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SUMMARY

Modifies certain provisions of law relating to crime of prostitution to exclude child victims of sex trafficking. Extends affirmative defense to crime of prostitution to victims of sex trafficking irrespective of results of any criminal prosecution for sex trafficking.

Provides affirmative defense to certain misdemeanors for victims of sex trafficking.

Directs Department of Human Services to study and make recommendations regarding changes to state law regarding child abuse investigations involving victims of sex trafficking. Requires department to report to interim committee of Legislative Assembly not later than September 15, 2022.

A BILL FOR AN ACT

Relating to victims of sex trafficking; creating new provisions; and amending
ORS 12.117, 131.125, 161.005, 167.007, 167.017 and 419B.005.

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

IMMUNITY FOR CHILD VICTIMS OF SEX TRAFFICKING

SECTION 1. Section 1 of this 2021 Act is added to and made a part of ORS chapter 419C.

SECTION 2. A person who is under 18 years of age at the time of committing an act that, if committed by an adult, would constitute the crime of prostitution under ORS 167.007 is immune from prosecution, may not be taken into custody as described in ORS 419C.080 or 419C.088 or issued a citation in lieu of custody as described in ORS 419C.085 and may not be found to be within the jurisdiction of the ju-

1 **venile court under ORS 419C.005 for committing the act.**

2 **SECTION 3.** ORS 167.007 is amended to read:

3 167.007. (1) A person commits the crime of prostitution if the person en-
4 gages in, or offers or agrees to engage in, sexual conduct or sexual contact
5 in return for a fee.

6 (2) Prostitution is a Class A misdemeanor.

7 (3) It is an affirmative defense to prosecution under this section that the
8 defendant, at the time of the alleged offense, was a victim of the crime of
9 trafficking in persons as described in ORS 163.266 (1)(b) or (c), **irrespective**
10 **of any criminal prosecution or the result of a criminal prosecution**
11 **under ORS 163.266.**

12 **SECTION 4.** ORS 12.117 is amended to read:

13 12.117. (1) Notwithstanding ORS 12.110, 12.115 or 12.160, an action based
14 on conduct that constitutes child abuse or conduct knowingly allowing, per-
15 mitting or encouraging child abuse that occurs while the person is under 18
16 years of age must be commenced before the person attains 40 years of age,
17 or if the person has not discovered the causal connection between the injury
18 and the child abuse, nor in the exercise of reasonable care should have dis-
19 covered the causal connection between the injury and the child abuse, not
20 more than five years from the date the person discovers or in the exercise
21 of reasonable care should have discovered the causal connection between the
22 child abuse and the injury, whichever period is longer.

23 (2) As used in subsection (1) of this section, “child abuse” means any of
24 the following:

25 (a) Intentional conduct by an adult that results in:

26 (A) Any physical injury to a child; or

27 (B) Any mental injury to a child which results in observable and sub-
28 stantial impairment of the child’s mental or psychological ability to function
29 caused by cruelty to the child, with due regard to the culture of the child;

30 (b) Rape of a child, which includes but is not limited to rape, sodomy,
31 unlawful sexual penetration and incest, as those acts are *[defined]* **described**

in ORS chapter 163;

(c) Sexual abuse, as *[defined]* **described** in ORS chapter 163, when the victim is a child; or

(d) Sexual exploitation of a child, including but not limited to:

(A) Conduct constituting violation of ORS 163.435 and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact; and

(B) Allowing, permitting, encouraging or hiring a child to engage in *[prostitution]*, **or offer or agree to engage in, sexual conduct or sexual contact, as those terms are defined in ORS 167.002, in return for a fee** or commercial sexual solicitation, as *[defined in ORS chapter 167]* **described in ORS 167.008.**

(3) Nothing in this section creates a new cause of action or enlarges any existing cause of action.

SECTION 5. ORS 131.125 is amended to read:

131.125. (1) A prosecution for aggravated murder, murder, attempted murder or aggravated murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of manslaughter may be commenced at any time after the commission of the attempt, conspiracy or solicitation to commit aggravated murder or murder, or the death of the person killed.

(2) A prosecution for any of the following felonies may be commenced within 12 years after the commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime before the victim attains 30 years of age:

(a) Rape in the first degree under ORS 163.375.

(b) Sodomy in the first degree under ORS 163.405.

(c) Unlawful sexual penetration in the first degree under ORS 163.411.

(d) Sexual abuse in the first degree under ORS 163.427.

