

A-Engrossed
House Bill 2328

Ordered by the House March 23
Including House Amendments dated March 23

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon District Attorneys Association)

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.

Modifies definition of "oral or anal sexual intercourse" for purposes of sex crimes.

Expands crime of using a child in a display of sexually explicit conduct to include when person knowingly *[creates]* **records in** visual recording *[of sexually explicit conduct involving]* child **participating or engaging in sexually explicit conduct**. Punishes by maximum of 20 years' imprisonment, \$375,000 fine, or both.

Modifies crimes of unlawful sexual penetration in the first and second degrees. Provides that any object, **including body part of actor**, may be used in commission of offense. **Prohibits entry of separate convictions when multiple charges based on one penetrative act.**

A BILL FOR AN ACT

1
2 Relating to sex crimes; creating new provisions; and amending ORS 163.305, 163.408, 163.411 and
3 163.670.

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

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

6 163.305. As used in chapter 743, Oregon Laws 1971, unless the context requires otherwise:

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

8 (a) Physical force; or

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

12 (2) "Mentally incapacitated" means that a person is rendered incapable of appraising or con-
13 trolling the conduct of the person at the time of the alleged offense.

14 (3) "Oral or anal sexual intercourse" means sexual conduct between persons consisting of con-
15 tact between the sex organs **or anus** of one person and the mouth or anus of another.

16 (4) "Physically helpless" means that a person is unconscious or for any other reason is phys-
17 ically unable to communicate unwillingness to an act.

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

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

23 **SECTION 2.** ORS 163.670 is amended to read:

24 163.670. (1) A person commits the crime of using a child in a display of sexually explicit conduct

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 if the person:

2 (a) Employs, authorizes, permits, compels or induces a child to participate or engage in sexually
3 explicit conduct for any person to observe or to record in a visual recording; or

4 (b) **Knowingly records in a visual recording a child participating or engaging in sexually**
5 **explicit conduct.**

6 (2) Using a child in a display of sexually explicit conduct is a Class A felony.

7 **SECTION 3.** ORS 163.408 is amended to read:

8 163.408. (1) Except as permitted under ORS 163.412, a person commits the crime of unlawful
9 sexual penetration in the second degree if the person penetrates the vagina, anus or penis of another
10 with any object [*other than the penis or mouth of the actor*] and the victim is under 14 years of age.

11 (2) Unlawful sexual penetration in the second degree is a Class B felony.

12 (3) **As used in this section, “object” includes any body part of the actor.**

13 (4) **When multiple crimes are charged based on one penetrative act, the court may not**
14 **enter separate convictions for each crime, and may enter only one conviction for the con-**
15 **duct.**

16 **SECTION 4.** ORS 163.411 is amended to read:

17 163.411. (1) Except as permitted under ORS 163.412, a person commits the crime of unlawful
18 sexual penetration in the first degree if the person penetrates the vagina, anus or penis of another
19 with any object [*other than the penis or mouth of the actor*] and:

20 (a) The victim is subjected to forcible compulsion;

21 (b) The victim is under 12 years of age; or

22 (c) The victim is incapable of consent by reason of mental incapacitation, physical helplessness
23 or incapability of appraising the nature of the victim’s conduct.

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

25 (3) **As used in this section, “object” includes any body part of the actor.**

26 (4) **When multiple crimes are charged based on one penetrative act, the court may not**
27 **enter separate convictions for each crime, and may enter only one conviction for the con-**
28 **duct.**

29 **SECTION 5.** The amendments to ORS 163.305, 163.408, 163.411 and 163.670 by sections 1
30 to 4 of this 2023 Act apply to conduct occurring on or after the effective date of this 2023
31 Act.

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