

House Bill 2381

Sponsored by Representative NELSON

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 **as introduced**.

Expands crimes of rape in second degree, sodomy in second degree, unlawful sexual penetration in second degree and sexual abuse in first degree to include victims under 18 years of age.

Repeals crimes of rape in third degree, sodomy in third degree and contributing to sexual delinquency of minor.

A BILL FOR AN ACT

1
2 Relating to sex offenses; amending ORS 12.117, 124.105, 131.125, 137.712, 163.345, 163.365, 163.395,
3 163.408, 163.415, 163.427, 336.455, 419B.005 and 419C.230; and repealing ORS 163.355, 163.385 and
4 163.435.

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

6 **SECTION 1.** ORS 163.365 is amended to read:

7 163.365. (1) A person who has sexual intercourse with another person commits the crime of rape
8 in the second degree if the other person is under [14] 18 years of age.

9 (2) Rape in the second degree is a Class B felony.

10 **SECTION 2.** ORS 163.395 is amended to read:

11 163.395. (1) A person who engages in deviate sexual intercourse with another person or causes
12 another to engage in deviate sexual intercourse commits the crime of sodomy in the second degree
13 if the victim is under [14] 18 years of age.

14 (2) Sodomy in the second degree is a Class B felony.

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

16 163.408. (1) Except as permitted under ORS 163.412, a person commits the crime of unlawful
17 sexual penetration in the second degree if the person penetrates the vagina, anus or penis of another
18 with any object other than the penis or mouth of the actor and the victim is under [14] 18 years of
19 age.

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

21 **SECTION 4.** ORS 163.415 is amended to read:

22 163.415. (1) A person commits the crime of sexual abuse in the third degree if the person sub-
23 jects another person to sexual contact and[:]

24 [(a)] the victim does not consent to the sexual contact.[: or]

25 [(b)] *The victim is incapable of consent by reason of being under 18 years of age.*]

26 (2) Sexual abuse in the third degree is a Class A misdemeanor.

27 **SECTION 5.** ORS 163.427 is amended to read:

28 163.427. (1) A person commits the crime of sexual abuse in the first degree when that person:

29 (a) Subjects another person to sexual contact and:

30 (A) The victim is less than [14] 18 years of age;

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 (B) The victim is subjected to forcible compulsion by the actor; or

2 (C) The victim is incapable of consent by reason of being mentally defective, mentally incapac-
3 itated or physically helpless; or

4 (b) Intentionally causes a person under 18 years of age to touch or contact the mouth, anus or
5 sex organs of an animal for the purpose of arousing or gratifying the sexual desire of a person.

6 (2) Sexual abuse in the first degree is a Class B felony.

7 **SECTION 6.** ORS 12.117 is amended to read:

8 12.117. (1) Notwithstanding ORS 12.110, 12.115 or 12.160, an action based on conduct that con-
9 stitutes child abuse or conduct knowingly allowing, permitting or encouraging child abuse accruing
10 while the person who is entitled to bring the action is under 18 years of age shall be commenced
11 not more than six years after that person attains 18 years of age, or if the injured person has not
12 discovered the injury or the causal connection between the injury and the child abuse, nor in the
13 exercise of reasonable care should have discovered the injury or the causal connection between the
14 injury and the child abuse, not more than three years from the date the injured person discovers
15 or in the exercise of reasonable care should have discovered the injury or the causal connection
16 between the child abuse and the injury, whichever period is longer.

17 (2) As used in subsection (1) of this section, "child abuse" means any of the following:

18 (a) Intentional conduct by an adult that results in:

19 (A) Any physical injury to a child; or

20 (B) Any mental injury to a child which results in observable and substantial impairment of the
21 child's mental or psychological ability to function caused by cruelty to the child, with due regard
22 to the culture of the child;

23 (b) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual pene-
24 tration and incest, as those acts are defined in ORS chapter 163;

25 (c) Sexual abuse, as defined in ORS chapter 163, when the victim is a child; or

26 (d) Sexual exploitation of a child, including but not limited to:

27 (A) Conduct [*constituting violation of ORS 163.435 and any other conduct which*] **that** allows,
28 employs, authorizes, permits, induces or encourages a child to engage in the performing for people
29 to observe or the photographing, filming, tape recording or other exhibition which, in whole or in
30 part, depicts sexual conduct or contact; and

31 (B) Allowing, permitting, encouraging or hiring a child to engage in prostitution, as defined in
32 ORS chapter 167.

