

Enrolled
Senate Bill 803

Sponsored by Senators VERGER, MONNES ANDERSON; Senators BATES, BONAMICI, DEVLIN,
DINGFELDER, EDWARDS, HASS, JOHNSON, MONROE, PROZANSKI, ROSENBAUM

CHAPTER

AN ACT

Relating to crime; creating new provisions; amending ORS 163.665, 163.670, 163.682, 163.684, 163.686, 163.687, 163.688, 163.689 and 163.693; repealing section 1, chapter 109, Oregon Laws 2011 (Enrolled House Bill 2463); and declaring an emergency.

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

SECTION 1. ORS 163.665 is amended to read:

163.665. As used in ORS 163.670 to 163.693:

(1) "Child" means a person who is less than 18 years of age, and any reference to a child in relation to a [*photograph, motion picture, videotape or other*] visual recording of the child is a reference to a person who was less than 18 years of age at the time the original image in the [*photograph, motion picture, videotape or other*] visual recording was created and not the age of the person at the time of an alleged offense relating to the subsequent reproduction, use or possession of the visual recording.

(2) "Child abuse" means conduct that constitutes, or would constitute if committed in this state, a crime in which the victim is a child.

(3) "Sexually explicit conduct" means actual or simulated:

(a) Sexual intercourse or deviant sexual intercourse;

(b) Genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex or between humans and animals;

(c) Penetration of the vagina or rectum by any object other than as part of a medical diagnosis or treatment or as part of a personal hygiene practice;

(d) Masturbation;

(e) Sadistic or masochistic abuse; or

(f) Lewd exhibition of sexual or other intimate parts.

(4) "Visual depiction" includes, but is not limited to, [*photographs, films, videotapes, pictures or computer or*] **visual recordings, pictures and** computer-generated images [*or*] **and** pictures, whether made or produced by electronic, mechanical or other means.

(5) "**Visual recording**" includes, but is not limited to, **photographs, films, videotapes and computer and other digital pictures, regardless of the manner in which the recording is stored.**

SECTION 2. ORS 163.670 is amended to read:

163.670. (1) A person commits the crime of using a child in a display of sexually explicit conduct if the person employs, authorizes, permits, compels or induces a child to participate or engage in

sexually explicit conduct for any person to observe or to record in a [*photograph, motion picture, videotape or other*] visual recording.

(2) Using a child in a display of sexually explicit conduct is a Class A felony.

SECTION 3. ORS 163.684 is amended to read:

163.684. (1) A person commits the crime of encouraging child sexual abuse in the first degree if the person:

(a)(A) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, displays, finances, attempts to finance or sells [*any photograph, motion picture, videotape or other*] a visual recording of sexually explicit conduct involving a child or **knowingly** possesses, **accesses or views** such [*matter*] a **visual recording** with the intent to develop, duplicate, publish, print, disseminate, exchange, display or sell it; or

(B) Knowingly brings into this state, or causes to be brought or sent into this state, for sale or distribution, [*any photograph, motion picture, videotape or other*] a visual recording of sexually explicit conduct involving a child; and

(b) Knows or is aware of and consciously disregards the fact that creation of the visual recording of sexually explicit conduct involved child abuse.

(2) Encouraging child sexual abuse in the first degree is a Class B felony.

SECTION 4. ORS 163.686 is amended to read:

163.686. (1) A person commits the crime of encouraging child sexual abuse in the second degree if the person:

(a)(A)(i) Knowingly possesses or controls [*any photograph, motion picture, videotape or other*], **or knowingly accesses with the intent to view, a** visual recording of sexually explicit conduct involving a child for the purpose of arousing or satisfying the sexual desires of the person or another person; or

(ii) Knowingly pays, exchanges or gives anything of value to obtain or view a [*photograph, motion picture, videotape or other*] visual recording of sexually explicit conduct involving a child for the purpose of arousing or satisfying the sexual desires of the person or another person; and

(B) Knows or is aware of and consciously disregards the fact that creation of the visual recording of sexually explicit conduct involved child abuse; or

(b)(A) Knowingly pays, exchanges or gives anything of value to observe sexually explicit conduct by a child or knowingly observes, for the purpose of arousing or gratifying the sexual desire of the person, sexually explicit conduct by a child; and

(B) Knows or is aware of and consciously disregards the fact that the conduct constitutes child abuse.

(2) Encouraging child sexual abuse in the second degree is a Class C felony.

SECTION 5. ORS 163.687 is amended to read:

163.687. (1) A person commits the crime of encouraging child sexual abuse in the third degree if the person:

(a)(A)(i) Knowingly possesses or controls [*any photograph, motion picture, videotape or other*], **or knowingly accesses with the intent to view, a** visual recording of sexually explicit conduct involving a child for the purpose of arousing or satisfying the sexual desires of the person or another person; or

(ii) Knowingly pays, exchanges or gives anything of value to obtain or view a [*photograph, motion picture, videotape or other*] visual recording of sexually explicit conduct involving a child for the purpose of arousing or satisfying the sexual desires of the person or another person; and

(B) Knows or fails to be aware of a substantial and unjustifiable risk that the creation of the visual recording of sexually explicit conduct involved child abuse; or

(b)(A) Knowingly pays, exchanges or gives anything of value to observe sexually explicit conduct by a child or knowingly observes, for the purpose of arousing or gratifying the sexual desire of the person, sexually explicit conduct by a child; and

(B) Knows or fails to be aware of a substantial and unjustifiable risk that the conduct constitutes child abuse.

