

# House Bill 3405

Sponsored by Representative LEWIS; Representatives BARRETO, BONHAM, DRAZAN, FINDLEY, LEIF, NEARMAN, SMITH DB, ZIKA

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Creates aggravated version of certain sex offenses. Increases crime classification when person, in order to facilitate commission of offense, knowingly causes other person to ingest controlled substance without other person's consent.

Punishes aggravated version of sexual abuse in the third degree by maximum of five years' imprisonment, \$125,000 fine, or both.

Punishes aggravated version of rape in the third degree, sodomy in the third degree and sexual abuse in the second degree by maximum of 10 years' imprisonment, \$250,000 fine, or both.

Punishes aggravated version of rape in the second degree, sodomy in the second degree, unlawful sexual penetration in the second degree and sexual abuse in the first degree by maximum of 20 years' imprisonment, \$375,000 fine, or both.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to sex crimes involving controlled substances; creating new provisions; amending ORS  
3 131.125, 163.355, 163.365, 163.385, 163.395, 163.408, 163.415, 163.425, 163.427 and 163A.140; and  
4 declaring an emergency.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1.** ORS 163.355 is amended to read:

7 163.355. (1) A person commits the crime of rape in the third degree if the person has sexual  
8 intercourse with another person under 16 years of age.

9 (2)(a) **Except as provided in paragraph (b) of this subsection**, rape in the third degree is a  
10 Class C felony.

11 **(b) Rape in the third degree is a Class B felony if the person, in order to facilitate the**  
12 **commission of the offense, knowingly causes the other person to ingest a controlled sub-**  
13 **stance as defined in ORS 475.005 without the other person's consent.**

14 **SECTION 2.** ORS 163.365 is amended to read:

15 163.365. (1) A person who has sexual intercourse with another person commits the crime of rape  
16 in the second degree if the other person is under 14 years of age.

17 (2)(a) **Except as provided in paragraph (b) of this subsection**, rape in the second degree is  
18 a Class B felony.

19 **(b) Rape in the second degree is a Class A felony if the person, in order to facilitate the**  
20 **commission of the offense, knowingly causes the other person to ingest a controlled sub-**  
21 **stance as defined in ORS 475.005 without the other person's consent.**

22 **SECTION 3.** ORS 163.385 is amended to read:

23 163.385. (1) A person commits the crime of sodomy in the third degree if the person engages in  
24 oral or anal sexual intercourse with another person under 16 years of age or causes that person to  
25 engage in oral or anal sexual intercourse.

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (2)(a) **Except as provided in paragraph (b) of this subsection**, sodomy in the third degree is  
 2 a Class C felony.

3 (b) **Sodomy in the third degree is a Class B felony if the person, in order to facilitate the**  
 4 **commission of the offense, knowingly causes the other person to ingest a controlled sub-**  
 5 **stance as defined in ORS 475.005 without the other person’s consent.**

6 **SECTION 4.** ORS 163.395 is amended to read:

7 163.395. (1) A person who engages in oral or anal sexual intercourse with another person or  
 8 causes another to engage in oral or anal sexual intercourse commits the crime of sodomy in the  
 9 second degree if the victim is under 14 years of age.

10 (2)(a) **Except as provided in paragraph (b) of this subsection**, sodomy in the second degree  
 11 is a Class B felony.

12 (b) **Sodomy in the second degree is a Class A felony if the person, in order to facilitate**  
 13 **the commission of the offense, knowingly causes the other person to ingest a controlled**  
 14 **substance as defined in ORS 475.005 without the other person’s consent.**

15 **SECTION 5.** ORS 163.408 is amended to read:

16 163.408. (1) Except as permitted under ORS 163.412, a person commits the crime of unlawful  
 17 sexual penetration in the second degree if the person penetrates the vagina, anus or penis of another  
 18 with any object other than the penis or mouth of the actor and the victim is under 14 years of age.

19 (2)(a) **Except as provided in paragraph (b) of this subsection**, unlawful sexual penetration  
 20 in the second degree is a Class B felony.

