

**SB 566 A STAFF MEASURE SUMMARY**

**Carrier:** Sen. Gelser

**Senate Committee On Judiciary and Ballot Measure 110  
Implementation**

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**Action Date:** 03/25/21

**Action:** Do pass with amendments. (Printed A-Eng.)

**Vote:** 4-3-0-0

**Yeas:** 4 - Dembrow, Gelser, Manning Jr, Prozanski

**Nays:** 3 - Heard, Linthicum, Thatcher

**Fiscal:** Has minimal fiscal impact

**Revenue:** No revenue impact

**Prepared By:** Gillian Fischer, Counsel

**Meeting Dates:** 3/11, 3/25

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**WHAT THE MEASURE DOES:**

Removes term “mentally defective” from statutes defining sexual offenses. Provides that a person is incapable of consenting to sexual act if the person is incapable of appraising the nature of the person’s conduct. Directs the trier of fact to consider certain criteria when determining whether the victim had the capability of appraising the nature of the victim's conduct. Declares emergency, effective on passage.

**ISSUES DISCUSSED:**

- Measure does not expand scope of current crimes
- Removal of offensive terminology
- Diagnosis as current criteria for determining incapacity

**EFFECT OF AMENDMENT:**

Modifies criteria for a fact finder to determine if a person is incapable of appraising the nature of the person’s conduct.

**BACKGROUND:**

ORS 163.305 defines “mentally defective” as a person who suffers from a qualifying mental disorder that renders the person incapable of appraising the nature of the conduct of the person. Under Oregon criminal statutes relating to sexual offenses, a person is considered incapable of consenting to a sexual act if the person is mentally defective as defined.

Senate Bill 566 A removes the term mentally defective and instead states that a person is incapable of consent if the person is incapable of appraising the nature of their conduct and provides specific factors for the trier of fact to consider in evaluating a person's ability to appraise the nature of their conduct.