

Senate Bill 274

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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**.

Modifies certain provisions of law relating to crime of prostitution to exclude child victims of sex trafficking. Extends affirmative defense to crime of prostitution to victims of sex trafficking irrespective of results of any criminal prosecution for sex trafficking.

Provides affirmative defense to certain misdemeanors for victims of sex trafficking.

Directs Department of Human Services to study and make recommendations regarding changes to state law regarding child abuse investigations involving victims of sex trafficking. Requires department to report to interim committee of Legislative Assembly not later than September 15, 2022.

A BILL FOR AN ACT

1
2 Relating to victims of sex trafficking; creating new provisions; and amending ORS 12.117, 131.125,
3 161.005, 167.007, 167.017 and 419B.005.

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

IMMUNITY FOR CHILD VICTIMS OF SEX TRAFFICKING

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8 **SECTION 1.** Section 1 of this 2021 Act is added to and made a part of ORS chapter 419C.

9 **SECTION 2.** A person who is under 18 years of age at the time of committing an act that,
10 if committed by an adult, would constitute the crime of prostitution under ORS 167.007 is
11 immune from prosecution, may not be taken into custody as described in ORS 419C.080 or
12 419C.088 or issued a citation in lieu of custody as described in ORS 419C.085 and may not be
13 found to be within the jurisdiction of the juvenile court under ORS 419C.005 for committing
14 the act.

15 **SECTION 3.** ORS 167.007 is amended to read:

16 167.007. (1) A person commits the crime of prostitution if the person engages in, or offers or
17 agrees to engage in, sexual conduct or sexual contact in return for a fee.

18 (2) Prostitution is a Class A misdemeanor.

19 (3) It is an affirmative defense to prosecution under this section that the defendant, at the time
20 of the alleged offense, was a victim of the crime of trafficking in persons as described in ORS 163.266
21 (1)(b) or (c), **irrespective of any criminal prosecution or the result of a criminal prosecution**
22 **under ORS 163.266.**

23 **SECTION 4.** ORS 12.117 is amended to read:

24 12.117. (1) Notwithstanding ORS 12.110, 12.115 or 12.160, an action based on conduct that con-
25 stitutes child abuse or conduct knowingly allowing, permitting or encouraging child abuse that oc-
26 curs while the person is under 18 years of age must be commenced before the person attains 40
27 years of age, or if the person has not discovered the causal connection between the injury and the

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 child abuse, nor in the exercise of reasonable care should have discovered the causal connection
 2 between the injury and the child abuse, not more than five years from the date the person discovers
 3 or in the exercise of reasonable care should have discovered the causal connection between the
 4 child abuse and the injury, whichever period is longer.

5 (2) As used in subsection (1) of this section, "child abuse" means any of the following:

6 (a) Intentional conduct by an adult that results in:

7 (A) Any physical injury to a child; or

8 (B) Any mental injury to a child which results in observable and substantial impairment of the
 9 child's mental or psychological ability to function caused by cruelty to the child, with due regard
 10 to the culture of the child;

11 (b) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual pene-
 12 tration and incest, as those acts are [defined] **described** in ORS chapter 163;

13 (c) Sexual abuse, as [defined] **described** in ORS chapter 163, when the victim is a child; or

14 (d) Sexual exploitation of a child, including but not limited to:

15 (A) Conduct constituting violation of ORS 163.435 and any other conduct which allows, employs,
 16 authorizes, permits, induces or encourages a child to engage in the performing for people to observe
 17 or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts
 18 sexual conduct or contact; and

19 (B) Allowing, permitting, encouraging or hiring a child to engage in [prostitution], **or offer or**
 20 **agree to engage in, sexual conduct or sexual contact, as those terms are defined in ORS**
 21 **167.002, in return for a fee** or commercial sexual solicitation, as [defined in ORS chapter 167] **de-**
 22 **scribed in ORS 167.008.**

23 (3) Nothing in this section creates a new cause of action or enlarges any existing cause of
 24 action.

