

A-Engrossed Senate Bill 217

Ordered by the Senate March 9
Including Senate Amendments dated March 9

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 Attorney General Hardy Myers for Attorney General's Sexual Assault Task Force)

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.

Changes term "deviate sexual intercourse" to "oral or anal [*sexual*] intercourse."

A BILL FOR AN ACT

1
2 Relating to terminology used in describing sex offenses; amending ORS 161.067, 163.305, 163.385,
3 163.395, 163.405, 163.425, 163.435, 163.445, 163.465, 163.525, 163.665 and 167.002.

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) "*Deviate sexual intercourse*" means sexual conduct between persons consisting of contact be-
8 tween the sex organs of one person and the mouth or anus of another.]

9 [(2)] (1) "Forcible compulsion" means to compel by:

10 (a) Physical force; or

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

14 [(3)] (2) "Mentally defective" means that a person suffers from a mental disease or defect that
15 renders the person incapable of appraising the nature of the conduct of the person.

16 [(4)] (3) "Mentally incapacitated" means that a person is rendered incapable of appraising or
17 controlling the conduct of the person at the time of the alleged offense because of the influence of
18 a controlled or other intoxicating substance administered to the person without the consent of the
19 person or because of any other act committed upon the person without the consent of the person.

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

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

24 (6) "Sexual contact" means any touching of the sexual or other intimate parts of a person or
25 causing such person to touch the sexual or other intimate parts of the actor for the purpose of
26 arousing or gratifying the sexual desire of either party.

27 (7) "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however
28 slight; emission is not required.

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 **SECTION 2.** ORS 163.385 is amended to read:

2 163.385. (1) A person commits the crime of sodomy in the third degree if the person engages in
3 [*deviate sexual*] **oral or anal** intercourse with another person under 16 years of age or causes that
4 person to engage in [*deviate sexual*] **oral or anal** intercourse.

5 (2) Sodomy in the third degree is a Class C felony.

6 **SECTION 3.** ORS 163.395 is amended to read:

7 163.395. (1) A person who engages in [*deviate sexual*] **oral or anal** intercourse with another
8 person or causes another to engage in [*deviate sexual*] **oral or anal** intercourse commits the crime
9 of sodomy in the second degree if the victim is under 14 years of age.

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

11 **SECTION 4.** ORS 163.405 is amended to read:

12 163.405. (1) A person who engages in [*deviate sexual*] **oral or anal** intercourse with another
13 person or causes another to engage in [*deviate sexual*] **oral or anal** intercourse commits the crime
14 of sodomy in the first degree if:

15 (a) The victim is subjected to forcible compulsion by the actor;

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

17 (c) The victim is under 16 years of age and is the actor's brother or sister, of the whole or half
18 blood, the son or daughter of the actor or the son or daughter of the actor's spouse; or

19 (d) The victim is incapable of consent by reason of mental defect, mental incapacitation or
20 physical helplessness.

21 (2) Sodomy in the first degree is a Class A felony.

22 **SECTION 5.** ORS 163.425 is amended to read:

23 163.425. (1) A person commits the crime of sexual abuse in the second degree when that person
24 subjects another person to sexual intercourse, [*deviate sexual*] **oral or anal** intercourse or, except
25 as provided in ORS 163.412, penetration of the vagina, anus or penis with any object other than the
26 penis or mouth of the actor and the victim does not consent thereto.

27 (2) Sexual abuse in the second degree is a Class C felony.

28 **SECTION 6.** ORS 163.435 is amended to read:

29 163.435. (1) A person 18 years of age or older commits the crime of contributing to the sexual
30 delinquency of a minor if:

31 (a) Being a male, he engages in sexual intercourse with a female under 18 years of age; or

32 (b) Being a female, she engages in sexual intercourse with a male under 18 years of age; or

33 (c) The person engages in [*deviate sexual*] **oral or anal** intercourse with another person under
34 18 years of age or causes that person to engage in [*deviate sexual*] **oral or anal** intercourse.

35 (2) Contributing to the sexual delinquency of a minor is a Class A misdemeanor.

36 **SECTION 7.** ORS 163.445 is amended to read:

37 163.445. (1) A person commits the crime of sexual misconduct if the person engages in sexual
38 intercourse or [*deviate sexual*] **oral or anal** intercourse with an unmarried person under 18 years
39 of age.

40 (2) Sexual misconduct is a Class C misdemeanor.

41 **SECTION 8.** ORS 163.465 is amended to read:

42 163.465. (1) A person commits the crime of public indecency if while in, or in view of, a public
43 place the person performs:

44 (a) An act of sexual intercourse;

45 (b) An act of [*deviate sexual*] **oral or anal** intercourse; or

1 (c) An act of exposing the genitals of the person with the intent of arousing the sexual desire
2 of the person or another person.

