

Enrolled House Bill 2385

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Attorney General Ellen F. Rosenblum)

CHAPTER

AN ACT

Relating to crime; creating new provisions; and amending ORS 163.413, 167.057 and 181.805.

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

SECTION 1. ORS 167.057 is amended to read:

167.057. (1) A person commits the crime of luring a minor if the person furnishes to, or uses with, a minor, **a police officer posing as a minor or an agent of a police officer posing as a minor**, a visual representation or explicit verbal description or narrative account of sexual conduct for the purpose of inducing the minor **or purported minor** to engage in sexual conduct.

(2) A person is not liable to prosecution for violating subsection (1) of this section if the person furnishes or uses a representation, description or account of sexual conduct that forms merely an incidental part of an otherwise nonoffending whole and serves some purpose other than titillation.

(3) In a prosecution under subsection (1) of this section, it is an affirmative defense:

(a) That the representation, description or account was furnished or used for the purpose of psychological or medical treatment and was furnished by a treatment provider or by another person acting on behalf of the treatment provider;

(b) That the defendant had reasonable cause to believe that the person to whom the representation, description or account was furnished or with whom the representation, description or account was used was not a minor; or

(c) That the defendant was less than three years older than the minor **or, in the case of a police officer or agent of a police officer posing as a minor, the age of the purported minor as reported to the defendant** at the time of the alleged offense.

[(4) In a prosecution under subsection (1) of this section, it is not a defense that the person to whom the representation, description or account was furnished or with whom the representation, description or account was used was not a minor but was a law enforcement officer posing as a minor.]

[(5)] (4) Luring a minor is a Class C felony.

[(6)(a)] (5)(a) The court may designate luring a minor as a sex crime under ORS 181.805 if the court determines that:

(A) The offender reasonably believed the *[child]* **minor or, in the case of a police officer or agent of a police officer posing as a minor, the purported minor** to be more than five years younger than the offender or under 16 years of age; and

(B) Given the nature of the offense, the age *[or purported age of the minor]* **of the minor or purported minor as reported to the defendant** and the person's criminal history, designation of the offense as a sex crime is necessary for the safety of the community.

(b) The court shall indicate the designation and the findings supporting the designation in the judgment.

(6) As used in this section, “police officer” has the meaning given that term in ORS 181.610.

SECTION 2. ORS 163.413 is amended to read:

163.413. (1) A person commits the crime of purchasing sex with a minor if the person pays, or offers or agrees to pay, a fee to engage in sexual intercourse or sexual contact with a minor, **a police officer posing as a minor or an agent of a police officer posing as a minor.**

(2)(a) If the person does not have a prior conviction under this section at the time of the offense, purchasing sex with a minor is a Class C felony and the person may use a defense described in ORS 163.325 only if the minor **or, in the case of a police officer or agent of a police officer posing as a minor, the age of the purported minor as reported to the defendant** was at least 16 years of age.

(b) If the person has one or more prior convictions under this section at the time of the offense, purchasing sex with a minor is a Class B felony, the state need not prove that the person knew the minor **or, in the case of a police officer or agent of a police officer posing as a minor, the purported minor** was under 18 years of age and the person may not use a defense described in ORS 163.325.

(3)(a) When a person is convicted under this section, in addition to any other sentence that may be imposed, the court shall impose and may not suspend the sentence described in paragraph (b) of this subsection.

(b) The mandatory minimum sentences that apply to paragraph (a) of this subsection are as follows:

(A) For a person’s first conviction, a fine in the amount of \$10,000, a term of incarceration of at least 30 days and completion of a john school program.

(B) For a person’s second or subsequent conviction, a fine in the amount of \$20,000 and the court shall designate the offense as a sex crime under ORS 181.805.

(c) Notwithstanding paragraphs (a) and (b) of this subsection, if the court determines that the person is unable to pay the full amount of the mandatory minimum fine, the court shall impose and may not suspend a fine in an amount the court determines the person is able to pay.

(d) For a person’s first conviction under this section, the court may designate the offense as a sex crime under ORS 181.805 if the court finds that the circumstances of the offense and the age of the minor **or, in the case of a police officer or agent of a police officer posing as a minor, the purported minor** as reported to the defendant require the defendant to register and report as a sex offender for the safety of the community.

(4) As used in this section:

(a) “John school” means any course, class or program intended to educate and prevent recidivism of persons who have been arrested for, charged with or convicted of patronizing a prostitute or purchasing sex with a minor or attempting to patronize a prostitute or purchase sex with a minor.

(b) “Minor” means a person under 18 years of age.