25 **SECTION 5.** ORS 131.125 is amended to read:

26 131.125. (1) A prosecution for aggravated murder, murder, attempted murder or aggravated
 27 murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of
 28 manslaughter may be commenced at any time after the commission of the attempt, conspiracy or
 29 solicitation to commit aggravated murder or murder, or the death of the person killed.

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

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

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

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

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

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

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

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

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

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

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

- 1 (f) Sodomy in the second degree under ORS 163.395.
- 2 (g) Unlawful sexual penetration in the second degree under ORS 163.408.
- 3 (h) Sexual abuse in the second degree under ORS 163.425.
- 4 (i) Using a child in a display of sexual conduct under ORS 163.670.
- 5 (j) Encouraging child sexual abuse in the first degree under ORS 163.684.
- 6 (k) Incest under ORS 163.525.
- 7 (L) Promoting prostitution under ORS 167.012.
- 8 (m) Compelling prostitution under ORS 167.017.
- 9 (n) Luring a minor under ORS 167.057.

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

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

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

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

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

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

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

- 39 (a) For any other felony, three years.
- 40 (b) For any misdemeanor, two years.
- 41 (c) For a violation, six months.

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

- 44 (a) If the offense has as a material element either fraud or the breach of a fiduciary obligation,
 45 prosecution may be commenced within one year after discovery of the offense by an aggrieved party

1 or by a person who has a legal duty to represent an aggrieved party and who is not a party to the
2 offense, but in no case shall the period of limitation otherwise applicable be extended by more than
3 three years;

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

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

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

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

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

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

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

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

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

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

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

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

39 (E) A report made by a different victim to a law enforcement agency, made either before or after
40 the victim's report, alleging that the defendant committed another crime of the same or similar
41 character such that the two crimes could be charged in the same charging instrument under ORS
42 132.560.

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

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

3 **SECTION 6.** ORS 167.017 is amended to read:

4 167.017. (1) A person commits the crime of compelling prostitution if the person knowingly:

5 (a) Uses force or intimidation to compel another to engage in prostitution or attempted
 6 prostitution;

7 (b) Induces or causes a person under 18 years of age to engage in [*prostitution*], **or offer or**
 8 **agree to engage in, sexual conduct or sexual contact in return for a fee;**

9 (c) Aids or facilitates [*the commission of prostitution or attempted prostitution by*] a person under
 10 18 years of age **in engaging in, or offering or agreeing to engage in, sexual conduct or sexual**
 11 **contact in return for a fee;** or

12 (d) Induces or causes the spouse, child or stepchild of the person to engage in prostitution.

13 (2) Compelling prostitution is a Class B felony.

14 (3) In a prosecution under subsection (1)(b) or (c) of this section, the state is not required to
 15 prove that the defendant knew the other person was under 18 years of age and it is no defense that
 16 the defendant did not know the person's age or that the defendant reasonably believed the person
 17 to be older than 18 years of age.

18 **SECTION 7.** ORS 419B.005 is amended to read:

19 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

20 (1)(a) "Abuse" means:

21 (A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child
 22 which has been caused by other than accidental means, including any injury which appears to be
 23 at variance with the explanation given of the injury.

24 (B) Any mental injury to a child, which shall include only observable and substantial impairment
 25 of the child's mental or psychological ability to function caused by cruelty to the child, with due
 26 regard to the culture of the child.

27 (C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual pene-
 28 tration and incest, as those acts are described in ORS chapter 163.

29 (D) Sexual abuse, as described in ORS chapter 163.

30 (E) Sexual exploitation, including but not limited to:

31 (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any
 32 other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage
 33 in the performing for people to observe or the photographing, filming, tape recording or other ex-
 34 hibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or
 35 described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-
 36 cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or
 37 which is designed to serve educational or other legitimate purposes; and

38 (ii) Allowing, permitting, encouraging or hiring a child to engage in [*prostitution as described in*
 39 *ORS 167.007 or a commercial sex act as defined in ORS 163.266*], **or offer or agree to engage in,**
 40 **sexual conduct or sexual contact, as those terms are defined in ORS 167.002, in return for a**
 41 **fee,** to purchase sex with a minor as described in ORS 163.413 or to engage in commercial sexual
 42 solicitation as described in ORS 167.008.

