

A-Engrossed
Senate Bill 974

Ordered by the Senate April 14
Including Senate Amendments dated April 14

Sponsored by Senators MEEK, TAYLOR, WAGNER; Senators HANSELL, KNOPP, MANNING JR, PROZANSKI

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.

Creates crime of sexual [*assault*] **abuse** by fraudulent representation. Punishes by maximum of 10 years' imprisonment, \$250,000 fine, or both. Specifies statute of limitations for crime. Defines crime as sex crime, requiring persons convicted of crime to report as sex offender.

Requires, for provision excluding certain conduct from crimes of unlawful sexual penetration and custodial sexual misconduct, that conduct be for legitimate medical purpose.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to sexual assault; creating new provisions; amending ORS 131.125, 161.005, 163.412,
3 163A.005 and 163A.115; and declaring an emergency.

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

5 **SECTION 1. (1) A person commits the crime of sexual abuse by fraudulent representation**
6 **if the person is a licensee and knowingly:**

7 (a) **Subjects another person to sexual contact; and**

8 (b) **Falsely or fraudulently represents to the other person that the sexual contact serves**
9 **a legitimate medical purpose.**

10 (2) **Sexual abuse by fraudulent representation is a Class B felony.**

11 (3) **The Oregon Criminal Justice Commission shall classify sexual abuse by fraudulent**
12 **representation as a crime category 8 of the sentencing guidelines grid of the commission.**

13 (4) **As used in this section:**

14 (a) **"Licensee" has the meaning given that term in ORS 676.150.**

15 (b) **"Sexual contact" has the meaning given that term in ORS 163.305.**

16 **SECTION 2. ORS 131.125 is amended to read:**

17 131.125. (1) A prosecution for aggravated murder, murder, attempted murder or aggravated
18 murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of
19 manslaughter may be commenced at any time after the commission of the attempt, conspiracy or
20 solicitation to commit aggravated murder or murder, or the death of the person killed.

21 (2) A prosecution for any of the following felonies may be commenced within 12 years after the
22 commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime
23 before the victim attains 30 years of age:

24 (a) Rape in the first degree under ORS 163.375.

25 (b) Sodomy in the first degree under ORS 163.405.

26 (c) Unlawful sexual penetration in the first degree under ORS 163.411.

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 (d) Sexual abuse in the first degree under ORS 163.427.

2 (3) A prosecution for any of the following felonies may be commenced within six years after the
3 commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime
4 before the victim attains 30 years of age or within 12 years after the offense is reported to a law
5 enforcement agency or the Department of Human Services, whichever occurs first:

6 (a) Strangulation under ORS 163.187 (4).

7 (b) Criminal mistreatment in the first degree under ORS 163.205.

8 (c) Rape in the third degree under ORS 163.355.

9 (d) Rape in the second degree under ORS 163.365.

10 (e) Sodomy in the third degree under ORS 163.385.

11 (f) Sodomy in the second degree under ORS 163.395.

12 (g) Unlawful sexual penetration in the second degree under ORS 163.408.

13 (h) Sexual abuse in the second degree under ORS 163.425.

14 (i) Using a child in a display of sexual conduct under ORS 163.670.

15 (j) Encouraging child sexual abuse in the first degree under ORS 163.684.

16 (k) Incest under ORS 163.525.

17 (L) Promoting prostitution under ORS 167.012.

18 (m) Compelling prostitution under ORS 167.017.

19 (n) Luring a minor under ORS 167.057.

20 (4) A prosecution for any of the following misdemeanors may be commenced within four years
21 after the commission of the crime or, if the victim at the time of the crime was under 18 years of
22 age, anytime before the victim attains 22 years of age or within four years after the offense is re-
23 ported to a law enforcement agency or the Department of Human Services, whichever occurs first:

24 (a) Strangulation under ORS 163.187 (3).

25 (b) Sexual abuse in the third degree under ORS 163.415.

26 (c) Exhibiting an obscene performance to a minor under ORS 167.075.

27 (d) Displaying obscene materials to minors under ORS 167.080.

28 (5) In the case of crimes described in subsection (3)(i) of this section, the victim is the child
29 engaged in sexual conduct. In the case of the crime described in subsection (3)(k) of this section,
30 the victim is the party to the incest other than the party being prosecuted. In the case of crimes
31 described in subsection (3)(L) and (m) of this section, the victim is the child whose acts of
32 prostitution are promoted or compelled.

