

Senate Bill 247

Sponsored by Senator TAYLOR, Representative HUFFMAN (Presession filed.)

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**.

Changes term "deviate sexual intercourse" to "oral or anal sexual intercourse" for purposes of Oregon Criminal Code.

A BILL FOR AN ACT

1
2 Relating to sex offense terminology; amending ORS 161.067, 163.305, 163.385, 163.395, 163.405,
3 163.425, 163.435, 163.445, 163.452, 163.465, 163.472, 163.525, 164.377 and 167.002.

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

5 **SECTION 1.** ORS 161.067 is amended to read:

6 161.067. (1) When the same conduct or criminal episode violates two or more statutory pro-
7 visions and each provision requires proof of an element that the others do not, there are as many
8 separately punishable offenses as there are separate statutory violations.

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

14 (a) Theft as defined in ORS 164.015.

15 (b) Unauthorized use of a vehicle as defined in ORS 164.135.

16 (c) Criminal possession of rented or leased personal property as defined in ORS 164.140.

17 (d) Criminal possession of a rented or leased motor vehicle as defined in ORS 164.138.

18 (e) Burglary as defined in ORS 164.215 or 164.225.

19 (f) Criminal trespass as defined in ORS 164.243, 164.245, 164.255, 164.265 or 164.278.

20 (g) Arson and related offenses as defined in ORS 164.315, 164.325 or 164.335.

21 (h) Forgery and related offenses as defined in ORS 165.002 to 165.070.

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

31 **SECTION 2.** ORS 163.305 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.

1 163.305. As used in chapter 743, Oregon Laws 1971, unless the context requires otherwise:

2 [(1) “*Deviate sexual intercourse*” means sexual conduct between persons consisting of contact be-
 3 tween the sex organs of one person and the mouth or anus of another.]

4 [(2)] (1) “Forcible compulsion” means to compel by:

5 (a) Physical force; or

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

9 [(3)] (2) “Mentally defective” means that a person suffers from a mental disease or defect that
 10 renders the person incapable of appraising the nature of the conduct of the person.

11 [(4)] (3) “Mentally incapacitated” means that a person is rendered incapable of appraising or
 12 controlling the conduct of the person at the time of the alleged offense.

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

15 (5) “Physically helpless” means that a person is unconscious or for any other reason is phys-
 16 ically unable to communicate unwillingness to an act.

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

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

22 **SECTION 3.** ORS 163.385 is amended to read:

23 163.385. (1) A person commits the crime of sodomy in the third degree if the person engages in
 24 [*deviate*] **oral or anal** sexual intercourse with another person under 16 years of age or causes that
 25 person to engage in [*deviate*] **oral or anal** sexual intercourse.

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

27 **SECTION 4.** ORS 163.395 is amended to read:

28 163.395. (1) A person who engages in [*deviate*] **oral or anal** sexual intercourse with another
 29 person or causes another to engage in [*deviate*] **oral or anal** sexual intercourse commits the crime
 30 of sodomy in the second degree if the victim is under 14 years of age.

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

32 **SECTION 5.** ORS 163.405 is amended to read:

33 163.405. (1) A person who engages in [*deviate*] **oral or anal** sexual intercourse with another
 34 person or causes another to engage in [*deviate*] **oral or anal** sexual intercourse commits the crime
 35 of sodomy in the first degree if:

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

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

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

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

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

43 **SECTION 6.** ORS 163.425 is amended to read:

44 163.425. (1) A person commits the crime of sexual abuse in the second degree when:

45 (a) The person subjects another person to sexual intercourse, [*deviate*] **oral or anal** sexual

1 intercourse or, except as provided in ORS 163.412, penetration of the vagina, anus or penis with any
 2 object other than the penis or mouth of the actor and the victim does not consent thereto; or

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

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

5 (C) At any time before the commission of the offense, the person was the victim's coach as de-
 6 fined in ORS 163.426.

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

8 **SECTION 7.** ORS 163.435 is amended to read:

9 163.435. (1) A person 18 years of age or older commits the crime of contributing to the sexual
 10 delinquency of a minor if:

11 (a) Being a male, he engages in sexual intercourse with a female under 18 years of age; or

12 (b) Being a female, she engages in sexual intercourse with a male under 18 years of age; or

13 (c) The person engages in [*deviate*] **oral or anal** sexual intercourse with another person under
 14 18 years of age or causes that person to engage in [*deviate*] **oral or anal** sexual intercourse.

15 (2) Contributing to the sexual delinquency of a minor is a Class A misdemeanor.

16 **SECTION 8.** ORS 163.445 is amended to read:

17 163.445. (1) A person commits the crime of sexual misconduct if the person engages in sexual
 18 intercourse or [*deviate*] **oral or anal** sexual intercourse with an unmarried person under 18 years
 19 of age.

20 (2) Sexual misconduct is a Class C misdemeanor.

