

Enrolled
Senate Bill 247

Sponsored by Senator TAYLOR, Representative HUFFMAN; Senator MANNING JR (Pre-session filed.)

CHAPTER

AN ACT

Relating to sex offense terminology; amending ORS 161.067, 163.305, 163.385, 163.395, 163.405, 163.425, 163.435, 163.445, 163.452, 163.465, 163.472, 163.525, 164.377 and 167.002.

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

SECTION 1. ORS 161.067 is amended to read:

161.067. (1) When the same conduct or criminal episode violates two or more statutory provisions and each provision requires proof of an element that the others do not, there are as many separately punishable offenses as there are separate statutory violations.

(2) When the same conduct or criminal episode, though violating only one statutory provision involves two or more victims, there are as many separately punishable offenses as there are victims. However, two or more persons owning joint interests in real or personal property shall be considered a single victim for purposes of determining the number of separately punishable offenses if the property is the subject of one of the following crimes:

- (a) Theft as defined in ORS 164.015.
- (b) Unauthorized use of a vehicle as defined in ORS 164.135.
- (c) Criminal possession of rented or leased personal property as defined in ORS 164.140.
- (d) Criminal possession of a rented or leased motor vehicle as defined in ORS 164.138.
- (e) Burglary as defined in ORS 164.215 or 164.225.
- (f) Criminal trespass as defined in ORS 164.243, 164.245, 164.255, 164.265 or 164.278.
- (g) Arson and related offenses as defined in ORS 164.315, 164.325 or 164.335.
- (h) Forgery and related offenses as defined in ORS 165.002 to 165.070.

(3) When the same conduct or criminal episode violates only one statutory provision and involves only one victim, but nevertheless involves repeated violations of the same statutory provision against the same victim, there are as many separately punishable offenses as there are violations, except that each violation, to be separately punishable under this subsection, must be separated from other such violations by a sufficient pause in the defendant's criminal conduct to afford the defendant an opportunity to renounce the criminal intent. Each method of engaging in [*deviate*] **oral or anal** sexual intercourse as defined in ORS 163.305, and each method of engaging in unlawful sexual penetration as defined in ORS 163.408 and 163.411 shall constitute separate violations of their respective statutory provisions for purposes of determining the number of statutory violations.

SECTION 2. ORS 163.305 is amended to read:

163.305. As used in chapter 743, Oregon Laws 1971, unless the context requires otherwise:

[(1) "*Deviate sexual intercourse*" means sexual conduct between persons consisting of contact between the sex organs of one person and the mouth or anus of another.]

[2] (1) "Forcible compulsion" means to compel by:

(a) Physical force; or

(b) A threat, express or implied, that places a person in fear of immediate or future death or physical injury to self or another person, or in fear that the person or another person will immediately or in the future be kidnapped.

[3] (2) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person incapable of appraising the nature of the conduct of the person.

[4] (3) "Mentally incapacitated" means that a person is rendered incapable of appraising or controlling the conduct of the person at the time of the alleged offense.

(4) **"Oral or anal sexual intercourse" means sexual conduct between persons consisting of contact between the sex organs of one person and the mouth or anus of another.**

(5) "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(6) "Sexual contact" means any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(7) "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight; emission is not required.

SECTION 3. ORS 163.385 is amended to read:

163.385. (1) A person commits the crime of sodomy in the third degree if the person engages in [*deviate*] **oral or anal** sexual intercourse with another person under 16 years of age or causes that person to engage in [*deviate*] **oral or anal** sexual intercourse.

(2) Sodomy in the third degree is a Class C felony.

SECTION 4. ORS 163.395 is amended to read:

163.395. (1) A person who engages in [*deviate*] **oral or anal** sexual intercourse with another person or causes another to engage in [*deviate*] **oral or anal** sexual intercourse commits the crime of sodomy in the second degree if the victim is under 14 years of age.

(2) Sodomy in the second degree is a Class B felony.

SECTION 5. ORS 163.405 is amended to read:

163.405. (1) A person who engages in [*deviate*] **oral or anal** sexual intercourse with another person or causes another to engage in [*deviate*] **oral or anal** sexual intercourse commits the crime of sodomy in the first degree if:

(a) The victim is subjected to forcible compulsion by the actor;

(b) The victim is under 12 years of age;

(c) The victim is under 16 years of age and is the actor's brother or sister, of the whole or half blood, the son or daughter of the actor or the son or daughter of the actor's spouse; or

(d) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

(2) Sodomy in the first degree is a Class A felony.

SECTION 6. ORS 163.425 is amended to read:

163.425. (1) A person commits the crime of sexual abuse in the second degree when:

(a) The person subjects another person to sexual intercourse, [*deviate*] **oral or anal** sexual intercourse or, except as provided in ORS 163.412, penetration of the vagina, anus or penis with any object other than the penis or mouth of the actor and the victim does not consent thereto; or

(b)(A) The person violates ORS 163.415 (1)(a)(B);

(B) The person is 21 years of age or older; and

(C) At any time before the commission of the offense, the person was the victim's coach as defined in ORS 163.426.

(2) Sexual abuse in the second degree is a Class C felony.