33 (3) Nothing in this section creates a new cause of action or enlarges any existing cause of
34 action.

35 **SECTION 7.** ORS 124.105 is amended to read:

36 124.105. (1) An action may be brought under ORS 124.100 for physical abuse if the defendant
37 engaged in conduct against an elderly or incapacitated person that would constitute any of the fol-
38 lowing:

39 (a) Assault, under the provisions of ORS 163.160, 163.165, 163.175 and 163.185.

40 (b) Menacing, under the provisions of ORS 163.190.

41 (c) Recklessly endangering another person, under the provisions of ORS 163.195.

42 (d) Criminal mistreatment, under the provisions of ORS 163.200 and 163.205.

43 (e) Rape, under the provisions of ORS [*163.355,*] 163.365 and 163.375.

44 (f) Sodomy, under the provisions of ORS [*163.385,*] 163.395 and 163.405.

45 (g) Unlawful sexual penetration, under the provisions of ORS 163.408 and 163.411.

1 (h) Sexual abuse, under the provisions of ORS 163.415, 163.425 and 163.427.

2 (i) Strangulation, under ORS 163.187.

3 (2) An action may be brought under ORS 124.100 for physical abuse if the defendant used any
4 unreasonable physical constraint on the plaintiff or subjected the plaintiff to prolonged or continued
5 deprivation of food or water.

6 (3) An action may be brought under ORS 124.100 for physical abuse if the defendant used a
7 physical or chemical restraint, or psychotropic medication on the plaintiff without an order from a
8 physician licensed in the State of Oregon or under any of the following conditions:

9 (a) For the purpose of punishing the elderly or incapacitated person.

10 (b) For any purpose not consistent with the purposes authorized by a physician.

11 (c) For a period significantly beyond that for which the restraint or medication was authorized
12 by a physician.

13 **SECTION 8.** ORS 131.125 is amended to read:

14 131.125. (1) A prosecution for aggravated murder, murder, attempted murder or aggravated
15 murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of
16 manslaughter may be commenced at any time after the commission of the attempt, conspiracy or
17 solicitation to commit aggravated murder or murder, or the death of the person killed.

18 (2) A prosecution for any of the following felonies may be commenced within six years after the
19 commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime
20 before the victim attains 24 years of age or within six years after the offense is reported to a law
21 enforcement agency or other governmental agency, whichever occurs first:

22 (a) Criminal mistreatment in the first degree under ORS 163.205.

23 [(b) Rape in the third degree under ORS 163.355.]

24 [(c)] (b) Rape in the second degree under ORS 163.365.

25 [(d)] (c) Rape in the first degree under ORS 163.375.

26 [(e) Sodomy in the third degree under ORS 163.385.]

27 [(f)] (d) Sodomy in the second degree under ORS 163.395.

28 [(g)] (e) Sodomy in the first degree under ORS 163.405.

29 [(h)] (f) Unlawful sexual penetration in the second degree under ORS 163.408.

30 [(i)] (g) Unlawful sexual penetration in the first degree under ORS 163.411.

31 [(j)] (h) Sexual abuse in the second degree under ORS 163.425.

32 [(k)] (i) Sexual abuse in the first degree under ORS 163.427.

33 [(L)] (j) Using a child in a display of sexual conduct under ORS 163.670.

34 [(m)] (k) Encouraging child sexual abuse in the first degree under ORS 163.684.

35 [(n)] (L) Incest under ORS 163.525.

36 [(o)] (m) Promoting prostitution under ORS 167.012.

37 [(p)] (n) Compelling prostitution under ORS 167.017.

38 (3) A prosecution for any of the following misdemeanors may be commenced within four years
39 after the commission of the crime or, if the victim at the time of the crime was under 18 years of
40 age, anytime before the victim attains 22 years of age or within four years after the offense is re-
41 ported to a law enforcement agency or other governmental agency, whichever occurs first:

42 (a) Sexual abuse in the third degree under ORS 163.415.

43 (b) Furnishing obscene materials to minors under ORS 167.065.

44 (c) Sending obscene materials to minors under ORS 167.070.

45 (d) Exhibiting an obscene performance to a minor under ORS 167.075.

1 (e) Displaying obscene materials to minors under ORS 167.080.

