

## **Appendix C**

### **ORS § 131.125**

The Oregon Annotated Statutes is updated with emergency legislation through Chapters 1-50, 52-59, 62-71 and 73-92. of the 2018 Legislative Session. Some sections may have multiple variants due to amendment by multiple acts. Revision and codification by the Legislative Counsel are updated as available, see ORS 173.111 et seq. For sections pending codification by the Legislative Counsel, see Newly Added Sections in the Table of Contents.

**LexisNexis® Oregon Annotated Statutes > Title 14 Procedure in Criminal Matters Generally (Chs. 131 – 153) > Chapter 131- Preliminary Provisions; Limitations; Jurisdiction; Venue; Criminal Forfeiture; Crime Prevention (§§ 131.005 – 131.920) > Time Limitations (§§ 131.105 – 131.155)**

### **131.125 Time limitations.**

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**(1)**A prosecution for aggravated murder, murder, attempted murder or aggravated murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of manslaughter may be commenced at any time after the commission of the attempt, conspiracy or solicitation to commit aggravated murder or murder, or the death of the person killed.

**(2)**A prosecution for any of the following felonies may be commenced within 12 years after the commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime before the victim attains 30 years of age:

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

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

- (a)**Strangulation under ORS 163.187 (4).
- (b)**Criminal mistreatment in the first degree under ORS 163.205.
- (c)**Rape in the third degree under ORS 163.355.
- (d)**Rape in the second degree under ORS 163.365.
- (e)**Sodomy in the third degree under ORS 163.385.
- (f)**Sodomy in the second degree under ORS 163.395.
- (g)**Unlawful sexual penetration in the second degree under ORS 163.408.
- (h)**Sexual abuse in the second degree under ORS 163.425.
- (i)**Using a child in a display of sexual conduct under ORS 163.670.
- (j)**Encouraging child sexual abuse in the first degree under ORS 163.684.
- (k)**Incest under ORS 163.525.

**(L)**Promoting prostitution under ORS 167.012.

**(m)**Compelling prostitution under ORS 167.017.

**(n)**Luring a minor under ORS 167.057.

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

**(a)**Strangulation under ORS 163.187 (3).

**(b)**Sexual abuse in the third degree under ORS 163.415.

**(c)**Exhibiting an obscene performance to a minor under ORS 167.075.

**(d)**Displaying obscene materials to minors under ORS 167.080.

**(5)**In the case of crimes described in subsection (3)(i) of this section, the victim is the child engaged in sexual conduct. In the case of the crime described in subsection (3)(k) of this section, the victim is the party to the incest other than the party being prosecuted. In the case of crimes described in subsection (3)(L) and (m) of this section, the victim is the child whose acts of prostitution are promoted or compelled.

**(6)**A prosecution for arson in any degree may be commenced within six years after the commission of the crime.

**(7)**A prosecution for any of the following felonies may be commenced within six years after the commission of the crime if the victim at the time of the crime was 65 years of age or older:

**(a)**Theft in the first degree under ORS 164.055.

**(b)**Aggravated theft in the first degree under ORS 164.057.

**(c)**Extortion under ORS 164.075.

**(d)**Robbery in the third degree under ORS 164.395.

**(e)**Robbery in the second degree under ORS 164.405.

**(f)**Robbery in the first degree under ORS 164.415.

**(g)**Forgery in the first degree under ORS 165.013.

**(h)**Fraudulent use of a credit card under ORS 165.055 (4)(b).

**(i)**Identity theft under ORS 165.800.

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

**(a)**For any other felony, three years.

**(b)**For any misdemeanor, two years.

**(c)**For a violation, six months.

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

**(a)**If the offense has as a material element either fraud or the breach of a fiduciary obligation, prosecution may be commenced within one year after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved

party and who is not a party to the offense, but in no case shall the period of limitation otherwise applicable be extended by more than three years;

**(b)**If the offense is based upon misconduct in office by a public officer or employee, prosecution may be commenced at any time while the defendant is in public office or employment or within two years thereafter, but in no case shall the period of limitation otherwise applicable be extended by more than three years; or

**(c)**If the offense is an invasion of personal privacy under ORS 163.700 or 163.701, prosecution may be commenced within one year after discovery of the offense by the person aggrieved by the offense, by a person who has a legal duty to represent the person aggrieved by the offense or by a law enforcement agency, but in no case shall the period of limitation otherwise applicable be extended by more than three years.