SECTION 7. ORS 163.435 is amended to read:

163.435. (1) A person 18 years of age or older commits the crime of contributing to the sexual delinquency of a minor if:

- (a) Being a male, he engages in sexual intercourse with a female under 18 years of age; or
 - (b) Being a female, she engages in sexual intercourse with a male under 18 years of age; or
 - (c) The person engages in [*deviate*] **oral or anal** sexual intercourse with another person under 18 years of age or causes that person to engage in [*deviate*] **oral or anal** sexual intercourse.
- (2) Contributing to the sexual delinquency of a minor is a Class A misdemeanor.

SECTION 8. ORS 163.445 is amended to read:

163.445. (1) A person commits the crime of sexual misconduct if the person engages in sexual intercourse or [*deviate*] **oral or anal** sexual intercourse with an unmarried person under 18 years of age.

(2) Sexual misconduct is a Class C misdemeanor.

SECTION 9. ORS 163.452 is amended to read:

163.452. (1) A person commits the crime of custodial sexual misconduct in the first degree if the person:

(a) Engages in sexual intercourse or [*deviate*] **oral or anal** sexual intercourse with another person or penetrates the vagina, anus or penis of another person with any object other than the penis or mouth of the actor knowing that the other person is:

(A) In the custody of a law enforcement agency following arrest;

(B) Confined or detained in a correctional facility;

(C) Participating in an inmate or offender work crew or work release program; or

(D) On probation, parole, post-prison supervision or other form of conditional or supervised release; and

(b) Is employed by or under contract with the state or local agency that:

(A) Employs the officer who arrested the other person;

(B) Operates the correctional facility in which the other person is confined or detained;

(C) Is responsible for supervising the other person in a work crew or work release program or on probation, parole, post-prison supervision or other form of conditional or supervised release; or

(D) Engages the other person in work or on-the-job training pursuant to ORS 421.354 (1).

(2) Consent of the other person to sexual intercourse, [*deviate*] **oral or anal** sexual intercourse or the sexual penetration is not a defense to a prosecution under this section.

(3) Lack of supervisory authority over the other person is an affirmative defense to a prosecution under this section when the other person is on probation, parole, post-prison supervision or other form of conditional or supervised release.

(4) Custodial sexual misconduct in the first degree is a Class C felony.

SECTION 10. ORS 163.465 is amended to read:

163.465. (1) A person commits the crime of public indecency if while in, or in view of, a public place the person performs:

(a) An act of sexual intercourse;

(b) An act of [*deviate*] **oral or anal** sexual intercourse; or

(c) An act of exposing the genitals of the person with the intent of arousing the sexual desire of the person or another person.

(2)(a) Public indecency is a Class A misdemeanor.

(b) Notwithstanding paragraph (a) of this subsection, public indecency is a Class C felony if the person has a prior conviction for public indecency or a crime described in ORS 163.355 to 163.445 or for a crime in another jurisdiction that, if committed in this state, would constitute public indecency or a crime described in ORS 163.355 to 163.445.

SECTION 11. ORS 163.472 is amended to read:

163.472. (1) A person commits the crime of unlawful dissemination of an intimate image if:

(a) The person, with the intent to harass, humiliate or injure another person, knowingly causes to be disclosed through an Internet website an identifiable image of the other person whose intimate parts are visible or who is engaged in sexual conduct;

(b) The person knows or reasonably should have known that the other person does not consent to the disclosure;

- (c) The other person is harassed, humiliated or injured by the disclosure; and
- (d) A reasonable person would be harassed, humiliated or injured by the disclosure.
- (2)(a) Except as provided in paragraph (b) of this subsection, unlawful dissemination of an intimate image is a Class A misdemeanor.
- (b) Unlawful dissemination of an intimate image is a Class C felony if the person has a prior conviction under this section at the time of the offense.
- (3) As used in this section:
 - (a) "Disclose" includes, but is not limited to, transfer, publish, distribute, exhibit, advertise and offer.
 - (b) "Image" includes, but is not limited to, a photograph, film, videotape, recording, digital picture and other visual reproduction, regardless of the manner in which the image is stored.
 - (c) "Information content provider" has the meaning given that term in 47 U.S.C. 230(f).
 - (d) "Interactive computer service" has the meaning given that term in 47 U.S.C. 230(f).
 - (e) "Intimate parts" means uncovered human genitals, pubic areas or female nipples.
 - (f) "Sexual conduct" means sexual intercourse or [*deviate*] **oral or anal** sexual intercourse, as those terms are defined in ORS 163.305, or masturbation.
- (4) This section does not apply to:
 - (a) Activity by law enforcement agencies investigating and prosecuting criminal offenses;
 - (b) Legitimate medical, scientific or educational activities;
 - (c) Legal proceedings, when disclosure is consistent with common practice in civil proceedings or necessary for the proper functioning of the criminal justice system;
 - (d) The reporting of unlawful conduct to a law enforcement agency;
 - (e) Disclosures that serve a lawful public interest;
 - (f) Disclosures of images:
 - (A) Depicting the other person voluntarily displaying, in a public area, the other person's intimate parts or engaging in sexual conduct; or
 - (B) Originally created for a commercial purpose with the consent of the other person; or
 - (g) The provider of an interactive computer service for an image of intimate parts provided by an information content provider.

