

2009 Regular Legislative Session
FISCAL ANALYSIS OF PROPOSED LEGISLATION
Prepared by the Oregon Legislative Fiscal Office

MEASURE NUMBER: HB 2343 **STATUS:** A Engrossed
SUBJECT: Modifies definition of “mentally incapacitated” for purposes of certain criminal statutes/
GOVERNMENT UNIT AFFECTED: Department of Corrections, Oregon Judicial Department, and
Public Defense Services Commission
PREPARED BY: Tim Walker
REVIEWED BY: Doug Wilson and John Borden
DATE: March 16, 2009

	<u>2009-2011</u>	<u>2011-2013</u>
EXPENDITURES: See Analysis.		

EFFECTIVE DATE: January 1, 2010

GOVERNOR’S BUDGET: This bill is not anticipated by the Governor’s recommended budget.

LOCAL GOVERNMENT MANDATE: This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

ANALYSIS: This bill expands the definition of “mentally incapacitated” to any situation where the victim is rendered incapable of appraising or controlling his or her conduct at the time of the offense. Under current law, this crime would most likely be charged as Sex Abuse 2, which would result in anywhere from probation plus jail to 36 months in prison depending upon the criminal history. This bill would change this to an A level Measure 11 crime with a mandatory 100 month sentence. The Criminal Justice Commission estimates an additional ten convictions per year under the provisions of this bill.

The Department of Corrections (DOC) estimates that the provisions of this bill will result in the need of two additional beds in the 2009-11 biennium at a cost of \$125,230, 12 additional beds in 2011-13 at a cost of \$698,933, and 29 additional beds in 2013-15 at a cost of \$1,650,593. The increased demand for beds would plateau at 70 in 2019-21 at a cost of \$3,970,413.

The Public Defense Services Commission (PDSC) estimates that there could be as many as 72 cases per year that could result from this bill. The cost difference between defending a Measure 11 crime and a misdemeanor is \$1,338. The additional costs as a result of this bill could be as much as \$192,672 per biennium. As sanctions increase, offenders may be more inclined to go to trial and the prosecutors can be more inclined offer a plea bargain to avoid a trial.

The Oregon Judicial Department (OJD) estimates that it costs an additional \$344 in court costs to try a felony case over a misdemeanor. 72 additional cases per year would result in an increase of \$49,536 in court costs per biennium. Due to the increased sanctions proposed by this bill, it is not known whether more offenders may accept plea bargains or request trials. In addition, it is likely that the increased sanctions would result in additional appeals and filings of motions.