

Senate Bill 677

Sponsored by COMMITTEE ON JUDICIARY

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**.

Creates partial defense to certain sex offenses for certain juveniles and persons less than three years older than victim. Reduces sex offense to crime of inappropriate use of sexual image.

Creates crime of inappropriate use of sexual image. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to crime; declaring an emergency; and providing for criminal sentence reduction that re-
3 quires approval by a two-thirds majority.

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

5 **SECTION 1.** (1) **Except as otherwise provided in subsection (3) of this section, in any**
6 **prosecution under ORS 163.670, 163.684, 163.686, 163.687, 163.688, 163.689 or 163.693, it is an**
7 **affirmative defense that:**

8 (a) **The defendant was under 18 years of age at the time of the offense; or**

9 (b) **The defendant was less than three years older than the victim at the time of the of-**
10 **fense.**

11 (2) **Except as otherwise provided in subsection (3) of this section, the affirmative defenses**
12 **described in subsection (1) of this section constitute mitigating circumstances reducing what**
13 **otherwise would be a violation of ORS 163.670, 163.684, 163.686, 163.687, 163.688, 163.689 or**
14 **163.693 to the offense of inappropriate use of a sexual image as defined in section 2 of this**
15 **2011 Act.**

16 (3) **The affirmative defense described in:**

17 (a) **Subsection (1) of this section does not apply if:**

18 (A) **The state proves beyond a reasonable doubt that, at the time the offense was com-**
19 **mitted, the victim was under 12 years of age; or**

20 (B) **The defendant has a previous conviction or finding of juvenile court jurisdiction for**
21 **inappropriate use of a sexual image as defined in section 2 of this 2011 Act.**

22 (b) **Subsection (1)(b) of this section does not apply if the state proves beyond a reasonable**
23 **doubt that:**

24 (A) **The defendant transferred the visual recording or visual depiction, or authorized an-**
25 **other person to observe or record the sexually explicit conduct, for consideration; or**

26 (B) **The defendant used the visual recording or visual depiction, or the victim's partic-**
27 **ipation or engagement in sexually explicit conduct, to commit coercion as defined in ORS**
28 **163.275 or theft by extortion as defined in ORS 164.075.**

29 (4) **As used in this section:**

30 (a) **"Previous conviction or finding of juvenile court jurisdiction" means a conviction or**

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 finding of juvenile court jurisdiction that was entered prior to the commission of the current
2 offense.

3 (b) "Victim" means the child who is the subject of the visual recording or visual depiction
4 or, in the case of a prosecution under ORS 163.670, the child who participates or engages in
5 sexually explicit conduct.

6 **SECTION 2.** (1) A person commits the offense of inappropriate use of a sexual image if
7 the person violates ORS 163.670, 163.684, 163.686, 163.687, 163.688, 163.689 or 163.693 under the
8 mitigating circumstances described in section 1 of this 2011 Act.

9 (2) The state:

10 (a) May charge the offense of inappropriate use of a sexual image by alleging the ele-
11 ments of ORS 163.670, 163.684, 163.686, 163.687, 163.688, 163.689 or 163.693;

12 (b) Need not prove the existence of an affirmative defense described in section 1 of this
13 2011 Act as a precondition to a conviction or finding of juvenile court jurisdiction; and

14 (c) Notwithstanding that the circumstances described in section 1 (3) of this 2011 Act
15 exist, may allege a violation of this section by a person described in section 1 (1) of this 2011
16 Act. In a prosecution described in this paragraph, nothing in section 1 (3) of this 2011 Act
17 prohibits a court from entering a judgment of conviction or a finding of juvenile court ju-
18 risdiction for a violation of this section.

19 (3) Inappropriate use of a sexual image is a Class A misdemeanor.

20 **SECTION 3.** Sections 1 and 2 of this 2011 Act are added to and made a part of ORS 163.670
21 to 163.693.

22 **SECTION 4.** Sections 1 and 2 of this 2011 Act apply only to conduct occurring on or after
23 the effective date of this 2011 Act.

24 **SECTION 5.** This 2011 Act being necessary for the immediate preservation of the public
25 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
26 on its passage.