

House Bill 2356

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim 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**.

Increases penalty for crime of invasion of personal privacy if defendant has certain prior convictions or person recorded is under 18 years of age. Punishes by maximum of 5 years' imprisonment, \$125,000 fine, or both.

Provides that invasion of personal privacy is sex crime requiring reporting as sex offender if person has prior conviction for sex crime.

A BILL FOR AN ACT

1
2 Relating to invasion of personal privacy; amending ORS 163.700, 181.803 and 181.805.

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

4 **SECTION 1.** ORS 163.700 is amended to read:

5 163.700. (1) Except as provided in ORS 163.702, a person commits the crime of invasion of personal privacy if:

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7 (a)(A) The person knowingly makes or records a photograph, motion picture, videotape or other visual recording of another person in a state of nudity without the consent of the person being recorded; and

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10 (B) At the time the visual recording is made or recorded the person being recorded is in a place and circumstances where the person has a reasonable expectation of personal privacy; or

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12 (b)(A) For the purpose of arousing or gratifying the sexual desire of the person, the person is in a location to observe another person in a state of nudity without the consent of the other person; and

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15 (B) The other person is in a place and circumstances where the person has a reasonable expectation of personal privacy.

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17 (2) As used in this section:

18 (a) "Makes or records a photograph, motion picture, videotape or other visual recording" includes, but is not limited to, making or recording or employing, authorizing, permitting, compelling or inducing another person to make or record a photograph, motion picture, videotape or other visual recording.

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21 (b) "Nudity" means any part of the uncovered or less than opaquely covered:

22 (A) Genitals;

23 (B) Pubic area; or

24 (C) Female breast below a point immediately above the top of the areola.

25 (c) "Places and circumstances where the person has a reasonable expectation of personal privacy" includes, but is not limited to, a bathroom, dressing room, locker room that includes an enclosed area for dressing or showering, tanning booth and any area where a person undresses in an enclosed space that is not open to public view.

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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 (d) "Public view" means that an area can be readily seen and that a person within the area can
2 be distinguished by normal unaided vision when viewed from a public place as defined in ORS
3 161.015.

4 (3)(a) Invasion of personal privacy is a Class A misdemeanor.

5 **(b) Notwithstanding paragraph (a) of this subsection, invasion of personal privacy is a**
6 **Class C felony if:**

7 **(A) The person has a prior conviction for invasion of personal privacy or a crime de-**
8 **scribed in ORS 163.355 to 163.445, or for a crime in another jurisdiction that, if committed**
9 **in this state, would constitute invasion of personal privacy or a crime described in ORS**
10 **163.355 to 163.445; or**

11 **(B) The person being recorded is under 18 years of age at the time of the recording.**

12 **SECTION 2.** ORS 181.805 is amended to read:

13 181.805. As used in ORS 181.800 to 181.845:

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

- 16 (a) A state other than Oregon;
- 17 (b) The District of Columbia;
- 18 (c) The Commonwealth of Puerto Rico;
- 19 (d) Guam;
- 20 (e) American Samoa;
- 21 (f) The Commonwealth of the Northern Mariana Islands; or
- 22 (g) The United States Virgin Islands.

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

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

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

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

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

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

34 (5) "Sex crime" means:

- 35 (a) Rape in any degree;
- 36 (b) Sodomy in any degree;
- 37 (c) Unlawful sexual penetration in any degree;
- 38 (d) Sexual abuse in any degree;
- 39 (e) Incest with a child victim;
- 40 (f) Using a child in a display of sexually explicit conduct;
- 41 (g) Encouraging child sexual abuse in any degree;
- 42 (h) Transporting child pornography into the state;
- 43 (i) Paying for viewing a child's sexually explicit conduct;
- 44 (j) Compelling prostitution;
- 45 (k) Promoting prostitution;