21 (b) **Unlawful sexual penetration in the second degree is a Class A felony if the person, in**  
 22 **order to facilitate the commission of the offense, knowingly causes the other person to**  
 23 **ingest a controlled substance as defined in ORS 475.005 without the other person’s consent.**

24 **SECTION 6.** ORS 163.415 is amended to read:

25 163.415. (1) A person commits the crime of sexual abuse in the third degree if:

26 (a) The person subjects another person to sexual contact and:

27 (A) The victim does not consent to the sexual contact; or

28 (B) The victim is incapable of consent by reason of being under 18 years of age; or

29 (b) For the purpose of arousing or gratifying the sexual desire of the person or another person,  
 30 the person intentionally propels any dangerous substance at a victim without the consent of the  
 31 victim.

32 (2)(a) **Except as provided in paragraph (b) of this subsection**, sexual abuse in the third de-  
 33 gree is a Class A misdemeanor.

34 (b) **Sexual abuse in the third degree is a Class C felony if the person, in order to facilitate**  
 35 **the commission of the offense, knowingly causes the other person to ingest a controlled**  
 36 **substance as defined in ORS 475.005 without the other person’s consent.**

37 (3) As used in this section, “dangerous substance” means blood, urine, semen or feces.

38 **SECTION 7.** ORS 163.425 is amended to read:

39 163.425. (1) A person commits the crime of sexual abuse in the second degree when:

40 (a) The person subjects another person to sexual intercourse, oral or anal sexual intercourse  
 41 or, except as provided in ORS 163.412, penetration of the vagina, anus or penis with any object other  
 42 than the penis or mouth of the actor and the victim does not consent thereto; or

43 (b)(A) The person violates ORS 163.415 (1)(a)(B);

44 (B) The person is 21 years of age or older; and

45 (C) At any time before the commission of the offense, the person was the victim’s coach as de-

1 fined in ORS 163.426.

2 (2)(a) **Except as provided in paragraph (b) of this subsection**, sexual abuse in the second  
3 degree is a Class C felony.

4 (b) **Sexual abuse in the second degree is a Class B felony if the person, in order to facil-**  
5 **itate the commission of the offense, knowingly causes the other person to ingest a controlled**  
6 **substance as defined in ORS 475.005 without the other person's consent.**

7 **SECTION 8.** ORS 163.427 is amended to read:

8 163.427. (1) A person commits the crime of sexual abuse in the first degree when that person:

9 (a) Subjects another person to sexual contact and:

10 (A) The victim is less than 14 years of age;

11 (B) The victim is subjected to forcible compulsion by the actor; or

12 (C) The victim is incapable of consent by reason of being mentally defective, mentally incapac-  
13 itated or physically helpless; or

14 (b) Intentionally causes a person under 18 years of age to touch or contact the mouth, anus or  
15 sex organs of an animal for the purpose of arousing or gratifying the sexual desire of a person.

16 (2)(a) **Except as provided in paragraph (b) of this subsection**, sexual abuse in the first degree  
17 is a Class B felony.

18 (b) **Sexual abuse in the first degree is a Class A felony if the person, in order to facilitate**  
19 **the commission of the offense, knowingly causes the other person to ingest a controlled**  
20 **substance as defined in ORS 475.005 without the other person's consent.**

21 **SECTION 9.** ORS 131.125 is amended to read:

22 131.125. (1) A prosecution for aggravated murder, murder, attempted murder or aggravated  
23 murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of  
24 manslaughter may be commenced at any time after the commission of the attempt, conspiracy or  
25 solicitation to commit aggravated murder or murder, or the death of the person killed.

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

29 (a) Rape in the first degree under ORS 163.375.

30 (b) Sodomy in the first degree under ORS 163.405.

31 (c) Unlawful sexual penetration in the first degree under ORS 163.411.

32 (d) Sexual abuse in the first degree under ORS 163.427.

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

37 (a) Strangulation under ORS 163.187 (4).

38 (b) Criminal mistreatment in the first degree under ORS 163.205.

39 (c) Rape in the third degree under ORS 163.355.

40 (d) Rape in the second degree under ORS 163.365.

41 (e) Sodomy in the third degree under ORS 163.385.

42 (f) Sodomy in the second degree under ORS 163.395.

43 (g) Unlawful sexual penetration in the second degree under ORS 163.408.

44 (h) **Sexual abuse in the third degree under ORS 163.415 (2)(b).**

45 [(h)] (i) Sexual abuse in the second degree under ORS 163.425.

- 1        [(i)] **(j)** Using a child in a display of sexual conduct under ORS 163.670.
- 2        [(j)] **(k)** Encouraging child sexual abuse in the first degree under ORS 163.684.
- 3        [(k)] **(L)** Incest under ORS 163.525.
- 4        [(L)] **(m)** Promoting prostitution under ORS 167.012.
- 5        [(m)] **(n)** Compelling prostitution under ORS 167.017.
- 6        [(n)] **(o)** Luring a minor under ORS 167.057.