33 (6) A prosecution for arson in any degree may be commenced within six years after the com-
34 mission of the crime.

35 (7) A prosecution for any of the following felonies may be commenced within six years after the
36 commission of the crime if the victim at the time of the crime was 65 years of age or older:

37 (a) Theft in the first degree under ORS 164.055.

38 (b) Aggravated theft in the first degree under ORS 164.057.

39 (c) Extortion under ORS 164.075.

40 (d) Robbery in the third degree under ORS 164.395.

41 (e) Robbery in the second degree under ORS 164.405.

42 (f) Robbery in the first degree under ORS 164.415.

43 (g) Forgery in the first degree under ORS 165.013.

44 (h) Fraudulent use of a credit card under ORS 165.055 (4)(b).

45 (i) Identity theft under ORS 165.800.

1 (8) Except as provided in subsection (9) of this section or as otherwise expressly provided by
2 law, prosecutions for other offenses must be commenced within the following periods of limitations
3 after their commission:

4 (a) For any other felony, three years.

5 (b) For any misdemeanor, two years.

6 (c) For a violation, six months.

7 (9) If the period prescribed in subsection (8) of this section has expired, a prosecution never-
8 theless may be commenced as follows:

9 (a) If the offense has as a material element either fraud or the breach of a fiduciary obligation,
10 prosecution may be commenced within one year after discovery of the offense by an aggrieved party
11 or by a person who has a legal duty to represent an aggrieved party and who is not a party to the
12 offense, but in no case shall the period of limitation otherwise applicable be extended by more than
13 three years;

14 (b) If the offense is based upon misconduct in office by a public officer or employee, prosecution
15 may be commenced at any time while the defendant is in public office or employment or within two
16 years thereafter, but in no case shall the period of limitation otherwise applicable be extended by
17 more than three years; [or]

18 (c) If the offense is an invasion of personal privacy under ORS 163.700 or 163.701, prosecution
19 may be commenced within one year after discovery of the offense by the person aggrieved by the
20 offense, by a person who has a legal duty to represent the person aggrieved by the offense or by a
21 law enforcement agency, but in no case shall the period of limitation otherwise applicable be ex-
22 tended by more than three years[.]; **or**

23 **(d) If the offense is sexual abuse by fraudulent representation under section 1 of this 2023**
24 **Act, prosecution may be commenced within six years after the victim becomes aware or**
25 **reasonably should have become aware of the criminal nature of the conduct.**

26 (10) Notwithstanding subsections (2) and (3) of this section, if the defendant is identified after
27 the period described in subsection (2) or (3) of this section on the basis of DNA (deoxyribonucleic
28 acid) sample comparisons, a prosecution for:

29 (a) Rape in the first degree, sodomy in the first degree, unlawful sexual penetration in the first
30 degree or sexual abuse in the first degree may be commenced at any time after the commission of
31 the crime.

32 (b) Rape in the second degree, sodomy in the second degree or unlawful sexual penetration in
33 the second degree may be commenced within 25 years after the commission of the crime.

34 (11) Notwithstanding subsection (10) of this section, if a prosecution for a felony listed in sub-
35 section (10) of this section would otherwise be barred by subsection (2) or (3) of this section, the
36 prosecution must be commenced within two years of the DNA-based identification of the defendant.

37 (12)(a) Notwithstanding subsection (2) of this section, if a prosecuting attorney obtains corrob-
38 orating evidence of the crimes of rape in the first degree, sodomy in the first degree, unlawful sexual
39 penetration in the first degree or sexual abuse in the first degree, after the period described in
40 subsection (2) of this section, the prosecution may be commenced at any time after the commission
41 of the crime.

42 (b) The corroborating evidence described in paragraph (a) of this subsection must consist of one
43 of the following:

44 (A) Physical evidence other than a DNA sample, including but not limited to audio, video or
45 other electronic recordings, text messages, guest book logs, telephone recordings and photographs.

1 (B) A confession, made by the defendant, to the crime the victim reported.

2 (C) An oral statement, made by the victim to another person in temporal proximity to the com-
3 mission of the crime, corroborating the victim’s report of the crime to a law enforcement agency.

4 (D) A written statement, created by the victim in temporal proximity to the commission of the
5 crime and subsequently delivered to another person or to a law enforcement agency, corroborating
6 the victim’s report of the crime to a law enforcement agency.

7 (E) A report made by a different victim to a law enforcement agency, made either before or after
8 the victim’s report, alleging that the defendant committed another crime of the same or similar
9 character such that the two crimes could be charged in the same charging instrument under ORS
10 132.560.

