

**Enrolled**  
**Senate Bill 566**

Sponsored by Senator GELSER; Senator PATTERSON, Representatives ALONSO LEON, CAMPOS, SALINAS, SOLLMAN, WILLIAMS (Pre-session filed.)

CHAPTER .....

AN ACT

Relating to consent; creating new provisions; amending ORS 137.765, 144.635, 163.305, 163.315, 163.325, 163.375, 163.405, 163.411 and 163.427; and declaring an emergency.

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

**SECTION 1.** ORS 163.305 is amended to read:

163.305. As used in chapter 743, Oregon Laws 1971, unless the context requires otherwise:

(1) "Forcible compulsion" means to compel by:

(a) Physical force; or

(b) A threat, express or implied, that places a person in fear of immediate or future death or physical injury to self or another person, or in fear that the person or another person will immediately or in the future be kidnapped.

[(2)] *"Mentally defective" means that a person suffers from a qualifying mental disorder that renders the person incapable of appraising the nature of the conduct of the person.*

[(3)] (2) "Mentally incapacitated" means that a person is rendered incapable of appraising or controlling the conduct of the person at the time of the alleged offense.

[(4)] (3) "Oral or anal sexual intercourse" means sexual conduct between persons consisting of contact between the sex organs of one person and the mouth or anus of another.

[(5)] (4) "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

[(6)] (5) "Sexual contact" means any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

[(7)] (6) "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight; emission is not required.

**SECTION 2.** ORS 163.315 is amended to read:

163.315. (1) A person is considered incapable of consenting to a sexual act if the person is:

(a) Under 18 years of age;

(b) [*Mentally defective*] **incapable of appraising the nature of the person's conduct;**

(c) Mentally incapacitated; or

(d) Physically helpless.

(2) A lack of verbal or physical resistance does not, by itself, constitute consent but may be considered by the trier of fact along with all other relevant evidence.

**(3) A person is incapable of appraising the nature of the person's conduct if:**

**(a) The person is unable to understand the nature of the conduct;**

**(b) The person is unable to understand the right to choose whether and how to engage in conduct, including the right to revoke a prior decision to engage in conduct; or**

**(c) The person is unable to communicate a decision to engage in conduct.**

**SECTION 3.** ORS 163.325 is amended to read:

163.325. (1) In any prosecution under ORS 163.355 to 163.445 in which the criminality of conduct depends on a child's being under the age of 16, it is no defense that the defendant did not know the child's age or that the defendant reasonably believed the child to be older than the age of 16.

(2) When criminality depends on the child's being under a specified age other than 16, it is an affirmative defense for the defendant to prove that the defendant reasonably believed the child to be above the specified age at the time of the alleged offense.

(3) In any prosecution under ORS 163.355 to 163.445 in which the victim's lack of consent is based solely upon the incapacity of the victim to consent because the victim is [*mentally defective,*] mentally incapacitated, [*or*] physically helpless **or incapable of appraising the nature of the victim's conduct**, it is an affirmative defense for the defendant to prove that at the time of the alleged offense the defendant did not know of the facts or conditions responsible for the victim's incapacity to consent.

**SECTION 4.** ORS 163.375 is amended to read:

163.375. (1) A person who has sexual intercourse with another person commits the crime of rape in the first degree if:

- (a) The victim is subjected to forcible compulsion by the person;
- (b) The victim is under 12 years of age;
- (c) The victim is under 16 years of age and is the person's sibling, of the whole or half blood, the person's child or the person's spouse's child; or
- (d) The victim is incapable of consent by reason of [*mental defect,*] mental incapacitation, [*or*] physical helplessness **or incapability of appraising the nature of the victim's conduct**.

(2) Rape in the first degree is a Class A felony.

**SECTION 5.** ORS 163.405 is amended to read:

163.405. (1) A person who engages in oral or anal sexual intercourse with another person or causes another to engage in oral or anal sexual intercourse commits the crime of sodomy in the first degree if:

- (a) The victim is subjected to forcible compulsion by the actor;
- (b) The victim is under 12 years of age;
- (c) The victim is under 16 years of age and is the actor's brother or sister, of the whole or half blood, the son or daughter of the actor or the son or daughter of the actor's spouse; or
- (d) The victim is incapable of consent by reason of [*mental defect,*] mental incapacitation, [*or*] physical helplessness **or incapability of appraising the nature of the victim's conduct**.

(2) Sodomy in the first degree is a Class A felony.