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

- 11        (a) Strangulation under ORS 163.187 (3).
- 12        (b) Sexual abuse in the third degree under ORS 163.415 **(2)(a)**.
- 13        (c) Exhibiting an obscene performance to a minor under ORS 167.075.
- 14        (d) Displaying obscene materials to minors under ORS 167.080.

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

20        (6) A prosecution for arson in any degree may be commenced within six years after the com-  
 21 mission of the crime.

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

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

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

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

39        (9) If the period prescribed in subsection (8) of this section has expired, a prosecution never-  
 40 theless may be commenced as follows:

41        (a) If the offense has as a material element either fraud or the breach of a fiduciary obligation,  
 42 prosecution may be commenced within one year after discovery of the offense by an aggrieved party  
 43 or by a person who has a legal duty to represent an aggrieved party and who is not a party to the  
 44 offense, but in no case shall the period of limitation otherwise applicable be extended by more than  
 45 three years;

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

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

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

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

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

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

21 (12)(a) Notwithstanding subsection (2) of this section, if a prosecuting attorney obtains corrob-  
 22 orating evidence of the crimes of rape in the first degree, sodomy in the first degree, unlawful sexual  
 23 penetration in the first degree or sexual abuse in the first degree, after the period described in  
 24 subsection (2) of this section, the prosecution may be commenced at any time after the commission  
 25 of the crime.

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

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

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

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

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

36 (E) A report made by a different victim to a law enforcement agency, made either before or after  
 37 the victim's report, alleging that the defendant committed another crime of the same or similar  
 38 character such that the two crimes could be charged in the same charging instrument under ORS  
 39 132.560.

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

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

45 **SECTION 10.** ORS 163A.140 is amended to read:

1 163A.140. A person otherwise required to report under ORS 163A.010, 163A.015, 163A.020 or  
2 163A.025 is not required to report, and if currently reporting is no longer required to report, if:

3 (1)(a) The person has been convicted of:

4 (A) Rape in the third degree as defined in ORS 163.355 (2)(a);

5 (B) Sodomy in the third degree as defined in ORS 163.385 (2)(a);

6 (C) Sexual abuse in the third degree as defined in ORS 163.415 (2)(a);

7 (D) Contributing to the sexual delinquency of a minor as defined in ORS 163.435;

8 (E) Sexual misconduct as defined in ORS 163.445; or

9 (F) An attempt to commit an offense listed in subparagraphs (A) to (E) of this paragraph;

10 (b) The person has been found guilty except for insanity of an offense listed in paragraph (a) of  
11 this subsection;

12 (c) The person has been found to be within the jurisdiction of the juvenile court for having  
13 committed an act that if committed by an adult would constitute an offense listed in paragraph  
14 (a)(A) or (B) of this subsection; or

15 (d) The person is paroled to this state under ORS 144.610 after being convicted in another  
16 United States court of a crime that would constitute an offense listed in paragraph (a) of this sub-  
17 section;

18 (2)(a) The person is less than five years older than the victim;

19 (b) The victim's lack of consent was due solely to incapacity to consent by reason of being less  
20 than a specified age;

21 (c) The victim was at least 14 years of age at the time of the offense or act;

22 (d) Except for the convictions or findings described in subsection (1) of this section, the person  
23 has not been convicted of, found guilty except for insanity of, or found to be within the jurisdiction  
24 of the juvenile court based on, a sex crime or an offense, in another United States court, for conduct  
25 that if committed in this state would constitute a sex crime; and

26 (e) Each conviction or finding described in subsection (1) of this section involved the same vic-  
27 tim; and

28 (3) The court enters an order relieving the person of the requirement to report under ORS  
29 163A.145 or 163A.150.

30 **SECTION 11. The amendments to ORS 131.125, 163.355, 163.365, 163.385, 163.395, 163.408,**  
31 **163.415, 163.425, 163.427 and 163A.140 by sections 1 to 10 of this 2019 Act apply to crimes al-**  
32 **leged to have been committed on or after the effective date of this 2019 Act.**

33 **SECTION 12. This 2019 Act being necessary for the immediate preservation of the public**  
34 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**  
35 **on its passage.**

36