2 (4) In the case of crimes described in subsection [(2)(L)] **(2)(j)** of this section, the “victim” is the
 3 child engaged in sexual conduct. In the case of the crime described in subsection [(2)(n)] **(2)(L)** of
 4 this section, the “victim” is the party to the incest other than the party being prosecuted. In the
 5 case of crimes described in subsection [(2)(o) and (p)] **(2)(m) and (n)** of this section, the “victim” is
 6 the child whose acts of prostitution are promoted or compelled.

7 (5) A prosecution for arson in any degree may be commenced within six years after the com-
 8 mission of the crime.

9 (6) Except as provided in subsection (7) of this section or as otherwise expressly provided by
 10 law, prosecutions for other offenses must be commenced within the following periods of limitations
 11 after their commission:

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

13 (b) For any misdemeanor, two years.

14 (c) For a violation, six months.

15 (7) If the period prescribed in subsection (6) of this section has expired, a prosecution never-
 16 theless may be commenced as follows:

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

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

26 (c) If the offense is an invasion of personal privacy under ORS 163.700, prosecution may be
 27 commenced within one year after discovery of the offense by the person aggrieved by the offense,
 28 by a person who has a legal duty to represent the person aggrieved by the offense or by a law
 29 enforcement agency, but in no case shall the period of limitation otherwise applicable be extended
 30 by more than three years.

31 (8) Notwithstanding subsection (2) of this section, a prosecution for rape in the first or second
 32 degree or sodomy in the first or second degree may be commenced within 12 years after the com-
 33 mission of the crime if the defendant is identified after the period described in subsection (2) of this
 34 section on the basis of DNA (deoxyribonucleic acid) sample comparisons.

35 **SECTION 9.** ORS 137.712 is amended to read:

36 137.712. (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person is convicted of
 37 manslaughter in the second degree as defined in ORS 163.125, assault in the second degree as de-
 38 fined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225, rape in the
 39 second degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395,
 40 unlawful sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first
 41 degree as defined in ORS 163.427 (1)(a)(A) or robbery in the second degree as defined in ORS
 42 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice
 43 Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700
 44 or 137.707 if the court, on the record at sentencing, makes the findings set forth in subsection (2)
 45 of this section and finds that a substantial and compelling reason under the rules of the Oregon

1 Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under
 2 this subsection, the person is eligible for a reduction in the sentence as provided in ORS 421.121 and
 3 any other statute.

4 (b) In order to make a dispositional departure under this section, the court must make the fol-
 5 lowing additional findings on the record:

6 (A) There exists a substantial and compelling reason not relied upon in paragraph (a) of this
 7 subsection;

8 (B) A sentence of probation will be more effective than a prison term in reducing the risk of
 9 offender recidivism; and

10 (C) A sentence of probation will better serve to protect society.

11 (2) A conviction is subject to subsection (1) of this section only if the sentencing court finds on
 12 the record by a preponderance of the evidence:

13 (a) If the conviction is for manslaughter in the second degree:

14 (A) That the defendant is the mother or father of the victim;

15 (B) That the death of the victim was the result of an injury or illness that was not caused by
 16 the defendant;

17 (C) That the defendant treated the injury or illness solely by spiritual treatment in accordance
 18 with the religious beliefs or practices of the defendant and based on a good faith belief that spiritual
 19 treatment would bring about the victim's recovery from the injury or illness;

20 (D) That no other person previously under the defendant's care has died or sustained significant
 21 physical injury as a result of or despite the use of spiritual treatment, regardless of whether the
 22 spiritual treatment was used alone or in conjunction with medical care; and

23 (E) That the defendant does not have a previous conviction for a crime listed in subsection (4)
 24 of this section or for criminal mistreatment in the second degree.

25 (b) If the conviction is for assault in the second degree:

26 (A) That the victim was not physically injured by means of a deadly weapon;

27 (B) That the victim did not suffer a significant physical injury; and

28 (C) That the defendant does not have a previous conviction for a crime listed in subsection (4)
 29 of this section.

30 (c) If the conviction is for kidnapping in the second degree:

31 (A) That the victim was at least 12 years of age at the time the crime was committed; and

32 (B) That the defendant does not have a previous conviction for a crime listed in subsection (4)
 33 of this section.

