

House Bill 2343

Sponsored by Representative GELSER (at the request of Attorney General Hardy Myers and Attorney General's Sexual Assault Task Force) (Pre-session filed).

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**.

Modifies definition of "mentally incapacitated" for purposes of certain criminal statutes.

A BILL FOR AN ACT

Relating to mental incapacitation; creating new provisions; and amending ORS 163.305.

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

SECTION 1. ORS 163.305 is amended to read:

163.305. As used in chapter 743, Oregon Laws 1971, unless the context requires otherwise:

(1) "Deviate sexual intercourse" means sexual conduct between persons consisting of contact between the sex organs of one person and the mouth or anus of another.

(2) "Forcible compulsion" means to compel by:

(a) Physical force; or

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

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

(4) "Mentally incapacitated" means that a person is rendered incapable of appraising or controlling the conduct of the person at the time of the alleged offense [*because of*] **as a result of illness**, the influence of a controlled or other intoxicating substance [*administered to the person without the consent of the person or because of any other act committed upon the person without the consent of the person*] **or some other cause**.

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

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

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

SECTION 2. The amendments to ORS 163.305 by section 1 of this 2009 Act apply to conduct occurring on or after the effective date of this 2009 Act.

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.