(3) A prosecution for any of the following felonies may be commenced

within six years after the commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime before the victim attains 30 years of age or within 12 years after the offense is reported to a law enforcement agency or the Department of Human Services, whichever occurs first:

- (a) Strangulation under ORS 163.187 (4).
- (b) Criminal mistreatment in the first degree under ORS 163.205.
- (c) Rape in the third degree under ORS 163.355.
- (d) Rape in the second degree under ORS 163.365.
- (e) Sodomy in the third degree under ORS 163.385.
- (f) Sodomy in the second degree under ORS 163.395.
- (g) Unlawful sexual penetration in the second degree under ORS 163.408.
- (h) Sexual abuse in the second degree under ORS 163.425.
- (i) Using a child in a display of sexual conduct under ORS 163.670.
- (j) Encouraging child sexual abuse in the first degree under ORS 163.684.
- (k) Incest under ORS 163.525.
- (L) Promoting prostitution under ORS 167.012.
- (m) Compelling prostitution under ORS 167.017.
- (n) Luring a minor under ORS 167.057.

(4) A prosecution for any of the following misdemeanors may be commenced within four years after the commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime before the victim attains 22 years of age or within four years after the offense is reported to a law enforcement agency or the Department of Human Services, whichever occurs first:

- (a) Strangulation under ORS 163.187 (3).
- (b) Sexual abuse in the third degree under ORS 163.415.
- (c) Exhibiting an obscene performance to a minor under ORS 167.075.
- (d) Displaying obscene materials to minors under ORS 167.080.

(5) In the case of crimes described in subsection (3)(i) of this section, the victim is the child engaged in sexual conduct. In the case of the crime de-

scribed in subsection (3)(k) of this section, the victim is the party to the incest other than the party being prosecuted. In the case of crimes described in subsection (3)(L) and (m) of this section, the victim is the child whose [acts of prostitution are] **sexual conduct or sexual contact is** promoted or compelled.

(6) A prosecution for arson in any degree may be commenced within six years after the commission of the crime.

(7) A prosecution for any of the following felonies may be commenced within six years after the commission of the crime if the victim at the time of the crime was 65 years of age or older:

- (a) Theft in the first degree under ORS 164.055.
- (b) Aggravated theft in the first degree under ORS 164.057.
- (c) Extortion under ORS 164.075.
- (d) Robbery in the third degree under ORS 164.395.
- (e) Robbery in the second degree under ORS 164.405.
- (f) Robbery in the first degree under ORS 164.415.
- (g) Forgery in the first degree under ORS 165.013.
- (h) Fraudulent use of a credit card under ORS 165.055 (4)(b).
- (i) Identity theft under ORS 165.800.

(8) Except as provided in subsection (9) of this section or as otherwise expressly provided by law, prosecutions for other offenses must be commenced within the following periods of limitations after their commission:

- (a) For any other felony, three years.
- (b) For any misdemeanor, two years.
- (c) For a violation, six months.

(9) If the period prescribed in subsection (8) of this section has expired, a prosecution nevertheless may be commenced as follows:

- (a) If the offense has as a material element either fraud or the breach of a fiduciary obligation, prosecution may be commenced within one year after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is not a party to the offense,

but in no case shall the period of limitation otherwise applicable be extended by more than three years;

(b) If the offense is based upon misconduct in office by a public officer or employee, prosecution may be commenced at any time while the defendant is in public office or employment or within two years thereafter, but in no case shall the period of limitation otherwise applicable be extended by more than three years; or

(c) If the offense is an invasion of personal privacy under ORS 163.700 or 163.701, prosecution may be commenced within one year after discovery of the offense by the person aggrieved by the offense, by a person who has a legal duty to represent the person aggrieved by the offense or by a law enforcement agency, but in no case shall the period of limitation otherwise applicable be extended by more than three years.

(10) Notwithstanding subsections (2) and (3) of this section, if the defendant is identified after the period described in subsection (2) or (3) of this section on the basis of DNA (deoxyribonucleic acid) sample comparisons, a prosecution for:

(a) Rape in the first degree, sodomy in the first degree, unlawful sexual penetration in the first degree or sexual abuse in the first degree may be commenced at any time after the commission of the crime.

(b) Rape in the second degree, sodomy in the second degree or unlawful sexual penetration in the second degree may be commenced within 25 years after the commission of the crime.

(11) Notwithstanding subsection (10) of this section, if a prosecution for a felony listed in subsection (10) of this section would otherwise be barred by subsection (2) or (3) of this section, the prosecution must be commenced within two years of the DNA-based identification of the defendant.

(12)(a) Notwithstanding subsection (2) of this section, if a prosecuting attorney obtains corroborating evidence of the crimes of rape in the first degree, sodomy in the first degree, unlawful sexual penetration in the first degree or sexual abuse in the first degree, after the period described in sub-

1 section (2) of this section, the prosecution may be commenced at any time
2 after the commission of the crime.

3 (b) The corroborating evidence described in paragraph (a) of this sub-
4 section must consist of one of the following:

5 (A) Physical evidence other than a DNA sample, including but not limited
6 to audio, video or other electronic recordings, text messages, guest book logs,
7 telephone recordings and photographs.

