

**SB 752 STAFF MEASURE SUMMARY****Carrier:** Sen. Manning Jr**Senate Committee On Judiciary and Ballot Measure 110  
Implementation**


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**Action Date:** 03/31/21  
**Action:** Do pass.  
**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:** 3/17, 3/31

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**WHAT THE MEASURE DOES:**

Establishes an affirmative defense in certain prosecutions for sexual abuse in the second degree and sexual abuse in the third degree if a defendant reasonably believed that the victim consented to the sexual contact alleged. Provides that person convicted of sexual abuse in the second degree is not required to report as sex offender if criteria applicable to existing exceptions apply.

**ISSUES DISCUSSED:**

- Legislative intent of statute
- Mental states in criminal statutes
- Exceptions to sex offender registration
- Applicability of affirmative defense

**EFFECT OF AMENDMENT:**

No amendment.

**BACKGROUND:**

Under Oregon law, a culpable mental state is required for each element of a criminal offense except for those elements relating to the statute of limitations, jurisdiction, and venue. The core principles determining which mental state attaches to an element of a crime, according to Oregon case law, include: (1) the statute that defines an offense, read in the context of the Oregon Criminal Code's general culpability provisions, determines the applicable mental state or states; (2) if a statute does not prescribe a culpable mental state, culpability is established only if it is shown that the person had one of the four mental states—intentionally, knowingly, recklessly or with criminal negligence; (3) under the statutory definitions of those four culpable mental states, certain mental states apply to only certain categories of elements, i.e., conduct elements, circumstance elements, and result elements; and (4) knowledge is the minimum culpable mental state for conduct elements, while criminal negligence is the minimum culpable mental state for both circumstance and result elements.

In a recent Court of Appeals decision, *State v. Haltom*, the court held that the "does not consent" element of second-degree sexual abuse under Or. Rev. Stat. § 163.425(1)(a), absent clear legislative intent in the plain language of the statute of the mental state attached, is a "conduct element" and requires a knowing mental state. Thus, the court held, the trial court erred in instructing the jury that it could find defendant guilty if he acted with criminal negligence, recklessly, or with knowledge as to that element, which had not been disputed in front of the court.

Senate Bill 752 provides legislative clarification by establishing an affirmative defense to an allegation of second-degree sexual abuse based on non-consent if a jury finds the defendant reasonably believed the victim did

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consent to the sexual intercourse. The measure also amends sex offender registration exceptions under sex abuse in the second-degree to align with existing exceptions.