43 (F) Negligent treatment or maltreatment of a child, including but not limited to the failure to
 44 provide adequate food, clothing, shelter or medical care that is likely to endanger the health or
 45 welfare of the child.

1 (G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm
2 to the child's health or welfare.

3 (H) Buying or selling a person under 18 years of age as described in ORS 163.537.

4 (I) Permitting a person under 18 years of age to enter or remain in or upon premises where
5 methamphetamines are being manufactured.

6 (J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, or to the unlawful
7 manufacturing of a cannabinoid extract, as defined in ORS 475B.015, that subjects a child to a sub-
8 stantial risk of harm to the child's health or safety.

9 (b) "Abuse" does not include reasonable discipline unless the discipline results in one of the
10 conditions described in paragraph (a) of this subsection.

11 (2) "Child" means an unmarried person who:

12 (a) Is under 18 years of age; or

13 (b) Is under 21 years of age and residing in or receiving care or services at a child-caring
14 agency as that term is defined in ORS 418.205.

15 (3) "Higher education institution" means:

16 (a) A community college as defined in ORS 341.005;

17 (b) A public university listed in ORS 352.002;

18 (c) The Oregon Health and Science University; and

19 (d) A private institution of higher education located in Oregon.

20 (4)(a) "Investigation" means a detailed inquiry into or assessment of the safety of a child alleged
21 to have experienced abuse.

22 (b) "Investigation" does not include screening activities conducted upon the receipt of a report.

23 (5) "Law enforcement agency" means:

24 (a) A city or municipal police department.

25 (b) A county sheriff's office.

26 (c) The Oregon State Police.

27 (d) A police department established by a university under ORS 352.121 or 353.125.

28 (e) A county juvenile department.

29 (6) "Public or private official" means:

30 (a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician,
31 including any intern or resident.

32 (b) Dentist.

33 (c) School employee, including an employee of a higher education institution.

34 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide
35 or employee of an in-home health service.

36 (e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning
37 Division, Department of Education, Youth Development Division, Office of Child Care, the Oregon
38 Youth Authority, a local health department, a community mental health program, a community de-
39 velopmental disabilities program, a county juvenile department, a child-caring agency as that term
40 is defined in ORS 418.205 or an alcohol and drug treatment program.

41 (f) Peace officer.

42 (g) Psychologist.

43 (h) Member of the clergy.

44 (i) Regulated social worker.

45 (j) Optometrist.

- 1 (k) Chiropractor.
- 2 (L) Certified provider of foster care, or an employee thereof.
- 3 (m) Attorney.
- 4 (n) Licensed professional counselor.
- 5 (o) Licensed marriage and family therapist.
- 6 (p) Firefighter or emergency medical services provider.
- 7 (q) A court appointed special advocate, as defined in ORS 419A.004.
- 8 (r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.
- 9 (s) Member of the Legislative Assembly.
- 10 (t) Physical, speech or occupational therapist.
- 11 (u) Audiologist.
- 12 (v) Speech-language pathologist.
- 13 (w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
14 gations or discipline by the commission.
- 15 (x) Pharmacist.
- 16 (y) An operator of a preschool recorded program under ORS 329A.255.
- 17 (z) An operator of a school-age recorded program under ORS 329A.257.
- 18 (aa) Employee of a private agency or organization facilitating the provision of respite services,
19 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS
20 109.056.
- 21 (bb) Employee of a public or private organization providing child-related services or activities:
22 (A) Including but not limited to youth groups or centers, scout groups or camps, summer or day
23 camps, survival camps or groups, centers or camps that are operated under the guidance, super-
24 vision or auspices of religious, public or private educational systems or community service organ-
25 izations; and
26 (B) Excluding community-based, nonprofit organizations whose primary purpose is to provide
27 confidential, direct services to victims of domestic violence, sexual assault, stalking or human traf-
28 ficking.
- 29 (cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete,
30 if compensated and if the athlete is a child.
- 31 (dd) Personal support worker, as defined in ORS 410.600.
- 32 (ee) Home care worker, as defined in ORS 410.600.
- 33 (ff) Animal control officer, as defined in ORS 609.500.
- 34 (gg) Member of a school district board or public charter school governing body.
- 35 (hh) An individual who is paid by a public body, in accordance with ORS 430.215, to provide a
36 service identified in an individualized written service plan of a child with a developmental disability.