(c) “Police officer” has the meaning given that term in ORS 181.610.

SECTION 3. ORS 181.805 is amended to read:

181.805. As used in ORS 181.800 to 181.845:

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

(a) A state other than Oregon;

(b) The District of Columbia;

(c) The Commonwealth of Puerto Rico;

(d) Guam;

(e) American Samoa;

(f) The Commonwealth of the Northern Mariana Islands; or

- (g) The United States Virgin Islands.
- (2) "Attends" means is enrolled on a full-time or part-time basis.
- (3)(a) "Correctional facility" means any place used for the confinement of persons:
 - (A) Charged with or convicted of a crime or otherwise confined under a court order.
 - (B) Found to be within the jurisdiction of the juvenile court for having committed an act that if committed by an adult would constitute a crime.
 - (b) "Correctional facility" applies to a state hospital or a secure intensive community inpatient facility only as to persons detained therein charged with or convicted of a crime, or detained therein after being found guilty except for insanity under ORS 161.290 to 161.370 or responsible except for insanity under ORS 419C.411.
- (4) "Institution of higher education" means a public or private educational institution that provides a program of post-secondary education.
- (5) "Sex crime" means:
 - (a) Rape in any degree;
 - (b) Sodomy in any degree;
 - (c) Unlawful sexual penetration in any degree;
 - (d) Sexual abuse in any degree;
 - (e) Incest with a child victim;
 - (f) Using a child in a display of sexually explicit conduct;
 - (g) Encouraging child sexual abuse in any degree;
 - (h) Transporting child pornography into the state;
 - (i) Paying for viewing a child's sexually explicit conduct;
 - (j) Compelling prostitution;
 - (k) Promoting prostitution;
 - (L) Kidnapping in the first degree if the victim was under 18 years of age;
 - (m) Contributing to the sexual delinquency of a minor;
 - (n) Sexual misconduct if the offender is at least 18 years of age;
 - (o) Possession of materials depicting sexually explicit conduct of a child in the first degree;
 - (p) Kidnapping in the second degree if the victim was under 18 years of age, except by a parent or by a person found to be within the jurisdiction of the juvenile court;
 - (q) Online sexual corruption of a child in any degree if the offender reasonably believed the child to be more than five years younger than the offender;
 - (r) Luring a minor, if:
 - (A) The offender reasonably believed the [*child*] **minor or, in the case of a police officer or agent of a police officer posing as a minor, the purported minor** to be more than five years younger than the offender or under 16 years of age; and
 - (B) The court designates in the judgment that the offense is a sex crime;
 - (s) Sexual assault of an animal;
 - (t) Public indecency or private indecency, if the person has a prior conviction for a crime listed in this subsection;
 - (u) Trafficking in persons as described in ORS 163.266 (1)(b) or (c);
 - (v) Purchasing sex with a minor if the court designates the offense as a sex crime pursuant to ORS 163.413 (3)(d), or the offense is the defendant's second or subsequent conviction under ORS 163.413 (3)(b)(B);
 - (w) Any attempt to commit any of the crimes listed in paragraphs (a) to (s), (u) or (v) of this subsection;
 - (x) Burglary, when committed with intent to commit any of the offenses listed in paragraphs (a) to (v) of this subsection; or
 - (y) Criminal conspiracy if the offender agrees with one or more persons to engage in or cause the performance of an offense listed in paragraphs (a) to (t) of this subsection.
- (6) "Sex offender" means a person who:
 - (a) Has been convicted of a sex crime;

- (b) Has been found guilty except for insanity of a sex crime;
- (c) Has been convicted in another United States court of a crime:
- (A) That would constitute a sex crime if committed in this state; or
- (B) For which the person would have to register as a sex offender in that court's jurisdiction, or as required under federal law, regardless of whether the crime would constitute a sex crime in this state; or
- (d) Is described in ORS 181.809 (1).
- (7) "Works" or "carries on a vocation" means full-time or part-time employment for more than 14 days within one calendar year whether financially compensated, volunteered or for the purpose of governmental or educational benefit.

SECTION 4. The amendments to ORS 163.413, 167.057 and 181.805 by sections 1 to 3 of this 2015 Act apply to criminal prosecutions for acts occurring on or after the effective date of this 2015 Act.

Passed by House March 19, 2015

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 Timothy G. Sekerak, Chief Clerk of House

 Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2015

Approved:

.....M.,....., 2015

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 Kate Brown, Governor

Passed by Senate May 7, 2015

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 Peter Courtney, President of Senate

Filed in Office of Secretary of State:

.....M.,....., 2015

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 Jeanne P. Atkins, Secretary of State