

Joint Committee on Ways and Means

Carrier – House: Rep. Gelser
Carrier – Senate: Sen. Carter

Revenue: No revenue impact

Fiscal: Fiscal statement issued

Action: Do Pass the A-Engrossed Measure

Vote: 18 – 3 – 1

House

Yeas: Buckley, C. Edwards, D. Edwards, Galizio, Gilman, Jenson, Kotek, Nathanson, Richardson, Shields, G. Smith

Nays: Garrard

Exc:

Senate

Yeas: Bates, Carter, Johnson, Monroe, Nelson, Verger, Walker

Nays: Girod, Whitsett

Exc: Winters

Prepared By: Tim Walker, Legislative Fiscal Office

Meeting Date: June 23, 2009

WHAT THE MEASURE DOES: Modifies the definition of “mentally incapacitated” as it applies to sex offenses. Removes language referring to how the victim became incapacitated.

ISSUES DISCUSSED:

- Cost of measure
- Difficulty in convincing a jury of the particulars of the crime
- What constitutes consent

EFFECT OF COMMITTEE AMENDMENT: No amendment.

BACKGROUND: This measure removes the question of how a person who is assaulted became incapacitated and focuses instead on the person’s ability to consent to sexual activity. According to the Attorney General’s Sexual Assault Task Force, Oregon is one of only 18 states that allows *how* a victim became incapacitated to determine the offender’s level of guilty.

The current definition of “mental incapacitation” covers a narrow set of circumstances. For example, it would apply in the following scenario: Someone slips a drug into a victim’s drink and, once drugged, the victim is sexually assaulted. The change proposed by HB 2343 broadens the application of “mental incapacitation” by removing the requirement that the victim become incapacitated as a result of *another person’s actions*.

This change would allow for possible prosecution for Rape in the first degree, Sex Abuse in the first degree, etc. in the following scenarios: A victim becomes incapable of granting consent as a result of his or her own actions, such as drinking to the point of incoherence, or due to some unforeseen factor such as illness, and then a person subjects the victim to sexual contact or intercourse. Under the current law, the person would only be charged with sex abuse in the second degree, not Rape in the first degree or Sex Abuse in the first degree. Sex Abuse 2 is a 7 on the Sentencing Guidelines Grid and a person prosecuted under this statute may receive a presumptive probation sentence, depending on their criminal history.