34 (d) If the conviction is for robbery in the second degree:

35 (A) That the victim did not suffer a significant physical injury;

36 (B) That, if the defendant represented by words or conduct that the defendant was armed with
 37 a dangerous weapon, the representation did not reasonably put the victim in fear of imminent sig-
 38 nificant physical injury;

39 (C) That, if the defendant represented by words or conduct that the defendant was armed with
 40 a deadly weapon, the representation did not reasonably put the victim in fear of imminent physical
 41 injury; and

42 (D) That the defendant does not have a previous conviction for a crime listed in subsection (4)
 43 of this section.

44 (e) If the conviction is for rape in the second degree, sodomy in the second degree or sexual
 45 abuse in the first degree:

1 (A) That the victim was at least 12 years of age, but under [14] 18 years of age, at the time of
2 the offense;

3 (B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of
4 this section;

5 (C) That the defendant has not been previously found to be within the jurisdiction of a juvenile
6 court for an act that would have been a felony sexual offense if the act had been committed by an
7 adult;

8 (D) That the defendant was no more than five years older than the victim at the time of the
9 offense;

10 (E) That the offense did not involve sexual contact with any minor other than the victim; and

11 (F) That the victim's lack of consent was due solely to incapacity to consent by reason of being
12 under 18 years of age at the time of the offense.

13 (f) If the conviction is for unlawful sexual penetration in the second degree:

14 (A) That the victim was 12 years of age or older at the time of the offense;

15 (B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of
16 this section;

17 (C) That the defendant has not been previously found to be within the jurisdiction of a juvenile
18 court for an act that would have been a felony sexual offense if the act had been committed by an
19 adult;

20 (D) That the defendant was no more than five years older than the victim at the time of the
21 offense;

22 (E) That the offense did not involve sexual contact with any minor other than the victim;

23 (F) That the victim's lack of consent was due solely to incapacity to consent by reason of being
24 under 18 years of age at the time of the offense; and

25 (G) That the object used to commit the unlawful sexual penetration was the hand or any part
26 thereof of the defendant.

27 (3) In making the findings required by subsections (1) and (2) of this section, the court may
28 consider any evidence presented at trial and may receive and consider any additional relevant in-
29 formation offered by either party at sentencing.

30 (4) The crimes to which subsection (2)(a)(E), (b)(C), (c)(B), (d)(D), (e)(B) and (f)(B) of this section
31 refer are:

32 (a) A crime listed in ORS 137.700 (2) or 137.707 (4);

33 (b) Escape in the first degree, as defined in ORS 162.165;

34 (c) Aggravated murder, as defined in ORS 163.095;

35 (d) Criminally negligent homicide, as defined in ORS 163.145;

36 (e) Assault in the third degree, as defined in ORS 163.165;

37 (f) Criminal mistreatment in the first degree, as defined in ORS 163.205 (1)(b)(A);

38 (g) Rape in the third degree, as defined in ORS 163.355;

39 (h) Sodomy in the third degree, as defined in ORS 163.385;

40 (i) Sexual abuse in the second degree, as defined in ORS 163.425;

41 (j) Stalking, as defined in ORS 163.732;

42 (k) Burglary in the first degree, as defined in ORS 164.225, when it is classified as a person
43 felony under the rules of the Oregon Criminal Justice Commission;

44 (L) Arson in the first degree, as defined in ORS 164.325;

45 (m) Robbery in the third degree, as defined in ORS 164.395;

1 (n) Intimidation in the first degree, as defined in ORS 166.165;

2 (o) Promoting prostitution, as defined in ORS 167.012; and

3 (p) An attempt or solicitation to commit any Class A or B felony listed in paragraphs (a) to (L)
4 of this subsection.

5 (5) Notwithstanding ORS 137.545 (5)(b), if a person sentenced to probation under this section
6 violates a condition of probation by committing a new crime, the court shall revoke the probation
7 and impose the presumptive sentence of imprisonment under the rules of the Oregon Criminal Jus-
8 tice Commission.

9 (6) As used in this section:

10 (a) "Conviction" includes, but is not limited to:

11 (A) A juvenile court adjudication finding a person within the court's jurisdiction under ORS
12 419C.005, if the person was at least 15 years of age at the time the person committed the offense
13 that brought the person within the jurisdiction of the juvenile court.

14 (B) A conviction in another jurisdiction for a crime that if committed in this state would con-
15 stitute a crime listed in subsection (4) of this section.

