

From the Desk of
Senator Ted Ferrell

Senate Bill 513

Sponsored by Senator KNOPP, Representatives BUEHLER, WHISNANT

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.

Expands crime of trafficking in persons to increase age limit of persons trafficked for purpose of engaging in commercial sex act and to include advertising for trafficking activities. Directs Oregon Criminal Justice Commission to classify certain offenses on sentencing guidelines grid.

Provides that trafficking in persons is abuse when committed for purpose of engaging in commercial sex act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Relating to the crime of trafficking in persons; amending ORS 163.266, 181.805 and 419B.005; and declaring an emergency.

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

SECTION 1. ORS 163.266 is amended to read:

163.266. (1) A person commits the crime of trafficking in persons if the person knowingly recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person and:

(a) The person knows that the other person will be subjected to involuntary servitude as described in ORS 163.263 or 163.264;

(b) The person knows or recklessly disregards the fact that force, fraud or coercion will be used to cause the other person to engage in a commercial sex act; or

(c) *[The person knows or recklessly disregards the fact that]* The other person is under *[15]* **18** years of age and will be used in a commercial sex act.

(2) A person commits the crime of trafficking in persons if the person knowingly **advertises for, or** benefits financially or receives something of value from participation in, a venture that involves an act prohibited by subsection (1) of this section or ORS 163.263 or 163.264.

(3) As used in this section, "commercial sex act" means sexual conduct or sexual contact, as those terms are defined in ORS 167.002, performed in return for a fee or anything of value.

(4) Violation of subsection (1)(a) or (2) of this section is a Class B felony.

(5) Violation of subsection (1)(b) or (c) of this section is a Class A felony~~[,]~~, **and the Oregon Criminal Justice Commission shall classify the offense as a crime category 9 of the sentencing guidelines grid.**

(6) In any prosecution under subsection (1)(c) of this section, it is not a defense that:

(a) The defendant did not know the victim's age;

(b) The victim consented to the activity or the lack of consent was due solely to incapacity by reason of the victim being less than a specified age; or

(c) The defendant is the victim's parent or legal guardian.

SECTION 2. ORS 181.805 is amended to read:

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.

1 181.805. As used in ORS 181.800 to 181.845:

2 (1) "Another United States court" means a federal court, a military court, the tribal court of a
3 federally recognized Indian tribe or a court of:

- 4 (a) A state other than Oregon;
- 5 (b) The District of Columbia;
- 6 (c) The Commonwealth of Puerto Rico;
- 7 (d) Guam;
- 8 (e) American Samoa;
- 9 (f) The Commonwealth of the Northern Mariana Islands; or
- 10 (g) The United States Virgin Islands.

11 (2) "Attends" means is enrolled on a full-time or part-time basis.

12 (3)(a) "Correctional facility" means any place used for the confinement of persons:

13 (A) Charged with or convicted of a crime or otherwise confined under a court order.

14 (B) Found to be within the jurisdiction of the juvenile court for having committed an act that
15 if committed by an adult would constitute a crime.

16 (b) "Correctional facility" applies to a state hospital or a secure intensive community inpatient
17 facility only as to persons detained therein charged with or convicted of a crime, or detained therein
18 after being found guilty except for insanity under ORS 161.290 to 161.370 or responsible except for
19 insanity under ORS 419C.411.

20 (4) "Institution of higher education" means a public or private educational institution that pro-
21 vides a program of post-secondary education.

22 (5) "Sex crime" means:

- 23 (a) Rape in any degree;
- 24 (b) Sodomy in any degree;
- 25 (c) Unlawful sexual penetration in any degree;
- 26 (d) Sexual abuse in any degree;
- 27 (e) Incest with a child victim;
- 28 (f) Using a child in a display of sexually explicit conduct;
- 29 (g) Encouraging child sexual abuse in any degree;
- 30 (h) Transporting child pornography into the state;
- 31 (i) Paying for viewing a child's sexually explicit conduct;
- 32 (j) Compelling prostitution;
- 33 (k) Promoting prostitution;
- 34 (L) Kidnapping in the first degree if the victim was under 18 years of age;
- 35 (m) Contributing to the sexual delinquency of a minor;
- 36 (n) Sexual misconduct if the offender is at least 18 years of age;
- 37 (o) Possession of materials depicting sexually explicit conduct of a child in the first degree;
- 38 (p) Kidnapping in the second degree if the victim was under 18 years of age, except by a parent
39 or by a person found to be within the jurisdiction of the juvenile court;
- 40 (q) Online sexual corruption of a child in any degree if the offender reasonably believed the
41 child to be more than five years younger than the offender;
- 42 (r) Luring a minor, if:
43 (A) The offender reasonably believed the child to be more than five years younger than the
44 offender or under 16 years of age; and
45 (B) The court designates in the judgment that the offense is a sex crime;