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

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

**(b)**Rape in the second degree, sodomy in the second degree or unlawful sexual penetration in the second degree may be commenced within 25 years after the commission of the crime.

**(11)**Notwithstanding subsection (10) of this section, if a prosecution for a felony listed in subsection (10) of this section would otherwise be barred by subsection (2) or (3) of this section, the prosecution must be commenced within two years of the DNA-based identification of the defendant.

**(12)**

**(a)**Notwithstanding subsection (2) of this section, if a prosecuting attorney obtains corroborating evidence of the crimes of rape in the first degree, sodomy in the first degree, unlawful sexual penetration in the first degree or sexual abuse in the first degree, after the period described in subsection (2) of this section, the prosecution may be commenced at any time after the commission of the crime.

**(b)**The corroborating evidence described in paragraph (a) of this subsection must consist of one of the following:

**(A)**Physical evidence other than a DNA sample, including but not limited to audio, video or other electronic recordings, text messages, guest book logs, telephone recordings and photographs.

**(B)**A confession, made by the defendant, to the crime the victim reported.

**(C)**An oral statement, made by the victim to another person in temporal proximity to the commission of the crime, corroborating the victim's report of the crime to a law enforcement agency.

**(D)**A written statement, created by the victim in temporal proximity to the commission of the crime and subsequently delivered to another person or to a law enforcement agency, corroborating the victim's report of the crime to a law enforcement agency.

**(E)**A report made by a different victim to a law enforcement agency, made either before or after the victim's report, alleging that the defendant committed another

crime of the same or similar character such that the two crimes could be charged in the same charging instrument under ORS 132.560.

**(13)**

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

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

## History

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1973 c.836 § 6; 1989 c.831 § 1; 1991 c.386 § 5; 1991 c.388 § 1; 1991 c.830 § 5; 1995 c.768 § 8; 1997 c.427 § 1; 1997 c.697 § 3; 1997 c.850 § 5; 2001 c.375 § 1; 2005 c.252 § 1; 2005 c.839 § 1; 2007 c.840 § 1; 2007 c.869 § 6; 2009 c.585 § 1; 2011 c.666 § 2; 2011 c.681 § 3; 2012 c.70 § 2, effective March 27, 2012; 2015 c.417 § 1, effective January 1, 2016; 2016 c.47 § 5, effective January 1, 2017; 2016 c.120 § 1, effective January 1, 2017.

Annotations

## LexisNexis® Notes

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## Notes

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### Uncodified Provisions

#### Stats 2012 ch. 70 § 2 provides:

The amendments to ORS 131.125 and 411.990 by sections 2 and 3 of this 2012 Act apply to offenses committed before, on or after the effective date of this 2012 Act, but do not operate to revive a prosecution barred by the operation of ORS 131.125 before the effective date of this 2012 Act.

#### Applicability

#### Stats 2016 ch. 120 § 2 provides:

**Sec. 2.** The amendments to ORS 131.125 by section 1 of this 2016 Act apply to offenses committed before, on or after the effective date of this 2016 Act but do not operate to revive a prosecution barred by the operation of ORS 131.125 before the effective date of this 2016 Act.

## Case Notes

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**Criminal Law & Procedure: Criminal Offenses: Property Crimes: General Overview**

Theft convictions were reversed because the charges were brought after the three-year statute of limitations ran; the court rejected the argument the statute of limitation did not begin to run while the stolen property was concealed because the indictment on its face did not allege concealment, much less specify the date within the statute of limitations when any concealment ended. *State v. Nistler*, 268 Ore. App. 470, 342 P.3d 1035, 2015 Ore. App. LEXIS 61 (Or. Ct. App. 2015).