8 (B) A confession, made by the defendant, to the crime the victim reported.

9 (C) An oral statement, made by the victim to another person in temporal
10 proximity to the commission of the crime, corroborating the victim's report
11 of the crime to a law enforcement agency.

12 (D) A written statement, created by the victim in temporal proximity to
13 the commission of the crime and subsequently delivered to another person
14 or to a law enforcement agency, corroborating the victim's report of the
15 crime to a law enforcement agency.

16 (E) A report made by a different victim to a law enforcement agency,
17 made either before or after the victim's report, alleging that the defendant
18 committed another crime of the same or similar character such that the two
19 crimes could be charged in the same charging instrument under ORS 132.560.

20 (13)(a) A prosecuting attorney commencing a prosecution pursuant to
21 subsection (12) of this section shall present any evidence reasonably tending
22 to negate the guilt of the defendant to the grand jury considering the
23 indictment for the offense.

24 (b) The failure to present evidence reasonably tending to negate guilt as
25 required by paragraph (a) of this subsection does not affect the validity of
26 an indictment or prosecution.

27 **SECTION 6.** ORS 167.017 is amended to read:

28 167.017. (1) A person commits the crime of compelling prostitution if the
29 person knowingly:

30 (a) Uses force or intimidation to compel another to engage in prostitution
31 or attempted prostitution;

(b) Induces or causes a person under 18 years of age to engage in [prostitution], or offer or agree to engage in, sexual conduct or sexual contact in return for a fee;

(c) Aids or facilitates [*the commission of prostitution or attempted prostitution by*] a person under 18 years of age in engaging in, or offering or agreeing to engage in, sexual conduct or sexual contact in return for a fee; or

(d) Induces or causes the spouse, child or stepchild of the person to engage in prostitution.

(2) Compelling prostitution is a Class B felony.

(3) In a prosecution under subsection (1)(b) or (c) of this section, the state is not required to prove that the defendant knew the other person was under 18 years of age and it is no defense that the defendant did not know the person's age or that the defendant reasonably believed the person to be older than 18 years of age.

SECTION 7. ORS 419B.005 is amended to read:

419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

(1)(a) "Abuse" means:

(A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

(B) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.

(C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are described in ORS chapter 163.

(D) Sexual abuse, as described in ORS chapter 163.

(E) Sexual exploitation, including but not limited to:

(i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; and

(ii) Allowing, permitting, encouraging or hiring a child to engage in *[prostitution as described in ORS 167.007 or a commercial sex act as defined in ORS 163.266]*, **or offer or agree to engage in, sexual conduct or sexual contact, as those terms are defined in ORS 167.002, in return for a fee**, to purchase sex with a minor as described in ORS 163.413 or to engage in commercial sexual solicitation as described in ORS 167.008.

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

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

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

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

(J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, or to the unlawful manufacturing of a cannabinoid extract, as defined in ORS 475B.015, that subjects a child to a substantial risk of harm to the child's health or safety.

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

(2) “Child” means an unmarried person who:

(a) Is under 18 years of age; or

(b) Is under 21 years of age and residing in or receiving care or services at a child-caring agency as that term is defined in ORS 418.205.

(3) “Higher education institution” means:

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

(b) A public university listed in ORS 352.002;

(c) The Oregon Health and Science University; and

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

(4)(a) “Investigation” means a detailed inquiry into or assessment of the safety of a child alleged to have experienced abuse.

(b) “Investigation” does not include screening activities conducted upon the receipt of a report.

(5) “Law enforcement agency” means:

(a) A city or municipal police department.

(b) A county sheriff’s office.

(c) The Oregon State Police.

(d) A police department established by a university under ORS 352.121 or 353.125.

(e) A county juvenile department.

(6) “Public or private official” means:

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

(b) Dentist.

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

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

(e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning Division, Department of Education, Youth Development Division, Office of Child Care, the Oregon Youth Authority, a local

1 health department, a community mental health program, a community de-
2 velopmental disabilities program, a county juvenile department, a child-
3 caring agency as that term is defined in ORS 418.205 or an alcohol and drug
4 treatment program.

5 (f) Peace officer.

6 (g) Psychologist.

7 (h) Member of the clergy.

8 (i) Regulated social worker.

9 (j) Optometrist.

10 (k) Chiropractor.

11 (L) Certified provider of foster care, or an employee thereof.

12 (m) Attorney.

13 (n) Licensed professional counselor.

14 (o) Licensed marriage and family therapist.

15 (p) Firefighter or emergency medical services provider.

16 (q) A court appointed special advocate, as defined in ORS 419A.004.

17 (r) A child care provider registered or certified under ORS 329A.030 and
18 329A.250 to 329A.450.

19 (s) Member of the Legislative Assembly.

20 (t) Physical, speech or occupational therapist.

21 (u) Audiologist.

22 (v) Speech-language pathologist.

