

Senate Bill 48

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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**.

Provides that person is incapable of consenting to sexual act if person is student in grade 12 or below and other person involved in sexual act is school employee or person in position of authority over student.

Expands certain sexual offenses to include school employee or person in position of authority over student, regardless of age of student.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to sexual offenses involving students; creating new provisions; amending ORS 163.315,
3 163.325, 163.355, 163.385, 163.408 and 163.415; and declaring an emergency.

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

5 **SECTION 1.** ORS 163.315 is amended to read:

6 163.315. (1) A person is considered incapable of consenting to a sexual act if the person is:

7 (a) Under 18 years of age;

8 **(b) A student in grade 12 or below and the other person involved in the sexual act is a**
9 **school employee or a person in a position of authority over the student;**

10 [(b)] (c) Mentally defective;

11 [(c)] (d) Mentally incapacitated; or

12 [(d)] (e) Physically helpless.

13 (2) A lack of verbal or physical resistance does not, by itself, constitute consent but may be
14 considered by the trier of fact along with all other relevant evidence.

15 **SECTION 2.** ORS 163.325 is amended to read:

16 163.325. (1) In any prosecution under ORS 163.355 to 163.445 in which the criminality of conduct
17 depends on a child's being under the age of 16, it is no defense that the defendant did not know the
18 child's age or that the defendant reasonably believed the child to be older than the age of 16.

19 (2) When criminality depends on the child's being under a specified age other than 16, it is an
20 affirmative defense for the defendant to prove that the defendant reasonably believed the child to
21 be above the specified age at the time of the alleged offense.

22 (3) In any prosecution under ORS 163.355 to 163.445 in which the victim's lack of consent is
23 based solely upon the incapacity of the victim to consent because the victim is **a student in grade**
24 **12 or below**, mentally defective, mentally incapacitated or physically helpless, it is an affirmative
25 defense for the defendant to prove that at the time of the alleged offense the defendant did not know
26 of the facts or conditions responsible for the victim's incapacity to consent.

27 **SECTION 3.** ORS 163.355 is amended to read:

28 163.355. (1) A person commits the crime of rape in the third degree if the person has sexual

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 intercourse with another person **who is:**

2 (a) Under 16 years of age[.]; **or**

3 (b) **A student in grade 12 or below and the person is a school employee or a person in a**
4 **position of authority over the student.**

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

6 **SECTION 4.** ORS 163.385 is amended to read:

7 163.385. (1) A person commits the crime of sodomy in the third degree if the person engages in
8 deviate sexual intercourse with another person [*under 16 years of age*] or causes [*that*] **another**
9 person to engage in deviate sexual intercourse[.] **and the other person is:**

10 (a) **Under 16 years of age; or**

11 (b) **A student in grade 12 or below and the person is a school employee or a person in a**
12 **position of authority over the student.**

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

14 **SECTION 5.** ORS 163.408 is amended to read:

15 163.408. (1) Except as permitted under ORS 163.412, a person commits the crime of unlawful
16 sexual penetration in the second degree if the person penetrates the vagina, anus or penis of another
17 with any object other than the penis or mouth of the actor and the victim is:

18 (a) Under 14 years of age[.]; **or**

19 (b) **A student in grade 12 or below and the person is a school employee or a person in a**
20 **position of authority over the student.**

21 (2) Unlawful sexual penetration in the second degree is a Class B felony.

22 **SECTION 6.** ORS 163.415 is amended to read:

23 163.415. (1) A person commits the crime of sexual abuse in the third degree if the person sub-
24 jects another person to sexual contact and:

25 (a) The victim does not consent to the sexual contact; [*or*]

26 (b) The victim is incapable of consent by reason of being under 18 years of age[.]; **or**

27 (c) **The victim is incapable of consent by reason of being a student in grade 12 or below**
28 **and the person is a school employee or a person in a position of authority over the student.**

29 (2) Sexual abuse in the third degree is a Class A misdemeanor.

30 **SECTION 7.** The amendments to ORS 163.315, 163.325, 163.355, 163.385, 163.408 and 163.415
31 by sections 1 to 6 of this 2009 Act apply to conduct occurring on or after the effective date
32 of this 2009 Act.

33 **SECTION 8.** This 2009 Act being necessary for the immediate preservation of the public
34 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
35 on its passage.

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