- 1 (s) Sexual assault of an animal;
- 2 (t) Public indecency or private indecency, if the person has a prior conviction for a crime listed
- 3 in this subsection;
- 4 (u) Trafficking in persons as described in ORS 163.266 (1)(b) or (c);
- 5 (v) Purchasing sex with a minor if the court designates the offense as a sex crime pursuant to
- 6 ORS 163.413 (3)(d), or the offense is the defendant's second or subsequent conviction under ORS
- 7 163.413 (3)(b)(B);
- 8 (w) Any attempt to commit any of the crimes listed in paragraphs (a) to (s), (u) or (v) of this
- 9 subsection;
- 10 (x) Burglary, when committed with intent to commit any of the offenses listed in paragraphs (a)
- 11 to (v) of this subsection; or
- 12 (y) Criminal conspiracy if the offender agrees with one or more persons to engage in or cause
- 13 the performance of an offense listed in paragraphs (a) to [(t)] (v) of this subsection.
- 14 (6) "Sex offender" means a person who:
- 15 (a) Has been convicted of a sex crime;
- 16 (b) Has been found guilty except for insanity of a sex crime;
- 17 (c) Has been convicted in another United States court of a crime:
- 18 (A) That would constitute a sex crime if committed in this state; or
- 19 (B) For which the person would have to register as a sex offender in that court's jurisdiction,
- 20 or as required under federal law, regardless of whether the crime would constitute a sex crime in
- 21 this state; or
- 22 (d) Is described in ORS 181.809 (1).
- 23 (7) "Works" or "carries on a vocation" means full-time or part-time employment for more than
- 24 14 days within one calendar year whether financially compensated, volunteered or for the purpose
- 25 of governmental or educational benefit.
- 26 **SECTION 3.** ORS 419B.005 is amended to read:
- 27 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:
- 28 (1)(a) "Abuse" means:
- 29 (A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child
- 30 which has been caused by other than accidental means, including any injury which appears to be
- 31 at variance with the explanation given of the injury.
- 32 (B) Any mental injury to a child, which shall include only observable and substantial impairment
- 33 of the child's mental or psychological ability to function caused by cruelty to the child, with due
- 34 regard to the culture of the child.
- 35 (C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual pene-
- 36 tration and incest, as those acts are described in ORS chapter 163.
- 37 (D) Sexual abuse, as described in ORS chapter 163.
- 38 (E) Sexual exploitation, including but not limited to:
- 39 (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any
- 40 other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage
- 41 in the performing for people to observe or the photographing, filming, tape recording or other ex-
- 42 hibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or
- 43 described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-
- 44 cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or
- 45 which is designed to serve educational or other legitimate purposes; [and]

1 (ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in
 2 ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as
 3 described in ORS 163.413 or to patronize a prostitute as described in ORS 167.008[.]; and

4 (iii) **Trafficking in persons for the purpose of engaging in a commercial sex act as de-**
 5 **scribed in ORS 163.266 (1)(b) or (c).**

6 (F) Negligent treatment or maltreatment of a child, including but not limited to the failure to
 7 provide adequate food, clothing, shelter or medical care that is likely to endanger the health or
 8 welfare of the child.

9 (G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm
 10 to the child's health or welfare.

11 (H) Buying or selling a person under 18 years of age as described in ORS 163.537.

12 (I) Permitting a person under 18 years of age to enter or remain in or upon premises where
 13 methamphetamines are being manufactured.

14 (J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, that subjects a child
 15 to a substantial risk of harm to the child's health or safety.

16 (b) "Abuse" does not include reasonable discipline unless the discipline results in one of the
 17 conditions described in paragraph (a) of this subsection.

18 (2) "Child" means an unmarried person who is under 18 years of age.

19 (3) "Higher education institution" means:

20 (a) A community college as defined in ORS 341.005;

21 (b) A public university listed in ORS 352.002;

22 (c) The Oregon Health and Science University; and

23 (d) A private institution of higher education located in Oregon.

24 (4) "Law enforcement agency" means:

25 (a) A city or municipal police department.

26 (b) A county sheriff's office.

27 (c) The Oregon State Police.

28 (d) A police department established by a university under ORS 352.383 or 353.125.

29 (e) A county juvenile department.

30 (5) "Public or private official" means:

31 (a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician,
 32 including any intern or resident.

33 (b) Dentist.

34 (c) School employee, including an employee of a higher education institution.

35 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide
 36 or employee of an in-home health service.

37 (e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning
 38 Division, Youth Development Division, Office of Child Care, the Oregon Youth Authority, a county
 39 health department, a community mental health program, a community developmental disabilities
 40 program, a county juvenile department, a licensed child-caring agency or an alcohol and drug
 41 treatment program.

42 (f) Peace officer.

43 (g) Psychologist.

44 (h) Member of the clergy.

45 (i) Regulated social worker.

- 1 (j) Optometrist.
- 2 (k) Chiropractor.
- 3 (L) Certified provider of foster care, or an employee thereof.
- 4 (m) Attorney.
- 5 (n) Licensed professional counselor.
- 6 (o) Licensed marriage and family therapist.
- 7 (p) Firefighter or emergency medical services provider.
- 8 (q) A court appointed special advocate, as defined in ORS 419A.004.
- 9 (r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.
- 10 (s) Member of the Legislative Assembly.
- 11 (t) Physical, speech or occupational therapist.
- 12 (u) Audiologist.
- 13 (v) Speech-language pathologist.
- 14 (w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
- 15 gations or discipline by the commission.
- 16 (x) Pharmacist.
- 17 (y) An operator of a preschool recorded program under ORS 329A.255.
- 18 (z) An operator of a school-age recorded program under ORS 329A.257.
- 19 (aa) Employee of a private agency or organization facilitating the provision of respite services,
- 20 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS
- 21 109.056.
- 22 (bb) Employee of a public or private organization providing child-related services or activities:
- 23 (A) Including but not limited to youth groups or centers, scout groups or camps, summer or day
- 24 camps, survival camps or groups, centers or camps that are operated under the guidance, super-
- 25 vision or auspices of religious, public or private educational systems or community service organ-
- 26 izations; and
- 27 (B) Excluding community-based, nonprofit organizations whose primary purpose is to provide
- 28 confidential, direct services to victims of domestic violence, sexual assault, stalking or human traf-
- 29 ficking.
- 30 (cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete,
- 31 if compensated and if the athlete is a child.

32 **SECTION 4. This 2015 Act being necessary for the immediate preservation of the public**
33 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
34 **on its passage.**

35

