

SB 974 A STAFF MEASURE SUMMARY

House Committee On Judiciary

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Meeting Dates: 5/10, 5/17

WHAT THE MEASURE DOES:

Creates crime of sexual abuse by fraudulent representation if the person is a licensee and knowingly subjects another person to sexual contact and falsely or fraudulently represents to the other person that the sexual contact serves a legitimate medical purpose. Provides that sexual abuse by fraudulent representation is a Class B felony and requires the Oregon Criminal Justice Commission to classify it as a crime category 8 on the sentencing guidelines grid. Provides that sexual abuse by fraudulent representation does not prohibit penetration when it is part of a medically recognized treatment or diagnostic procedure and is for a legitimate medical purpose. Provides that the prosecution for sexual abuse by fraudulent representation may commence within six years after the victim becomes aware or reasonably should have become aware of the criminal nature of the conduct. Defines sexual abuse by fraudulent representation as a sex crime requiring sex offender registration. Declares emergency, effective on passage.

FISCAL: Minimal fiscal impact

REVENUE: Minimal revenue impact

Senate floor vote: 27--0

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

Oregon sex abuse and rape statutes provide that the crimes occur when a person subjects another to sexual contact or intercourse and the victim is a minor; force was used; the victim was incapacitated in some form; or the victim does not consent, depending on the degree of the crime. A person is considered incapable of consenting if: the person is under 18 years of age, incapable of appraising the nature of the person's conduct, mentally incapacitated, or physically helpless (ORS 163.315). A person is incapable of appraising the nature of the person's conduct if: the person is unable to understand the nature of the conduct; 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 the person is unable to communicate a decision to engage in conduct. Oregon's definitions of consent and lack of consent do not contemplate deception or fraudulent representation by a medical professional.

The Model Penal Code's "global consent provision" provides that "unless otherwise provided by the Code or by the law defining the offense, assent does not constitute consent if...it is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense." At least eight states have adopted language in their sexual assault statutes similar to the language in the Model Penal Code and at least twelve states have enacted some form of rape by fraud statutes, including California.

Senate Bill 974 A creates a new crime of sexual abuse by fraudulent representation if the person is a licensee and knowingly subjects another person to sexual contact and falsely or fraudulently represents to the other person that the sexual contact serves a legitimate medical purpose. Licensee means "health professional licensed or

This summary has not been adopted or officially endorsed by action of the committee.

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certified by or registered with a board." It declares an emergency, effective on passage.

PRELIMINARY