**SECTION 6.** ORS 163.411 is amended to read:

163.411. (1) Except as permitted under ORS 163.412, a person commits the crime of unlawful sexual penetration in the first degree if the person penetrates the vagina, anus or penis of another with any object other than the penis or mouth of the actor and:

- (a) The victim is subjected to forcible compulsion;
- (b) The victim is under 12 years of age; or
- (c) The victim is incapable of consent by reason of [*mental defect,*] mental incapacitation, [*or*] physical helplessness **or incapability of appraising the nature of the victim's conduct**.

(2) Unlawful sexual penetration in the first degree is a Class A felony.

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

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

- (a) Subjects another person to sexual contact and:
  - (A) The victim is less than 14 years of age;
  - (B) The victim is subjected to forcible compulsion by the actor; or

(C) The victim is incapable of consent by reason of being [*mentally defective,*] mentally incapacitated, [*or*] physically helpless **or incapable of appraising the nature of the victim's conduct**; or  
(b) Intentionally causes a person under 18 years of age to touch or contact the mouth, anus or sex organs of an animal for the purpose of arousing or gratifying the sexual desire of a person.

(2) Sexual abuse in the first degree is a Class B felony.

**SECTION 8.** ORS 137.765 is amended to read:

137.765. (1) As used in this section:

(a) "History of sexual assault" means that a person has engaged in unlawful sexual conduct that:

(A) Was not committed as part of the same criminal episode as the crime for which the person is currently being sentenced; and

(B) Seriously endangered the life or safety of another person or involved a victim under 12 years of age.

(b) "Sexually violent dangerous offender" means a person who has psychopathic personality features, sexually deviant arousal patterns or interests and a history of sexual assault and presents a substantial probability of committing a crime listed in subsection (3) of this section.

(2) Notwithstanding ORS 161.605, when a person is convicted of a crime listed in subsection (3) of this section, in addition to any sentence of imprisonment required by law, a court shall impose a period of post-prison supervision that extends for the life of the person if:

(a) The person was 18 years of age or older at the time the person committed the crime; and

(b) The person is a sexually violent dangerous offender.

(3) The crimes to which subsection (2) of this section applies are:

(a) Rape in the first degree and sodomy in the first degree if the victim was:

(A) Subjected to forcible compulsion by the person;

(B) Under 12 years of age; or

(C) Incapable of consent by reason of [*mental defect,*] mental incapacitation, [*or*] physical helplessness **or incapability of appraising the nature of the victim's conduct**;

(b) Unlawful sexual penetration in the first degree; and

(c) An attempt to commit a crime listed in paragraph (a) or (b) of this subsection.

**SECTION 9.** ORS 144.635 is amended to read:

144.635. (1) As used in this section and ORS 144.637:

(a) "History of sexual assault" means that a person has engaged in unlawful sexual conduct that:

(A) Is not related to the crime for which the person is currently on parole or post-prison supervision; and

(B) Seriously endangered the life or safety of another person or involved a victim under 12 years of age.

(b) "Sexually violent dangerous offender" means a person who has psychopathic personality features, sexually deviant arousal patterns or interests and a history of sexual assault, and who the State Board of Parole and Post-Prison Supervision or local supervisory authority finds presents a substantial probability of committing an offense listed in subsection (3) of this section.

(2) When a person is released from custody after serving a sentence of incarceration as a result of conviction for an offense listed in subsection (3) of this section, the board or local supervisory authority shall subject the person to intensive supervision for the full period of the person's parole or post-prison supervision if:

(a) The person was 18 years of age or older at the time the person committed the offense; and

(b) The board or local supervisory authority finds that the person is a sexually violent dangerous offender.

(3) The crimes to which subsection (2) of this section applies are:

(a) Rape in the first degree and sodomy in the first degree if the victim was:

(A) Subjected to forcible compulsion by the person;

(B) Under 12 years of age; or

(C) Incapable of consent by reason of [*mental defect,*] mental incapacitation, [*or*] physical helplessness **or incapability of appraising the nature of the victim's conduct**;

- (b) Unlawful sexual penetration in the first degree; and
- (c) An attempt to commit a crime listed in paragraph (a) or (b) of this subsection.

**SECTION 10. The amendments to ORS 137.765, 144.635, 163.305, 163.315, 163.325, 163.375, 163.405, 163.411 and 163.427 by sections 1 to 9 of this 2021 Act apply to conduct occurring on or after the effective date of this 2021 Act.**

**SECTION 11. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.**

**Passed by Senate April 14, 2021**

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House May 12, 2021**

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Tina Kotek, Speaker of House

**Received by Governor:**

.....M.,....., 2021

**Approved:**

.....M.,....., 2021

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2021

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Shemia Fagan, Secretary of State