11 (13)(a) A prosecuting attorney commencing a prosecution pursuant to subsection (12) of this
12 section shall present any evidence reasonably tending to negate the guilt of the defendant to the
13 grand jury considering the indictment for the offense.

14 (b) The failure to present evidence reasonably tending to negate guilt as required by paragraph
15 (a) of this subsection does not affect the validity of an indictment or prosecution.

16 **SECTION 3.** ORS 161.005 is amended to read:

17 161.005. ORS 161.005 to 161.055, 161.085 to 161.125, 161.150 to 161.175, 161.190 to 161.275, 161.290
18 to 161.373, 161.405 to 161.485, 161.505 to 161.585, 161.605, 161.615 to 161.685, 161.705 to 161.737,
19 162.005, 162.015 to 162.035, 162.055 to 162.115, 162.135 to 162.205, 162.225 to 162.375, 162.405 to
20 162.425, 162.465, 163.005, 163.095, 163.107, 163.115, 163.125 to 163.145, 163.149, 163.160 to 163.208,
21 163.191, 163.196, 163.215 to 163.257, 163.261, 163.263, 163.264, 163.266, 163.275, 163.285, 163.305 to
22 163.467, 163.432, 163.433, 163.472, 163.505 to 163.575, 163.665 to 163.693, 163.700, 163.701, 163.715,
23 164.005, 164.015 to 164.135, 164.138, 164.140, 164.205 to 164.270, 164.305 to 164.377, 164.395 to 164.415,
24 164.805, 164.857, 164.886, 165.002 to 165.102, 165.109, 165.118, 165.805, 165.815, 166.005 to 166.095,
25 166.350, 166.382, 166.384, 166.660, 167.002 to 167.027, 167.057, 167.060 to 167.100, 167.117, 167.122 to
26 167.162, 167.203 to 167.252, 167.310 to 167.340, 167.350, 167.810 and 167.820 **and section 1 of this**
27 **2023 Act** shall be known and may be cited as Oregon Criminal Code of 1971.

28 **SECTION 3a.** ORS 163.412 is amended to read:

29 163.412. Nothing in ORS 163.408, 163.411 or 163.452 prohibits a penetration described in those
30 sections when:

31 (1) The penetration is part of a medically recognized treatment or diagnostic procedure **and is**
32 **for a legitimate medical purpose;** or

33 (2) The penetration is accomplished by a peace officer or a corrections officer acting in official
34 capacity, or by medical personnel at the request of such an officer, in order to search for weapons,
35 contraband or evidence of crime.

36 **SECTION 4.** ORS 163A.005 is amended to read:

37 163A.005. As used in ORS 163A.005 to 163A.235:

38 (1) “Another United States court” means a federal court, a military court, the tribal court of a
39 federally recognized Indian tribe or a court of:

- 40 (a) A state other than Oregon;
- 41 (b) The District of Columbia;
- 42 (c) The Commonwealth of Puerto Rico;
- 43 (d) Guam;
- 44 (e) American Samoa;
- 45 (f) The Commonwealth of the Northern Mariana Islands; or