21 **SECTION 9.** ORS 163.452 is amended to read:

22 163.452. (1) A person commits the crime of custodial sexual misconduct in the first degree if the
 23 person:

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

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

28 (B) Confined or detained in a correctional facility;

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

30 (D) On probation, parole, post-prison supervision or other form of conditional or supervised re-
 31 lease; and

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

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

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

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

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

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

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

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

44 **SECTION 10.** ORS 163.465 is amended to read:

45 163.465. (1) A person commits the crime of public indecency if while in, or in view of, a public

1 place the person performs:

2 (a) An act of sexual intercourse;

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

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

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

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

11 **SECTION 11.** ORS 163.472 is amended to read:

12 163.472. (1) A person commits the crime of unlawful dissemination of an intimate image if:

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

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

18 (c) The other person is harassed, humiliated or injured by the disclosure; and

19 (d) A reasonable person would be harassed, humiliated or injured by the disclosure.

20 (2)(a) Except as provided in paragraph (b) of this subsection, unlawful dissemination of an inti-
21 mate image is a Class A misdemeanor.

22 (b) Unlawful dissemination of an intimate image is a Class C felony if the person has a prior
23 conviction under this section at the time of the offense.

24 (3) As used in this section:

25 (a) "Disclose" includes, but is not limited to, transfer, publish, distribute, exhibit, advertise and
26 offer.

27 (b) "Image" includes, but is not limited to, a photograph, film, videotape, recording, digital pic-
28 ture and other visual reproduction, regardless of the manner in which the image is stored.

29 (c) "Information content provider" has the meaning given that term in 47 U.S.C. 230(f).

30 (d) "Interactive computer service" has the meaning given that term in 47 U.S.C. 230(f).

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

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

34 (4) This section does not apply to:

35 (a) Activity by law enforcement agencies investigating and prosecuting criminal offenses;

36 (b) Legitimate medical, scientific or educational activities;

37 (c) Legal proceedings, when disclosure is consistent with common practice in civil proceedings
38 or necessary for the proper functioning of the criminal justice system;

39 (d) The reporting of unlawful conduct to a law enforcement agency;

40 (e) Disclosures that serve a lawful public interest;

41 (f) Disclosures of images:

42 (A) Depicting the other person voluntarily displaying, in a public area, the other person's inti-
43 mate parts or engaging in sexual conduct; or

44 (B) Originally created for a commercial purpose with the consent of the other person; or

45 (g) The provider of an interactive computer service for an image of intimate parts provided by

1 an information content provider.

2 **SECTION 12.** ORS 163.525 is amended to read:

3 163.525. (1) A person commits the crime of incest if the person marries or engages in sexual
4 intercourse or [*deviate*] **oral or anal** sexual intercourse with a person whom the person knows to
5 be related to the person, either legitimately or illegitimately, as an ancestor, descendant or brother
6 or sister of either the whole or half blood.

7 (2) Incest is a Class C felony.

8 **SECTION 13.** ORS 164.377 is amended to read:

9 164.377. (1) As used in this section:

10 (a) To “access” means to instruct, communicate with, store data in, retrieve data from or oth-
11 erwise make use of any resources of a computer, computer system or computer network.

12 (b) “Computer” means, but is not limited to, an electronic, magnetic, optical electrochemical or
13 other high-speed data processing device that performs logical, arithmetic or memory functions by the
14 manipulations of electronic, magnetic or optical signals or impulses, and includes the components
15 of a computer and all input, output, processing, storage, software or communication facilities that
16 are connected or related to such a device in a system or network.

17 (c) “Computer network” means, but is not limited to, the interconnection of communication lines,
18 including microwave or other means of electronic communication, with a computer through remote
19 terminals or a complex consisting of two or more interconnected computers.

20 (d) “Computer program” means, but is not limited to, a series of instructions or statements, in
21 a form acceptable to a computer, which permits the functioning of a computer system in a manner
22 designed to provide appropriate products from or usage of such computer system.

23 (e) “Computer software” means, but is not limited to, computer programs, procedures and asso-
24 ciated documentation concerned with the operation of a computer system.

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

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

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

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

36 (j) “Property” includes, but is not limited to, financial instruments, information, including elec-
37 tronically produced data, and computer software and programs in either computer or human read-
38 able form, intellectual property and any other tangible or intangible item of value.

39 (k) “Proprietary information” includes any scientific, technical or commercial information in-
40 cluding any design, process, procedure, list of customers, list of suppliers, customers’ records or
41 business code or improvement thereof that is known only to limited individuals within an organiza-
42 tion and is used in a business that the organization conducts. The information must have actual or
43 potential commercial value and give the user of the information an opportunity to obtain a business
44 advantage over competitors who do not know or use the information.

45 (L) “Services” includes, but is not limited to, computer time, data processing and storage func-

1 tions.

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

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

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

8 (b) Obtaining money, property or services by means of false or fraudulent pretenses, represen-
 9 tations or promises; or

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

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

15 (4) Any person who knowingly and without authorization uses, accesses or attempts to access
 16 any computer, computer system, computer network, or any computer software, program, documen-
 17 tation or data contained in such computer, computer system or computer network, commits com-
 18 puter crime.

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

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

26 **SECTION 14.** ORS 167.002 is amended to read:

27 167.002. As used in ORS 167.002 to 167.027, unless the context requires otherwise:

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

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

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

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

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

36