- 1 (L) Kidnapping in the first degree if the victim was under 18 years of age;
- 2 (m) Contributing to the sexual delinquency of a minor;
- 3 (n) Sexual misconduct if the offender is at least 18 years of age;
- 4 (o) Possession of materials depicting sexually explicit conduct of a child in the first degree;
- 5 (p) Kidnapping in the second degree if the victim was under 18 years of age, except by a parent
- 6 or by a person found to be within the jurisdiction of the juvenile court;
- 7 (q) Online sexual corruption of a child in any degree if the offender reasonably believed the
- 8 child to be more than five years younger than the offender;
- 9 (r) Luring a minor, if:
 - 10 (A) The offender reasonably believed the child to be more than five years younger than the
 - 11 offender or under 16 years of age; and
 - 12 (B) The court designates in the judgment that the offense is a sex crime;
- 13 (s) Sexual assault of an animal;
- 14 (t) Public indecency or private indecency, if the person has a prior conviction for a crime listed
- 15 in this subsection;
- 16 (u) Trafficking in persons as described in ORS 163.266 (1)(b) or (c);
- 17 (v) Purchasing sex with a minor if the court designates the offense as a sex crime pursuant to
- 18 ORS 163.413 (3)(d), or the offense is the defendant's second or subsequent conviction under ORS
- 19 163.413 (3)(b)(B);
- 20 **(w) Invasion of personal privacy, if the person has a prior conviction for a crime listed**
- 21 **in this subsection;**
- 22 [(w)] **(x)** Any attempt to commit any of the crimes listed in paragraphs (a) to [(s), (u) or (v)] **(w)**
- 23 of this subsection;
- 24 [(x)] **(y)** Burglary, when committed with intent to commit any of the offenses listed in paragraphs
- 25 (a) to [(v)] **(w)** of this subsection; or
- 26 [(y)] **(z)** Criminal conspiracy if the offender agrees with one or more persons to engage in or
- 27 cause the performance of an offense listed in paragraphs (a) to [(t)] **(w)** of this subsection.
- 28 (6) "Sex offender" means a person who:
 - 29 (a) Has been convicted of a sex crime;
 - 30 (b) Has been found guilty except for insanity of a sex crime;
 - 31 (c) Has been convicted in another United States court of a crime:
 - 32 (A) That would constitute a sex crime if committed in this state; or
 - 33 (B) For which the person would have to register as a sex offender in that court's jurisdiction,
 - 34 or as required under federal law, regardless of whether the crime would constitute a sex crime in
 - 35 this state; or
 - 36 (d) Is described in ORS 181.809 (1).
- 37 (7) "Works" or "carries on a vocation" means full-time or part-time employment for more than
- 38 14 days within one calendar year whether financially compensated, volunteered or for the purpose
- 39 of governmental or educational benefit.
- 40 **SECTION 3.** ORS 181.803 is amended to read:
- 41 181.803. Notwithstanding any other provision of law:
 - 42 (1) A person required to report as a sex offender under ORS 181.806, 181.807 or 181.808 is clas-
 - 43 sified as a level three sex offender under ORS 181.800 (3) unless:
 - 44 (a) Following a risk assessment conducted under ORS 181.801, the person is classified as a level
 - 45 two sex offender under ORS 181.800 (2) or as a level one sex offender under ORS 181.800 (1); or

1 (b) After filing a petition under ORS 181.821 (2), the person is reclassified as a level two sex
2 offender under ORS 181.800 (2) by the State Board of Parole and Post-Prison Supervision or the
3 Psychiatric Security Review Board.

4 (2) A person who is a sexually violent dangerous offender under ORS 137.765:

5 (a) Must be classified as a level three sex offender under ORS 181.800 (3); and

6 (b) Is not eligible for relief from the obligation to report as a sex offender or reclassification as
7 a level two sex offender under ORS 181.800 (2), pursuant to a petition filed under ORS 181.821.

8 (3) A person who has been convicted or found guilty except for insanity of one of the following
9 offenses is not eligible for relief from the obligation to report as a sex offender pursuant to a peti-
10 tion filed under ORS 181.821 (1):

11 (a) Rape in the first degree;

12 (b) Sodomy in the first degree;

13 (c) Unlawful sexual penetration in the first degree;

14 (d) Kidnapping in the first degree as described in ORS 163.235 (1)(e) or when the victim is under
15 18 years of age; or

16 (e) Burglary in the first degree when committed with the intent to commit any of the offenses
17 listed in ORS 181.805 (5)(a) to [(t)] (w).

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