- 1 (g) The United States Virgin Islands.
- 2 (2) "Attends" means is enrolled on a full-time or part-time basis.
- 3 (3)(a) "Correctional facility" means any place used for the confinement of persons:
- 4 (A) Charged with or convicted of a crime or otherwise confined under a court order.
- 5 (B) Found to be within the jurisdiction of the juvenile court for having committed an act that
- 6 if committed by an adult would constitute a crime.
- 7 (b) "Correctional facility" applies to a state hospital or a secure intensive community inpatient
- 8 facility only as to persons detained therein charged with or convicted of a crime, or detained therein
- 9 after being found guilty except for insanity under ORS 161.290 to 161.373 or responsible except for
- 10 insanity under ORS 419C.411.
- 11 (4) "Institution of higher education" means a public or private educational institution that pro-
- 12 vides a program of post-secondary education.
- 13 (5) "Sex crime" means:
- 14 (a) Rape in any degree;
- 15 (b) Sodomy in any degree;
- 16 (c) Unlawful sexual penetration in any degree;
- 17 (d) Sexual abuse in any degree;
- 18 (e) Incest with a child victim;
- 19 (f) Using a child in a display of sexually explicit conduct;
- 20 (g) Encouraging child sexual abuse in any degree;
- 21 (h) Transporting child pornography into the state;
- 22 (i) Paying for viewing a child's sexually explicit conduct;
- 23 (j) Compelling prostitution;
- 24 (k) Promoting prostitution;
- 25 (L) Kidnapping in the first degree if the victim was under 18 years of age;
- 26 (m) Contributing to the sexual delinquency of a minor;
- 27 (n) Sexual misconduct if the offender is at least 18 years of age;
- 28 (o) Possession of materials depicting sexually explicit conduct of a child in the first degree;
- 29 (p) Kidnapping in the second degree if the victim was under 18 years of age, except by a parent
- 30 or by a person found to be within the jurisdiction of the juvenile court;
- 31 (q) Online sexual corruption of a child in any degree if the offender reasonably believed the
- 32 child to be more than five years younger than the offender;
- 33 (r) Luring a minor, if:
- 34 (A) The offender reasonably believed the minor or, in the case of a police officer or agent of a
- 35 police officer posing as a minor, the purported minor to be more than five years younger than the
- 36 offender or under 16 years of age; and
- 37 (B) The court designates in the judgment that the offense is a sex crime;
- 38 (s) Sexual assault of an animal;
- 39 (t) Public indecency or private indecency, if the person has a prior conviction for a crime listed
- 40 in this subsection;
- 41 (u) Trafficking in persons as described in ORS 163.266 (1)(b) or (c);
- 42 (v) Purchasing sex with a minor if the court designates the offense as a sex crime pursuant to
- 43 ORS 163.413 (3)(d), or the offense is the defendant's second or subsequent conviction under ORS
- 44 163.413 (3)(b)(B);
- 45 (w) Invasion of personal privacy in the first degree, if the court designates the offense as a sex

1 crime pursuant to ORS 163.701 (3);

2 **(x) Sexual abuse by fraudulent representation;**

3 [(x)] (y) Any attempt to commit any of the crimes listed in paragraphs (a) to [(w)] (x) of this
4 subsection;

5 [(y)] (z) Burglary, when committed with intent to commit any of the offenses listed in paragraphs
6 (a) to [(w)] (x) of this subsection; or

7 [(z)] (aa) Criminal conspiracy if the offender agrees with one or more persons to engage in or
8 cause the performance of an offense listed in paragraphs (a) to [(w)] (x) of this subsection.

9 (6) "Sex offender" means a person who:

10 (a) Has been convicted of a sex crime;

11 (b) Has been found guilty except for insanity of a sex crime;

12 (c) Has been convicted in another United States court of a crime:

13 (A) That would constitute a sex crime if committed in this state; or

14 (B) For which the person would have to register as a sex offender in that court's jurisdiction,
15 or as required under federal law, regardless of whether the crime would constitute a sex crime in
16 this state; or

17 (d) Is described in ORS 163A.025 (1).

18 (7) "Works" or "carries on a vocation" means full-time or part-time employment for more than
19 14 days within one calendar year whether financially compensated, volunteered or for the purpose
20 of governmental or educational benefit.

21 **SECTION 5.** ORS 163A.115 is amended to read:

22 163A.115. Notwithstanding any other provision of law:

23 (1) A person who is a sexually violent dangerous offender under ORS 137.765:

24 (a) Must be classified as a level three sex offender under ORS 163A.100 (3); and

25 (b) Is not eligible for relief from the obligation to report as a sex offender or reclassification as
26 a level two sex offender under ORS 163A.100 (2), pursuant to a petition filed under ORS 163A.125.

27 (2) A person who has been convicted or found guilty except for insanity of one of the following
28 offenses is not eligible for relief from the obligation to report as a sex offender pursuant to a peti-
29 tion filed under ORS 163A.125 (1):

30 (a) Rape in the first degree;

31 (b) Sodomy in the first degree;

32 (c) Unlawful sexual penetration in the first degree;

33 (d) Kidnapping in the first degree as described in ORS 163.235 (1)(e) or when the victim is under
34 18 years of age; or

35 (e) Burglary in the first degree when committed with the intent to commit any of the offenses
36 listed in ORS 163A.005 (5)(a) to [(w)] (x).

37 (3) A person classified as a level three sex offender under section 7 (2)(b), chapter 708, Oregon
38 Laws 2013, is not eligible for relief from the obligation to report as a sex offender pursuant to a
39 petition filed under ORS 163A.125 (1).

40 **SECTION 6. This 2023 Act being necessary for the immediate preservation of the public**
41 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**
42 **on its passage.**