16 (b) "Previous conviction" means a conviction that was entered prior to imposing sentence on the
17 current crime provided that the prior conviction is based on a crime committed in a separate crim-
18 inal episode. "Previous conviction" does not include a conviction for a Class C felony, including an
19 attempt or solicitation to commit a Class B felony, or a misdemeanor, unless the conviction was
20 entered within the 10-year period immediately preceding the date on which the current crime was
21 committed.

22 (c) "Significant physical injury" means a physical injury that:

23 (A) Creates a risk of death that is not a remote risk;

24 (B) Causes a serious and temporary disfigurement;

25 (C) Causes a protracted disfigurement; or

26 (D) Causes a prolonged impairment of health or the function of any bodily organ.

27 **SECTION 10.** ORS 163.345 is amended to read:

28 163.345. (1) In any prosecution under ORS [163.355,] 163.365, [163.385,] 163.395, 163.415,
29 163.425[,] **or** 163.427 [*or* 163.435] in which the victim's lack of consent was due solely to incapacity
30 to consent by reason of being less than a specified age, it is a defense that the actor was less than
31 three years older than the victim at the time of the alleged offense.

32 (2) In any prosecution under ORS 163.408, when the object used to commit the unlawful sexual
33 penetration was the hand or any part thereof of the actor and in which the victim's lack of consent
34 was due solely to incapacity to consent by reason of being less than a specified age, it is a defense
35 that the actor was less than three years older than the victim at the time of the alleged offense.

36 (3) In any prosecution under ORS 163.445 in which the victim's lack of consent was due solely
37 to incapacity to consent by reason of being less than a specified age, it is a defense that the actor
38 was less than three years older than the victim at the time of the alleged offense if the victim was
39 at least 15 years of age at the time of the alleged offense.

40 **SECTION 11.** ORS 336.455 is amended to read:

41 336.455. (1) Course material and instruction for all human sexuality education courses that dis-
42 cuss human sexuality in public elementary and secondary schools shall enhance students' under-
43 standing of sexuality as a normal and healthy aspect of human development. Course instruction shall
44 be appropriate for the age of the pupils and satisfy the following criteria:

45 (a) Be comprehensive.

1 (b) As an integral part of the health education curriculum, include information about responsible
2 sexual behaviors and hygienic practices that eliminate or reduce the risks of pregnancy, exposure
3 to human immunodeficiency virus, hepatitis B and other infectious or sexually transmitted diseases
4 and shall be designed to allay those fears concerning the risks that are scientifically groundless.

5 (c) Promote abstinence for school-age youth and mutually monogamous relationships with an
6 uninfected partner for adults as the safest and most responsible sexual behavior. However,
7 abstinence shall not be taught to the exclusion of other material and instruction on contraceptive
8 and disease reduction measures. Human sexuality education courses shall acknowledge the value
9 of abstinence while not devaluing or ignoring those young people who have had or are having sexual
10 intercourse.

11 (d) Include a discussion of the possible emotional, physical and psychological consequences of
12 preadolescent and adolescent sexual intercourse and the emotional, physical and psychological con-
13 sequences of unintended pregnancy. Pupils shall be provided with statistics based on the latest
14 medical information regarding both the possible side effects and health benefits of all forms of
15 contraceptives, including the success and failure rates for prevention of pregnancy.

16 (e) Stress that sexually transmitted diseases are serious possible hazards of sexual contact. Pu-
17 pils shall be provided with statistics based on the latest medical information regarding the efficacy
18 of contraceptives in preventing human immunodeficiency virus infection and other sexually trans-
19 mitted diseases.

20 (f) Advise pupils of the laws pertaining to their financial responsibility for their children.

21 (g) Advise pupils of the circumstances in which it is unlawful under ORS [163.435 and] 163.445
22 for persons [18 years of age or older] to have sexual relations with persons younger than 18 years
23 of age to whom they are not married.

24 (h) Teach that no form of sexual expression is acceptable when it physically or emotionally
25 harms oneself or others and teach pupils not to make unwanted physical and verbal sexual advances,
26 how to decline unwanted sexual advances or accept the refusal of unwanted sexual advances. Pupils
27 shall be taught that it is wrong to take advantage of or to exploit another person. Materials and
28 information shall be presented in a manner sensitive to the fact that there are students who have
29 experienced sexual abuse.

30 (i) Validate through course material and instruction the importance of honesty with oneself and
31 others, respect for each person's dignity and well-being, and responsibility for one's actions.

