

HB 2328 A STAFF MEASURE SUMMARY

House Committee On Judiciary

Action Date: 03/20/23

Action: Do pass with amendments and be referred to Ways and Means by prior reference.
(Printed A-Eng.)

Vote: 10-0-0-0

Yeas: 10 - Andersen, Bynum, Chaichi, Conrad, Kropf, Lewis, Morgan, Reynolds, Tran, Wallan

Fiscal: Fiscal impact issued

Revenue: Revenue impact issued

Prepared By: Gillian Fischer, LPRO Analyst

Meeting Dates: 1/24, 3/20

WHAT THE MEASURE DOES:

Modifies definition of “oral or anal sexual intercourse” for purposes of sex crimes to include contact between the anus of one person and the mouth or anus of another. Expands crime of "using a child in a display of sexually explicit conduct" to include when person knowingly creates visual recording of sexually explicit conduct involving a child. States that a person commits the crime of using a child in a display of sexually explicit conduct if the person knowingly records in a visual recording a child participating or engaging in sexually explicit conduct. Provides that the crime of unlawful sexual penetration in the first and second degrees is accomplished when any object is used for penetration in commission of offense and when multiple crimes are charged based on one act of penetration, the court may only enter one conviction for the conduct.

ISSUES DISCUSSED:

- Current law for proving unlawful sexual penetration
- Legislative intent of the measure and amendment
- Fiscal impact analysis

EFFECT OF AMENDMENT:

Amends language in measure from "a person commits the crime of using a child in a display of sexually explicit conduct if the person knowingly creates" to "when a person knowingly records in a visual recording a child participating or engaging in sexually explicit conduct." States that when multiple crimes are charged based on one act of penetration, the court may only enter one conviction for the conduct.

BACKGROUND:

Under ORS 163.305 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. Contact between the mouth or anus of the accused person and the mouth or anus of the victim is not encompassed by the current definition.

A person commits the crime of using a child in a display of sexually explicit conduct if the person employs, authorizes, permits, compels or induces a child to participate or engage in sexually explicit conduct for any person to observe or to record in a visual recording. A recent Court of Appeals decision, *State v. Cazee*, held that statute does not encompass a person’s act of creating a visual recording of sexually explicit conduct of a child without evidence of the person employing, authorizing, permitting, compelling, or inducing the involved child to participate or engage in said sexually explicit conduct.

Current Oregon statutes criminalizing unlawful sexual penetration require the state to establish beyond a reasonable doubt that the object used to penetrate the victim was something other than the penis or mouth of the accused person. If a victim is unable to identify the object that was used for penetration as an object, a mouth, or a penis, the state cannot establish the elements required under any current Oregon statutes

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criminalizing penetration (rape, sodomy, unlawful sexual penetration).

House Bill 2328A amends the definition of oral or anal sexual intercourse to include contact between the mouth or anus of the accused and the mouth or anus of the victim; expands the crime of using a child in a display of sexually explicit conduct to include knowingly recording a visual recording of sexually explicit conduct involving a child; and finally, it would modify the crime of unlawful sexual penetration to include penetration with a body part and remove requirement that the state establish what object was used for penetration.