

D R A F T

SUMMARY

Provides that defendant's reasonable belief that victim consented constitutes affirmative defense in certain prosecutions for sexual abuse in the second degree and sexual abuse in the third degree.

Provides that person convicted of sexual abuse in the second degree is not required to report as sex offender in certain circumstances.

A BILL FOR AN ACT

Relating to sexual abuse offenses; amending ORS 163.325 and 163A.140.

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

SECTION 1. ORS 163.325 is amended to read:

163.325. (1) In any prosecution under ORS 163.355 to 163.445 in which the criminality of conduct depends on a child's being under the age of 16, it is no defense that the defendant did not know the child's age or that the defendant reasonably believed the child to be older than the age of 16.

(2) When criminality depends on the child's being under a specified age other than 16, it is an affirmative defense for the defendant to prove that the defendant reasonably believed the child to be above the specified age at the time of the alleged offense.

(3) In any prosecution under ORS 163.355 to 163.445 in which the victim's lack of consent is based solely upon the incapacity of the victim to consent because the victim is mentally defective, mentally incapacitated or physically helpless, it is an affirmative defense for the defendant to prove that, at the time of the alleged offense, the defendant did not know of the facts or conditions responsible for the victim's incapacity to consent.

(4) In any prosecution under ORS 163.415 or 163.425 in which the

1 **victim's lack of consent is not based on the incapacity of the victim**
2 **to consent because of the victim's age, it is an affirmative defense for**
3 **the defendant to prove that, at the time of the alleged offense, the**
4 **defendant reasonably believed that the victim consented to the sexual**
5 **contact, sexual intercourse or oral or anal intercourse.**

6 **SECTION 2.** ORS 163A.140 is amended to read:

7 163A.140. A person otherwise required to report under ORS 163A.010,
8 163A.015, 163A.020 or 163A.025 is not required to report, and if currently re-
9 porting is no longer required to report, if:

10 (1)(a) The person has been convicted of:

11 (A) Rape in the third degree as defined in ORS 163.355;

12 (B) Sodomy in the third degree as defined in ORS 163.385;

13 (C) Sexual abuse in the third degree as defined in ORS 163.415;

14 **(D) Sexual abuse in the second degree as defined in ORS 163.425;**

15 ~~[(D)]~~ **(E)** Contributing to the sexual delinquency of a minor as defined in
16 ORS 163.435;

17 ~~[(E)]~~ **(F)** Sexual misconduct as defined in ORS 163.445; or

18 ~~[(F)]~~ **(G)** An attempt to commit an offense listed in subparagraphs (A) to
19 ~~[(E)]~~ **(F)** of this paragraph;

20 (b) The person has been found guilty except for insanity of an offense
21 listed in paragraph (a) of this subsection;

22 (c) The person has been found to be within the jurisdiction of the juvenile
23 court for having committed an act that if committed by an adult would
24 constitute an offense listed in paragraph (a)(A), *[or]* (B) **or (D)** of this sub-
25 section; or

26 (d) The person is paroled to this state under ORS 144.610 after being
27 convicted in another United States court of a crime that would constitute
28 an offense listed in paragraph (a) of this subsection;

29 (2)(a) The person is less than five years older than the victim;

30 (b) The victim's lack of consent was due solely to incapacity to consent
31 by reason of being less than a specified age;

1 (c) The victim was at least 14 years of age at the time of the offense or
2 act;

3 (d) Except for the convictions or findings described in subsection (1) of
4 this section, the person has not been convicted of, found guilty except for
5 insanity of, or found to be within the jurisdiction of the juvenile court based
6 on, a sex crime or an offense, in another United States court, for conduct
7 that if committed in this state would constitute a sex crime; and

8 (e) Each conviction or finding described in subsection (1) of this section
9 involved the same victim; and

10 (3) The court enters an order relieving the person of the requirement to
11 report under ORS 163A.145 or 163A.150.

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