23 (w) Employee of the Teacher Standards and Practices Commission directly
24 involved in investigations or discipline by the commission.

25 (x) Pharmacist.

26 (y) An operator of a preschool recorded program under ORS 329A.255.

27 (z) An operator of a school-age recorded program under ORS 329A.257.

28 (aa) Employee of a private agency or organization facilitating the pro-
29 vision of respite services, as defined in ORS 418.205, for parents pursuant to
30 a properly executed power of attorney under ORS 109.056.

31 (bb) Employee of a public or private organization providing child-related

services or activities:

(A) Including but not limited to youth groups or centers, scout groups or camps, summer or day camps, survival camps or groups, centers or camps that are operated under the guidance, supervision or auspices of religious, public or private educational systems or community service organizations; and

(B) Excluding community-based, nonprofit organizations whose primary purpose is to provide confidential, direct services to victims of domestic violence, sexual assault, stalking or human trafficking.

(cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete, if compensated and if the athlete is a child.

(dd) Personal support worker, as defined in ORS 410.600.

(ee) Home care worker, as defined in ORS 410.600.

(ff) Animal control officer, as defined in ORS 609.500.

(gg) Member of a school district board or public charter school governing body.

(hh) An individual who is paid by a public body, in accordance with ORS 430.215, to provide a service identified in an individualized written service plan of a child with a developmental disability.

AFFIRMATIVE DEFENSES AGAINST CERTAIN MISDEMEANORS

SECTION 8. (1) It is an affirmative defense to a prosecution for a misdemeanor, other than a misdemeanor involving violence, that at the time of the alleged offense the defendant was:

(a) A victim of trafficking in persons as described in ORS 163.266 (1)(b) or (c);

(b) Coerced to engage in the conduct constituting the misdemeanor by the person whose actions are unlawful under ORS 163.266; and

(c) Under 21 years of age at the time of the conduct constituting the misdemeanor.

(2) The affirmative defense described in subsection (1) of this section applies irrespective of any criminal prosecution or the result of a criminal prosecution under ORS 163.266.

(3) As used in this section, “misdemeanor involving violence” has the meaning given that term in ORS 166.470.

SECTION 9. ORS 161.005 is amended to read:

161.005. ORS 161.005 to 161.055, 161.085 to 161.125, 161.150 to 161.175, 161.190 to 161.275, 161.290 to 161.373, 161.405 to 161.485, 161.505 to 161.585, 161.605, 161.615 to 161.685, 161.705 to 161.737, 162.005, 162.015 to 162.035, 162.055 to 162.115, 162.135 to 162.205, 162.225 to 162.375, 162.405 to 162.425, 162.465, 163.005, 163.095, 163.107, 163.115, 163.125 to 163.145, 163.149, 163.160 to 163.208, 163.196, 163.215 to 163.257, 163.261, 163.263, 163.264, 163.266, 163.275, 163.285, 163.305 to 163.467, 163.432, 163.433, 163.472, 163.505 to 163.575, 163.665 to 163.693, 163.700, 163.701, 163.715, 164.005, 164.015 to 164.135, 164.138, 164.140, 164.205 to 164.270, 164.305 to 164.377, 164.395 to 164.415, 164.805, 164.857, 164.886, 165.002 to 165.102, 165.109, 165.118, 165.805, 165.815, 166.005 to 166.095, 166.350, 166.382, 166.384, 166.660, 167.002 to 167.027, 167.057, 167.060 to 167.100, 167.117, 167.122 to 167.162, 167.203 to 167.252, 167.310 to 167.340, 167.350, 167.810 and 167.820 **and section 8 of this 2021 Act** shall be known and may be cited as Oregon Criminal Code of 1971.

CHILD ABUSE INVESTIGATIONS

SECTION 10. (1) The Department of Human Services shall study and make recommendations on provisions of law regarding child abuse investigations involving victims of sex trafficking to ensure that reports of child abuse involving victims of sex trafficking are investigated and that appropriate medical, mental health and social services are made available to the victims.

(2) The department shall submit a report on its findings to an appropriate interim committee of the Legislative Assembly no later than

1 **September 15, 2022.**

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MISCELLANEOUS

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5 **SECTION 11. Section 10 of this 2021 Act is repealed on January 2,**
6 **2023.**

7 **SECTION 12. Sections 2 and 8 of this 2021 Act and the amendments**
8 **to ORS 12.117, 131.125, 161.005, 167.007, 167.017 and 419B.005 by sections**
9 **3 to 7 and 9 of this 2021 Act apply to acts occurring on or after the**
10 **effective date of this 2021 Act.**

11 **SECTION 13. The unit captions used in this 2021 Act are provided**
12 **only for the convenience of the reader and do not become part of the**
13 **statutory law of this state or express any legislative intent in the**
14 **enactment of this 2021 Act.**

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