## State Notes

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### SUPPLEMENTARY ANNOTATIONS:

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Note: Section 5 (2), chapter 666, Oregon Laws 2011, provides:

Sec. 5. (2) The amendments to ORS 131.125 by section 2 of this 2011 Act apply to offenses committed before, on or after the effective date of this 2011 Act [January 1, 2012], but do not operate to revive a prosecution barred by the operation of ORS 131.125 before the effective date of this 2011 Act. [ 2011 c.666 § 5(2)]

#### NOTES OF DECISIONS

For purposes of time limitations, "prosecution" refers to criminal action itself rather than filing of accusatory instrument. *Abbott v. Baldwin*, 178 Or App 289, 36 P3d 516 (2001), Sup Ct **review denied**

**See also** annotations under ORS 131.110 in permanent edition.

#### NOTES OF DECISIONS

Where warrant for defendant's arrest for unlawfully obtaining public assistance was executed three years and four months from date of alleged offense and state offered no reason for delay, indictment should have been dismissed. *State v. Barnes*, 66 Or App 896, 676 P2d 344 (1984)

Indictment containing two dates on which purportedly returned, one inside and one outside statute of limitations, does not satisfy statutory requirement that indictment show prosecution was commenced within period of limitation. *State v. Bovee*, 76 Or App 572, 710 P2d 786 (1985), Sup Ct **review denied**

Where defendant pleaded no contest to and was convicted of driving under influence of intoxicants in 1980 and in 1986 sought and was awarded post-conviction relief from that judgment, state's subsequent decision to continue prosecution was not barred by statute of limitations. *State v. Sisneros*, 84 Or App 306, 734 P2d 355 (1987), Sup Ct **review denied**

This section barred prosecution for theft completed more than three years before commencement of prosecution where state produced no evidence that defendant retained some form of interest in or control over the stolen property after possession was given to third-party purchaser, even though final payment was made by third party within three years of filing information. *State v. Bailey*, 94 Or App 767, 767 P2d 114 (1989)

Where Oregon State Bar complained to court in 1985 and 1987 that defendant was violating injunction for unauthorized practice of law by activities beginning in 1981, some of Bar's complaints may have been barred by laches since two years is presumptively reasonable period for initiating

criminal contempt action for violations of court order. Oregon State Bar v. Wright, 309 Or 37, 785 P2d 340 (1990)

1989 amendments that extended statute of limitations from three to six years for certain offenses did not operate retroactively to revive cases barred from prosecution by operation of prior law. State v. Tyler, 108 Or App 378, 815 P2d 1289 (1991); State v. Cookman, 127 Or App 283, 873 P2d 335 (1994), aff'd 324 Or 19, 920 P2d 1086 (1996)

Amendment of this section that extended statute of limitations for certain misdemeanors from two to four years did not violate constitutional prohibition against *ex post facto* laws when applied to case where two-year period of limitations had not yet expired upon effective date of amendment. State v. Dufort, 111 Or App 515, 827 P2d 192 (1992)

Listing of sexual offense by both description and current ORS number makes described offense charged under former ORS number subject to same statute of limitations as if charged under current ORS number. State v. Sharp, 151 Or App 122, 949 P2d 1230 (1997), Sup Ct **review denied**

Reporting of offense does not occur until actual communication, through oral or written narration, of facts that form basis for offense. State v. Hutchison, 176 Or App 363, 31 P3d 1123 (2001)

"Other governmental agency" means agency with investigative responsibility or having statutory duty to report sexual offense to agency with investigative responsibility. State v. Walker, 192 Or App 535, 86 P3d 690 (2004), Sup Ct **review denied**

Where statute of limitations is extended before statute of limitations applicable at time of offense has expired, application of extended statute of limitations to offense does not constitute *ex post facto* law. State v. Harberts, 198 Or App 546, 108 P3d 1201 (2005), Sup Ct **review denied**

Extended limitation period for commencing prosecution based on misconduct in office by public officer or employee applies only where limitation period under catch-all provision has expired. State v. Tannehill, 341 Or 205, 141 P3d 584 (2006)

Under 1980 version statute, legislature demonstrated clear intent that unlimited statute of limitations applies to aggravated murder. State v. Anthony, 234 Or App 659, 228 P3d 1222 (2010)

General three-year limitation period for charging felony applies to charge of attempted rape. Lamb v. Coursey, 238 Or App 647, 243 P3d 130 (2010), Sup Ct **review denied**