3 (2)(a) Public indecency is a Class A misdemeanor.

4 (b) Notwithstanding paragraph (a) of this subsection, public indecency is a Class C felony if the
5 person has a prior conviction for public indecency or a crime described in ORS 163.355 to 163.445.

6 **SECTION 9.** ORS 163.525 is amended to read:

7 163.525. (1) A person commits the crime of incest if the person marries or engages in sexual
8 intercourse or [*deviate sexual*] **oral or anal** intercourse with a person whom the person knows to
9 be related to the person, either legitimately or illegitimately, as an ancestor, descendant or brother
10 or sister of either the whole or half blood.

11 (2) Incest is a Class C felony.

12 **SECTION 10.** ORS 163.665 is amended to read:

13 163.665. As used in ORS 163.670 to 163.696:

14 (1) "Child" means a person who is less than 18 years of age, and any reference to a child in
15 relation to a photograph, motion picture, videotape or other visual recording of the child is a ref-
16 erence to a person who was less than 18 years of age at the time the original image in the photo-
17 graph, motion picture, videotape or other visual recording was created and not the age of the person
18 at the time of an alleged offense relating to the subsequent reproduction, use or possession of the
19 visual recording.

20 (2) "Child abuse" means conduct that constitutes, or would constitute if committed in this state,
21 a crime in which the victim is a child.

22 (3) "Sexually explicit conduct" means actual or simulated:

23 (a) Sexual intercourse or [*deviant sexual*] **oral or anal** intercourse;

24 (b) Genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the
25 same or opposite sex or between humans and animals;

26 (c) Penetration of the vagina or rectum by any object other than as part of a medical diagnosis
27 or treatment or as part of a personal hygiene practice;

28 (d) Masturbation;

29 (e) Sadistic or masochistic abuse; or

30 (f) Lewd exhibition of sexual or other intimate parts.

31 (4) "Visual depiction" includes, but is not limited to, photographs, films, videotapes, pictures or
32 computer or computer-generated images or pictures, whether made or produced by electronic, me-
33 chanical or other means.

34 **SECTION 11.** ORS 161.067 is amended to read:

35 161.067. (1) When the same conduct or criminal episode violates two or more statutory pro-
36 visions and each provision requires proof of an element that the others do not, there are as many
37 separately punishable offenses as there are separate statutory violations.

38 (2) When the same conduct or criminal episode, though violating only one statutory provision
39 involves two or more victims, there are as many separately punishable offenses as there are victims.
40 However, two or more persons owning joint interests in real or personal property shall be consid-
41 ered a single victim for purposes of determining the number of separately punishable offenses if the
42 property is the subject of one of the following crimes:

43 (a) Theft as defined in ORS 164.015.

44 (b) Unauthorized use of a vehicle as defined in ORS 164.135.

45 (c) Criminal possession of rented or leased personal property as defined in ORS 164.140.

1 (d) Burglary as defined in ORS 164.215 or 164.225.

2 (e) Criminal trespass as defined in ORS 164.243, 164.245, 164.255, 164.265 or 164.278.

3 (f) Arson and related offenses as defined in ORS 164.315, 164.325 or 164.335.

4 (g) Forgery and related offenses as defined in ORS 165.002 to 165.070.

5 (3) When the same conduct or criminal episode violates only one statutory provision and in-
6 volves only one victim, but nevertheless involves repeated violations of the same statutory provision
7 against the same victim, there are as many separately punishable offenses as there are violations,
8 except that each violation, to be separately punishable under this subsection, must be separated
9 from other such violations by a sufficient pause in the defendant's criminal conduct to afford the
10 defendant an opportunity to renounce the criminal intent. Each method of engaging in [*deviate sex-*
11 *ual*] **oral or anal** intercourse as defined in ORS 163.305, and each method of engaging in unlawful
12 sexual penetration as defined in ORS 163.408 and 163.411 shall constitute separate violations of their
13 respective statutory provisions for purposes of determining the number of statutory violations.

14 **SECTION 12.** ORS 167.002 is amended to read:

15 167.002. As used in ORS 167.002 to 167.027, unless the context requires otherwise:

16 (1) "Place of prostitution" means any place where prostitution is practiced.

17 (2) "Prostitute" means a male or female person who engages in sexual conduct or sexual contact
18 for a fee.

19 (3) "Prostitution enterprise" means an arrangement whereby two or more prostitutes are or-
20 ganized to conduct prostitution activities.

21 (4) "Sexual conduct" means sexual intercourse or [*deviate sexual*] **oral or anal** intercourse.

22 (5) "Sexual contact" means any touching of the sexual organs or other intimate parts of a person
23 not married to the actor for the purpose of arousing or gratifying the sexual desire of either party.

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