37
38 **AFFIRMATIVE DEFENSES AGAINST CERTAIN MISDEMEANORS**

39
40 **SECTION 8. (1) It is an affirmative defense to a prosecution for a misdemeanor, other**
41 **than a misdemeanor involving violence, that at the time of the alleged offense the defendant**
42 **was:**

- 43 (a) A victim of trafficking in persons as described in ORS 163.266 (1)(b) or (c);
- 44 (b) Coerced to engage in the conduct constituting the misdemeanor by the person whose
45 actions are unlawful under ORS 163.266; and

1 (c) Under 21 years of age at the time of the conduct constituting the misdemeanor.

2 (2) The affirmative defense described in subsection (1) of this section applies irrespective
 3 of any criminal prosecution or the result of a criminal prosecution under ORS 163.266.

4 (3) As used in this section, “misdemeanor involving violence” has the meaning given that
 5 term in ORS 166.470.

6 **SECTION 9.** ORS 161.005 is amended to read:

7 161.005. ORS 161.005 to 161.055, 161.085 to 161.125, 161.150 to 161.175, 161.190 to 161.275, 161.290
 8 to 161.373, 161.405 to 161.485, 161.505 to 161.585, 161.605, 161.615 to 161.685, 161.705 to 161.737,
 9 162.005, 162.015 to 162.035, 162.055 to 162.115, 162.135 to 162.205, 162.225 to 162.375, 162.405 to
 10 162.425, 162.465, 163.005, 163.095, 163.107, 163.115, 163.125 to 163.145, 163.149, 163.160 to 163.208,
 11 163.196, 163.215 to 163.257, 163.261, 163.263, 163.264, 163.266, 163.275, 163.285, 163.305 to 163.467,
 12 163.432, 163.433, 163.472, 163.505 to 163.575, 163.665 to 163.693, 163.700, 163.701, 163.715, 164.005,
 13 164.015 to 164.135, 164.138, 164.140, 164.205 to 164.270, 164.305 to 164.377, 164.395 to 164.415, 164.805,
 14 164.857, 164.886, 165.002 to 165.102, 165.109, 165.118, 165.805, 165.815, 166.005 to 166.095, 166.350,
 15 166.382, 166.384, 166.660, 167.002 to 167.027, 167.057, 167.060 to 167.100, 167.117, 167.122 to 167.162,
 16 167.203 to 167.252, 167.310 to 167.340, 167.350, 167.810 and 167.820 and section 8 of this 2021 Act
 17 shall be known and may be cited as Oregon Criminal Code of 1971.

18
 19 **CHILD ABUSE INVESTIGATIONS**

20
 21 **SECTION 10.** (1) The Department of Human Services shall study and make recommen-
 22 dations on provisions of law regarding child abuse investigations involving victims of sex
 23 trafficking to ensure that reports of child abuse involving victims of sex trafficking are in-
 24 vestigated and that appropriate medical, mental health and social services are made available
 25 to the victims.

26 (2) The department shall submit a report on its findings to an appropriate interim com-
 27 mittee of the Legislative Assembly no later than September 15, 2022.

28
 29 **MISCELLANEOUS**

30
 31 **SECTION 11.** Section 10 of this 2021 Act is repealed on January 2, 2023.

32 **SECTION 12.** Sections 2 and 8 of this 2021 Act and the amendments to ORS 12.117,
 33 131.125, 161.005, 167.007, 167.017 and 419B.005 by sections 3 to 7 and 9 of this 2021 Act apply
 34 to acts occurring on or after the effective date of this 2021 Act.

35 **SECTION 13.** The unit captions used in this 2021 Act are provided only for the conven-
 36 ience of the reader and do not become part of the statutory law of this state or express any
 37 legislative intent in the enactment of this 2021 Act.