659.100.

In 1977, Oregon amended its employment discrimination law to define the term "because of sex" to include "because of pregnancy and related conditions." ORS 659.029. The purpose of the amendment was to nullify the effect in Oregon of a United States Supreme Court decision in1976 which held that discrimination on the basis of pregnancy is not sex discrimination within the meaning of the federal employment discrimination statute. *General Elec. Co. v. Gilbert*, 429 U.S. 125 (1976). The federal statutes were subsequently amended to cover pregnancy discrimination as well.

Employment discrimination on the basis of physical or mental handicap is prohibited if the handicap is unrelated to the person's ability to perform the job in question. Employers are prohibited from discriminating against persons because they have relatives working for the same employer, or because they have filed work safety violation complaints or because they have applied for workers' compensation. In 1997, Oregon's disability laws were brought into line with the federal Americans with Disabilities Act. ORS 659.410. In 2003, unlawful discrimination practices were expanded to include any act by state government that denies state services, programs, or activities to disabled persons.

In addition to prohibiting employment discrimination against some individuals, Oregon has a law declaring that the state in its capacity as an employer shall be a leader in taking affirmative action to eliminate all past and present discrimination on the basis of race, religion, national origin, age, sex, marital status, or physical or mental handicap not preventing adequate work performance. ORS 659.020.

Discrimination in Education

In education, discrimination is prohibited on the basis of age, handicap, national origin, race, marital status, religion or sex in public elementary, secondary, or community college programs and in higher education activities financed by moneys appropriated by the state legislature. Discrimination based on sexual orientation was prohibited in 2007 by the Oregon Equality Act. American history and government textbooks must be free from discrimination on the basis of race, color, creed, national origin, age, sex, or handicap. ORS 659.150.

Discrimination in Access to State Institutions or Programs

Discrimination on the basis of ability to pay, race, religion, sex, marital status or national origin is prohibited in admission to any state institution or its programs. Admission to the state drug program must be granted without regard to age, sex, race, nationality, religious preference, or ability to pay. ORS 430.550.

Other Discrimination

Any person who offers goods, services, facilities, or other accommodations to the public must offer them without discrimination on the basis of race, religion, sex, marital status, color, national origin, or handicap. Clubs or other establishments which are by their nature distinctly private are not covered by this law.

If an individual feels that he or she has been discriminated against on the basis of race, color, sex, marital status, religion, national origin, handicap, or sexual orientation, he or she may file a complaint with the Civil Rights Division of the Oregon State Bureau of Labor. The Civil Rights

Division will conduct an investigation of the situation and hold a conference to attempt to settle the complaint if there is evidence of discrimination. The terms of any settlement of a complaint shall be contained in a written conciliation agreement filed with the Commissioner ofthe Bureau of Labor. If conciliation fails, the Commissioner may conduct an administrative hearing. After considering the evidence, the commissioner shall issue findings of fact and conclusions of law.