

FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: HB 2328 - A

82nd Oregon Legislative Assembly – 2023 Regular Session

Legislative Fiscal Office

Only Impacts on Original or Engrossed Versions are Considered Official

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Measure Description:

Modifies definition of "oral or anal sexual intercourse" for purposes of sex crimes. Expands the crime of a using a child in a display of sexually explicit conduct.

Government Unit(s) Affected:

Cities, Counties, Criminal Justice Commission, Department of Corrections, Department of Justice, District Attorneys, Judicial Department, Oregon Youth Authority, Public Defense Services Commission

Summary of Fiscal Impact:

Costs related to the measure are indeterminate at this time - See explanatory analysis.

Analysis:

The measure modifies the definition of "oral and sexual intercourse" for purposes of sex crimes and expands the crime of using a child in a display of sexually explicit conduct, a Class A felony, to include when a person knowingly records in a visual recording a child participating or engaging in sexually explicit conduct. In addition, the measure defines "object" under ORS 163.408 to include any body part of the actor when a person commits the crime of unlawful sexual penetration, a Class B felony. The measure is effective January 1, 2024 for crimes on or after the effective date.

The measure's modification of sex crimes is anticipated to have an indeterminate impact on the number of cases filed through the court system, but is expected to have a minimal impact in terms of incarcerations with longer sentences for these crimes, but relatively few new convictions.

Public Services Defense Commission (PDSC)

PDSC reports that the fiscal impact of the measure is indeterminate. The agency anticipates there will be additional charges filed against defendants and that there may be increased prosecutions for the expansion of both unlawful sexual penetration and the crime of using a child in a display of sexually explicit conduct. Some charges may result in Ballot Measure 11 or Jessica's Law convictions and mandatory minimum sentences, according to PDSC, and which would increase the cost of defense at both the trial and appellate level. Currently, PDSC is unable to estimate the changes to existing misdemeanor and felony caseloads under this measure and therefore the impact is indeterminate.

Oregon Judicial Department (OJD)

OJD reports that the fiscal impact of the measure is indeterminate but anticipates there will be additional cases filed as a result of the measure. The agency assumes the number of charges using a child in a display of sexually explicit conduct will be similar to the number of charges filed per year before State v. Caze, 308 Or App 748 (2021). In the years prior to the Caze decision, there was an average of 206 charges filed per year but since the Caze decision, that number has dropped to an average of 78 charges filed per year. If this measure becomes law, OJD anticipates the case filings may return to the 206 charges per year, which can be absorbed within current resources. OJD anticipates, however, that additional cases for crimes of unlawful sexual penetration will be filed in circuit courts and possibly appellate courts due to the measure expanding the range of people who

could now be charged. The Department is unable to determine how many additional cases will be filed and therefore the impact is indeterminate.

There is a minimal fiscal impact for the Department of Justice, Department of Corrections, and counties. There is no fiscal impact for the Oregon Youth Authority, Oregon Criminal Justice Commission, District Attorneys, or cities.

This measure has a subsequent referral to the Joint Committee on Ways and Means for consideration of its budgetary impact on the State's General Fund.