

Senate Bill 678

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 or, under certain circumstances, authorizes court to impose sentence not to exceed any otherwise applicable mandatory minimum or presumptive sentence, whichever is longer.

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

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 (4) As used in this section:

2 (a) "Previous conviction or finding of juvenile court jurisdiction" means a conviction or
3 finding of juvenile court jurisdiction that was entered prior to the commission of the current
4 offense.

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

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

11 (2) The state:

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

14 (b) Need not prove the existence of an affirmative defense described in section 1 of this
15 2011 Act as a precondition to a conviction or finding of juvenile court jurisdiction; and

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

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

22 **SECTION 3.** (1) Notwithstanding any other provision of law, when a person is convicted
23 of an offense described in subsection (3) of this section the court may impose a sentence of
24 probation or a term of imprisonment that does not exceed any otherwise applicable manda-
25 tory minimum or presumptive sentence for the offense, whichever is longer, if:

26 (a) At the time the offense was committed, the defendant was under 18 years of age;

27 (b) At the time the offense was committed, the victim was under 12 years of age; and

28 (c) No other circumstance described in section 1 (3) of this 2011 Act exists.

29 (2) In making the sentencing determination described in this section, the court shall
30 consider, in addition to any other factor the court considers appropriate:

31 (a) The age of the defendant and the age of the victim, at the time the offense was
32 committed;

33 (b) The nature of the sexually explicit conduct involved in the offense; and

34 (c) Any criminal history of the defendant.

35 (3) This section applies to:

36 (a) Using a child in a display of sexually explicit conduct as defined in ORS 163.670.

37 (b) Encouraging child sexual abuse in the first degree as defined in ORS 163.684.

38 (c) Encouraging child sexual abuse in the second degree as defined in ORS 163.686.

39 (d) Possession of materials depicting sexually explicit conduct of a child in the first de-
40 gree as defined in ORS 163.688.

41 (e) Possession of materials depicting sexually explicit conduct of a child in the second
42 degree as defined in ORS 163.689.

43 **SECTION 4.** Sections 1 and 2 of this 2011 Act are added to and made a part of ORS 163.670
44 to 163.693.

45 **SECTION 5.** Sections 1 to 3 of this 2011 Act apply only to conduct occurring on or after

1 the effective date of this 2011 Act.

2 **SECTION 6.** This 2011 Act being necessary for the immediate preservation of the public
3 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
4 on its passage.

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