SECTION 12. ORS 163.525 is amended to read:

163.525. (1) A person commits the crime of incest if the person marries or engages in sexual intercourse or [*deviate*] **oral or anal** sexual intercourse with a person whom the person knows to be related to the person, either legitimately or illegitimately, as an ancestor, descendant or brother or sister of either the whole or half blood.

(2) Incest is a Class C felony.

SECTION 13. ORS 164.377 is amended to read:

164.377. (1) As used in this section:

- (a) To "access" means to instruct, communicate with, store data in, retrieve data from or otherwise make use of any resources of a computer, computer system or computer network.
- (b) "Computer" means, but is not limited to, an electronic, magnetic, optical electrochemical or other high-speed data processing device that performs logical, arithmetic or memory functions by the manipulations of electronic, magnetic or optical signals or impulses, and includes the components of a computer and all input, output, processing, storage, software or communication facilities that are connected or related to such a device in a system or network.
- (c) "Computer network" means, but is not limited to, the interconnection of communication lines, including microwave or other means of electronic communication, with a computer through remote terminals or a complex consisting of two or more interconnected computers.
- (d) "Computer program" means, but is not limited to, a series of instructions or statements, in a form acceptable to a computer, which permits the functioning of a computer system in a manner designed to provide appropriate products from or usage of such computer system.
- (e) "Computer software" means, but is not limited to, computer programs, procedures and associated documentation concerned with the operation of a computer system.

(f) "Computer system" means, but is not limited to, a set of related, connected or unconnected, computer equipment, devices and software. "Computer system" also includes any computer, device or software owned or operated by the Oregon State Lottery or rented, owned or operated by another person or entity under contract to or at the direction of the Oregon State Lottery.

(g) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. "Data" may be in any form, in storage media, or as stored in the memory of the computer, or in transit, or presented on a display device. "Data" includes, but is not limited to, computer or human readable forms of numbers, text, stored voice, graphics and images.

(h) "Intimate image" means a photograph, film, video, recording, digital picture or other visual reproduction of a person whose intimate parts are visible or who is engaged in sexual conduct.

(i) "Intimate parts" means uncovered human genitals, pubic areas or female nipples.

(j) "Property" includes, but is not limited to, financial instruments, information, including electronically produced data, and computer software and programs in either computer or human readable form, intellectual property and any other tangible or intangible item of value.

(k) "Proprietary information" includes any scientific, technical or commercial information including any design, process, procedure, list of customers, list of suppliers, customers' records or business code or improvement thereof that is known only to limited individuals within an organization and is used in a business that the organization conducts. The information must have actual or potential commercial value and give the user of the information an opportunity to obtain a business advantage over competitors who do not know or use the information.

(L) "Services" includes, but is not limited to, computer time, data processing and storage functions.

(m) "Sexual conduct" means sexual intercourse or [*deviate*] **oral or anal** sexual intercourse, as those terms are defined in ORS 163.305, or masturbation.

(2) Any person commits computer crime who knowingly accesses, attempts to access or uses, or attempts to use, any computer, computer system, computer network or any part thereof for the purpose of:

(a) Devising or executing any scheme or artifice to defraud;

(b) Obtaining money, property or services by means of false or fraudulent pretenses, representations or promises; or

(c) Committing theft, including, but not limited to, theft of proprietary information or theft of an intimate image.

(3) Any person who knowingly and without authorization alters, damages or destroys any computer, computer system, computer network, or any computer software, program, documentation or data contained in such computer, computer system or computer network, commits computer crime.

(4) Any person who knowingly and without authorization uses, accesses or attempts to access any computer, computer system, computer network, or any computer software, program, documentation or data contained in such computer, computer system or computer network, commits computer crime.

(5)(a) A violation of the provisions of subsection (2) or (3) of this section shall be a Class C felony. Except as provided in paragraph (b) of this subsection, a violation of the provisions of subsection (4) of this section shall be a Class A misdemeanor.

(b) Any violation of this section relating to a computer, computer network, computer program, computer software, computer system or data owned or operated by the Oregon State Lottery or rented, owned or operated by another person or entity under contract to or at the direction of the Oregon State Lottery Commission shall be a Class C felony.

SECTION 14. ORS 167.002 is amended to read:

167.002. As used in ORS 167.002 to 167.027, unless the context requires otherwise:

(1) "Place of prostitution" means any place where prostitution is practiced.

(2) "Prostitute" means a male or female person who engages in sexual conduct or sexual contact for a fee.

(3) "Prostitution enterprise" means an arrangement whereby two or more prostitutes are organized to conduct prostitution activities.

(4) "Sexual conduct" means sexual intercourse or [*deviate*] **oral or anal** sexual intercourse.

(5) "Sexual contact" means any touching of the sexual organs or other intimate parts of a person not married to the actor for the purpose of arousing or gratifying the sexual desire of either party.

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

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Tina Kotek, Speaker of House

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Approved:

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Kate Brown, Governor

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Dennis Richardson, Secretary of State