(2) Encouraging child sexual abuse in the third degree is a Class A misdemeanor.

SECTION 6. ORS 163.688 is amended to read:

163.688. (1) A person commits the crime of possession of materials depicting sexually explicit conduct of a child in the first degree if the person:

(a) Knowingly possesses [*any*], **accesses or views a** visual depiction of sexually explicit conduct involving a child or [*any*] **a** visual depiction of sexually explicit conduct that appears to involve a child; and

(b) Uses the visual depiction to induce a child to participate or engage in sexually explicit conduct.

(2) Possession of materials depicting sexually explicit conduct of a child in the first degree is a Class B felony.

SECTION 7. ORS 163.689 is amended to read:

163.689. (1) A person commits the crime of possession of materials depicting sexually explicit conduct of a child in the second degree if the person:

(a) Knowingly possesses [*any*], **accesses or views a** visual depiction of sexually explicit conduct involving a child or [*any*] **a** visual depiction of sexually explicit conduct that appears to involve a child; and

(b) Intends to use the visual depiction to induce a child to participate or engage in sexually explicit conduct.

(2) Possession of materials depicting sexually explicit conduct of a child in the second degree is a Class C felony.

SECTION 8. ORS 163.693 is amended to read:

163.693. (1) A person commits the crime of failure to report child pornography if the person, in the course of processing or producing a [*photograph, motion picture, videotape or other*] visual recording, either commercially or privately, has reasonable cause to believe that the visual recording being processed or produced, or submitted for processing or production, depicts sexually explicit conduct involving a child and fails to report that fact to the appropriate law enforcement agency.

(2) Failure to report child pornography is a Class A misdemeanor.

SECTION 9. ORS 163.682 is amended to read:

163.682. The provisions of ORS 163.665 to 163.693 do not apply to:

(1) Any legitimate medical procedure performed by or under the direction of a person licensed to provide medical services for the purpose of medical diagnosis or treatment, including the recording of medical procedures;

(2) Any activity undertaken in the course of bona fide law enforcement activity or necessary to the proper functioning of the criminal justice system, except that this exception shall not apply to any activity prohibited by ORS 163.670;

(3) Any bona fide educational activity, including studies and lectures, in the fields of medicine, psychotherapy, sociology or criminology, except that this exception shall not apply to any activity prohibited by ORS 163.670;

(4) Obtaining, viewing or possessing a [*photograph, motion picture, videotape or other*] visual recording as part of a bona fide treatment program for sexual offenders; or

(5) A public library, as defined in ORS 357.400, or a library exempt from taxation under ORS 307.090 or 307.130, except that these exceptions do not apply to any activity prohibited by ORS 163.670.

SECTION 10. ORS 163.665 is added to and made a part of ORS 163.670 to 163.693.

SECTION 11. The amendments to ORS 163.665, 163.670, 163.682, 163.684, 163.686, 163.687, 163.688, 163.689 and 163.693 by sections 1 to 9 of this 2011 Act apply to conduct occurring on or after the effective date of this 2011 Act.

SECTION 11a. If House Bill 2463 becomes law, section 1, chapter 109, Oregon Laws 2011 (Enrolled House Bill 2463) (amending ORS 163.693), is repealed and ORS 163.693, as amended by section 8 of this 2011 Act, is amended to read:

163.693. [(1) *A person commits the crime of failure to report child pornography if the person, in the course of processing or producing a visual recording, either commercially or privately, has reasonable cause to believe that the visual recording being processed or produced, or submitted for processing or production, depicts sexually explicit conduct involving a child and fails to report that fact to the appropriate law enforcement agency.*]

[(2) *Failure to report child pornography is a Class A misdemeanor.*]

(1) As used in this section:

(a) “Computer technician” means a person who repairs, installs or otherwise services a computer, computer network or computer system for compensation.

(b) “Processor of photographic images” means a person who develops, processes, reproduces, transfers, edits or enhances photographic film into negatives, slides, prints, movies, digital images or video.

(2) A processor of photographic images or a computer technician who reasonably believes the processor or technician has observed a visual recording of a child involved in sexually explicit conduct shall report the name and address, if known, of the person requesting the processing or of the owner or person in possession of the computer, computer network or computer system to:

(a) The CyberTipline at the National Center for Missing and Exploited children;

(b) The local office of the Department of Human Services; or

(c) A law enforcement agency within the county where the processor or technician making the report is located at the time the visual recording is observed.

(3) Nothing in this section requires a processor of photographic images or a computer technician to monitor any user, subscriber or customer or to search for prohibited materials or media.

(4) Any person, their employer or a third party complying with this section in good faith shall be immune from civil or criminal liability in connection with making the report, except for willful or wanton misconduct.

(5) A person commits the crime of failure to report child pornography if the person violates the provisions of this section.

(6) Failure to report child pornography is a Class A misdemeanor.

SECTION 11b. If House Bill 2463 becomes law, the amendments to ORS 163.693 by section 11a of this 2011 Act become operative on January 1, 2012.

SECTION 12. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by Senate April 21, 2011

Repassed by Senate June 13, 2011

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 7, 2011

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Received by Governor:

.....M,....., 2011

Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

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Kate Brown, Secretary of State