32 (j) Assist students in the development and practice of effective communication skills, the devel-
33 opment of self-esteem and the ability to resist peer pressure.

34 (k) Encourage family communication and involvement and help students learn to make respon-
35 sible decisions.

36 (2) Any course in any public elementary and secondary school, the main purpose of which is to
37 teach human sexuality education or human immunodeficiency virus education, or both, shall em-
38 phasize that abstinence from sexual contact is the only method that is 100 percent effective against
39 unintended pregnancy, sexually transmitted diseases and human immunodeficiency virus when
40 transmitted sexually. Abstinence is to be stressed, but not to the exclusion of other material and
41 instruction on contraceptive and disease reduction measures. Such courses are to acknowledge the
42 value of abstinence while not devaluing or ignoring those young people who have had or are having
43 sexual intercourse.

44 (3) Nothing in this section prohibits instruction in sanitation, hygiene or traditional courses in
45 biology.

SECTION 12. ORS 419C.230 is amended to read:

419C.230. (1) A formal accountability agreement may be entered into when a youth has been referred to a county juvenile department, and a juvenile department counselor has probable cause to believe that the youth may be found to be within the jurisdiction of the juvenile court for one or more acts specified in ORS 419C.005.

(2) Notwithstanding subsection (1) of this section, unless authorized by the district attorney, a formal accountability agreement may not be entered into when the youth:

(a) Is alleged to have committed an act that if committed by an adult would constitute:

(A) A felony sex offense under ORS [163.355,] 163.365, 163.375, [163.385,] 163.395, 163.405, 163.408, 163.411, 163.425 or 163.427; or

(B) An offense involving the use or possession of a firearm, as defined in ORS 166.210, or destructive device, as described in ORS 166.382; or

(b) Is being referred to the county juvenile department for a second or subsequent time for commission of an act that if committed by an adult would constitute a felony.

SECTION 13. ORS 419B.005 is amended to read:

419B.005. As used in ORS 418.747, 418.748, 418.749 and 419B.005 to 419B.050, unless the context requires otherwise:

(1)(a) "Abuse" means:

(A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

(B) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.

(C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are defined in ORS chapter 163.

(D) Sexual abuse, as defined in ORS chapter 163.

(E) Sexual exploitation, including but not limited to:

(i) [*Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which*] **Conduct that** allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or [*which*] **that** is designed to serve educational or other legitimate purposes; and

(ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution, as defined in ORS chapter 167.

(F) Negligent treatment or maltreatment of a child, including but not limited to the failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child.

(G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.

(H) Buying or selling a person under 18 years of age as described in ORS 163.537.

(I) Permitting a person under 18 years of age to enter or remain in a place where methamphetamines are being manufactured.

1 (b) "Abuse" does not include reasonable discipline unless the discipline results in one of the
2 conditions described in paragraph (a) of this subsection.

3 (2) "Child" means an unmarried person who is under 18 years of age.

4 (3) "Public or private official" means:

5 (a) Physician, including any intern or resident.

6 (b) Dentist.

7 (c) School employee.

8 (d) Licensed practical nurse or registered nurse.

9 (e) Employee of the Department of Human Services, State Commission on Children and Families,
10 Child Care Division of the Employment Department, the Oregon Youth Authority, a county health
11 department, a community mental health and developmental disabilities program, a county juvenile
12 department, a licensed child-caring agency or an alcohol and drug treatment program.

13 (f) Peace officer.

14 (g) Psychologist.

15 (h) Member of the clergy.

16 (i) Licensed clinical social worker.

17 (j) Optometrist.

18 (k) Chiropractor.

19 (L) Certified provider of foster care, or an employee thereof.

20 (m) Attorney.

21 (n) Naturopathic physician.

22 (o) Licensed professional counselor.

23 (p) Licensed marriage and family therapist.

24 (q) Firefighter or emergency medical technician.

25 (r) A court appointed special advocate, as defined in ORS 419A.004.

26 (s) A child care provider registered or certified under ORS 657A.030 and 657A.250 to 657A.450.

27 (t) Member of the Legislative Assembly.

28 (4) "Law enforcement agency" means:

29 (a) Any city or municipal police department.

30 (b) Any county sheriff's office.

31 (c) The Oregon State Police.

32 (d) A county juvenile department.

33 **SECTION 14. ORS 163.355, 163.385 and 163.435 are repealed.**

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