

**Enrolled**  
**Senate Bill 89**

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for Department of Corrections)

CHAPTER .....

AN ACT

Relating to custodial sexual misconduct; creating new provisions; amending ORS 163.412; and declaring an emergency.

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

**SECTION 1.** Sections 2 to 4 of this 2005 Act are added to and made a part of ORS 163.305 to 163.467.

**SECTION 2.** As used in sections 3 and 4 of this 2005 Act, “correctional facility” has the meaning given that term in ORS 162.135.

**SECTION 3.** (1) A person commits the crime of custodial sexual misconduct in the first degree if the person:

(a) Engages in sexual intercourse or deviate sexual intercourse with another person or penetrates the vagina, anus or penis of another person with any object other than the penis or mouth of the actor knowing that the other person is:

- (A) In the custody of a law enforcement agency following arrest;
- (B) Confined or detained in a correctional facility;
- (C) Participating in an inmate or offender work crew or work release program; or
- (D) On probation, parole, post-prison supervision or other form of conditional or supervised release; and

(b) Is employed by or under contract with the state or local agency that:

- (A) Employs the officer who arrested the other person;
- (B) Operates the correctional facility in which the other person is confined or detained;
- (C) Is responsible for supervising the other person in a work crew or work release program or on probation, parole, post-prison supervision or other form of conditional or supervised release; or
- (D) Engages the other person in work or on-the-job training pursuant to ORS 421.354 (1).

(2) Consent of the other person to sexual intercourse, deviate sexual intercourse or the sexual penetration is not a defense to a prosecution under this section.

(3) Lack of supervisory authority over the other person is an affirmative defense to a prosecution under this section when the other person is on probation, parole, post-prison supervision or other form of conditional or supervised release.

(4) Custodial sexual misconduct in the first degree is a Class C felony.

**SECTION 4.** (1) A person commits the crime of custodial sexual misconduct in the second degree if the person:

(a) Engages in sexual contact with another person knowing that the other person is:  
 (A) In the custody of a law enforcement agency following arrest;  
 (B) Confined or detained in a correctional facility;  
 (C) Participating in an inmate or offender work crew or work release program; or  
 (D) On probation, parole, post-prison supervision or other form of conditional or supervised release; and

(b) Is employed by or under contract with the state or local agency that:  
 (A) Employs the officer who arrested the other person;  
 (B) Operates the correctional facility in which the other person is confined or detained;  
 (C) Is responsible for supervising the other person in a work crew or work release program or on probation, parole, post-prison supervision or other form of conditional or supervised release; or

(D) Engages the other person in work or on-the-job training pursuant to ORS 421.354 (1).  
 (2) Consent of the other person to sexual contact is not a defense to a prosecution under this section.

(3) Lack of supervisory authority over the other person is an affirmative defense to a prosecution under this section when the other person is on probation, parole, post-prison supervision or other form of conditional or supervised release.

(4) Custodial sexual misconduct in the second degree is a Class A misdemeanor.

**SECTION 5.** ORS 163.412 is amended to read:

163.412. Nothing in ORS 163.408 or 163.411 or section 3 of this 2005 Act prohibits a penetration described in [either of] those sections when:

(1) The penetration is part of a medically recognized treatment or diagnostic procedure; or

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

**SECTION 6.** This 2005 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect on its passage.

Passed by Senate April 12, 2005

Received by Governor:

Repassed by Senate June 27, 2005

.....M.,....., 2005

Approved:

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 Secretary of Senate

.....M.,....., 2005

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 President of Senate

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 Governor

Passed by House June 23, 2005

Filed in Office of Secretary of State:

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 Speaker of House

.....M.,....., 2005

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 Secretary of State